

WESTERN AUSTRALIA.

## CRIMINAL CODE.

### No. 28 of 1913.

Reprinted pursuant to the Amendments Incorporation Act, 1938, as amended by Nos. 32 of 1918 (a), 51 of 1932 (b), 15 of 1942 (c), 40 of 1945 (d), 27 of 1952 (e), 55 of 1953 (f), 20 of 1954 (g), and 63 of 1954 (h); and by No. 35 of 1935 (i) as amended by No. 73 of 1954 (j).

**AN ACT to enact a compilation of the Criminal Code Act, 1902, with its amendments and portion of the Secret Commissions Act, 1905, and for other related purposes.**

*[Assented to 30th December, 1913.]*

**WHEREAS** the Legislative Council and Legislative Preamble.  
Assembly on the twenty-second day of December, in the year nineteen hundred and eleven, directed the compilation with its amendments of the Criminal Code Act, 1902; and a compilation of the said Act and the Acts amending the same was duly made in accordance with the Statutes Compilation Act (as amended): And whereas it is desirable to repeal the Acts so compiled: And whereas in order to carry out the purposes of the Criminal Code Amendment Act, 1913, it is desirable to include in the compilation the further amendments authorised to be so included by that Act, and also the provisions of the Secret Commissions Act, 1905 (except section nineteen thereof), and to repeal the last-mentioned Act and the portions of the Criminal Code Amendment Act, 1913, containing the said further amendments: And whereas the Acts and the parts of an Act which it is desirable to repeal are set out in the Appendix A hereto; and the compiled Act set out in Appendix B hereto is a true compilation of the Acts and parts of Acts so directed to be compiled

(a) Assented to 24th December, 1918. (b) Assented to 30th December, 1932.  
(c) Assented to 26th November, 1942. (d) Assented to 30th January, 1946.  
(e) Assented to 28th November, 1952. (f) Assented to 9th January, 1954.  
(g) Assented to 28th September, 1954. (h) Assented to 30th December, 1954:  
[To come into operation on a day to be fixed by proclamation. See No. 63 of 1954, s. 2 (1).] (i) Assented to 7th January, 1936: Proclaimed to commence 14th April, 1936 (see Gazette 9th April, 1936); (j) Assented to 14th January, 1955: Proclaimed to commence 1st March, 1955 (see Gazette, 18th February, 1955).

or authorised to be included in the compilation as aforesaid, and it is desirable to give such compilation the force of law. Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title.  
No. 28 of  
1913, s. 1.

1. This Act may be cited as the *Criminal Code Act Compilation Act, 1913*, and shall come into operation on the first day of January, nineteen hundred and fourteen.

Repeal.  
No. 28 of  
1913, s. 2.

2. The Acts and parts of an Act set out in Appendix "A" hereto are hereby repealed, and the compiled Act set forth in Appendix "B" hereto is hereby enacted under the title of the *Criminal Code Act, 1913*.

Matters and  
things  
originated  
under  
repealed  
Acts to  
enure for  
the purposes  
of the  
compiled  
Act.  
No. 28 of  
1913, s. 3.

3. (1) All offices, appointments, regulations, rules, convictions, sentences, judgments, orders, registers, records, certificates, and instruments, and generally all acts of authority, which originated or were operative or subsisting under any enactment repealed by this Act and hereby re-enacted with or without modification, and which are subsisting or in force on or immediately prior to the commencement of the compiled Act shall, subject to that Act, enure for the purposes thereof as fully and effectually as if they had originated under the corresponding provisions of that Act, and accordingly shall, where necessary, be deemed to have so originated.

(2) All offences committed against and all pending matters and proceedings commenced under any such enactment may be prosecuted, continued, and completed under and subject to the provisions of the compiled Act.

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## APPENDIX A.

## Acts and Parts of Act Repealed.

1 and 2 Edw. VII	No. 14	.....	The Criminal Code Act 1902.
2 Edw. VII	No. 29	.....	The Criminal Code Amendment Act 1902.
No. 13 of 1905	.....		The Secret Commissions Act 1905.
No. 31 of 1906	.....		The Criminal Code Amendment Act 1906.
No. 28 of 1911	.....		The Criminal Code Amendment Act 1911.
No. 52 of 1911	.....		The Criminal Code Amendment Act 1911.
Sections 2 to 29 (both inclusive) of Act No. 15 of 1913			The Criminal Code Amendment Act 1913.

## APPENDIX B.

## AN ACT to establish a Code of Criminal Law.

WHEREAS it is desirable to declare and consolidate the Criminal Law: Be it enacted and declared by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the *Criminal Code Act, 1913*. Preamble.  
Short title.  
No. 28 of  
1913,  
Appendix B,  
s. 1.
2. The provisions contained in the Code of Criminal Law set forth in the Schedule to this Act, and hereinafter called "the Code," shall be the law of Western Australia with respect to the several matters therein dealt with. Establishment of  
Code.  
Schedule.  
No. 28 of  
1913,  
Appendix B,  
s. 2.

The said Code may be cited as "The Criminal Code."\*

\* Marginal notes preceded by "Code" refer to the Schedule to Appendix "B" of Act No. 28 of 1913.

Construction  
of Statutes,  
Statutory  
Rules, and  
other  
instruments.  
No. 28 of  
1913,  
Appendix B,  
s. 3.

3. The following rules shall, unless the context otherwise indicates, apply with respect to the construction of Statutes, statutory rules, by-laws, and other instruments, that is to say:—

- (1) When in any Statute, statutory rule, by-law, or other instrument, public or private, the term “felony” is used, or reference is made to an offence by the name of felony, it shall be taken that reference is intended to an offence which is a crime under the provisions of the Code:
- (2) When in any Statute, statutory rule, by-law, or other instrument, public or private, the term “murder” is used, it shall be taken that reference is intended to the crimes of wilful murder, and murder, and each of them:
- (3) When in any Statute, statutory rule, by-law, or other instrument, public or private, the term “larceny” is used, it shall be taken that reference is intended to the crime of stealing:
- (4) When in any Statute, statutory rule, by-law, or other instrument, public or private, reference is made to any offence by any specific name, it shall be taken that reference is intended to the offence which, under the provisions of the Code, is constituted by the Act or omission that would heretofore have constituted the offence referred to:
- (5) When in any Statute, statutory rule, by-law, or other instrument, public or private, reference is made to any of the statutory provisions hereby repealed, it shall be taken that reference is intended to the corresponding provisions or substituted provisions of the Code.

Provisions  
of Code  
exclusive,  
with certain  
exceptions.  
No. 28 of  
1913,  
Appendix B,  
s. 4.

4. No person shall be liable to be tried or punished in Western Australia as for an indictable offence, except under the express provisions of the Code, or some other Statute Law of Western Australia; or under the express provisions of some



Statute of the Commonwealth of Australia, or of the United Kingdom which is expressly applied to Western Australia, or which is in force in all parts of His Majesty's dominions not expressly excepted from its operation, or which authorises the trial and punishment in Western Australia of offenders who have, at places not in Western Australia, committed offences against the laws of the Commonwealth of Australia or of the United Kingdom.

5. When, by the Code, any act is declared to be lawful, no action can be brought in respect thereof.

Civil remedies.

Except as aforesaid, the provisions of this Act shall not affect any right of action which any person would have had against another if this Act had not been passed; nor shall the omission from the Code of any penal provision in respect of any act or omission, which before the time of the coming into operation of the Code constituted an actionable wrong, affect any right of action in respect thereof.

Saving.  
No. 28 of  
1913,  
Appendix B,  
s. 5.

6. When an offender is punishable under the provisions of the Code, and also under the provisions of some other Statute, he may be prosecuted and convicted under the provisions either of the Code or of such other Statute; so that he is not twice punished for the same offence.

Offender may be prosecuted under Code or other Statute.  
No. 28 of  
1913,  
Appendix B,  
s. 6.

7. Nothing in this Act or in the Code shall affect the authority of Courts of Record to punish a person summarily for the offence commonly known as "Contempt of Court"; but so that a person cannot be so punished, and also punished under the provisions of the Code for the same act or omission.

Contempt of Court.  
No. 28 of  
1913,  
Appendix B,  
s. 7.

8. Whenever any amendment is made in the Code, all copies thereof printed by the Government Printer after the amendment shall be so printed as to set forth the actual provisions of the Code after omitting all repealed provisions or words, and embodying all newly enacted or substituted provisions or words.

Printing of amendments.  
No. 28 of  
1913,  
Appendix B,  
s. 8.

## THE SCHEDULE.

## THE CRIMINAL CODE OF WESTERN AUSTRALIA.

## PART I.—INTRODUCTORY.

INTERPRETATION: APPLICATION: GENERAL PRINCIPLE:.

## CHAPTER I.—INTERPRETATION.

1. Construction of terms.
2. Definition of offence.
3. Division of offences.
4. Attempts to commit offences.
5. Arrest without warrant.
6. Carnal knowledge.

## CHAPTER II.—PARTIES TO OFFENCES.

7. Principal offenders.
8. Offences committed in prosecution of common purpose.
9. Mode of execution immaterial.
10. Accessories after the fact.

## CHAPTER III.—APPLICATION OF CRIMINAL LAW.

11. Effect of changes in law.
12. Application of Code as to offences wholly or partially committed in Western Australia.
13. Offences procured or counselled by persons out of Western Australia.
14. Offences procured in Western Australia to be committed out of Western Australia.
15. Defence force.
16. Person not to be twice punished for same offence.
17. Former conviction or acquittal.

## CHAPTER IV.—PUNISHMENTS.

18. Kinds of punishment.
19. Construction of provisions of Code as to punishments.
20. Calculation of terms of sentence; Cumulative sentences; Escaped prisoners.
21. Prerogative.

## CHAPTER V.—CRIMINAL RESPONSIBILITY.

22. Ignorance of law; *bona fide* claim of right.
23. Intention: Motive.
24. Mistake of fact.
25. Extraordinary emergencies.
26. Presumption of sanity.

27. Insanity.
28. Intoxication.
29. Immature age.
30. Judicial officers.
31. Justification and excuse: Compulsion.
32. Compulsion of husband.
33. No conspiracy between husband and wife alone.
34. Offences by partners and members of companies with respect to partnership or corporate property.
35. Liability of husband and wife for offences committed by either with respect to the other's property.
36. Application of rules.

## PART II.—OFFENCES AGAINST PUBLIC ORDER.

### CHAPTER VI.—TREASON AND OTHER OFFENCES AGAINST THE SOVEREIGN'S PERSON AND AUTHORITY.

37. Treason.
38. Concealment of treason.
39. Treasonable crimes.
40. Time for proceeding in cases of treason or concealment of treason; Two witnesses necessary.
41. Inciting to mutiny.
42. Assisting escape of prisoners of war.
43. Overt act.

### CHAPTER VII.—SEDITION.

44. Definition of seditious intention.
45. Innocent intentions.
46. Definition of seditious enterprises, etc.
47. Unlawful oaths to commit capital offences.
48. Other unlawful oaths to commit offences.
49. Compulsion, how far a defence.
50. Effect of prosecution.
51. Unlawful drilling.
52. Sedition.
53. Defamation of foreign princes.

### CHAPTER VIII.—OFFENCES AGAINST THE EXECUTIVE AND LEGISLATIVE POWER.

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55. Interference with the Legislature.
56. Disturbing the Legislature.
57. False evidence before Parliament.
58. Threatening witness before Parliament.
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60. Member of Parliament receiving bribes.
61. Bribery of Member of Parliament.

## CHAPTER IX.—UNLAWFUL ASSEMBLIES: BREACHES OF THE PEACE.

- 62. Definitions.
- 63. Punishment of unlawful assembly.
- 64. Punishment of riot.
- 65. Rioters remaining after proclamation ordering them to disperse.
- 66. Rioters demolishing buildings, etc.
- 67. Rioters injuring building, machinery, etc.
- 68. Going armed so as to cause fear.
- 69. Forcible entry.
- 70. Forcible detainer.
- 71. Affray.
- 72. Challenge to fight a duel.
- 73. Prize fight.
- 74. Threatening violence.

## CHAPTER X.—OFFENCES AGAINST POLITICAL LIBERTY.

- 75. Interfering with political liberty.

## CHAPTER XI.—PIRACY.

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- 77. Further definition of pirates.
- 78. Punishment of piracy.
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- 89. False certificates by public officers.
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- 101. Illegal practices.
- 102. Other illegal practices.
- 103. Corrupt and illegal practices: Time.
- 104. Interference at elections.
- 105. Electors attempting to violate secrecy of ballot.
- 106. Other attempts of like kind.
- 107. Stuffing ballot boxes.
- 108. Offences by presiding officers at elections.
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- 112. Offences at elections when voting is by post.
- 113. False claims.
- 114. Attesting claims, etc., without inquiry.
- 115. Acts of agents.
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- 117. Certificate of Returning Officer.
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- 126. Evidence on charge of perjury.
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- 283. Attempt to murder.
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- 286. Conspiring to murder.
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- 299. Attempting to cause explosion likely to endanger life.
- 300. Maliciously administering poison with intent to harm.
- 301. Wounding and similar acts.
- 302. Failure to supply necessaries.
- 303. Endangering life or health of apprentices or servants.
- 304. Endangering life of children by exposure.
- 305. Setting man-traps.
- 306. Negligent acts causing harm.
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- 308. Sending or taking unseaworthy ships to sea.
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- 348. Definition of defamation.
- 349. Publication.
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- 352. Absolute protection: Privileges of Judges, witnesses, and others in Courts of justice.
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- 355. Protection: Fair comment.
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- 357. Qualified protection: Excuse.
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- 360. Unlawful publication of defamatory matter.
- 361. Defamation of Members of Parliament by strangers.
- 362. Defence in case of defamation by words, sounds, signs, signals, or gestures.
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- 364. Liability of proprietor, publisher, and editor of periodicals.
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## PART I.—INTRODUCTORY.

INTERPRETATION: APPLICATION: GENERAL  
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## CHAPTER I.—INTERPRETATION.

Construction  
of terms.  
Code, s. 1.

Amended by  
No. 55 of  
1953, s. 2.

1. In this Code, unless the context otherwise indicates—

The term “Attorney General” includes where there is a vacancy in the office of Attorney General the person appointed by the Governor to be Minister for Justice;

\* The term “bodily harm” means any bodily injury which interferes with health or comfort;

The term “circumstance of aggravation” means and includes any circumstance by reason whereof an offender is liable to a greater punishment than that to which he would be liable if the offence were committed without the existence of that circumstance;

The terms “clerk” and “servant” include any person employed for any purpose as or in the capacity of a clerk or servant, or as a collector of money, although temporarily only, or although employed also by other persons than the person alleged to be his employer, or although employed to pay as well as receive money, and any person employed as or in the capacity of a commission agent for the collection or disbursement of money, or in any similar capacity, although he has no authority from his employer to receive money or other property on his account;

The term “company” means an incorporated company;

The term “criminally responsible” means liable to punishment as for an offence; and the term “criminal responsibility” means liability to punishment as for an offence;

The term “dwelling-house” includes any building or structure, or part of a building or structure, which is for the time being kept by the owner or occupier for the residence



therein of himself, his family, or servants, or any of them: It is immaterial that it is from time to time uninhabited;

A building or structure adjacent to, and occupied with, a dwelling-house is deemed to be part of the dwelling-house if there is a communication between such building or structure and the dwelling-house, either immediate or by means of a covered and enclosed passage leading from the one to the other, but not otherwise;

The term "explosive substance" includes a gaseous substance in such a state of compression as to be capable of explosion;

The term "grievous bodily harm" means any bodily injury of such a nature as to endanger, or be likely to endanger life, or to cause, or be likely to cause, permanent injury to health;

The term "have in possession" includes having under control in any place whatever, whether for the use or benefit of the person of whom the term is used or of another person, and although another person has the actual possession or custody of the thing in question;

The term "indictment" means a written charge preferred against an accused person in order to his trial before some Court other than justices exercising summary jurisdiction;

The term "liable," used alone, means liable on conviction upon indictment;

The term "mail" includes anything sent by post which is in actual course of transmission from one place to another;

The term "mail conveyance" includes any conveyance of any kind by which a mail is carried, and also any vessel employed by or under the Postmaster General's Department, or the postal authority of any other country, or the Admiralty, for the convey-

ance of mails, whether under contract or not, and also a ship of war or other vessel in the service of His Majesty in respect of letters conveyed by it;

The term "money" includes bank notes, bank drafts, cheques, and any other orders, warrants, authorities, or requests for the payment of money;

The term "night" or "night-time" means the interval between nine o'clock in the evening and six o'clock in the morning;

The term "person" and "owner" and other like terms, when used with reference to property, include corporations of all kinds, and any other associations of persons capable of owning property: They also, when so used, include His Majesty;

The term "person employed in the Public Service" includes officers and men of the Defence Force and police officers, and persons employed to execute any process of a Court of justice, and persons employed by the Commissioner of Railways;

The term "police officer" includes any constable or officer of police;

The term "property" includes everything, animate or inanimate, capable of being the subject of ownership;

The term "railway" includes every kind of way on which vehicles are borne upon a rail or rails, whatever may be the means of propulsion;

The terms "registered brand" and "registered mark" mean respectively a brand or mark which is registered under the authority of the laws relating to brands;

The term "ship" includes every kind of vessel used in navigation not propelled by oars;

The term "summary conviction" means summary conviction before two justices in petty sessions;

The term "thing sent by post" includes any letter, newspaper, packet, parcel, or other thing, authorised by law to be transmitted by post, which has been posted or received at a post office for delivery or transmission by post, and which is in course of transmission by post, and any movable receptacle which contains any such thing, and which is in course of transmission by post;

The term "uncorroborated testimony" means testimony which is not corroborated in some material particular by other evidence implicating the accused person;

The term "utter" means and includes using or dealing with, and attempting to use or deal with, and attempting to induce any person to use, deal with, or act upon the thing in question;

The term "knowingly" used in connection with any term denoting uttering or using implies knowledge of the character of the thing uttered or used;

The term "valuable security" includes any document which is the property of any person, and which is evidence of the ownership of any property or of the right to recover or receive any property;

The term "vessel" includes a ship, a boat, and every other kind of vessel used in navigation.

2. An act or omission which renders the person doing the act or making the omission liable to punishment is called an offence.

Definition  
of offence.  
Code, s. 2.

3. Offences are of three kinds, namely, crimes, misdemeanours, and simple offences.

Division  
of offences  
Code, s. 3.

Crimes and misdemeanours are indictable offences; that is to say, the offenders cannot, unless otherwise expressly stated, be prosecuted or convicted except upon indictment.

A person guilty of a simple offence may be summarily convicted by two justices in petty sessions.

An offence not otherwise designated is a simple offence.

Attempts to  
commit  
offences.  
Code, s. 4.

4. When a person, intending to commit an offence, begins to put his intention into execution by means adapted to its fulfilment, and manifests his intention by some overt act, but does not fulfil his intention to such an extent as to commit the offence, he is said to attempt to commit the offence.

It is immaterial, except so far as regards punishment, whether the offender does all that is necessary on his part for completing the commission of the offence, or whether the complete fulfilment of his intention is prevented by circumstances independent of his will, or whether he desists of his own motion from the further prosecution of his intention.

It is immaterial that by reason of circumstances not known to the offender, it is impossible in fact to commit the offence.

The same facts may constitute one offence and an attempt to commit another offence.

Arrest  
without  
warrant.  
Code, s. 5.

5. The expression "the offender may be arrested without warrant" means that the provisions of this Code relating to the arrest of offenders or suspected offenders without warrant are applicable to the offence in question, either generally or subject to such conditions, if any, as to time, place, or circumstance, or as to the person authorised to make the arrest, as are specified in the particular case.

Except when otherwise stated, the definition of an offence as a crime imports that the offender may be arrested without warrant.

The expression "the offender cannot be arrested without warrant" means that the provisions of this Code relating to the arrest of offenders or suspected offenders without warrant are not applicable to the crime in question, except subject to such conditions,

if any, as to time, place, or circumstance, or as to the person authorised to make the arrest as are specified in the particular case.

6. When the term "carnal knowledge" or the term "carnal connection" is used in defining an offence, it is implied that the offence, so far as regards that element of it, is complete upon penetration.

Carnal  
knowledge.  
Code, s. 6.

#### CHAPTER II.—PARTIES TO OFFENCE.

7. When an offence is committed, each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with actually committing it, that is to say—

Principal  
offenders.  
Code, s. 7.

- (a) Every person who actually does the act or makes the omission which constitutes the offence;
- (b) Every person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence;
- (c) Every person who aids another person in committing the offence;
- (d) Any person who counsels or procures any other person to commit the offence;

In the fourth case he may be charged either with himself committing the offence or with counselling or procuring its commission.

A conviction of counselling or procuring the commission of an offence entails the same consequences in all respects as a conviction of committing the offence.

Any person who procures another to do or omit to do any act of such a nature that, if he had himself done the act or made the omission, the act or omission would have constituted an offence on his part, is guilty of an offence of the same kind, and is liable to the same punishment as if he had himself

done the act or made the omission; and he may be charged with himself doing the act or making the omission.

Offences  
committed  
in  
prosecution  
of common  
purpose.  
Code, s. 8.

8. When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence.

Mode of  
execution  
immaterial.  
Code, s. 9.

9. When a person counsels another to commit an offence, and an offence is actually committed after such counsel by the person to whom it is given, it is immaterial whether the offence actually committed is the same as that counselled or a different one, or whether the offence is committed in the way counselled, or in a different way, provided in either case that the acts constituting the offence actually committed are a probable consequence of carrying out the counsel.

In either case the person who gave the counsel is deemed to have counselled the other person to commit the offence actually committed by him.

Accessories  
after the  
fact.  
Code, s. 10.

10. A person who receives or assists another who is, to his knowledge, guilty of an offence, in order to enable him to escape punishment, is said to become an accessory after the fact to the offence.

A married woman does not become an accessory after the fact to an offence of which her husband is guilty, by receiving or assisting him in order to enable him to escape punishment; nor by receiving or assisting, in her husband's presence and by his authority, another person who is guilty of an offence in the commission of which her husband has taken part, in order to enable that other person to escape punishment: Nor does a husband become accessory after the fact to an offence of which his wife is guilty by receiving or assisting her in order to enable her to escape punishment.

## CHAPTER III.—APPLICATION OF CRIMINAL LAW.

11. A person cannot be punished for doing or omitting to do an act, unless the act or omission constituted an offence under the law in force when it occurred, nor unless doing or omitting to do the act under the same circumstances would constitute an offence under the law in force at the time when he is charged with the offence.

Effect of  
changes  
in law.  
Code, s. 11.

If the law in force when the act or omission occurred differs from that in force at the time of the conviction, the offender cannot be punished to any greater extent than was authorised by the former law or to any greater extent than is authorised by the latter law.

12. This Code applies to every person who is in Western Australia at the time of his doing any act or making any omission which constitutes an offence.

Application  
of Code as  
to offences  
wholly or  
partially  
committed  
in Western  
Australia.  
Code, s. 12.

With regard to offences which are of such a nature that they comprise several elements, if any acts or omissions or events actually occur which, if they all occurred in Western Australia, would constitute an offence, and any of such acts or omissions or events occurs in Western Australia although all or some of the other acts or omissions or events which, if they occurred in Western Australia, would be elements of the offence occur elsewhere than in Western Australia; then—

- (1) If the act or omission which, in the case of an offence wholly committed in Western Australia, would be the initial element of the offence, occurs in Western Australia, the person who does that act or makes that omission is guilty of an offence of the same kind, and is liable to the same punishment, as if all the subsequent elements of the offence had occurred in Western Australia; and

- (2) If that act or omission occurs elsewhere than in Western Australia, and the person who does that act or makes that omission afterwards comes into Western Australia, he is, by such coming into Western Australia, guilty of an offence of the same kind, and is liable to the same punishment as if that act or omission had occurred in Western Australia and he had been in Western Australia when it occurred:

But in any such case it is a defence to the charge to prove that the accused person did not intend that the act or omission should have effect in Western Australia.

This section does not extend to a case in which the only material event that occurs in Western Australia is the death in Western Australia of a person whose death is caused by an act done or omitted to be done at a place not in Western Australia, and at a time when he was not in Western Australia.

Offences  
procured or  
counselled  
by persons  
out of  
Western  
Australia.  
Code, s. 13.

13. Any person who, having while out of Western Australia procured another to do or omit to do in Western Australia an act of such a nature that, if he had himself done the act or made the omission in Western Australia, he would have been guilty of an offence, afterwards comes into Western Australia, is by such coming into Western Australia guilty of an offence of the same kind, and is liable to the same punishment, as if he had himself done the act or made the omission in Western Australia.

Any person who, having while out of Western Australia counselled or procured the commission of an offence which is actually committed in Western Australia, afterwards comes into Western Australia, is by such coming into Western Australia guilty of an offence of the same kind, and is liable to the same punishment, as if he had been in Western Australia when the offence was committed.



14. Any person who, while in Western Australia, procures another to do an act or make an omission at a place not in Western Australia of such a nature that, if he had himself done the act or made the omission in Western Australia, he would have been guilty of an offence, and that, if he had himself done the act or made the omission, he would have been guilty of an offence under the laws in force in the place where the act or omission is done or made, is guilty of an offence of the same kind, and is liable to the same punishment, as if the act had been done or the omission had been made in Western Australia, but so that the punishment does not exceed that which he would have incurred under the laws in force in the place where the act was done or the omission was made, if he had himself done the act or made the omission.

Offences  
procured in  
Western  
Australia  
to be  
committed  
out of  
Western  
Australia.  
Code, s. 14.

A prosecution cannot be instituted under the provisions of this section, except at the request of the Government of the State having jurisdiction in the place where the act or omission occurs.

15. Officers and men of the Naval and Military Defence Force are subject to the special laws relating to that force, but are not exempt from the provisions of this Code.

Defence  
Force.  
Code, s. 15.

16. A person cannot be twice punished, either under the provisions of this Code or under the provisions of any other law, for the same act or omission, except in the case where the act or omission is such that by means thereof he causes the death of another person, in which case he may be convicted of the offence of which he is guilty by reason of causing such death, notwithstanding that he has already been convicted of some other offence constituted by the act or omission.

Person not  
to be twice  
punished  
for same  
offence.  
Code, s. 16.

17. It is a defence to a charge of any offence to show that the accused person has already been tried, and convicted or acquitted upon an indictment on which he might have been convicted of the offence with which he is charged, or has already been acquitted upon indictment, or has already been convicted, of an offence of which he might be convicted upon the indictment or complaint on which he is charged.

Former  
conviction  
or acquittal.  
Code, s. 17.

## CHAPTER IV.—PUNISHMENTS.

Kinds of  
punishment.  
Code, s. 18.  
Amended by  
No. 32 of  
1918, s. 2.

18. The punishments which may be inflicted under this Code are as follows:—

Death;  
Imprisonment with hard labour;  
Imprisonment without hard labour;  
Detention in an industrial or reformatory school;  
Whipping;  
Fine;  
Finding security to keep the peace and be of good behaviour;  
Detention in a reformatory prison.

The punishment of whipping cannot be inflicted upon a female.

Construction  
of provisions  
of Code  
as to  
punish-  
ments.  
Code, s. 19.  
Amended by  
No. 32 of  
1918, s. 3.

19. In the construction of this Code it is to be taken that, except when it is otherwise expressly provided,

- (1) A person liable to imprisonment, either with or without hard labour, for life or for any other period, may be sentenced to similar imprisonment for any shorter term;
- (2) A person liable to imprisonment with hard labour may be sentenced to imprisonment without hard labour;
- (3) A person liable to imprisonment, either with or without hard labour, may be sentenced to pay a fine not exceeding Five hundred pounds in addition to, or instead of, such imprisonment.
- (4) A person liable to a fine of any amount may be sentenced to pay a fine of any lesser amount;
- (5) A person sentenced on conviction upon indictment to pay a fine may be sentenced to be imprisoned until the fine is paid, in addition to any other punishment to which he is sentenced; but so that the imprisonment for non-payment of the fine shall not extend for a term longer than two years, and shall not, together with the fixed term

of imprisonment, if any, extend for a term longer than the longest term for which he might be sentenced to be imprisoned without fine;

- (6) A person convicted upon indictment of an offence not punishable with death may, instead of, or in addition to, any punishment to which he is liable, be ordered to enter into his own recognisance, with or without sureties, in such amount as the Court thinks fit, that he shall keep the peace and be of good behaviour for a time to be fixed by the Court, and may be ordered to be imprisoned until such recognisance, with sureties if so directed, is entered into; but so that the imprisonment for not entering into the recognisance shall not extend for a term longer than one year, and shall not, together with the fixed term of imprisonment, if any, extend for a term longer than the longest term for which he might be sentenced to be imprisoned without fine;

- (6a) If any child or young person under the age of eighteen years is convicted on indictment of any offence punishable with imprisonment, the Court, in lieu of sentencing him to imprisonment, may order him to be sent to an industrial school (as defined in the State Children Act, 1907)\* until he is eighteen years of age, or until the expiry of two years from the date of the conviction, whichever period shall be the longer, and such child or young person may by virtue of the order be dealt with as is provided in the State Children Act, 1907\*, with reference to children sent to industrial schools, and the relative provisions of that Act shall apply to him accordingly.

Inserted by  
No. 32 of  
1918, s. 3.

- (7) A person convicted of any offence upon summary conviction may, instead of being sentenced to any punishment to which he

\* Title altered to *Child Welfare Act* by No. 22 of 1927, s. 2. Act repealed and re-enacted by No. 66 of 1947. Now *Child Welfare Act, 1947-1952*.

is liable, be discharged upon his entering into his own recognisances, with or without sureties, in such amount as the justices think fit, that he shall keep the peace and be of good behaviour for a term not exceeding one year;

- (8) When a person is convicted of any offence not punishable with death, the Court or justices may, instead of passing sentence, discharge the offender upon his entering into his own recognisance, with or without sureties, in such sum as the Court or justices may think fit, conditioned that he shall appear and receive judgment at some future sittings of the Court, or when called upon.

Calculation  
of terms of  
sentence:  
Cumulative  
sentences:  
Escaped  
prisoners.  
Code, s. 20.  
Amended by  
No. 55 of  
1953, s. 3.

20. When a person who is convicted of an offence is, at the time when he appears to receive judgment, undergoing or under sentence to undergo, for one or more other offences, a sentence or sentences involving deprivation of liberty, the punishment to be inflicted upon him for the first-mentioned offence may be directed to take effect from the expiration of the deprivation of liberty for the other offence or offences.

Judgments involving deprivation of liberty pronounced upon any convicted person on the same occasion may be directed to take effect concurrently or cumulatively.

The time during which a convicted appellant, pending the determination of his appeal, is admitted to bail and, subject to any directions which the Court of Criminal Appeal may give to the contrary on any appeal, the time during which the appellant if in custody is specially treated as an unconvicted prisoner, shall not count as part of any term of imprisonment under his sentence, and in the case of an appeal under this Code any imprisonment under the sentence of the appellant, whether it is the sentence passed by the Court of trial or the sentence passed by the Court of Criminal Appeal, shall, subject to any directions which may be given by

the Court as aforesaid, be deemed to be resumed or to begin to run, as the case requires, if the appellant is in custody, as from the day on which the appeal is determined, and, if he is not in custody, as from the day on which he is received into prison under the sentence.

Except as aforesaid, a sentence of imprisonment, with or without hard labour, upon a conviction on indictment, and a sentence of imprisonment, with or without hard labour, upon a summary conviction takes effect from the commencement of the offender's custody under sentence.

A person who escapes from lawful custody while undergoing a sentence involving deprivation of liberty is liable upon recapture to undergo the punishment which he was undergoing at the time of his escape, for a term equal to that during which he was absent from prison, after the escape and before the expiration of the term of his original sentence, whether at the time of his recapture the term of that sentence has or has not expired.

21. Nothing in this Code affects His Majesty's Royal Prerogative of Mercy, but the Attorney General, on the consideration of any petition for the exercise of His Majesty's mercy having reference to the conviction of a person on indictment or to the sentence (other than sentence of death) passed on a person so convicted, may, if he thinks fit, at any time either—

Prerogative  
Code, s. 21.

- (a) refer the whole case to the Court of Criminal Appeal, and the case shall then be heard and determined by the Court of Criminal Appeal as in the case of an appeal by a person convicted; or
- (b) if he desires the assistance of the Court of Criminal Appeal on any point arising in the case with a view to the determination of the petition, refer that point to the Court of Criminal Appeal for their opinion

thereon, and the Court shall consider the point so referred and furnish the Attorney General with their opinion thereon accordingly.

#### CHAPTER V.—CRIMINAL RESPONSIBILITY.

Ignorance  
of law:  
*Bona fide*  
claim of  
right.  
Code, s. 22.

22. Ignorance of the law does not afford any excuse for an act or omission which would otherwise constitute an offence, unless knowledge of the law by an offender is expressly declared to be an element of the offence.

But a person is not criminally responsible, as for an offence relating to property, for an act done or omitted to be done by him with respect to any property in the exercise of an honest claim of right and without intention to defraud.

Intention:  
Motive.  
Code, s. 23.

23. Subject to the express provisions of this Code relating to negligent acts and omissions, a person is not criminally responsible for an act or omission which occurs independently of the exercise of his will, or for an event which occurs by accident.

Unless the intention to cause a particular result is expressly declared to be an element of the offence constituted, in whole or part, by an act or omission, the result intended to be caused by an act or omission is immaterial.

Unless otherwise expressly declared, the motive by which a person is induced to do or omit to do an act, or to form an intention, is immaterial so far as regards criminal responsibility.

Mistake  
of fact.  
Code, s. 24.

24. A person who does or omits to do an act under an honest and reasonable, but mistaken, belief in the existence of any state of things is not criminally responsible for the act or omission to any greater extent than if the real state of things had been such as he believed to exist.

The operation of this rule may be excluded by the express or implied provisions of the law relating to the subject.

25. Subject to the express provisions of this Code relating to acts done upon compulsion or provocation or in self-defence, a person is not criminally responsible for an act or omission done or made under such circumstances of sudden or extraordinary emergency that an ordinary person possessing ordinary power of self-control could not reasonably be expected to act otherwise.

Extra-ordinary emergencies.  
Code, s. 25.

26. Every person is presumed to be of sound mind, and to have been of sound mind at any time which comes in question, until the contrary is proved.

Presumption of sanity.  
Code, s. 26.

27. A person is not criminally responsible for an act or omission if at the time of doing the act or making the omission he is in such a state of mental disease or natural mental infirmity as to deprive him of capacity to understand what he is doing, or of capacity to control his actions, or of capacity to know that he ought not to do the act or make the omission.

Insanity.  
Code, s. 27.

A person whose mind, at the time of his doing or omitting to do an act, is affected by delusions on some specific matter or matters, but who is not otherwise entitled to the benefit of the foregoing provisions of this section, is criminally responsible for the act or omission to the same extent as if the real state of things had been such as he was induced by the delusions to believe to exist.

28. The provisions of the last preceding section apply to the case of a person whose mind is disordered by intoxication or stupefaction caused without intention on his part by drugs or intoxicating liquor, or by any other means.

Intoxication.  
Code, s. 28.

They do not apply to the case of a person who has intentionally caused himself to become intoxicated or stupefied, whether in order to afford excuse for the commission of an offence or not.

When an intention to cause a specific result is an element of an offence, intoxication, whether complete or partial, and whether intentional or

unintentional, may be regarded for the purpose of ascertaining whether such an intention in fact existed.

Immature  
age.  
Code, s. 29.

29. A person under the age of seven years is not criminally responsible for any act or omission.

A person under the age of fourteen years is not criminally responsible for an act or omission, unless it is proved that at the time of doing the act or making the omission he had capacity to know that he ought not to do the act or make the omission.

A male person under the age of fourteen years is presumed to be incapable of having carnal knowledge.

Judicial  
officers.  
Code, s. 30.

30. Except as expressly provided by this Code, a judicial officer is not criminally responsible for anything done or omitted to be done by him in the exercise of his judicial functions, although the act done is in excess of his judicial authority, or although he is bound to do the act omitted to be done.

Justification  
and excuse:  
Compulsion.  
Code, s. 31.

31. A person is not criminally responsible for an act or omission if he does or omits to do the act under any of the following circumstances, that is to say—

- (1) In execution of the law;
- (2) In obedience to the order of a competent authority which he is bound by law to obey, unless the order is manifestly unlawful;
- (3) When the act is reasonably necessary in order to resist actual and unlawful violence threatened to him, or to another person in his presence;
- (4) When he does or omits to do the act in order to save himself from immediate death or grievous bodily harm threatened to be inflicted upon him by some person actually present and in a position to execute the threats, and believing himself to be unable otherwise to escape the carrying of the threats into execution;



But this protection does not extend to an act or omission which would constitute an offence punishable with death, or an offence of which grievous bodily harm to the person of another, or an intention to cause such harm, is an element, nor to a person who has, by entering into an unlawful association or conspiracy, rendered himself liable to have such threats made to him.

Whether an order is or is not manifestly unlawful is a question of law.

32. A married woman is not free from criminal responsibility for doing or omitting to do an act merely because the act or omission takes place in the presence of her husband.

Compulsion  
of husband.  
Code, s. 32.

But a married woman is not criminally responsible for doing or omitting to do an act which she is actually compelled by her husband to do or omit to do, and which is done or omitted to be done in his presence, except in the case of an act or omission which would constitute an offence punishable with death, or an offence of which grievous bodily harm to the person of another, or an intention to cause such harm, is an element, in which case the presence of her husband is immaterial.

33. A husband and wife are not criminally responsible for a conspiracy between themselves alone.

No  
conspiracy  
between  
husband  
and wife  
alone.  
Code, s. 33.

34. A person who, being a member of a co-partnership, corporation, or joint stock company, does or omits to do any act with respect to the property of the co-partnership, corporation, or company, which, if he were not a member of the co-partnership, corporation, or company, would constitute an offence, is criminally responsible to the same extent as if he were not such member.

Offences by  
partners and  
members of  
companies  
with respect  
to  
partnership  
or corporate  
property.  
Code, s. 34.

Liability of husband and wife for offences committed by either with respect to the other's property.  
Code, s. 35.

35. When a husband and wife are living together, neither of them incurs any criminal responsibility for doing or omitting to do any act with respect to the property of the other, except in the case of an act or omission of which an intention to injure or defraud some other person is an element, and except in the case of an act done by either of them when leaving or deserting, or when about to leave or desert, the other.

Subject to the foregoing provisions a husband and wife are, each of them, criminally responsible for any act done by him or her with respect to the property of the other, which would be an offence if they were not husband and wife, and to the same extent as if they were not husband and wife.

But neither of them can institute criminal proceedings against the other while they are living together.

Upon the prosecution of a husband on the complaint of his wife for an offence committed with respect to her property, and upon the prosecution of a wife on the complaint of her husband for an offence committed with respect to his property, the wife or husband, as the case may be, is a competent and compellable witness.

In this section the term "property," used with respect to a wife, means her separate property.

Application of rules.  
Code, s. 36.

36. The provisions of this chapter apply to all persons charged with any offence against the Statute Law of Western Australia.

## PART II.—OFFENCES AGAINST PUBLIC ORDER.

### CHAPTER VI.—TREASON AND OTHER OFFENCES AGAINST THE SOVEREIGN'S PERSON AND AUTHORITY.

Treason.  
Code s. 37.  
Amended by  
No. 55 of 1953  
s. 4.

37. Any person who—

- (1) Kills the Sovereign, or does Him any bodily harm, tending to His death, or maim or wounding, or imprisonment or restraint; or
- (2) Kills the eldest son and heir-apparent for the time being of the Sovereign, or the Queen Consort of the reigning King; or

- (3) Forms an intention to do any such act as aforesaid, and manifests such intention by any overt act; or
- (4) Conspires with any other person to kill the Sovereign or to do Him any bodily harm tending to His death, or maim or wounding, or imprisonment or restraint; or
- (5) Levies war against the Sovereign—
  - (a) With intent to depose the Sovereign from the Royal Style and Titles for the time being appertaining to the Crown as used in relation to any of Her Majesty's realms and territories; or
  - (b) In order by force or constraint to compel the Sovereign to change His measures or counsels, or in order to put any force or constraint upon, or in order to intimidate or overawe any House of Parliament of any of His Majesty's dominions; or
- (6) Conspires with any other person to levy war against the Sovereign with any such intent or purpose as last aforesaid; or
- (7) Instigates any foreigner to make an armed invasion of any part of His Majesty's dominions; or
- (8) Assists by any means whatever any public enemy at war with the Sovereign; or
- (9) Violates, whether with her consent or not, a Queen Consort, or the wife of the eldest son and heir-apparent for the time being of the Sovereign;

is guilty of a crime which is called treason, and is liable to the punishment of death.

### 38. Any person who—

- (1) Becomes an accessory after the fact to treason; or

Subsec. 5 (a)  
repealed and  
re-enacted  
by No. 55 of  
1953, s. 4.

Concealment  
of treason.  
Code, s. 38.

- (2) Knowing that any person intends to commit treason, does not give information thereof with all reasonable despatch to a justice, or use other reasonable endeavours to prevent the commission of the crime;

is guilty of a crime and is liable to imprisonment with hard labour for life.

Treasonable crimes.  
Code, s. 39.

39. Any person who forms an intention to effect any of the following purposes, that is to say:—

Amended by  
No. 55 of  
1953, s. 5.  
Para. (a)  
repealed and  
re-enacted  
by No. 55 of  
1953, s. 5.

- (a) To depose the Sovereign from the Royal Style and Titles for the time being appertaining to the Crown as used in relation to any of Her Majesty's realms and territories; or
- (b) To levy war against the Sovereign within any part of His dominions in order by force or constraint to compel the Sovereign to change his measures or counsels, or in order to put any force or constraint upon or in order to intimidate or overawe any House of Parliament of any of His Majesty's dominions; or
- (c) To instigate any foreigner to make an armed invasion of any of His Majesty's dominions;

and manifests such intention by any overt act, is guilty of a crime and is liable to imprisonment with hard labour for life.

A person charged with any of the crimes defined in this section is not entitled to be acquitted on the ground that any act proved to have been committed by him constitutes the crime of treason; but a person who has been tried, and convicted or acquitted on a charge of any such crime, cannot be afterwards prosecuted for treason in respect of the same facts.

Time for proceeding in cases of treason or concealment of treason: Two witnesses necessary.  
Code, s. 40.

40. A person cannot be tried for treason or for any of the crimes defined in the two last preceding sections unless the indictment is presented within two years after the crime is committed:

Nor can a person charged with treason or with any of such crimes be convicted, except on his own plea of guilty, or on the evidence in open court of two witnesses at the least to one overt act of the kind of treason alleged, or the evidence of one witness to one overt act, and one other witness to another overt act of the same kind of treason.

This section does not apply to cases in which the overt act of treason alleged is the killing of the Sovereign, or a direct attempt to endanger the life or injure the person of the Sovereign.

41. Any person who advisedly attempts to effect any of the following purposes, that is to say:

Inciting to  
mutiny.  
Code, s. 41.

- (a) To seduce any person serving in His Majesty's forces by sea or land from his duty and allegiance to His Majesty; or
- (b) To incite any such person to commit an act of mutiny or any traitorous or mutinous act; or
- (c) To incite any such persons to make or endeavour to make a mutinous assembly;

is guilty of a crime and is liable to imprisonment with hard labour for life.

A person who has been tried, and convicted or acquitted, on a charge of any of the crimes defined in this section cannot be afterwards prosecuted for any other crime defined in this chapter in respect of the same facts.

42. Any person who—

- (1) Knowingly and advisedly aids an alien enemy of His Majesty, being a prisoner of war, in Western Australia, whether such prisoner is confined in a prison or elsewhere or is suffered to be at large on his parole, to escape from his prison or place of confinement, or, if he is at large on his parole, to escape from Western Australia; or
- (2) Being a person who owes allegiance to His Majesty, after any such prisoner has escaped by sea from any part of His Majesty's dominions, knowingly and

Assisting  
escape of  
prisoners  
of war.  
Code, s. 42.

advisedly upon the high seas within the territorial waters of Western Australia aids him in his escape to or towards any other dominion or place;

is guilty of a crime and is liable to imprisonment with hard labour for life.

Overt act.  
Code, s. 43.

43. In the case of any of the offences defined in this chapter when the manifestation by an overt act of an intention to effect any purpose is an element of the offence, every act of conspiring with any person to effect that purpose, and every act done in furtherance of the purpose by any of the persons conspiring, is deemed to be an overt act manifesting the intention.

#### CHAPTER VII.—SEDITION.

Definition  
of seditious  
intention.  
Code, s. 44.

44. An intention to effect any of the following purposes, that is to say:

- (a) To bring the Sovereign into hatred or contempt;
- (b) To excite disaffection against the Sovereign, or the Government or Constitution of the United Kingdom, or of the Commonwealth of Australia, or of Western Australia as by law established, or against either House of Parliament of the United Kingdom, of the Commonwealth of Australia, or of Western Australia, or against the administration of justice;
- (c) To excite His Majesty's subjects to attempt to procure the alteration of any matter in the State as by law established otherwise than by lawful means;
- (d) To raise discontent or disaffection amongst His Majesty's subjects;
- (e) To promote feelings of ill-will and enmity between different classes of His Majesty's subjects;

is a seditious intention, unless it is justified by the provisions of the next following section.

45. It is lawful for any person—

Innocent  
intentions.  
Code, s. 45.

- (a) To endeavour in good faith to show that the Sovereign has been mistaken in any of His counsels;
- (b) To point out in good faith errors or defects in the Government or Constitution of the United Kingdom, or of the Commonwealth of Australia, or of Western Australia as by law established, or in legislation, or in the administration of justice, with a view to the reformation of such errors or defects;
- (c) To excite in good faith His Majesty's subjects to attempt to procure by lawful means the alteration of any matter in the State as by law established; or
- (d) To point out in good faith in order to their removal any matters which are producing or have a tendency to produce feelings of ill-will and enmity between different classes of His Majesty's subjects.

46. A seditious enterprise is an enterprise which is undertaken in order to the carrying out of a seditious intention.

Definition  
of seditious  
enterprises,  
etc.  
Code, s. 46.

Seditious words are words expressive of a seditious intention.

The term "seditious writing" includes anything intended to be read, and any sign or visible representation, which is expressive of a seditious intention.

47. Any person who—

Unlawful  
oaths to  
commit  
capital  
offences.  
Code, s. 47.

- (1) Administers or is present at and consents to the administering of, any oath or engagement in the nature of an oath, purporting to bind the person who takes it to commit any crime punishable with death; or
- (2) Takes any such oath or engagement, not being compelled to do so; or
- (3) Attempts to induce any person to take any such oath or engagement;

is guilty of a crime, and is liable to imprisonment with hard labour for life.

Other  
unlawful  
oaths to  
commit  
offences.  
Code, s. 48.

48. Any person who—

- (1) Administers, or is present at and consents to the administering of, any oath or engagement in the nature of an oath purporting to bind the person who takes it to act in any of the ways following, that is to say,—
  - (a) To engage in any mutinous or seditious enterprise;
  - (b) To commit any indictable offence not punishable with death;
  - (c) To disturb the public peace;
  - (d) To be of any association, society, or confederacy formed for the purpose of doing any such act as aforesaid;
  - (e) To obey the orders or commands of any committee or body of men not lawfully constituted, or of any leader or commander or other person not having authority by law for that purpose;
  - (f) Not to inform or give evidence against any associate, confederate, or other person;
  - (g) Not to reveal or discover any unlawful association, society, or confederacy, or any illegal act done or to be done, or any illegal oath or engagement that may have been administered or tendered to or taken by himself or any other person, or the import of any such oath or engagement; or
- (2) Takes any such oath or engagement, not being compelled to do so; or
- (3) Attempts to induce any person to take any such oath or engagement;

is guilty of a crime, and is liable to imprisonment with hard labour for seven years.



49. A person who takes any such oath or engagement as is mentioned in the two last preceding sections cannot set up as a defence that he was compelled to do so, unless within fourteen days after taking it, or, if he is prevented by actual force or sickness, within fourteen days after the termination of such prevention, he declares by information on oath before some member of the Executive Council or justice of the peace, or, if he is on actual service in His Majesty's forces by sea or land, either by such information or by information to his commanding officer, the whole of what he knows concerning the matter, including the person or persons by whom and in whose presence, and the place where, and the time when, the oath or engagement was administered or taken.

Compulsion,  
how far a  
defence.  
Code, s. 49.

50. A person who has been tried, and convicted or acquitted, on a charge of any of the crimes hereinbefore in this chapter defined cannot be afterwards prosecuted upon the same facts for the crime of treason, or for the crime of failing, when he knows that any person intends to commit treason, to give information thereof with all reasonable despatch to a justice or use other reasonable endeavours to prevent the commission of the crime.

Effect of  
prosecution.  
Code, s. 50.

51. (1) Any person who—

- (a) In contravention of the directions of a proclamation by the Governor in Council in that behalf trains or drills any other person to the use of arms or the practice of military exercise, movements, or evolutions; or
- (b) Is present at any meeting or assembly of persons held in contravention of the directions of any such proclamation, for the purpose of there training or drilling any other person to the use of arms or the practice of military exercise, movements, or evolutions;

Unlawful  
drilling.  
Code, s. 51.

is guilty of a crime, and is liable to imprisonment with hard labour for seven years.

(2) Any person who, at any meeting or assembly held in contravention of the directions of a proclamation of the Governor in Council in that behalf, is trained or drilled to the use of arms or the practice of military exercise, movements, or evolutions, or who is present at any such meeting or assembly for the purpose of being so trained or drilled, is guilty of a misdemeanour, and is liable to imprisonment for two years.

The offender may be arrested without warrant.

(3) A prosecution for any of the offences defined in this section must be begun within six months after the offence is committed.

Sedition.  
Code, s. 52.

52. Any person who—

- (1) Conspires with any person to carry into execution a seditious enterprise; or
- (2) Advisedly publishes any seditious words or writing;

is guilty of a misdemeanour, and is liable to imprisonment with hard labour for three years.

If he has been previously convicted of any such offence he is guilty of a crime, and is liable to imprisonment with hard labour for seven years.

A prosecution for any of the offences defined in this section must be begun within six months after the offence is committed.

A person cannot be convicted of any of the offences defined in this section upon the uncorroborated testimony of one witness.

Defamation  
of Foreign  
Princes.  
Code, s. 53.

53. Any person who, without such justification or excuse as would be sufficient in the case of the defamation of a private person, publishes anything intended to be read, or any sign or visible representation, tending to expose to hatred or contempt in the estimation of the people of any Foreign State any Prince or person exercising sovereign authority over that State, is guilty of a misdemeanour, and is liable to imprisonment for two years.

CHAPTER VIII.—OFFENCES AGAINST THE EXECUTIVE  
AND LEGISLATIVE POWER.

54. Any person who advisedly—

Interference  
with  
Governor or  
Ministers.  
Code, s. 54.

- (1) Does any act calculated to interfere with the free exercise by the Governor of the duties or authority of his office; or
- (2) Does any act calculated to interfere with the free exercise by a member of the Executive Council of the duties or authority of his office as a member of the Executive Council or as a Minister of State;

is guilty of a misdemeanour, and is liable to imprisonment for three years.

55. Any person who advisedly, by force or fraud, interferes or attempts to interfere with the free exercise by either House of Parliament of their authority, or with the free exercise by any member of either House of his duties or authority as such member or as a member of a Committee of either House, or of a joint Committee of both Houses, is guilty of a misdemeanour, and is liable to imprisonment for three years.

Interference  
with the  
Legislature.  
Code, s. 55.

56. Any person who advisedly—

Disturbing  
the  
Legislature.  
Code, s. 56.

- (1) Disturbs either House of Parliament while in session; or
- (2) Commits any disorderly conduct in the immediate view and presence of either House of Parliament while in session, tending to interrupt its proceedings or to impair the respect due to its authority;

is guilty of a misdemeanour, and is liable to imprisonment for three years.

57. Any person who in the course of an examination before either House of Parliament, or before a Committee of either House, or before a joint Committee of both Houses, knowingly gives a false answer to any lawful and relevant question put to him in the course of the examination, is guilty of a crime, and is liable to imprisonment with hard labour for seven years.

False  
evidence  
before  
Parliament.  
Code, s. 57.

The offender cannot be arrested without warrant.

A person cannot be convicted of the offence defined in this section upon the uncorroborated testimony of one witness.

Threatening  
witness  
before  
Parliament.  
Code, s. 58.

58. Any person who—

- (1) Threatens to do any injury, or cause any detriment of any kind to another with intent to prevent or hinder that other person from giving evidence before either House of Parliament, or before a Committee of either House, or before a joint Committee of both Houses; or
- (2) Threatens, or in any way punishes, damnfies, or injures, or attempts to punish, damnify, or injure any other person for having given such evidence, or on account of the evidence which he has given, unless such evidence was given in bad faith;

is guilty of a misdemeanour, and is liable, on conviction, to imprisonment with hard labour for two years.

Witnesses  
refusing to  
attend or  
give  
evidence  
before  
Parliament  
or Parlia-  
mentary  
Committee.  
Code, s. 59.

59. Any person who—

- (1) Being duly summoned to attend as a witness or to produce any book, document, or other thing, in his possession, before either House of Parliament, or before a Committee of either House, or before a joint Committee of both Houses, authorised to summon witnesses or to call for the production of such things, refuses or neglects without lawful excuse to attend pursuant to the summons or to produce anything which he is summoned to produce, and which is relevant and proper to be produced; or
- (2) Being present before either House of Parliament, or before a Committee of either House, or before a Joint Committee of both Houses, authorised to summon witnesses, refuses to answer any lawful and relevant question;

is guilty of a misdemeanour, and is liable to imprisonment for two years.

60. Any person who, being a member of either House of Parliament, asks, receives, or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself or any other person upon any understanding that his vote, opinion, judgment, or action, in the House of which he is a member, or in any Committee thereof, or in any joint Committee of both Houses, shall be influenced thereby, or shall be given in any particular manner or in favour of any particular side of any question or matter, is guilty of a crime, and is liable to imprisonment with hard labour for seven years, and is disqualified from sitting or voting as a member of either House of Parliament for seven years.

Member of  
Parliament  
receiving  
bribes.  
Code, s. 60.

The offender cannot be arrested without warrant.

61. Any person who,—

Bribery of  
member of  
Parliament.  
Code, s. 61.

- (1) In order to influence a member of either House of Parliament in his vote, opinion, judgment, or action, upon any question or matter arising in the House of which he is a member or in any Committee thereof, or in any joint Committee of both Houses, or in order to induce him to absent himself from the House or from any such Committee, gives, confers, or procures, or promises or offers to give or confer, or to procure or attempt to procure, any property or benefit of any kind to, upon, or for such member, or to, upon, or for, any other person; or
- (2) Attempts, directly or indirectly, by fraud, or by threats or intimidation of any kind, to influence a member of either House of Parliament in his vote, opinion, judgment, or action, upon any such question or matter, or to induce him to so absent himself;

is guilty of a crime, and is liable to imprisonment with hard labour for seven years.

The offender cannot be arrested without warrant.

## CHAPTER IX.—UNLAWFUL ASSEMBLIES: BREACHES OF THE PEACE.

Definitions.  
Code, s. 62.

62. When three or more persons, with intent to carry out some common purpose, assemble in such a manner, or, being assembled, conduct themselves in such a manner as to cause persons in the neighbourhood to fear, on reasonable grounds, that the persons so assembled will tumultuously disturb the peace, or will by such assembly needlessly and without any reasonable occasion provoke other persons tumultuously to disturb the peace, they are an unlawful assembly.

It is immaterial that the original assembling was lawful if, being assembled, they conduct themselves with a common purpose in such a manner as aforesaid.

An assembly of three or more persons who assemble for the purpose of protecting the house of any one of them against persons threatening to break and enter the house in order to commit an indictable offence therein is not an unlawful assembly.

When an unlawful assembly has begun to act in so tumultuous a manner as to disturb the peace, the assembly is called a riot, and the persons assembled are said to be riotously assembled.

Punishment  
of unlawful  
assembly.  
Code, s. 63.

63. Any person who takes part in an unlawful assembly is guilty of a misdemeanour, and is liable to imprisonment for one year.

Punishment  
of riot.  
Code, s. 64.

64. Any person who takes part in a riot is guilty of a misdemeanour, and is liable to imprisonment with hard labour for three years.

Rioters  
remaining  
after  
proclamation  
ordering  
them to  
disperse.  
Code, s. 65.

65. Whenever any persons, to the number of twelve or more, are riotously assembled together, it is the duty of some one of the following persons, that is to say, the sheriff or under sheriff, or a justice of the peace, or, if the assembly is in a municipality, the mayor, to go amongst them, or as near as he can safely come to them, and to command or cause to be commanded with a loud voice that silence be

kept while the proclamation next hereinafter mentioned is made, and then openly and with a loud voice to make proclamation, or cause proclamation to be made, in these words or to the like effect:

Our Sovereign Lord the King charges and commands all persons here assembled immediately to disperse themselves and peaceably to depart to their habitations or to their lawful business, or they will be guilty of a crime, and will be liable to be imprisoned and kept to hard labour for fourteen years. God save the King!

Any person who wilfully and knowingly, and by force, opposes, obstructs, or hurts, any person who goes to make, or begins to make, any such proclamation, and thereby prevents the proclamation from being made, is guilty of a crime.

Any persons who, being so assembled, continue together to the number of twelve or more, and do not disperse themselves within the space of an hour after the making of the proclamation, are guilty of a crime.

When the making of the proclamation is prevented, any persons who, being so assembled, and to whom the proclamation would or ought to have been made if the making thereof had not been so prevented, and who, knowing of such prevention, continue together to the number of twelve or more, and do not disperse themselves within the space of an hour after the time of such prevention, are guilty of a crime.

Any person who commits any of the crimes defined in this section is liable to imprisonment with hard labour for fourteen years.

A prosecution for any of the crimes defined in this section must be begun within a year after the crime is committed.

66. Any persons who, being riotously assembled together, unlawfully pull down or destroy, or begin to pull down or destroy—

Rioters  
demolishing  
buildings,  
etc.  
Code, s. 66.

(a) Any building whatever; or

(b) Any machinery whatever, whether fixed or movable; or

(c) Any structure used in farming land, or in carrying on any trade or manufacture, or in conducting the business of a mine; or

(d) Any bridge, wagon-way, or trunk, for conveying materials from a mine;

are guilty of a crime; and each of them is liable to imprisonment with hard labour for fourteen years.

Rioters  
injuring  
building,  
machinery,  
etc.  
Code, s. 67.

67. Any persons who, being riotously assembled together unlawfully damage any of the things in the last preceding section mentioned, are guilty of a crime; and each of them is liable to imprisonment with hard labour for seven years.

Going armed  
so as to  
cause fear.  
Code, s. 68.

68. Any person who goes armed in public without lawful occasion in such a manner as to cause terror to any person is guilty of a misdemeanour, and is liable to imprisonment with hard labour for two years.

Forcible  
entry.  
Code, s. 69.

69. Any person who, in a manner likely to cause a breach of the peace or reasonable apprehension of a breach of the peace, enters on land which is in the actual and peaceable possession of another is guilty of a misdemeanour, and is liable to imprisonment for one year.

It is immaterial whether he is entitled to enter on the land or not.

Forcible  
detainer.  
Code, s. 70.

70. Any person who, being in actual possession of land without colour of right holds possession of it in a manner likely to cause a breach of the peace or reasonable apprehension of a breach of the peace, against a person entitled by law to the possession of the land, is guilty of a misdemeanour, and is liable to imprisonment for one year.

Affray.  
Code, s. 71.

71. Any person who takes part in a fight in a public highway, or takes part in a fight of such a nature as to alarm the public in any other place to which the public have access, is guilty of a misdemeanour, and is liable to imprisonment with hard labour for one year.



72. Any person who challenges another to fight a duel, or attempts to provoke another to fight a duel, or attempts to provoke any person to challenge another to fight a duel, is guilty of a misdemeanour, and is liable to imprisonment with hard labour for three years.

Challenge  
to fight a  
duel.  
Code, s. 72.

73. Any person who fights in a prize fight or subscribes to or promotes a prize fight, is guilty of a misdemeanour, and is liable to imprisonment for one year.

Prize fight.  
Code, s. 73.

74. Any person who—

(1) With intent to intimidate or annoy any person, threatens to break or injure a dwelling-house; or

(2) With intent to alarm any person in a dwelling-house, discharges loaded firearms or commits any other breach of the peace;

is guilty of a misdemeanour, and is liable to imprisonment with hard labour for one year.

Threatening  
violence.  
Code, s. 74.

If the offence is committed in the night the offender is guilty of a crime, and is liable to imprisonment with hard labour for two years.

#### CHAPTER X.—OFFENCES AGAINST POLITICAL LIBERTY.

75. Any person who by violence, or by threats or intimidation of any kind, hinders or interferes with the free exercise of any political right by another person, is guilty of a misdemeanour, and is liable to imprisonment with hard labour for two years.

Interfering  
with  
political  
liberty.  
Code, s. 75.

If the offender is a public officer, and commits the offence in abuse of his authority as such officer, he is liable to imprisonment with hard labour for three years.

#### CHAPTER XI.—PIRACY.

76. In this chapter the term “pirate” includes any person who on the high seas commits, otherwise than as an act of war, and under the authority of some Foreign Prince or State, any act with

Definition  
of piracy  
in general.  
Code, s. 76.

respect to a ship, or any goods or merchandise belonging to a ship or laden upon it, which, if the act were committed on land, would constitute robbery as hereinafter defined; and any person who, having on the high seas obtained possession of a ship by means of any such act, retains possession thereof.

The term also includes any person who is declared by any Statute to be a pirate.

The act of any such person is called piracy.

Further  
definition  
of pirates.  
Code, s. 77.

77. Any person who does any of the acts following, that is to say:—

- (1) Being a British subject, and being at any place within the jurisdiction of the Admiralty, commits, under colour of a commission from a Foreign State or Prince, whether such State or Prince is at war with the Sovereign or not, or under pretence of authority from any person whatever, any act of hostility, or any act which, if it were committed on land, would be robbery as hereinafter defined, against another British subject; or
- (2) Being a British subject, is in any way adherent to or gives aid to His Majesty's enemies at any place within the jurisdiction of the Admiralty, during any war; or
- (3) Whether being a British subject or not, forcibly enters a British ship at any place within the jurisdiction of the Admiralty, and throws overboard or destroys any part of the goods or merchandise belonging to the ship or laden upon it; or
- (4) Being on board a British ship at any place within the jurisdiction of the Admiralty—
  - (a) Turns pirate, enemy, or rebel, and piratically runs away with the ship, or any boat, ordnance, ammunition, or goods belonging to it or laden upon it; or

- (b) Voluntarily yields up the ship or any such thing as last mentioned to a pirate; or
- (c) Brings a seducing message from a pirate, enemy, or rebel; or
- (d) Consults or conspires with, or attempts to corrupt, any master or officer of a ship, or any seaman with intent that he should run away with or yield up any ship, goods, or merchandise, or turn pirate, or go over to pirates; or
- (e) Lays violent hands on the master of the ship, with intent to hinder him from fighting in defence of the ship and goods committed to his trust; or
- (f) Confines the master of the ship; or
- (g) Makes, or endeavours to make, a revolt in the ship; or
- (5) Being a British subject in any part of the world, or whether being a British subject or not, being in any part of His Majesty's dominions, or on board a British ship in any part of the world, knowingly—
  - (h) Trades with a pirate in any manner whatever; or
  - (i) Furnishes a pirate with ammunition, provisions, or stores of any kind; or
  - (j) Fits out a ship or vessel with a design to trade with, or supply or correspond with, a pirate; or
  - (k) Conspires or corresponds with a pirate;

is also deemed to be a pirate, and his act is also called piracy.

78. Any person who, within the territorial jurisdiction of Western Australia, commits piracy, is guilty of a crime, and is liable to imprisonment with hard labour for life.

Punishment  
of piracy.  
Code, s. 78.

If the crime is committed with respect to a ship, and if at or immediately before or immediately after the time of committing the crime the offender—

- (a) Assaults any person on board of or belonging to the ship, with intent to kill him or to kill any other person; or
- (b) Wounds any such person; or
- (c) Unlawfully does any act by which the life of any such person is endangered;

the offender is liable to the punishment of death.

Attempted  
piracy  
with personal  
violence.  
Code, s. 79.

79. Any person who, within the territorial jurisdiction of Western Australia, does any of the acts following with intent to commit the crime of piracy with respect to a ship, that is to say:—

- (1) Assaults any person on board of or belonging to the ship, with intent to kill him or to kill any other person; or
- (2) Wounds any such person; or
- (3) Unlawfully does any act by which the life of any such person is endangered;

is guilty of a crime, and is liable to the punishment of death.

Aiding  
pirates.  
Code, s. 80.

80. Any person who—

- (1) Brings a seducing message from a pirate; or
- (2) Consults or conspires with, or attempts to corrupt, any master or officer of a ship or any seaman, with intent that he should run away with or yield up any ship, goods, or merchandise, or turn pirate, or go over to pirates;

is guilty of a crime, and is liable to imprisonment with hard labour for life.

PART III.—OFFENCES AGAINST THE ADMINISTRATION  
OF LAW AND JUSTICE AND AGAINST PUBLIC  
AUTHORITY.

CHAPTER XII.—DISCLOSING OFFICIAL SECRETS.

81. Any person who, being employed in the Public Service, publishes or communicates any fact which comes to his knowledge by virtue of his office and which it is his duty to keep secret, or any document which comes to his possession by virtue of his office and which it is his duty to keep secret, except to some person to whom he is bound to publish or communicate it, is guilty of a misdemeanour, and is liable to imprisonment for two years.

Disclosure  
of official  
secrets.  
Code, s. 81.

CHAPTER XIII.—CORRUPTION AND ABUSE OF OFFICE.

82. Any person who—

- (1) Being employed in the Public Service, or being the holder of any public office, and being charged with the performance of any duty by virtue of such employment or office, not being a duty touching the administration of justice, corruptly asks, receives, or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself or any other person on account of anything already done or omitted to be done, or to be afterwards done or omitted to be done, by him in the discharge of the duties of his office; or
- (2) Corruptly gives, confers, or procures, or promises or offers to give or confer, or to procure or attempt to procure, to, upon, or for, any person employed in the Public Service, or being the holder of any public office, or to, upon, or for, any other person, any property or benefit of any kind on account of any such act or omission on the part of the person so employed or holding such office;

Official  
corruption.  
Code, s. 82.

is guilty of a crime, and is liable to imprisonment with hard labour for seven years, and to be fined at the discretion of the Court.

The offender cannot be arrested without warrant.

Extortion  
by public  
officers.  
Code, s. 83.

83. Any person who, being employed in the Public Service, takes or accepts from any person, for the performance of his duty as such officer, any reward beyond his proper pay and emoluments, or any promise of such reward, is guilty of a misdemeanour, and is liable to imprisonment for three years.

Public  
officers  
interested  
in contracts.  
Code, s. 84.

84. Any person who, being employed in the Public Service, knowingly acquires or holds, directly or indirectly, otherwise than as a member of a registered joint stock company consisting of more than twenty persons, a private interest in any contract or agreement, which is made on account of the Public Service with respect to any matter concerning the department of the Service in which he is employed, is guilty of a misdemeanour, and is liable to imprisonment for three years, and to be fined at the discretion of the Court.

Officers  
charged with  
adminis-  
tration of  
property of  
a special  
character  
or with  
special  
duties.  
Code, s. 85.

85. Any person who, being employed in the Public Service, and being charged by virtue of his employment with any judicial or administrative duties respecting property of a special character or respecting the carrying on of any manufacture, trade, or business of a special character, and having acquired or holding, directly or indirectly, a private interest in any such property, manufacture, trade, or business, discharges any such duties with respect to the property, manufacture, trade, or business, in which he has such interest, or with respect to the conduct of any person in relation thereto, is guilty of a misdemeanour, and is liable to imprisonment for one year, and to be fined at the discretion of the Court.

False claims  
by officials.  
Code, s. 86.

86. Any person who, being employed in the Public Service in such a capacity as to require him or to enable him to furnish returns or statements touching any remuneration payable or claimed to be payable to himself or to any other person, or touching any other matter required by law to be certified for the purpose of any payment of money or delivery of goods to be made to any person, makes a return or statement touching any such

matter which is, to his knowledge, false in any material particular, is guilty of a misdemeanour, and is liable to imprisonment with hard labour for three years.

87. Any person who, being employed in the Public Service, does or directs to be done, in abuse of the authority of his office, any arbitrary act prejudicial to the rights of another is guilty of a misdemeanour, and is liable to imprisonment for two years.

Abuse of  
office.  
Code, s. 87.

If the act is done or directed to be done for purposes of gain, he is liable to imprisonment with hard labour for three years.

88. Any person who, being a valuator for determining the compensation to be paid to any person for land compulsorily taken from him under the authority of any Statute, or for injury done to any land under the authority of any Statute—

Corruption  
of surveyor  
and valuator.  
Code, s. 88.

(1) Acts as such valuator while he has, to his knowledge, an interest in the land in question; or

(2) Executes unfaithfully, dishonestly, or with partiality, the duty of making a valuation of the land or of the extent of the injury;

is guilty of a misdemeanour, and is liable to imprisonment for three years.

89. Any person who, being authorised or required by law to give any certificate touching any matter by virtue whereof the rights of any person may be prejudicially affected, gives a certificate, which is, to his knowledge, false in any material particular is guilty of a misdemeanour, and is liable to imprisonment with hard labour for three years.

False  
certificates  
by public  
officers.  
Code, s. 89.

90. Any person who administers an oath, or takes a solemn declaration or affirmation or affidavit, touching any matter with respect to which he has not by law any authority to do so, is guilty of a misdemeanour, and is liable to imprisonment for one year.

Administer-  
ing extra-  
judicial  
oaths.  
Code, s. 90.

This section does not apply to an oath, declaration, affirmation, or affidavit, administered or taken before a justice in any matter relating to the preservation of the peace or the punishment of offences, or relating to inquiries respecting sudden death, or to proceedings before either House of Parliament or a Committee of either House or a Joint Committee of both Houses; nor to an oath, declaration, affirmation, or affidavit, administered or taken for some purpose which is lawful under the laws of another country, or for the purpose of giving validity to an instrument in writing which is intended to be used in another country.

False  
assumption  
of authority.  
Code, s. 91.

91. Any person who—

- (1) Not being a justice assumes to act as a justice; or
- (2) Without authority assumes to act as a person having authority by law to administer an oath or take a solemn declaration or affirmation or affidavit, or to do any other act of a public nature which can only be done by persons authorised by law to do so; or
- (3) Represents himself to be a person authorised by law to sign a document testifying to the contents of any register or record kept by lawful authority, or testifying to any fact or event, and signs such document as being so authorised, when he is not, and knows that he is not, in fact, so authorised;

is guilty of a misdemeanour, and is liable to imprisonment with hard labour for three years.

Personating  
public  
officers.

92. Any person who—

- (1) Personates any person employed in the Public Service on an occasion when the latter is required to do any act or attend in any place by virtue of his employment; or



- (2) Falsely represents himself to be a person employed in the Public Service, and assumes to do any act or to attend in any place for the purpose of doing any act by virtue of such employment;

is guilty of a misdemeanour, and is liable to imprisonment with hard labour for three years.

A person found committing the offence may be arrested without warrant.

#### CHAPTER XIV.—CORRUPT AND IMPROPER PRACTICES AT ELECTIONS.

##### 93. In this chapter—

Definitions.  
Code, s. 93.

The term “election” includes any election held under the authority of any statute providing for the choice of persons to fill any office or place of a public character;

The term “elector” includes any person entitled to vote at an election;

The term “ballot-box” includes any receptacle in which voting papers are put before being counted at an election;

The term “polling-booth” includes any room or place in which voting at an election is conducted or in which the votes are counted.

94. Any person who votes or attempts to vote in the name of another person at an election, whether the name is that of a person living or dead or of a fictitious person, is guilty of a misdemeanour, and is liable to imprisonment with hard labour for one year.

Personation.  
Code, s. 94.

95. Any person who, being an elector, votes or attempts to vote at an election oftener than he is entitled to vote at the election is guilty of an offence, and is liable to imprisonment with hard labour for six months.

Double  
voting.  
Code, s. 95.

Recording  
excessive  
number of  
votes.  
Code, s. 96.

96. Any person who, being an elector, records at an election a larger number of votes than he is entitled to is guilty of an offence, and is liable to imprisonment with hard labour for three months, or to a fine of twenty pounds.

Treating.  
Code, s. 97.

97. Any person who—

- (1) Corruptly, before, during, or after an election, provides, or pays, in whole or part, the expense of providing any food, drink, or lodging to or for any person on account of anything already done or omitted to be done, or to be afterwards done or omitted to be done, by an elector at the election in the capacity of an elector; or
- (2) Being an elector, corruptly receives any food, drink, or lodging on account of any such act or omission;

is guilty of an offence, and is liable to imprisonment with hard labour for six months, or to a fine of fifty pounds.

Undue  
influence.  
Code, s. 98.

98. Any person who—

- (1) Uses or threatens to use any force or restraint, or does or threatens to do any temporal or spiritual injury, or causes or threatens to cause any detriment of any kind, to an elector in order to induce him to vote or refrain from voting at an election, or on account of his having voted or refrained from voting at an election; or
- (2) By force or fraud prevents or obstructs the free exercise of the franchise by an elector, or by any such means compels or induces an elector to vote or refrain from voting at an election;

is guilty of a misdemeanour, and is liable to imprisonment with hard labour for nine months, or to a fine of One hundred pounds.

## 99. Any person who—

Bribery.  
Code, s. 99.

- (1) Gives, confers, or procures, or promises or offers to give or confer, or to procure or attempt to procure, to, upon, or for any person any property or benefit of any kind on account of anything already done or omitted to be done, or to be afterwards done or omitted to be done, by an elector at an election in the capacity of an elector or on account of any person acting or joining in a procession during an election, or in order to induce any person to endeavour to procure the return of any person at an election, or the vote of any elector at an election; or
- (2) Being an elector, asks, receives, or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself or any other person on account of anything already done or omitted to be done, or to be afterwards done or omitted to be done, by him at an election, in the capacity of an elector; or
- (3) Asks, receives, or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself or any other person, on account of a promise made by him or any other person to endeavour to procure the return of any person at an election, or the vote of any person at an election; or
- (4) Advances or pays any money to or to the use of any other person with the intent that such money shall be applied for any of the purposes hereinbefore in this section mentioned, or in discharge or repayment of money wholly or in part applied for any such purpose; or
- (5) Corruptly transfers or pays any property or money to any person for the purpose of enabling that person to be registered as an elector, and thereby of influencing the vote of that person at a future election; or

- (6) Is privy to any such transfer or payment as last-mentioned which is made for his benefit;

is guilty of a misdemeanour, and is liable to imprisonment with hard labour for nine months, or to a fine of One hundred pounds.

Illegal  
practices.  
Code, s. 100.

100. Any person who, being a candidate at an election—

- (1) Convenes or holds a meeting of his committee in a house licensed for the sale of fermented or spirituous liquors;
- (2) Personally solicits the vote of any elector on polling-day; or
- (3) Attends at any meeting of electors held for electoral purposes on polling day;

is guilty of an offence and is liable to imprisonment for two months, or to a fine of Twenty pounds.

Illegal  
practices.  
Code, s. 101.

101. Any person who—

- (1) Being prohibited by law from voting at an election, and knowing that he is so prohibited, votes at the election; or
- (2) Procures any person who is, and whom he knows to be, prohibited from voting at an election to vote at the election; or
- (3) Before or during an election, and for the purpose of promoting or procuring the choice of any candidate at the election, knowingly publishes a false statement of the withdrawal of another candidate at the election; or
- (4) Before or during an election, and for the purpose of affecting the return of a candidate at the election, knowingly publishes a false statement of fact respecting the personal character or conduct of the candidate; or
- (5) Being a candidate at an election, withdraws from being a candidate in consideration of a payment or promise of payment; or

(6) Being a candidate or the agent of a candidate at an election, corruptly procures any other person to withdraw from being a candidate at the election in consideration of any payment or promise of payment; is guilty of a misdemeanour, and is liable to imprisonment for nine months, or to a fine of One hundred pounds.

102. Any person who—

Other illegal  
practices.  
Code, s. 102.

- (1) Knowingly provides money for any payment which is contrary to any law relating to elections, or for replacing any money which has been expended in any such payment, and which is not allowed by law to be an exception; or
- (2) Prints, publishes, or posts any bill, placard, or poster, which has reference to an election, and which does not bear on the face of it the name and address of the printer and publisher; or
- (3) Hires or uses for a committee room at an election—
  - (a) Any part of a house licensed for the sale of fermented or spirituous liquors; or
  - (b) Any part of any premises where any intoxicating liquor is sold or supplied to members of a club, society, or association, which is not a permanent political club; unless, in either case, it is a part which has a separate entrance, and has no direct communication with any part of the premises in which intoxicating liquor is sold, and is a part ordinarily let for the purpose of chambers or offices or for holding public meetings or arbitrations; or
- (4) Knowing that the same are intended to be used as a committee room at an election, lets any part of any such premises, not being such a part as aforesaid, for such use; or

- (5) Provides any cab, carriage, or other conveyance to carry an elector to a polling place with the view to influence the vote of the elector;

is guilty of an offence, and is liable, on summary conviction, to a fine of Twenty-five pounds.

Corrupt and  
illegal  
practices:  
Time.  
Code, s. 103.

103. A prosecution for any of the offences hereinbefore defined in this chapter must be begun within one year after the offence is committed.

The service or execution of process on or against the alleged offender is deemed to be the commencement of the prosecution, unless such service or execution is prevented by some act on his part, in which case the issue of the process is deemed to be the commencement of the proceeding.

Interference  
at elections.  
Code, s. 104.

104. Any person who—

- (1) Intrudes into a polling-booth, not being lawfully entitled to be in it; or
- (2) Wilfully interrupts, obstructs, or disturbs any proceedings at an election;

is guilty of an offence, and is liable to imprisonment with hard labour for three months, or to a fine of Twenty-five pounds.

A person found committing the offence may be arrested without warrant by direction of the presiding officer.

Electors  
attempting  
to violate  
secrecy of  
ballot.  
Code, s. 105.

105. Any person, who, having received a ballot-paper from the presiding officer at an election—

- (a) Wilfully makes on the ballot-paper any mark or writing not expressly authorised by law; or
- (b) Wilfully fails to fold up the ballot-paper in such a manner as to conceal the names of the candidates; or
- (c) Wilfully fails to deposit the ballot-paper in the ballot-box in the presence of the presiding officer;

is guilty of an offence, and is liable to imprisonment with hard labour for six months or to a fine of Twenty-five pounds.

106. Any person who—

- (1) Takes or attempts to take a ballot-paper out of a polling-booth; or
- (2) Whilst an elector is preparing his ballot-paper in a compartment provided for the use of electors actually voting, wilfully intrudes into the compartment;

Other attempts of like kind.  
Code, s. 108.

is guilty of an offence, and is liable to imprisonment with hard labour for six months.

A person found committing the offence may be arrested without warrant by direction of the presiding officer.

107. Any person who places, or is privy to placing, in a ballot-box a ballot-paper which has not been lawfully handed to and marked by an elector is guilty of a misdemeanour, and is liable to imprisonment with hard labour for one year.

Stuffing ballot-boxes.  
Code, s. 107.

108. Any person who, being a presiding officer at an election, and whilst an elector is preparing his ballot-paper in a compartment provided for the use of electors actually voting, unlawfully and wilfully allows any other person to be in the compartment, is guilty of an offence, and is liable to imprisonment with hard labour for six months.

Offences by presiding officers at elections.  
Code, s. 108.

If an elector satisfies the presiding officer that he is so blind as to be unable to vote without assistance, it is lawful for the presiding officer to permit any person named and described by the elector to accompany him into the voting compartment, and to mark, fold, and deliver his voting paper for him.

Presiding officer may permit another person to mark voting-paper for an elector who is blind.

109. Any person who, at an election—

- (1) Wilfully makes a false answer to any question which is lawfully put to him by the presiding officer, and which he is required by law to answer; or

False answers to questions at elections.  
Code, s. 108.

- (2) Being lawfully required to make a declaration before voting, wilfully makes a false declaration;

is guilty of a misdemeanour, and is liable to imprisonment with hard labour for one year.

The offender may be arrested without warrant by direction of the presiding officer.

Interfering  
with  
secrecy at  
elections.  
Code, s. 110.

110. Any person who—

- (1) At or after an election, knowingly and wilfully, and without the lawful command of some competent Court or tribunal, unfastens the fold upon a ballot-paper within which the number of an elector is written, and which fold has been made under the authority of the law; or
- (2) Being a person required by law to discharge duties at an election, at which the voting is by ballot, attempts to ascertain or discover, or aids in ascertaining or discovering, the candidate for whom the vote of any person is given at the election, except in the case of a person voting openly; or
- (3) Having, in the exercise of his office at an election, obtained knowledge or the means of knowledge of the candidate for whom any person has voted at the election, discloses or aids in disclosing such knowledge otherwise than in answer to a question put in the course of proceedings before some competent Court or tribunal; or
- (4) Being a person required by law to discharge duties at an election, places upon a ballot-paper any mark or writing not authorised by law;

is guilty of an offence, and is liable to imprisonment with hard labour for six months.



111. Any person who knowingly and wilfully, and without the lawful command of some competent Court or tribunal, opens or breaks the seal of a sealed parcel which has been sealed up under the provisions of the laws relating to elections, is guilty of an offence, and is liable to imprisonment with hard labour for six months.

Breaking  
seal of  
packets  
used at  
elections.  
Code, s. 111.

112. Any person who at any election at which the voting is by post—

Offences at  
elections  
when voting  
is by post.  
Code, s. 112.

- (1) Knowing that he is not entitled to vote at the election, signs his name as a voter to a voting-paper; or
- (2) Signs the name of another person to a voting-paper; or
- (3) Attests the signature to a voting-paper of any person who is, to his knowledge, not entitled to vote by means of such voting-paper;

is guilty of a misdemeanour, and is liable to imprisonment for nine months or to a fine of One hundred pounds.

113. Any person who—

False  
claims.  
Code, s. 113.

- (1) Makes, in a claim to be inserted in a list of electors, any statement which is, to his knowledge, false in any material particular; or
- (2) Makes, orally or in writing, to a Court or tribunal having jurisdiction to deal with the claims of persons to be registered as electors or as persons claiming to be electors, a statement relating to the qualification of any person as an elector which is, to his knowledge, false in any material particular;

is guilty of a misdemeanour, and is liable to imprisonment with hard labour for one year.

A person cannot be convicted of either of the offences defined in this section upon the uncorroborated testimony of one witness.

Attesting  
claims, etc.,  
without  
inquiry.  
Code, s. 114.

114. Any person who attests a claim, application for transfer, change of qualification, or other document requiring to be attested without satisfying himself by inquiry of the claimant or otherwise that the particulars are true, is guilty of an offence, and is liable to a fine of Twenty pounds.

Acts of  
agents.  
Code, s. 115.

115. The acts of authorised agents of candidates are, in matters connected with elections, deemed to be the acts of their principals, unless it be proved that such acts were committed without their knowledge or consent, and that they had neither directly nor indirectly sanctioned, countenanced, nor approved of the same in any way.

Liability for  
indirect  
acts.  
Code, s. 116.

116. Every person is liable for an illegal practice committed directly or indirectly by himself, or by any other person on his behalf, except as mentioned in the last preceding section.

Certificate  
of Returning  
Officer.  
Code, s. 117.

117. On any prosecution under this chapter, the certificate of the Returning Officer that the election mentioned in the certificate was duly held, and that the person named in the certificate was a candidate at such election, is conclusive evidence of the matter stated.

This chapter  
not to apply  
to parlia-  
mentary,  
municipal or  
road board  
elections.  
Code, s. 118.

118. Nothing in this chapter shall apply to Parliamentary, Municipal, or Road Board elections.

#### CHAPTER XV.—SELLING AND TRAFFICKING IN OFFICES.

Bargaining  
for offices in  
Public  
Service.  
Code, s. 119.

119. Any person who—

- (1) Corruptly asks, receives, or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself or any other person on account of anything already done or omitted to be done, or to be afterwards done or omitted to be done, by him or any other person with regard to the appointment or contemplated appointment of any person to any office or employment in the Public Service, or with regard to any application by any person for employment in the Public Service; or

- (2) Corruptly gives, confers, or procures, or promises or offers to give or confer, or to procure or attempt to procure to, upon, or for any person any property or benefit of any kind on account of any such act or omission;

is guilty of a misdemeanour, and is liable to imprisonment with hard labour for three years, and to be fined at the discretion of the Court.

CHAPTER XVI.—OFFENCES RELATING TO THE  
ADMINISTRATION OF JUSTICE.

120. In this chapter the term “judicial proceeding” includes any proceeding had or taken in or before any court, tribunal, or person, in which evidence may be taken on oath.

Definition  
of judicial  
proceeding.  
Code, s. 120.

121. Any person who—

- (1) Being the holder of a judicial office, corruptly asks, receives, or obtains, or agrees or attempts to receive or obtain any property or benefit of any kind for himself or any other person on account of anything already done or omitted to be done, or to be afterwards done or omitted to be done, by him in his judicial capacity; or
- (2) Corruptly gives, confers, or procures, or promises or offers to give or confer, or to procure or attempt to procure to, upon, or for any person holding a judicial office, or to, upon, or for any other person, any property or benefit of any kind on account of any such act or omission on the part of the person holding the judicial office;

Judicial  
corruption.  
Code, s. 121.

is guilty of a crime, and is liable to imprisonment with hard labour for fourteen years, and to be fined at the discretion of the Court.

The offender cannot be arrested without warrant.

The term “holder of a judicial office” in this section includes an arbitrator or umpire and any member of any board or court of conciliation or

arbitration; but in the case of an offence committed by or with respect to any such person, the longest term of imprisonment is seven years.

A prosecution for any of the offences firstly defined in this section cannot be begun except by the direction of the Attorney General.

Official  
corruption  
not judicial  
but relating  
to offences.  
Code, s. 122.

122. Any person who—

- (1) Being a justice not acting judicially, or being a person employed in the Public Service in any capacity not judicial, for the prosecution or detention or punishment of offenders, corruptly asks, receives, or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself or any other person, on account of anything already done or omitted to be done, or to be afterwards done or omitted to be done, by him, with a view to corrupt or improper interference with the due administration of justice, or or the procurement or facilitation of the commission of any offence, or the protection of any offender or intending offender from detection or punishment; or
- (2) Corruptly gives, confers, or procures, or promises or offers to give or confer, or to procure or attempt to procure, to, upon, or for any such person, or to, upon, or for any other person, any property or benefit of any kind, on account of any such act or omission on the part of the justice or other person so employed;

is guilty of a crime, and is liable to imprisonment with hard labour for fourteen years, and to be fined at the discretion of the Court.

The offender cannot be arrested without warrant.

Corrupting  
or  
threatening  
jurors.  
Code, s. 123.

123. Any person who—

- (1) Attempts by threats or intimidation of any kind, or by benefits or promises of benefit of any kind, or by other corrupt means,

to influence any person, whether a particular person or not, in his conduct as a juror in any judicial proceeding, whether he has been sworn as a juror or not; or

- (2) Threatens to do any injury or cause any detriment of any kind to any person on account of anything done by him as a juror in any judicial proceeding; or
- (3) Accepts any benefit or promise of benefit on account of anything to be done by him as a juror in any judicial proceeding, whether he has been sworn as a juror or not, or on account of anything already done by him as a juror in any judicial proceeding;

is guilty of a misdemeanour, and is liable to imprisonment with hard labour for three years.

124. Any person who, in any judicial proceeding, or for the purpose of instituting any judicial proceeding, knowingly gives false testimony touching any matter which is material to any question then depending in that proceeding, or intended to be raised in that proceeding, is guilty of a crime which is called perjury.

Perjury.  
Code, s. 124.

It is immaterial whether the testimony is given on oath or under any other sanction authorised by law.

The forms and ceremonies used in administering the oath or in otherwise binding the person giving the testimony to speak the truth are immaterial, if he assents to the forms and ceremonies actually used.

It is immaterial whether the false testimony is given orally or in writing.

It is immaterial whether the Court or tribunal is properly constituted, or is held in the proper place, or not, if it actually acts as a Court or tribunal in the proceeding in which the testimony is given.

It is immaterial whether the person who gives the testimony is a competent witness or not, or whether the testimony is admissible in the proceeding or not.

The offender cannot be arrested without warrant.

Punishment  
of perjury.  
Code, s. 125.

125. Any person who commits perjury is liable to imprisonment with hard labour for fourteen years.

If the offender commits the crime in order to procure the conviction of another person for a crime punishable with death, or with imprisonment with hard labour for life, he is liable to imprisonment with hard labour for life.

Evidence on  
charge of  
perjury.  
Code, s. 126.

126. A person cannot be convicted of committing perjury or of counselling or procuring the commission of perjury upon the uncorroborated testimony of one witness.

False  
evidence  
before a  
Royal  
Commission.  
Code, s. 127.

127. Any person who, in the course of an examination before a Royal Commission, knowingly gives a false answer to any lawful and relevant question put to him in the course of the examination is guilty of a crime, and is liable to imprisonment with hard labour for seven years.

The offender cannot be arrested without warrant.

A person cannot be convicted of the offence defined in this section upon the uncorroborated testimony of one witness.

Threatening  
witness  
before Royal  
Commission,  
etc.  
Code, s. 128.

128. Any person who—

- (1) Threatens to do any injury, or cause any detriment of any kind to another, with intent to prevent or hinder that other person from giving evidence before any Royal Commission or on other public inquiry; or
- (2) Threatens, or in any way punishes, damifies, or injures, or attempts to punish, damnify, or injure any other person for

having given such evidence, or on account of the evidence which he has given, unless such evidence was given in bad faith;

is guilty of a misdemeanour, and is liable to imprisonment with hard labour for two years.

129. Any person who, with intent to mislead any tribunal in any judicial proceeding—

Fabricating evidence.  
Code, s. 129.

- (1) Fabricates evidence by any means other than perjury or counselling or procuring the commission of perjury; or
- (2) Knowingly makes use of such fabricated evidence;

is guilty of a crime, and is liable to imprisonment with hard labour for seven years.

The offender cannot be arrested without warrant.

130. Any person who—

Corruption of witnesses.  
Code, s. 130.

- (1) Gives, confers, or procures, or promises or offers to give or confer, or to procure or attempt to procure, any property or benefit of any kind to, upon, or for any person, upon any agreement or understanding that any person called or to be called as a witness in any judicial proceeding shall give false testimony or withhold true testimony; or
- (2) Attempts by any other means to induce a person called or to be called as a witness in any judicial proceeding to give false testimony or to withhold true testimony; or
- (3) Asks, receives, or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself or any other person, upon any agreement or understanding that any person shall, as a witness in any judicial proceeding, give false testimony or withhold true testimony,

is guilty of a crime, and is liable to imprisonment with hard labour for seven years.

The offender cannot be arrested without warrant.

Deceiving  
witnesses.  
Code, s. 131.

131. Any person who practises any fraud or deceit, or knowingly makes or exhibits any false statement, representation, token, or writing, to any person called or to be called as a witness in any judicial proceeding, with intent to affect the testimony of such person as a witness, is guilty of a misdemeanour, and is liable to imprisonment with hard labour for three years.

Destroying  
evidence.  
Code, s. 132.

132. Any person who, knowing that any book, document, or other thing of any kind, is or may be required in evidence in a judicial proceeding, wilfully destroys it or renders it illegible or undecipherable or incapable of identification, with intent thereby to prevent it from being used in evidence, is guilty of a misdemeanour, and is liable to imprisonment with hard labour for three years.

Preventing  
witnesses  
from  
attending.  
Code, s. 133.

133. Any person who wilfully prevents or attempts to prevent any person who has been duly summoned to attend as a witness before any Court or tribunal from attending as a witness, or from producing anything in evidence pursuant to the subpoena or summons, is guilty of a misdemeanour, and is liable to imprisonment for one year.

Conspiracy  
to bring  
false  
accusation.  
Code, s. 134.

134. Any person who conspires with another to charge any person or cause any person to be charged with any offence, whether alleged to have been committed in Western Australia, or elsewhere, knowing that such person is innocent of the alleged offence, or not believing him to be guilty of the alleged offence, is guilty of a crime.

If the offence is such that a person convicted of it is liable to be sentenced to death or to imprisonment with hard labour for life, the offender is liable to imprisonment with hard labour for life.

If the offence is such that a person convicted of it is liable to be sentenced to imprisonment with hard labour, but for a term less than life, the offender is liable to imprisonment with hard labour for fourteen years.



In any other case the offender is liable to imprisonment with hard labour for seven years.

The offender cannot be arrested without warrant.

135. Any person who conspires with another to obstruct, prevent, pervert, or defeat the course of justice is guilty of a crime, and is liable to imprisonment with hard labour for seven years.

Conspiring  
to defeat  
justice.  
Code, s. 135.

The offender cannot be arrested without warrant.

136. Any person who asks, receives, or obtains, or agrees, or attempts to receive or obtain, any property or benefit of any kind for himself or any other person, upon any agreement or understanding that he will compound or conceal a crime, or will abstain from, discontinue, or delay, a prosecution for a crime, or will withhold any evidence thereof, is guilty of an indictable offence.

Compound-  
ing crimes.  
Code, s. 136.

If the crime is such that a person convicted of it is liable to be sentenced to death or imprisonment with hard labour for life, the offender is guilty of a crime, and is liable to imprisonment with hard labour for seven years.

In any other case the offender is guilty of a misdemeanour, and is liable to imprisonment with hard labour for three years.

The offender cannot be arrested without warrant.

137. Any person who, having brought, or under pretence of bringing, an action against another person upon a penal statute in order to obtain from him a penalty for any offence committed or alleged to have been committed by him, compounds the action without the order or consent of the Court in which the action is brought or is to be brought, is guilty of a misdemeanour, and is liable to imprisonment for one year.

Compound-  
ing penal  
actions.  
Code, s 137.

138. Any person who—

- (1) Publicly offers a reward for the return of any property which has been stolen or lost, and in the offer makes use of any words

Advertising  
a reward  
for the  
return of  
stolen  
property,  
etc.  
Code, s. 138.

purporting that no questions will be asked or that the person producing such property will not be seized or molested; or

- (2) Publicly offers to return to any person who may have bought or advanced money by way of loan upon any stolen or lost property the money so paid or advanced, or any other sum of money or reward for the return of such property or;

- (3) Prints or publishes any such offer;

is guilty of an offence, and is liable on summary conviction to a fine of Fifty pounds.

Justices  
acting  
oppressively  
or when  
interested.  
Code, s. 139.

### 139. Any person who—

- (1) Being a justice and being required by law to admit an accused person to bail, wilfully and perversely and without reasonable excuse, and in abuse of his office, requires excessive and unreasonable bail; or
- (2) Being a justice, wilfully and perversely exercises jurisdiction in any matter in which he has a personal interest;

is guilty of a misdemeanour, and is liable to imprisonment for two years, and to be fined at the discretion of the Court.

Delay to  
take person  
arrested  
before  
magistrate.  
Code, s. 140.

140. Any person, who, having arrested another upon a charge of an offence wilfully delays to take him before a justice to be dealt with according to law, is guilty of a misdemeanour, and is liable to imprisonment for two years.

Bringing  
fictitious  
action on  
penal  
statute.  
Code, s. 141.

141. Any person who, in the name of a fictitious plaintiff, or in the name of a real person, but without his authority, brings an action against another person upon a penal statute for the recovery of a penalty for any offence committed or alleged to have been committed by him, is guilty of a misdemeanour, and is liable to imprisonment for two years.

Inserting  
advertisement  
without  
authority  
of Court.  
Code, s. 142.

142. Any person who, without authority, or knowing the advertisement to be false in any material particular, inserts or causes to be inserted in the

*Government Gazette*, or in any newspaper an advertisement purporting to be published under the authority of any Court or tribunal, is guilty of a misdemeanour, and is liable to imprisonment with hard labour for two years.

143. Any person who attempts, in any way not specially defined in this Code, to obstruct, prevent, pervert, or defeat the course of justice, is guilty of a misdemeanour, and is liable to imprisonment with hard labour for two years.

Attempting to pervert justice.  
Code, s. 143.

#### CHAPTER XVII.—ESCAPES: RESCUES: OBSTRUCTING OFFICERS OF COURTS.

144. Any person who by force rescues or attempts to rescue from lawful custody an offender under sentence of death, or a person committed to prison on a charge of a crime punishable with death, is guilty of a crime, and is liable to imprisonment with hard labour for life.

Forcibly rescuing capital offenders.  
Code, s. 144.

145. Any person who—

- (1) Aids a prisoner in escaping or attempting to escape from lawful custody; or
- (2) Conveys anything or causes anything to be conveyed into a prison with intent to facilitate the escape of a prisoner;

Aiding prisoners to escape.  
Code, s. 145.

is guilty of a crime, and is liable to imprisonment with hard labour for seven years.

146. Any person who, being a prisoner in lawful custody under sentence after conviction for an indictable offence, escapes from such custody is guilty of a crime, and is liable to imprisonment with hard labour for three years.

Escape by prisoner.  
Code, s. 146.

The offender may be tried, convicted, and punished, notwithstanding that at the time of his apprehension or trial the term of his original sentence has expired.

147. Any person who, being an officer of a prison or police officer, and being charged, for the time being, with the custody of a prisoner or a person

Permitting escape.  
Code, s. 147.

under arrest upon a charge of an offence, wilfully permits him to escape from custody, is guilty of a misdemeanour, and is liable to imprisonment with hard labour for three years.

Harbouring  
escaped  
prisoners.  
Code, s. 148.

148. Any person who harbours, maintains, or employs a person who is, to his knowledge, an offender under sentence of such a kind as to involve deprivation of liberty, and illegally at large, is guilty of a misdemeanour, and is liable to imprisonment for two years, or to a fine of Two hundred pounds.

Rescuing  
insane  
persons.  
Code, s. 149.

149. Any person who—

- (1) Rescues any person during his conveyance as an insane person to a hospital or reception house for the insane, or to a house licensed under the laws relating to insane persons for the reception of patients, or to a prison, or rescues any person during his confinement as an insane person in any such place; or
- (2) Being in charge of a person during his conveyance as an insane person to any such place, wilfully permits him to escape from custody; or
- (3) Being a superintendent of, or person employed in any such place, wilfully permits a person confined therein as an insane person to escape therefrom; or
- (4) Conceals any such person as aforesaid who has, to his knowledge, been rescued during such conveyance or confinement, or has, to his knowledge, escaped during such conveyance, or from such confinement;

is guilty of a misdemeanour, and is liable to imprisonment with hard labour for three years.

Removing,  
etc.,  
property  
under  
lawful  
seizure.  
Code, s. 150.

150. Any person who, when any property has been attached or taken under the process or authority of any Court of justice, knowingly, and with intent to hinder or defeat the attachment, or process,

receives, removes, retains, conceals, or disposes of such property, is guilty of a misdemeanour, and is liable to imprisonment with hard labour for three years.

151. Any person who wilfully obstructs or resists any person lawfully charged with the execution of an order or warrant of any Court of justice is guilty of a misdemeanour, and is liable to imprisonment with hard labour for one year, or to a fine of One hundred pounds.

Obstructing  
officers of  
Courts of  
justice.  
Code, s. 151.

Or he may be summarily convicted before two justices, in which case he is liable to imprisonment with hard labour for six months, or to a fine of Fifty pounds.

#### CHAPTER XVIII.—OFFENCES RELATING TO THE COIN.

152. In this chapter—

Definitions.  
Code, s. 152.

The term “current,” applied to coin, includes coin of any of the kinds or denominations of coin which are coined in any of His Majesty’s mints, or are lawfully current by virtue of any proclamation or otherwise in any part of His Majesty’s dominions, whether within the United Kingdom or elsewhere;

The term “metal” includes any mixture or alloy of metals;

The term “copper” applied to coin, includes any metal of less value than the silver or alloy of silver used in the silver coin of the country in question;

The term “counterfeit” applied to coin, means coin not genuine, but resembling or apparently intended to resemble or pass for genuine coin, and includes genuine coin which has been prepared or altered so as to resemble or be apparently intended to resemble or pass for coin of a higher denomination, and also genuine coin which

has been clipped or filed, or the size or weight of which has been otherwise diminished, and which has been prepared or altered so as to conceal such clipping, filing, or diminution; it includes any such coin whether it is or is not in a fit state to be uttered, and whether the process of preparation or alteration is or is not complete;

The term "gild" and "silver" applied to coin, include producing the appearance of gold or silver respectively by any means whatever;

The term "utter" means and includes using, dealing with, or acting upon, and attempting to use, deal with, or act upon, and attempting to induce any person to use, deal with, or act upon, the thing in question as if it were genuine.

Counter-  
feiting gold  
and silver  
coin.  
Code, s. 153.

153. Any person who makes or begins to make any counterfeit gold or silver coin is guilty of a crime.

If the crime is committed with respect to current coin, he is liable to imprisonment with hard labour for life.

If the crime is committed with respect to coin of a Foreign Prince or State, he is liable to imprisonment with hard labour for seven years.

Preparation  
for coining  
gold and  
silver coin.  
Code, s. 154.

154. Any person who—

- (1) Gilds or silvers any piece of metal of a fit size or figure to be coined, with intent that it shall be coined into counterfeit gold or silver coin; or
- (2) Makes any piece of metal into a fit size or figure to facilitate the coining from it of any counterfeit gold or silver coin, with intent that such counterfeit coin shall be made from it; or

(3) Without lawful authority or excuse, the proof of which lies on him—

- (a) Buys, sells, receives, pays, or disposes of any counterfeit gold or silver coin at a lower rate than it imports or is apparently intended to import, or offers to do any such thing; or
- (b) Brings or receives into Western Australia any counterfeit gold or silver coin knowing it to be counterfeit; or
- (c) Makes or mends, or begins or prepares to make or mend, or has in his possession, or disposes of any stamp or mould which is adapted to make the resemblance of both or either of the sides of any gold or silver coin, or any part of either side thereof, knowing the same to be such a stamp or mould, or to be so adapted; or
- (d) Makes or mends, or begins or prepares to make or mend, or has in his possession, or disposes of any tool, instrument, or machine, which is adapted and intended to be used for marking coin round the edges with marks or figures apparently resembling those on the edges of any gold or silver coin, knowing the same to be so adapted and intended; or
- (e) Makes or mends, or begins or prepares to make or mend, or has in his possession, or disposes of any press for coinage, or any tool, instrument or machine which is adapted for cutting round blanks out of gold, silver, or other metal, knowing such press, tool, instrument, or machine to have been used or to be intended to be used for making any counterfeit gold or silver coin; or
- (f) Knowingly conveys out of any of His Majesty's mints any stamp, mould, tool, instrument, machine or press,

used or employed in coining, or any useful part of any of such things, or any coin, bullion, or metal;

is guilty of a crime.

If the crime is committed with respect to current coin, he is liable to imprisonment with hard labour for life.

If the crime is committed with respect to the coin of a Foreign Prince or State, he is liable to imprisonment with hard labour for seven years.

Clipping.  
Code, s. 155.

155. Any person who deals with any current gold or silver coin in such a manner as to diminish its weight, with intent that when so dealt with it may pass as current gold or silver coin, is guilty of a crime, and is liable to imprisonment with hard labour for life.

Possession  
of clippings.  
Code, s. 156.

156. Any person who unlawfully has in his possession or disposes of any filings or clippings of gold or silver, or any gold or silver in bullion, dust, solution, or any other state, obtained by dealing with current gold or silver coin in such a manner as to diminish its weight, knowing the same to have been so obtained, is guilty of a crime, and is liable to imprisonment with hard labour for seven years.

Uttering  
counterfeit  
gold or  
silver coin.  
Code, s. 157.

157. Any person who utters any counterfeit gold or silver coin, knowing it to be counterfeit, is guilty of a misdemeanour.

If the offence is committed with respect to current coin, he is liable to imprisonment with hard labour for two years.

If the offence is committed with respect to coin of a Foreign Prince or State, he is liable to imprisonment with hard labour for one year.

A person found committing the offence may be arrested without warrant.



## 158. Any person who—

- (1) Utters any counterfeit gold or silver coin, knowing it to be counterfeit, and at the time of such uttering has in his possession any other counterfeit gold or silver coin; or
- (2) Utters any counterfeit gold or silver coin, knowing it to be counterfeit, and either on the same day or on any of the ten days next ensuing utters any other counterfeit current gold or silver coin knowing it to be counterfeit; or
- (3) Has in his possession three or more pieces of counterfeit current gold or silver coin, knowing them to be counterfeit, and with intent to utter any of them;

Repeated uttering of counterfeit current gold or silver coin, or possession of several such coins.  
Code, s. 158.

is guilty of a misdemeanour, and is liable to imprisonment with hard labour for three years.

A person found committing the offence may be arrested without warrant.

159. Any person who commits any of the offences defined in the two last preceding sections, after having been previously convicted of any of those offences committed with respect to current coin or of any crime committed with respect to current coin, or after having been twice previously convicted of any of those offences committed with respect to coin of a Foreign Prince or State, is guilty of a crime, and is liable to imprisonment with hard labour for life.

Offences after previous conviction.  
Code, s. 159.

## 160. Any person who—

- (1) Makes or begins to make any counterfeit copper coin; or
- (2) Without lawful authority or excuse, the proof of which lies on him knowingly—
  - (a) Makes or mends, or begins or prepares to make or mend, or has in his possession, or disposes of any tool, instrument, or machine which is adapted and intended for making any counterfeit copper coin, knowing the same to be so adapted and intended; or

Counter-fetting copper coin.  
Code, s. 160.

- (b) Buys, sells, receives, pays, or disposes of any counterfeit copper coin at a lower rate of value than it imports or was apparently intended to import, or offers to do any such thing;

is guilty of an offence.

If the offence is committed with respect to current coin, the offender is guilty of a crime, and is liable to imprisonment with hard labour for seven years.

If the offence is committed with respect to coin of a Foreign Prince or State, the offender is guilty of a misdemeanour, and is liable, on conviction, to imprisonment with hard labour for twelve months. If found committing the offence, he may be arrested without warrant.

If the offence is committed with respect to coin of a Foreign Prince or State, and the offender has been previously convicted of any such offence, he is guilty of a crime, and is liable to imprisonment with hard labour for seven years.

Uttering  
base copper  
coin.  
Code, s. 161.

161. Any person who—

- (1) Utters any counterfeit current copper coin, knowing it to be counterfeit; or
- (2) Has in his possession three or more pieces of counterfeit current copper coin, knowing them to be counterfeit, and with intent to utter any of them;

is guilty of a misdemeanour, and is liable to imprisonment with hard labour for one year.

A person found committing the offence may be arrested without warrant.

Defacing  
coins by  
stamping  
words  
thereon.  
Code, s. 162.

162. Any person who defaces any current coin by stamping thereon any name or word, whether the weight of the coin is or is not thereby diminished, is guilty of a misdemeanour, and is liable to imprisonment with hard labour for one year.

A person found committing the offence may be arrested without warrant.

163. Any person who, with intent to defraud, utters as and for current gold or silver coin—

Uttering foreign coin, medals, etc., as current coin with intent to defraud.  
Code, s. 163.

(a) Any coin which is not current coin; or

(b) Any medal or piece of metal, whether a coin or not, which is of less value than the current coin as and for which it is uttered;

is guilty of a misdemeanour, and is liable to imprisonment with hard labour for one year.

A person found committing the offence may be arrested without warrant.

164. Any person who, without lawful authority or excuse, the proof of which lies on him, exports or puts on board of a vessel or vehicle of any kind, for the purpose of being exported from Western Australia, any counterfeit current coin whatever, knowing it to be counterfeit, is guilty of a misdemeanour, and is liable to imprisonment with hard labour for two years.

Exporting counterfeit coin.  
Code, s. 164.

A person found committing the offence may be arrested without warrant.

165. Any person who, without lawful authority or excuse, the proof of which lies on him, has in his possession more than five pieces of counterfeit coin of any Foreign Prince or State, is guilty of an offence, and is liable, on summary conviction, to a fine not exceeding Forty shillings and not less than Ten shillings, for every such counterfeit coin found in his possession, and to forfeiture of the counterfeit coin, which is to be destroyed by order of the justices.

Having possession of more than five pieces of counterfeit foreign coin.  
Code, s. 165.

In default of immediate payment of the fine, he is liable to imprisonment with hard labour for three months, unless the fine is sooner paid.

166. Any person who utters any current coin, which is defaced by the stamping of any name or word thereon, is guilty of an offence, and is liable on summary conviction to a fine of Forty shillings.

Tender of defaced coin not legal tender: Penalty for uttering.  
Code, s. 166.

A prosecution for any such offence cannot be commenced without the consent of the Attorney General.

A tender of payment in money made in any coin so defaced is not a legal tender.

#### CHAPTER XIX.—OFFENCES RELATING TO MAILS.

Stopping  
mails.  
Code, s. 167.

167. Any person who stops a mail conveyance, or stops any person engaged in conveying or delivering a mail, with intent to search the mail, is guilty of a crime, and is liable to imprisonment with hard labour for fourteen years.

The term "mail conveyance" includes any conveyance of any kind by which a mail is carried, and also any vessel employed by or under the postal authority of any country, or the Admiralty, for the conveyance of mails, whether under contract or not, and also a ship of war or other vessel in the service of His Majesty in respect of letters conveyed by it.

#### CHAPTER XX.—MISCELLANEOUS OFFENCES AGAINST PUBLIC AUTHORITY.

False  
declaration  
as to  
execution of  
sentence of  
death.  
Code, s. 168.

168. Any person who subscribes a certificate or declaration as to the execution of a sentence of death, which in any material particular is to his knowledge false, is guilty of a crime, and is liable to imprisonment with hard labour for fourteen years.

False  
statements  
in state-  
ments  
required to  
be under  
oath or  
solemn  
declaration.  
Code, s. 169.

169. Any person who, on any occasion on which a person making a statement touching any matter is required by law to make it on oath or under some sanction which may by law be substituted for an oath, or is required to verify it by solemn declaration or affirmation, makes a statement touching such matter which, in any material particular, is to his knowledge false, and verifies it on oath or under such other sanction or by solemn declaration or affirmation, is guilty of a crime, and is liable to imprisonment with hard labour for seven years.

The offender cannot be arrested without warrant.

170. Any person who, on any occasion on which he is permitted or required by law to make a statement or declaration before any person authorised by law to permit it to be made before him, makes a statement or declaration before that person which, in any material particular, is to his knowledge false, is guilty of a misdemeanour, and is liable to imprisonment with hard labour for three years.

False  
declarations  
and  
statements.  
Code, s. 170.

171. A person cannot be convicted of any of the offences defined in the two last preceding sections upon the uncorroborated testimony of one witness.

Evidence.  
Code, s. 171.

172. Any person who in any manner obstructs or resists any public officer while engaged in the discharge or attempted discharge of the duties of his office under any Statute, or obstructs or resists any person while engaged in the discharge or attempted discharge of any duty imposed on him by any Statute, is guilty of a misdemeanour, and is liable to imprisonment with hard labour for two years.

Resisting  
public  
officers.  
Code, s. 172.

173. Any person who, being employed in the Public Service, or as an officer of any Court or tribunal, perversely and without lawful excuse omits or refuses to do any act which it is his duty to do by virtue of his employment, is guilty of a misdemeanour, and is liable to imprisonment for two years, and to be fined at the discretion of the Court.

Refusal by  
public officer  
to perform  
duty.  
Code, s. 173.

174. Any person who, being a sheriff, under sheriff, justice, mayor, or police officer, and having notice that there is a riot in his neighbourhood, without reasonable excuse omits to do his duty in suppressing such riot, is guilty of a misdemeanour, and is liable to imprisonment for two years.

Neglect of  
officers to  
suppress  
riot.  
Code, s. 174.

175. Any person who, having reasonable notice that he is required to assist any sheriff, under sheriff, justice, mayor, or police officer, in suppressing a riot, without reasonable excuse omits to do so, is guilty of a misdemeanour, and is liable to imprisonment for one year.

Neglect to  
aid in  
suppressing  
riot.  
Code, s. 175.

Neglect to  
aid in  
arresting  
offenders.  
Code, s. 176.

176. Any person who, having reasonable notice that he is required to assist any sheriff, under sheriff, justice, mayor, or police officer, in arresting any person, or in preserving the peace, without reasonable excuse omits to do so, is guilty of a misdemeanour, and is liable to imprisonment for one year.

Disobedience  
to Statute  
Law.  
Code, s. 177.

177. Any person who, without lawful excuse, the proof of which lies on him, does any act which he is, by the provisions of any public Statute in force in Western Australia, forbidden to do or omits to do any act which he is, by the provisions of any such Statute, required to do, is guilty of a misdemeanour, unless some mode of proceeding against him for such disobedience is expressly provided by Statute, and is intended to be exclusive of all other punishment.

The offender is liable to imprisonment for one year.

Disobedience  
to lawful  
order issued  
by statutory  
authority.  
Code, s. 178.

178. Any person who, without lawful excuse, the proof of which lies on him, disobeys any lawful order issued by any Court of justice, or by any person authorised by any public Statute in force in Western Australia to make the order, is guilty of a misdemeanour, unless some mode of proceeding against him for such disobedience is expressly provided by Statute, and is intended to be exclusive of all other punishment.

The offender is liable to imprisonment for one year.

#### PART IV.—ACTS INJURIOUS TO THE PUBLIC IN GENERAL.

##### CHAPTER XXI.—OFFENCES RELATING TO RELIGIOUS WORSHIP.

Offering  
violence to  
officiating  
ministers of  
religion.  
Code, s. 179.

179. Any person who—

- (1) By threats or force prevents or attempts to prevent any minister of religion from lawfully officiating in any place of religious worship, or from performing his duty in the lawful burial of the dead in any cemetery, or other burial place; or

- (2) By threats or force obstructs or attempts to obstruct any minister of religion while so officiating or performing his duty; or
- (3) Assaults, or, upon or under the pretence of executing any civil process, arrests any minister of religion who is engaged in, or is, to the knowledge of the offender, about to engage in, any of the offices or duties aforesaid or who is, to the knowledge of the offender, going to perform the same or returning from the performance thereof;

is guilty of a misdemeanour, and is liable to imprisonment with hard labour for two years.

180. Any person who wilfully and without lawful justification or excuse, the proof of which lies on him, disquiets or disturbs any meeting of persons lawfully assembled for religious worship, or assaults any person lawfully officiating at any such meeting, or any of the persons there assembled, is guilty of an offence, and is liable on summary conviction to imprisonment for two months, or to a fine of Five pounds.

Disturbing  
religious  
worship.  
Code, s. 180.

#### CHAPTER XXII.—OFFENCES AGAINST MORALITY.

181. Any person who—

- (1) Has carnal knowledge of any person against the order of nature; or
- (2) Has carnal knowledge of an animal; or
- (3) Permits a male person to have carnal knowledge of him or her against the order of nature;

Unnatural  
offences.  
Code, s. 181.

is guilty of a crime, and is liable to imprisonment with hard labour for fourteen years, with or without whipping.

182. Any person who attempts to commit any of the crimes defined in the last preceding section is guilty of a crime, and is liable to imprisonment with hard labour for seven years, with or without whipping.

Attempt to  
commit  
unnatural  
offences.  
Code, s. 182.  
Amended by  
No. 32 of  
1918, s. 4.

Indecent  
treatment  
of boys  
under  
fourteen.  
Code, s. 183.

183. Any person who unlawfully and indecently deals with a boy under the age of fourteen years is guilty of a crime, and is liable to imprisonment with hard labour for seven years, with or without whipping.

The term "deal with" includes doing any act which, if done without consent, would constitute an assault as hereinafter defined.

Indecent  
practices  
between  
males.  
Code, s. 184.

184. Any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male person, whether in public or private, is guilty of a misdemeanour, and is liable to imprisonment with hard labour for three years, with or without whipping.

Defilement  
of girls under  
thirteen.  
Code, s. 185.  
Amended by  
No. 32 of  
1918, s. 5.

185. Any person who has unlawful carnal knowledge of a girl under the age of thirteen years is guilty of a crime, and is liable to imprisonment with hard labour for life, with or without whipping.

Any person who attempts to have unlawful carnal knowledge of a girl under the age of thirteen years is guilty of a crime, and is liable to imprisonment with hard labour for fourteen years, with or without whipping.

A person cannot be convicted of either of the offences defined in this section upon the uncorroborated testimony of one witness.

The wife of the accused person is a competent and compellable witness.

Householder  
permitting  
defilement  
of young  
girls on his  
premises.  
Code, s. 186.

186. Any person who, being the owner or occupier of any premises, or having, or acting or assisting in the management or control of any premises, induces or knowingly permits any girl of such age as is in this section mentioned to resort to or be in or upon such premises for the purpose of being unlawfully carnally known by any man, whether a particular man or not, is guilty of an indictable offence.



If the girl is under the age of sixteen years, he is guilty of a misdemeanour, and is liable to imprisonment with hard labour for two years, with or without whipping.

If the girl is under the age of thirteen years, he is guilty of a crime, and is liable to imprisonment with hard labour for life, with or without whipping.

It is a defence to a charge to any of the offences defined in this section to prove that the accused person believed, on reasonable grounds, that the girl was of or above the age of sixteen years.

The husband or wife of the accused person is a competent and compellable witness.

187. (1) Any person who has or attempts to have unlawful carnal knowledge of a girl under the age of sixteen years is guilty of a crime, and is liable to imprisonment with hard labour for five years with or without whipping:

Defilement  
of girls  
under  
sixteen.  
Code, s. 187.  
Repealed by  
No. 32 of  
1918, s. 6.  
New section  
substituted  
by No. 32 of  
1918, s. 7.

Provided that if the offender's age does not exceed twenty-one years he is guilty of a misdemeanour and liable to imprisonment with hard labour for two years, with or without whipping.

(2) It is a defence to a charge of either of the offences defined in this section to prove that the accused person believed, on reasonable grounds, that the girl was of or above the age of sixteen.

(3) A prosecution under this section for the offence of having unlawful carnal knowledge must be begun within six months, and for the offence of attempting to have unlawful carnal knowledge within three months, after the offence has been committed.

(4) A person cannot be convicted of either of the offences defined in this section upon the uncorroborated testimony of one witness.

(5) The wife of the accused person is a competent and compellable witness.

Defilement  
of idiots.  
Code, s. 188.  
Repealed  
and new  
section  
substituted  
by No. 32 of  
1918, s. 7.

188. (1) Any person who, knowing a woman or girl to be an idiot or imbecile, has or attempts to have unlawful carnal knowledge of her is guilty of a crime, and is liable to imprisonment with hard labour for five years with or without whipping.

(2) A person cannot be convicted of either of the offences defined in this section upon the uncorroborated testimony of one witness.

(3) The wife of the accused person is a competent and compellable witness.

Indecent  
dealing with  
girls under  
sixteen and  
others.  
Code, s. 189.  
Repealed  
and new  
section  
substituted  
by No. 32 of  
1918, s. 8.

189. (1) Any person who unlawfully and indecently deals with a girl or woman—

- (i) who is under the age of sixteen years; or
- (ii) who is to the knowledge of the accused person an idiot or imbecile; or
- (iii) who is under the age of seventeen years, and of whom the accused person is a guardian, employer, teacher, or school-master,

is guilty of a crime, and is liable to imprisonment with hard labour for four years with or without whipping:

Provided that if the offender's age does not exceed twenty-one years he is guilty of a misdemeanour and liable to imprisonment with hard labour for two years, with or without whipping.

(2) If the girl dealt with is under the age of thirteen years he is guilty of a crime, and liable to imprisonment with hard labour for seven years with or without whipping.

(3) If a person accused of the offence of unlawfully and indecently dealing with a girl under the age of sixteen years proves that the act committed was done with the consent of the girl, that she was in fact of or over the age of thirteen years, and that he believed at the time on reasonable grounds that her age was greater than stated in the indictment, he shall be in the same position as if her age had in fact been such as he so believed it to be.

(4) The wife of the accused person is a competent and compellable witness.

(5) The term "deal with" includes doing any act which if done without consent would constitute an assault as hereinafter defined.

(6) A prosecution under this section for the offence of unlawfully and indecently dealing with a girl under the age of sixteen years must, if she is of or over the age of thirteen years, be commenced within three months after the offence has been committed.

190. Any person who, being a guardian, employer, teacher, or schoolmaster of any girl or woman under the age of seventeen years, unlawfully and carnally knows, or attempts to have unlawful and carnal knowledge of such girl or woman, is guilty of a crime and is liable to imprisonment with hard labour for five years with or without whipping.

Defilement  
by guardian,  
etc.  
Code, s. 190.  
Amended by  
No. 32 of  
1918, s. 9.

The wife of the accused person is a competent and compellable witness.

191. Any person who—

Procuration.  
Code, s. 191.

- (1) Procures a girl or woman who is under the age of twenty-one years, and is not a common prostitute or of known immoral character to have unlawful carnal connection with a man, either in Western Australia or elsewhere; or
- (2) Procures a woman or girl to become a common prostitute either in Western Australia or elsewhere; or
- (3) Procures a woman or girl to leave Western Australia, with intent that she may become an inmate of a brothel, elsewhere; or
- (4) Procures a woman or girl to leave her usual place of abode in Western Australia, such place not being a brothel, with intent that she may, for the purposes of prostitution, become an inmate of a brothel, either in Western Australia or elsewhere;

is guilty of a misdemeanour, and is liable to imprisonment with hard labour for two years.

A person cannot be convicted of any of the offences defined in this section upon the uncorroborated testimony of one witness.

The husband or wife of the accused person is a competent and compellable witness.

Procuring  
defilement  
of woman  
by threats,  
or fraud, or  
administer-  
ing drugs.  
Code, s. 192.

192. Any person who—

- (1) By threats or intimidation of any kind procures a woman or girl to have unlawful carnal connection with a man, either in Western Australia or elsewhere; or
- (2) By any false pretence procures a woman or girl, who is not a common prostitute or of known immoral character, to have unlawful carnal connection with a man, either in Western Australia or elsewhere; or
- (3) Administers to a woman or girl, or causes a woman or girl to take, any drug or other thing with intent to stupefy or overpower her in order to enable any man, whether a particular man or not, to have unlawful carnal knowledge of her;

is guilty of a misdemeanour, and is liable to imprisonment with hard labour for two years.

A person cannot be convicted of any of the offences defined in this section upon the uncorroborated testimony of one witness.

The husband or wife of the accused person is a competent and compellable witness.

Abduction  
of girl under  
eighteen  
with intent  
to have  
carnal  
knowledge.  
Code, s. 193.

193. Any person who, with intent that an unmarried girl under the age of eighteen years may be unlawfully carnally known by any man, whether a particular man or not, takes her or causes her to be taken out of the custody or protection of her father or mother, or other person having the lawful care or charge of her, and against the will of such father or mother or other person, is guilty of a misdemeanour, and is liable to imprisonment with hard labour for two years.

It is a defence to a charge of any of the offences defined in this section to prove that the accused person believed, on reasonable grounds, that the girl was of or above the age of eighteen years.

The husband or wife of the accused person is a competent and compellable witness.

194. Any person who—

- (1) Detains a woman or girl against her will in or upon any premises in order to her being unlawfully carnally known by any man, whether a particular man or not; or
- (2) Detains a woman or girl against her will in a brothel; or
- (3) being the keeper of a brothel suffers any girl or woman under the age of twenty-one years to be therein;

Unlawful  
detention  
with intent  
to defile, or  
in a brothel.  
Code, s. 194.  
Amended by  
No. 32 of  
1918, s. 10.

is guilty of a misdemeanour, and is liable to imprisonment with hard labour for two years.

The husband or wife of the accused person is a competent and compellable witness.

When a woman or girl is in or upon any premises in order to her being unlawfully carnally known by any man, whether a particular man or not, or is in a brothel, a person is deemed to detain such woman or girl in or upon such premises in order to her being so unlawfully carnally known, or to detain her in such brothel if, with intent to compel or induce her to remain in or upon the premises or in the brothel, he withholds from her any wearing apparel or other property belonging to her, or if, after wearing apparel has been lent or otherwise supplied to the woman or girl by or by the direction of such person or any other person, he threatens the woman or girl with legal proceedings if she takes away with her the wearing apparel so lent or supplied.

It is lawful for a woman or girl to take any such wearing apparel as may be necessary to enable her to leave a brothel or any premises in or upon which she is in order to her being unlawfully carnally known by any man.

Permitting  
boys to  
resort to  
brothels.  
Code, s. 195  
Amended by  
No. 32 of  
1918, s. 31.

195. Any person who, being the owner or occupier of any premises, or having, or aiding or assisting in the management or control thereof, induces, or knowingly suffers any boy under the age of eighteen years to resort to, or be in or upon such premises for the purpose of unlawfully and carnally knowing any girl or woman, whether intended to be with any particular girl or woman, or generally, is guilty of a misdemeanour, and is liable to imprisonment with hard labour for two years.

Conspiracy  
to defile.  
Code, s. 196.

196. Any person who conspires with another to induce any woman or girl, by means of any false pretence or other fraudulent means, to permit any man to have unlawful carnal knowledge of her is guilty of a misdemeanour, and is liable to imprisonment with hard labour for three years.

Incest by  
man.  
Code, s. 197.

197. Any person who carnally knows a woman or girl who is, to his knowledge, his mother or daughter or other lineal ancestress or descendant, or his sister or half-sister, is guilty of a crime, and is liable to imprisonment with hard labour for life.

Any person who attempts to have carnal knowledge of a woman or girl who is, to his knowledge, his mother or daughter, or other lineal ancestress or descendant, or his sister or half-sister, is guilty of a crime, and is liable to imprisonment with hard labour for seven years.

It is immaterial that the carnal knowledge was had, or that the attempt was made, with the consent of the woman or girl.

The wife of the accused person is a competent and compellable witness.

The mention of any relationship herein shall include any such relationship whether natural only or legitimate.

Incest by  
adult  
female.  
Code, s. 198.

198. Any woman or girl of or above the age of eighteen years who permits her father or son or other lineal ancestor or descendant, or her brother or half-brother, to have carnal knowledge of her,

knowing him to be her father or son or other lineal ancestor or descendant, or her brother or half-brother, as the case may be, is guilty of a misdemeanour, and is liable to imprisonment with hard labour for three years.

It is a defence to a charge of the offence defined in this section that the woman or girl was, at the time when she permitted her father or son or other lineal ancestor or descendant, or her brother, or half-brother, to have carnal knowledge of her, acting under his coercion.

The husband of the accused person is a competent and compellable witness.

The mention of any relationship herein shall include any such relationship whether natural only or legitimate.

199. Any person who with intent to procure the miscarriage of a woman, whether she is or is not with child, unlawfully administers to her or causes her to take any poison or other noxious thing, or uses any force of any kind, or uses any other means whatever, is guilty of a crime, and is liable to imprisonment with hard labour for fourteen years.

Attempts to procure abortion.  
Code, s. 199.

200. Any woman who, with intent to procure her own miscarriage, whether she is or is not with child, unlawfully administers to herself any poison or other noxious thing, or uses any force of any kind, or uses any other means whatever, or permits any such thing or means to be administered or used to her, is guilty of a crime, and is liable to imprisonment with hard labour for seven years.

The like by women with child.  
Code, s. 200.

201. Any person who unlawfully supplies to or procures for any person any thing whatever, knowing that it is intended to be unlawfully used to procure the miscarriage of a woman, whether she is or is not with child, is guilty of a misdemeanour, and is liable to imprisonment with hard labour for three years.

Supplying drugs or instruments to procure abortion.  
Code, s. 201.

Consent no  
defence.  
Code, s. 202.

202. The consent of the girl or woman is no defence to any charge defined in sections one hundred and eighty-five to one hundred and ninety-three inclusive of this chapter.

Indecent  
acts.  
Code, s. 203.

203. Any person who—

(1) Wilfully and without lawful excuse does any indecent act in any place to which the public are permitted to have access, whether on payment of a charge for admission or not; or

(2) Wilfully does any indecent act in any place with intent to insult or offend any person;

is guilty of a misdemeanour, and is liable to imprisonment with hard labour for two years.

Obscene  
publications  
and  
exhibitions.  
Code, s. 204.

204. Any person who knowingly, and without lawful justification or excuse,—

(1) Publicly sells or exposes for sale any obscene book or other obscene printed or written matter, or any obscene picture, photograph, drawing, or model or any other object tending to corrupt morals; or

(2) Exposes to view in any place to which the public are permitted to have access, whether on payment of a charge for admission or not, any obscene picture, photograph, drawing or model, or any other object tending to corrupt morals; or

(3) Publicly exhibits any indecent show or performance, whether on payment of a charge for admission to see the show or performance or not;

is guilty of a misdemeanour, and is liable to imprisonment with hard labour for two years.

It is a defence to a charge of any of the offences defined in this section to prove that it was for the public benefit that the act complained of should be done.

Whether the doing of any such act is or is not for the public benefit is a question of fact.



205. Except as otherwise expressly stated, it is immaterial, in the case of any of the offences defined in this chapter committed with respect to a woman or girl under the specified age, that the accused person did not know that the woman or girl was under that age, or believed that she was not under that age.

Knowledge of age immaterial. Code, s. 205.

205A. Nothing in the foregoing provisions of this chapter shall apply to or in respect of the offence of rape or attempted rape.

Rape or attempted rape not affected by foregoing provisions of this chapter. Inserted by No. 32 of 1918, s. 11.

206. (1) If any person, who shall have been at any time (either heretofore or hereafter) convicted of an offence defined in section one hundred and eighty-seven, one hundred and eighty-eight, one hundred and eighty-nine, three hundred and twenty-six, three hundred and twenty-seven, or three hundred and twenty-eight of this Code committed against a female who is under the age of thirteen years or whom he knows to be an idiot or imbecile, shall, subsequently (being of the age of sixteen years or over), commit an offence defined in any of the said sections against any such female as aforesaid, and be duly convicted thereof, he may, in addition to any other punishment provided by law which the Court may see fit to impose, be sentenced to a whipping.

Punishment of whipping may be inflicted in certain cases. Code, s. 206. Amended by No. 32 of 1918, ss. 6 and 7; No. 55 of 1953, s. 6.

(2) Any person being of the age of sixteen years or over who shall be hereafter convicted of an offence defined in section one hundred and eighty-five of this Code, may, in addition to any other punishment provided by law which the Court may see fit to impose, be sentenced to a whipping.

Amended by No. 32 of 1918, s. 6; No. 55 of 1953, s. 6.

#### CHAPTER XXIII.—NUISANCES: MISCONDUCT RELATING TO CORPSES.

207. (1) Any person who without lawful justification or excuse (the proof of which lies on him) does any act or omits to discharge any legal duty which act or omission endangers the lives, safety, health or property of the public or by which act or omission the comfort of the public is interfered

Common nuisances. Code, s. 207.

with or the public are obstructed in the exercise or enjoyment of any common right, is guilty of a misdemeanour, which is called a common nuisance, and is liable to imprisonment for one year.

(2) It is the duty of every person having any property under his control to do such acts with respect thereto as are necessary to prevent any such danger, interference, or obstruction as aforesaid arising therefrom.

Poisoning  
water-holes.  
Code, s. 208.

208. Any person who—

- (a) Without lawful justification or excuse, places in any water-hole or other place containing water of which he is the owner or lawful occupier; or
- (b) Without the leave of the Minister for Lands first had and obtained, places in any water-hole or other place containing water situated on unoccupied Crown land; or
- (c) Places in any water-hole or other place containing water on any private land, of which such person is not the owner or lawful occupier—

any poisonous or noxious matter in any quantity sufficient to render such water unfit for human consumption, or unfit for consumption by cattle, horses, camels, sheep, or other animals, is guilty of a misdemeanour and liable to imprisonment with hard labour for two years; or he may be summarily convicted before two justices, in which case he is liable to imprisonment with hard labour for six months.

On any prosecution under this section the onus lies on the accused person to prove all facts negatived in the complaint or indictment.

Bawdy  
houses.  
Code, s. 209.

209. Any person who keeps a house, room, set of rooms, or place of any kind whatever for purposes of prostitution, is guilty of a misdemeanour, and is liable to imprisonment with hard labour for three years.

210. A person who—

Gaming  
houses.  
Code, s. 210.  
Amended by  
No. 32 of  
1918, s. 12.

- (1) Keeps for gain any place to which persons resort for the purpose of playing at any game of chance; or
- (2) Keeps any place which is kept or used for playing therein at any game of chance, or any game of mixed chance and skill, and in which—
  - (a) A bank is kept by one or more of the players exclusively of the others; or
  - (b) Any game is played the chances of which are not alike favourable to all the players, including the banker or other persons by whom the game is managed, or against whom the other players stake, play, or bet;

is said to keep a common gaming house.

Any person who keeps a common gaming house is guilty of a misdemeanour, and is liable to imprisonment with hard labour for three years.

Or he may be summarily convicted before two Justices, in which case he is liable to imprisonment with hard labour for six months, or to a fine of One hundred pounds.

In any prosecution under paragraph (1) on proof that the place was kept as a place to which persons resort for the purpose of playing at any game of chance, the averment in the indictment, information, or complaint that the place was kept for gain shall be deemed to be proved in the absence of proof to the contrary.

Added by  
No. 32 of  
1918, s. 12.

Any person who, being the owner or occupier of any house, room, or place, knowingly and wilfully permits it to be opened, kept, or used as a common gaming house by another person, or who has the use or management, or assists in conducting the business of a common gaming house, is guilty of an offence, and is liable on summary conviction to imprisonment with hard labour for six months, or to a fine of one hundred pounds.

Added by  
No. 32 of  
1918, s. 12.

Betting  
houses.  
Code, s. 211.  
Amended by  
No. 15 of  
1942, s. 2;  
No. 63 of 1954,  
s. 5 (3), and  
Sched.  
Part II.\*

211. (1) Any house or room, or any place whatsoever which is used for any of the purposes following, that is to say:—

- (i) For the purpose of bets being made therein between persons resorting to the place; or
- (ii) For the purpose of bets being made therein between persons resorting to the place and—
  - (a) The owner, occupier, or keeper of the place, or any person using the place; or
  - (b) Any person procured or employed by or acting for or on behalf of any such owner, occupier, or keeper, or person using the place; or
  - (c) Any person having the care or management, or in any manner conducting the business of the place; or
- (iii) For the purpose of any money or other property being paid or received therein by or on behalf of any such owner, occupier, or keeper, or person using the place as or for the consideration—
  - (d) For an assurance, undertaking, promise, or agreement, express or implied, to pay or give thereafter any money or other property on any event or contingency of or relating to any horse-race, or other race, fight, game, sport, or exercise; or
  - (e) For securing the paying or giving by some other person of any money or other property on any such event or contingency;

is called a common betting house.

Any person who opens, keeps, or uses a common betting house is guilty of a misdemeanour, and is liable to imprisonment with hard labour for three years.

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\* See footnote (h) on p. 1 of this reprint.

Or he may be summarily convicted before two justices, in which case he is liable to imprisonment with hard labour for six months, or to a fine of One hundred pounds.

(2) Any person who, being the owner or occupier of any house, room, or place, permits it to be opened, kept, or used as a common betting house by another person, or who has the use or management, or assists in conducting the business of a common betting house, is guilty of an offence, and is liable on summary conviction to imprisonment with hard labour for six months, or to a fine of One hundred pounds. For the purpose of this subsection—

Amended by  
No. 15 of  
1942, s. 2.

“Occupier” includes any person by whom or on whose behalf any house, room, office, or place is actually occupied or who is the lessee or sublessee (not being the owner, as hereinafter in this section defined), and any attorney, agent, or manager of such person who has the control, supervision, or management of the premises on his behalf; and

Inserted by  
No. 15 of  
1942, s. 2.

“Owner” of any house, room, office, or place includes every person, company, or corporation who is, whether at law or in equity, entitled to the same or on the land in which the same is situate for any estate of freehold in possession or is in actual receipt of or entitled to receive or if the house, room, office, or place were let to a tenant would be entitled to receive the rents and profits of the same, either on his own account or as mortgagee in possession, or if the house, room, office, or place is subleased, who is the lessee or sublessee from whom a sublessee holds, and also includes the attorney, agent or manager having control or supervision of the premises for such person or who on his behalf receives the rent or is authorised to issue receipts for the rent.

Inserted by  
No. 15 of  
1942, s. 2.

The Western Australian Turf Club, and any other club or company, incorporated or otherwise, registered by the Western Australian Turf Club, and

authorised by the Treasurer,\* and any person, with the permission of any such club or company, may have, use, and play with on the racecourse of such club or company, during the days of any race meeting, the instrument known as the totalisator.

The provisions of this chapter are subject to the Totalisator Regulation Act, 1911, The Totalisator Act, 1883, the Lotteries Control Act, 1954, and to the Betting Control Act, 1954.

Lotteries.  
Code, s. 212.

212. Any person who opens, keeps, or uses any place for carrying on a lottery of any kind whatever is guilty of a misdemeanour, and is liable to imprisonment with hard labour for three years; or may be summarily convicted before two justices, in which case he is liable to imprisonment with hard labour for six months, or to a fine of One hundred pounds.

The term "lottery" includes any scheme or device for the sale, gift, disposal, or distribution of any property depending upon or to be determined by lot or chance, whether by the throwing or casting of dice, or the drawing of tickets, cards, lots, numbers or figures, or by means of a wheel or trained animal, or otherwise howsoever.

Acting as  
keeper of  
bawdy  
houses,  
gaming  
houses,  
betting  
houses, and  
lotteries.  
Code, s. 213.

213. Any person who appears, acts, or behaves as master or mistress, or as the person having the care or management of any such house, room, set of rooms, or place as is mentioned in the four last preceding sections, is to be taken to be the keeper thereof, whether he is or is not the real keeper.

Misconduct  
with regard  
to corpses.  
Code, s. 214.

214. Any person who, without lawful justification or excuse, the proof of which lies on him—

- (1) Neglects to perform any duty imposed upon him by law, or undertaken by him, whether for reward or otherwise, touching the burial or other disposition of a human body or human remains; or

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\* Formerly Colonial Treasurer; amended by No. 8 of 1925, s. 2.

- (2) Improperly or indecently interferes with, or offers any indignity to, any dead human body or human remains, whether buried or not;

is guilty of a misdemeanour, and is liable to imprisonment with hard labour for two years.

#### CHAPTER XXIV.—OFFENCES AGAINST PUBLIC HEALTH.

215. Any person who, being the master or medical officer of a ship arriving from beyond sea, neglects or refuses to give to any officer employed in the Public Service any information which he is required by law to give to him, or gives to any such officer, either verbally or in writing, any information touching any matter as to which he is required by law to give him information, which information is, to his knowledge, false in any material particular, is guilty of a misdemeanour, and is liable to imprisonment with hard labour for two years, and to a fine of Three hundred pounds.

False information as to health of foreign ships.  
Code, s. 215.

216. Any person who knowingly exposes for sale for the food of man, or has in his possession with intent to sell it for the food of man, any article which he knows to be unfit for the food of man, is guilty of a misdemeanour, and is liable to imprisonment with hard labour for two years.

Exposing for sale things unfit for food.  
Code, s. 216

217. Any person who—

- (1) Knowingly takes into a slaughter house used for the slaughter of any animals intended for the food of man, the whole or any part of the carcass of any animal which has died of any disease; or
- (2) Knowingly sells or exposes for sale the whole or part of the carcass of any animal which has died of any disease or which was diseased when slaughtered;

Dealing in diseased meat.  
Code, s. 217.

is guilty of a misdemeanour, and is liable to imprisonment with hard labour for two years.

Adulterating  
liquor.  
Code, s. 218.

218. Any person who—

- (1) Puts any deleterious or poisonous substance into any spirituous or fermented liquor, or mixes any such substance with any such liquor; or
- (2) Sells or otherwise disposes of, or keeps for sale, any spirituous or fermented liquor into which any such substance has been put, or with which any such substance has been mixed;

is guilty of a misdemeanour, and is liable on conviction to imprisonment with hard labour for two years, or to a fine of Two hundred pounds.

Adulteration  
of beverages.  
Code, s. 219.

219. Any person who, being a public brewer or maker of any liquor intended to be used as a beverage for man—

- (1) Uses in the brewing or making of the liquor any deleterious or poisonous substance; or
- (2) Puts any such substance into, or mixes any such substance with, the liquor, whether before or after the brewing or making is complete;

is guilty of an offence, and is liable, on summary conviction, to a fine of Two hundred pounds, and to forfeiture of the liquor.

If the offender, before committing the offence, has been previously convicted of any such offence, he is guilty of a misdemeanour, and is liable to imprisonment for two years, as well as to forfeiture of the liquor.

#### CHAPTER XXV.—MISCELLANEOUS OFFENCES.

Frauds on  
land laws.  
Code, s. 220.

220. Any person who, for the purpose of acquiring land from the Crown, fraudulently evades or attempts to evade any of the provisions of the Statutes relating to the sale or leasing of Crown lands is guilty of a misdemeanour, and is liable to imprisonment with hard labour for two years.

And all his interest, if any, in the land is forfeited to His Majesty.



221. Any person who buys or takes on lease any land, or any estate in any land, from any person who has acquired the land or the estate by means of any fraudulent evasion of the laws relating to the sale or leasing of Crown lands, knowing that the seller or lessor has so acquired the same, is guilty of a misdemeanour, and is liable to imprisonment with hard labour for one year.

Dealing with land fraudulently acquired from the Crown.  
Code, s. 221.

And all his estate in the land is forfeited to His Majesty.

PART V.—OFFENCES AGAINST THE PERSON AND RELATING TO MARRIAGE AND PARENTAL RIGHTS AND DUTIES AND AGAINST THE REPUTATION OF INDIVIDUALS.

CHAPTER XXVI.—ASSAULTS AND VIOLENCE TO THE PERSON GENERALLY: JUSTIFICATION AND EXCUSE.

222. A person who strikes, touches, or moves, or otherwise applies force of any kind to the person of another, either directly or indirectly, without his consent, or with his consent if the consent is obtained by fraud, or who by any bodily act or gesture attempts or threatens to apply force of any kind to the person of another without his consent, under such circumstances that the person making the attempt or threat has actually or apparently a present ability to effect his purpose, is said to assault that other person, and the act is called an assault.

Definition of assault.  
Code, s. 222.

The term “applies force” includes the case of applying heat, light, electrical force, gas, odour, or any other substance or thing whatever if applied in such a degree as to cause injury or personal discomfort.

223. An assault is unlawful and constitutes an offence unless it is authorised or justified or excused by law.

Assaults unlawful.  
Code, s. 223.

The application of force by one person to the person of another may be unlawful, although it is done with the consent of that other person.

Execution  
of sentence.  
Code, s. 224.

224. It is lawful for a person who is charged by law with the duty of executing or giving effect to the lawful sentence of a Court to execute or give effect to that sentence.

Execution  
of process.  
Code, s. 225.

225. It is lawful for a person who is charged by law with the duty of executing the lawful process of a Court, and who is required to arrest or detain another person under such process, and for every person lawfully assisting a person so charged, to arrest or detain that other person according to the terms of the process.

Execution  
of warrants.  
Code, s. 226.

226. It is lawful for a person who is charged by law with the duty of executing a lawful warrant issued by any Court or justice or other person having jurisdiction to issue it, and who is required to arrest or detain another person under such warrant, and for every person lawfully assisting a person so charged, to arrest or detain that other person according to the directions of the warrant.

Erroneous  
sentence or  
process or  
warrant.  
Code, s. 227.

227. If the sentence was passed, or the process was issued, by a Court having jurisdiction under any circumstances to pass such a sentence, or to issue such process, or if the warrant was issued by a Court or justice or other person having authority under any circumstances to issue such a warrant, it is immaterial whether the Court or justice or person had or had not authority to pass the sentence or issue the process or warrant in the particular case; unless the person executing the same knows that the sentence or process or warrant was in fact passed or issued without authority.

Sentence  
or process  
or warrant  
without  
jurisdiction.  
Code, s. 228.

228. A person who executes or assists in executing any sentence, process, or warrant which purports to be passed or issued by a Court, justice, or other person, and who would be justified, under the provisions of the four last preceding sections, in executing the same if it had been passed or issued by a Court, justice, or person having authority to pass or issue it, is not criminally responsible for any act done in such execution, notwithstanding that the Court, justice, or person had no authority to

pass the sentence or issue the process or warrant, if in such execution he acted in good faith and in the belief that the sentence, process, or warrant was that of a Court, justice, or other person having such authority.

229. A person who, being duly authorised to execute a warrant to arrest one person, arrests another person, believing in good faith and on reasonable grounds that the person arrested is the person named in the warrant, is not criminally responsible for doing so to any greater extent than if the person arrested had been the person named in the warrant.

Arrest of  
wrong  
person.  
Code, s. 229.

Any person who lawfully assists in making such an arrest, believing that the person arrested is the person named in the warrant, or who, being required by the warrant to receive and detain the person named in it, receives and detains the person so arrested, is not criminally responsible for doing so to any greater extent than if the person arrested had been the person named in the warrant.

230. When any process or warrant is bad in law by reason of some defect in substance or in form apparent on the face of it, a person who, in good faith and believing that it is good in law, acts in the execution of the process or warrant, is not criminally responsible for anything done in such execution to any greater extent than if the process or warrant were good in law.

Irregular  
process or  
warrant.  
Code, s. 230.

231. It is lawful for a person who is engaged in the lawful execution of any sentence, process, or warrant, or in making any arrest, and for any person lawfully assisting him, to use such force as may be reasonably necessary to overcome any force used in resisting such execution or arrest.

Force used  
in executing  
process or in  
arrest.  
Code, s. 231.

232. It is the duty of a person executing any process or warrant to have it with him, and to produce it if required.

Duty of  
persons  
arresting.  
Code, s. 232.

It is the duty of a person arresting another, whether with or without warrant, to give notice, if practicable, of the process or warrant under which he is acting or of the cause of the arrest.

A failure to fulfil either of the aforesaid duties does not of itself make the execution of the process or warrant or the arrest unlawful, but is relevant to the inquiry whether the process or warrant might not have been executed or the arrest made by reasonable means in a less forcible manner.

Police officer  
preventing  
escape from  
arrest.  
Code, s. 233.

233. When a police officer is proceeding lawfully to arrest, with or without warrant, a person for an offence which is such that the offender may be arrested without warrant, and the person sought to be arrested takes to flight in order to avoid arrest, it is lawful for the police officer, and for any person lawfully assisting him, to use such force as may be reasonably necessary to prevent the escape of the person sought to be arrested.

But this section does not authorise the use of force which is intended or is likely to cause death or grievous bodily harm, except in a case where the person sought to be arrested is reasonably suspected of having committed an offence punishable with death or imprisonment for life under this Code, nor until the person sought to be arrested has been called upon to surrender.

Other cases  
of preventing  
escape from  
arrest.  
Code, s. 234.

234. When a person who is not a police officer is proceeding lawfully to arrest, without warrant, another person for an offence which is such that the offender may be arrested without warrant, and when any person is proceeding lawfully to arrest another person for any cause other than such an offence, and, in either case, the person sought to be arrested takes to flight in order to avoid arrest, it is lawful for the person seeking to arrest him to use such force as may be reasonably necessary to prevent his escape.

But this section does not authorise the use of force which is intended or is likely to cause death or grievous bodily harm.

235. When any person has lawfully arrested another person for any offence, it is lawful for him to use such force as he believes, on reasonable grounds, to be necessary to prevent the escape or rescue of the person arrested.

Preventing  
escape or  
rescue after  
arrest.  
Code, s. 235.

But, if the offence is not a crime which is such that the offender may be arrested without warrant, this section does not authorise the use of force which is intended or is likely to cause death or grievous bodily harm.

236. When a person is in lawful custody upon a charge of committing any offence, it is lawful for a police officer to search his person, and to take from him anything found upon his person, and to use such force as is reasonably necessary for that purpose.

Examination  
of person  
of accused  
persons in  
custody.  
Code, s. 236.

When a person is in lawful custody upon a charge of committing any offence of such a nature and alleged to have been committed under such circumstances that there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of the offence, it is lawful for a legally qualified medical practitioner, acting at the request of a police officer, and for any person acting in good faith in his aid and under his direction, to make such an examination of the person of the person so in custody as is reasonably necessary in order to ascertain the facts which may afford such evidence, and to use such force as is reasonably necessary for that purpose.

237. It is lawful for any person who witnesses a breach of the peace to interfere to prevent the continuance or renewal of it, and to use such force as is reasonably necessary for such prevention and is reasonably proportioned to the danger to be apprehended from such continuance or renewal, and to detain any person who is committing or who is about to join in or to renew the breach of the peace for such time as may be reasonably necessary in order to give him into the custody of a police officer.

Preventing  
a breach of  
the peace.  
Code, s. 237.

It is lawful for a police officer who witnesses a breach of the peace, and for any person lawfully assisting him, to arrest any person whom he finds committing it, or whom he believes, on reasonable grounds, to be about to join in or renew the breach of the peace.

It is lawful for a police officer to receive into custody and detain in custody any person given into his charge as having been a party to a breach of the peace by a person whom the police officer believes, on reasonable grounds, to have witnessed the breach of the peace.

Suppression  
of riot.  
Code, s. 238.

238. It is lawful for any person to use such force as is necessary to suppress a riot, and is reasonably proportioned to the danger to be apprehended from its continuance.

Suppression  
of riot by  
magistrates  
and police  
officers.  
Code, s. 239.

239. It is lawful for a justice to use or order to be used, and for a police officer to use, such force as he believes, on reasonable grounds, to be necessary in order to suppress a riot, and as is reasonably proportioned to the danger which he believes, on reasonable grounds, is to be apprehended from its continuance.

Suppression  
of riot by  
person acting  
under lawful  
orders.  
Code, s. 240.

240. It is lawful for any person acting in good faith in obedience to orders, not manifestly unlawful, given by a justice for the suppression of a riot, to use such force as he believes, on reasonable grounds, to be necessary for carrying such orders into effect.

Whether any particular order so given is or is not manifestly unlawful is a question of law.

Suppression  
of riot by  
person acting  
without  
order in  
case of  
emergency.  
Code, s. 241.

241. When any person, whether subject to military law or not, believes, on reasonable grounds, that serious mischief will arise from a riot before there is time to procure the intervention of a justice, it is lawful for him to use such force as he believes, on reasonable grounds, to be necessary for the suppression of the riot, and as is reasonably proportioned to the danger which he believes, on reasonable grounds, is to be apprehended from its continuance.

242. It is lawful for a person who is bound by military law to obey the lawful commands of his superior officer to obey any command given him by his superior officer in order to the suppression of a riot, unless the command is manifestly unlawful.

Riot:  
Persons  
subject to  
military law.  
Code, s. 242.

Whether any particular command is or is not manifestly unlawful is a question of law.

243. It is lawful for any person to use such force as is reasonably necessary in order to prevent the commission of an offence which is such that the offender may be arrested without warrant; or in order to prevent any act from being done as to which he believes, on reasonable grounds, that it would, if done, amount to any such offence; or in order to prevent a person whom he believes, on reasonable grounds, to be of unsound mind from doing violence to any person or property.

Prevention  
of crimes  
and offences  
for which  
an offender  
may be  
arrested  
without  
warrant:  
Prevention of  
violence by  
persons of  
unsound  
mind.  
Code, s. 243.

244. It is lawful for any person who is in peaceable possession of a dwelling-house, and for any person lawfully assisting him or acting by his authority, to use such force as he believes, on reasonable grounds, to be necessary in order to prevent the forcible breaking and entering of the dwelling-house, either by night or day, by any person whom he believes, on reasonable grounds, to be attempting to break and enter the dwelling-house with intent to commit any indictable offence therein.

Defence of  
dwelling-  
house.  
Code, s. 244.

245. The term "provocation" used with reference to an offence of which an assault is an element, means and includes, except as hereinafter stated, any wrongful act or insult of such a nature as to be likely, when done to an ordinary person, or in the presence of an ordinary person to another person who is under his immediate care, or to whom he stands in a conjugal, parental, filial, or fraternal relation, or in the relation of master or servant, to deprive him of the power of self control, and to induce him to assault the person by whom the act or insult is done or offered.

Provocation.  
Code, s. 245.

When such an act or insult is done or offered by one person to another, or in the presence of another, to a person who is under the immediate care of that other, or to whom the latter stands in any such relation as aforesaid, the former is said to give to the latter provocation for an assault.

A lawful act is not provocation to any person for an assault.

An act which a person does in consequence of incitement given by another person in order to induce him to do the act and thereby to furnish an excuse for committing an assault, is not provocation to that other person for an assault.

An arrest which is unlawful is not necessarily provocation for an assault, but it may be evidence of provocation to a person who knows of the illegality.

Defence of  
provocation.  
Code, s. 246.

246. A person is not criminally responsible for an assault committed upon a person who gives him provocation for the assault, if he is in fact deprived by the provocation of the power of self-control, and acts upon it on the sudden and before there is time for his passion to cool; provided that the force used is not disproportionate to the provocation, and is not intended, and is not such as is likely to cause death or grievous bodily harm.

Whether any particular act or insult is such as to be likely to deprive an ordinary person of the power of self-control and to induce him to assault the person by whom the act or insult is done or offered, and whether, in any particular case, the person provoked was actually deprived by the provocation of the power of self-control, and whether any force used is or is not disproportionate to the provocation, are questions of fact.

Prevention  
of repetition  
of insult.  
Code, s. 247.

247. It is lawful for any person to use such force as is reasonably necessary to prevent the repetition of an act or insult of such a nature as to be provocation to him for an assault; provided that the force used is not intended, and is not such as is likely, to cause death or grievous bodily harm.



248. When a person is unlawfully assaulted, and has not provoked the assault, it is lawful for him to use such force to the assailant as is reasonably necessary to make effectual defence against the assault, provided that the force used is not intended, and is not such as is likely, to cause death or grievous bodily harm.

Self-defence  
against  
unprovoked  
assault.  
Code, s. 248.

If the nature of the assault is such as to cause reasonable apprehension of death or grievous bodily harm, and the person using force by way of defence believes, on reasonable grounds, that he cannot otherwise preserve the person defended from death or grievous bodily harm, it is lawful for him to use any such force to the assailant as is necessary for defence, even though such force may cause death or grievous bodily harm.

249. When a person has unlawfully assaulted another or has provoked an assault from another, and that other assaults him with such violence as to cause reasonable apprehension of death or grievous bodily harm, and to induce him to believe, on reasonable grounds, that it is necessary for his preservation from death or grievous bodily harm to use force in self-defence, he is not criminally responsible for using any such force as is reasonably necessary for such preservation, although such force may cause death or grievous bodily harm.

Self-defence  
against  
provoked  
assault.  
Code, s. 249.

This protection does not extend to a case in which the person using force which causes death or grievous bodily harm first began the assault with intent to kill or to do grievous bodily harm to some person; nor to a case in which the person using force which causes death or grievous bodily harm endeavoured to kill or to do grievous bodily harm to some person before the necessity of so preserving himself arose; nor, in either case, unless, before such necessity arose, the person using such force declined further conflict, and quitted it or retreated from it as far as was practicable.

250. In any case in which it is lawful for any person to use force of any degree for the purpose of defending himself against an assault, it is lawful

Aiding in  
self-defence  
Code, s. 250.

for any other person acting in good faith in his aid to use a like degree of force for the purpose of defending such first-mentioned person.

Defence of  
movable  
property  
against  
trespassers.  
Code, s. 251.

251. It is lawful for any person who is in peaceable possession of any movable property, and for any person acting by his authority, to use such force as is reasonably necessary in order to resist the taking of such property by a trespasser, or in order to retake it from a trespasser, provided that he does not do bodily harm to the trespasser.

Defence of  
movable  
property  
with claim  
of right.  
Code, s. 252.

252. When a person is in peaceable possession of any movable property under a claim of right, it is lawful for him, and for any person acting by his authority, to use such force as is reasonably necessary in order to defend his possession of the property, even against a person who is entitled by law to possession of the property, provided that he does not do bodily harm to such other person.

Defence of  
movable  
property  
without  
claim of  
right.  
Code, s. 253.

253. When a person who is entitled by law to the possession of movable property attempts to take it from a person who is in possession of the property, but who neither claims right to it nor acts by the authority of a person who claims right, and the person in possession resists him, it is lawful for the person so entitled to possession to use force in order to obtain possession of the property; provided that he does not do bodily harm to the person in possession.

Defence of  
premises  
against  
trespassers.  
Removal of  
disorderly  
persons.  
Code, s. 254.

254. It is lawful for a person who is in peaceable possession of any land, structure, vessel, or place, or who is entitled to the control or management of any land, structure, vessel, or place, and for any person acting by his authority, to use such force as is reasonably necessary in order to prevent any person from wrongfully entering upon such land, structure, vessel, or place, or in order to remove therefrom a person who wrongfully remains therein, provided that he does not do bodily harm to such person.

It is lawful for a person who is in peaceable possession of any land, structure, vessel, or place, or who is entitled to the control or management of any land, structure, vessel, or place and for any person acting by his authority, to use force in order to remove therefrom any person who conducts himself in a disorderly manner therein, provided that he does not do him bodily harm.

The term "place" includes any part of an enclosure or structure whether separated from the rest of the enclosure or structure by a partition, fence, rope, or any other means, or not.

255. When a person is in peaceable possession of any land, structure, or vessel, with a claim of right, it is lawful for him, and for any person acting by his authority, to use such force as is reasonably necessary in order to defend his possession, even against a person who is entitled by law to the possession of the property, provided that he does not do bodily harm to such person.

Defence of possession of real property or vessel with claim of right.  
Code, s. 255.

256. When a person who is lawfully entitled to enter upon land for the exercise of a right-of-way or other easement or profit enters upon the land for the purpose of exercising such right-of-way, easement, or profit, after notice that his right to use such way or easement or to take such profit is disputed by the person in possession of the land, or having entered persists in his entry after such notice, it is lawful for the person in possession, and for any person acting by his authority, to use such force as is reasonably necessary for the purpose of making the person so entering desist from the entry, provided that he does not do him bodily harm.

Exercise of right-of-way or easement.  
Code, s. 256.

257. It is lawful for a parent or a person in the place of a parent, or for a schoolmaster or master, to use, by way of correction, towards a child, pupil, or apprentice, under his care, such force as is reasonable under the circumstances.

Domestic discipline.  
Code, s. 257.

258. It is lawful for a master or other person in command of a vessel on a voyage to use, for the purpose of maintaining good order and discipline

Discipline of ship.  
Code, s. 258.

on board of the vessel, such force as he believes, on reasonable grounds, to be necessary, and as is reasonable under the circumstances.

Surgical  
operations.  
Code, s. 259.

259. A person is not criminally responsible for performing, in good faith and with reasonable care and skill, a surgical operation upon any person for his benefit, or upon an unborn child for the preservation of the mother's life, if the performance of the operation is reasonable, having regard to the patient's state at the time and to all the circumstances of the case.

Excessive  
force.  
Code, s. 260.

260. In any case in which the use of force by one person to another is lawful, the use of more force than is justified by law under the circumstances is unlawful.

Consent to  
death  
immaterial.  
Code, s. 261.

261. Consent by a person to the causing of his own death does not affect the criminal responsibility of any person by whom such death is caused.

#### CHAPTER XXVII.—DUTIES RELATING TO THE PRESERVATION OF HUMAN LIFE.

Duty to  
provide  
necessaries.  
Code, s. 262.

262. It is the duty of every person having charge of another who is unable by reason of age, sickness, unsoundness of mind, detention, or any other cause, to withdraw himself from such charge, and who is unable to provide himself with the necessaries of life, whether the charge is undertaken under a contract, or is imposed by law, or arises by reason of any act, whether lawful or unlawful, of the person who has such charge, to provide for that other person the necessaries of life; and he is held to have caused any consequences which result to the life or health of the other person by reason of any omission to perform that duty.

Duty of head  
of family.  
Code, s. 263.

263. It is the duty of every person who, as head of a family, has the charge of a child under the age of sixteen years, being a member of his household, to provide the necessaries of life for such child, and he is held to have caused any consequences

which result to the life or health of the child by reason of any omission to perform that duty whether the child is helpless or not.

264. It is the duty of every person who, as a master or mistress, has contracted to provide necessary food, clothing, or lodging for any servant or apprentice under the age of sixteen years to provide the same; and he or she is held to have caused any consequences which result to the life or health of the servant or apprentice by reason of any omission to perform that duty.

Duty of  
masters.  
Code, s. 264.

265. It is the duty of every person who, except in a case of necessity, undertakes to administer surgical or medical treatment to any other person, or to do any other lawful act which is or may be dangerous to human life or health, to have reasonable skill and to use reasonable care in doing such act; and he is held to have caused any consequences which result to the life or health of any person by reason of any omission to observe or perform that duty.

Duty of  
persons doing  
dangerous  
acts.  
Code, s. 265.

266. It is the duty of every person who has in his charge or under his control anything, whether living or inanimate, and whether moving or stationary, of such a nature that, in the absence of care or precaution in its use or management, the life, safety, or health of any person may be endangered, to use reasonable care and take reasonable precautions to avoid such danger; and he is held to have caused any consequences which result to the life or health of any person by reason of any omission to perform that duty.

Duty of  
persons in  
charge of  
dangerous  
things.  
Code, s. 266.

267. When a person undertakes to do any act the omission to do which is or may be dangerous to human life or health, it is his duty to do that act; and he is held to have caused any consequences which result to the life or health of any person by reason of any omission to perform that duty.

Duty to do  
certain acts.  
Code, s. 267.

CHAPTER XXVIII.—HOMICIDE: SUICIDE:  
CONCEALMENT OF BIRTH.

Killing of  
a human  
being  
unlawful.  
Code, s. 268.

268. It is unlawful to kill any person unless such killing is authorised or justified or excused by law.

When a child  
becomes a  
human  
being.  
Code, s. 269.

269. A child becomes a person capable of being killed when it has completely proceeded in a living state from the body of its mother, whether it has breathed or not, and whether it has an independent circulation or not, and whether the navel-string is severed or not.

Definition  
of killing.  
Code, s. 270.

270. Except as hereinafter set forth, any person who causes the death of another, directly or indirectly, by any means whatever, is deemed to have killed that other person.

Death by  
acts done at  
childbirth.  
Code, s. 271.

271. When a child dies in consequence of an act done or omitted to be done by any person before or during its birth, the person who did or omitted to do such act is deemed to have killed the child.

Causing  
death by  
threats.  
Code, s. 272.

272. A person who, by threats or intimidation of any kind, or by deceit, causes another person to do an act or make an omission which results in the death of that other person, is deemed to have killed him.

Acceleration  
of death.  
Code, s. 273.

273. A person who does any act or makes any omission which hastens the death of another person who, when the act is done or the omission is made, is labouring under some disorder or disease arising from another cause, is deemed to have killed that other person.

When injury  
or death  
might be  
prevented  
by proper  
precaution.  
Code, s. 274.

274. When a person causes a bodily injury to another from which death results, it is immaterial that the injury might have been avoided by proper precaution on the part of the person injured, or that his death from that injury might have been prevented by proper care or treatment.

Injuries  
causing  
death in  
consequence  
of  
subsequent  
treatment.  
Code, s. 275

275. When a person does grievous bodily harm to another and such other person has recourse to surgical or medical treatment, and death results

either from the injury or the treatment, he is deemed to have killed that other person, although the immediate cause of death was the surgical or medical treatment; provided that the treatment was reasonably proper under the circumstances, and was applied in good faith.

276. A person is not deemed to have killed another if the death of that other person does not take place within a year and a day of the cause of death.

Limitation  
as to time  
of death.  
Code, s. 276.

Such period is reckoned inclusive of the day on which the last unlawful act contributing to the cause of death was done.

When the cause of death is an omission to observe or perform a duty, the period is reckoned inclusive of the day on which the omission ceased.

When the cause of death is in part an unlawful act, and in part an omission to observe or perform a duty, the period is reckoned inclusive of the day on which the last unlawful act was done or the day on which the omission ceased, whichever is the later.

277. Any person who unlawfully kills another is guilty of a crime which is called wilful murder, murder, or manslaughter, according to the circumstances of the case.

Unlawful  
homicide.  
Code, s. 277.

278. Except as hereinafter set forth, a person who unlawfully kills another, intending to cause his death or that of some other person, is guilty of wilful murder.

Definition of  
wilful  
murder.  
Code, s. 278.

279. Except as hereinafter set forth, a person who unlawfully kills another under any of the following circumstances, that is to say:—

Definition of  
murder.  
Code, s. 279.

- (1) If the offender intends to do to the person killed or to some other person some grievous bodily harm;
- (2) If death is caused by means of an act done in the prosecution of an unlawful purpose, which act is of such a nature as to be likely to endanger human life;

- (3) If the offender intends to do grievous bodily harm to some person for the purpose of facilitating the commission of a crime which is such that the offender may be arrested without warrant, or for the purpose of facilitating the flight of an offender who has committed or attempted to commit any such crime;
- (4) If death is caused by administering any stupefying or overpowering thing for either of the purposes last aforesaid;
- (5) If death is caused by wilfully stopping the breath of any person for either of such purposes;

is guilty of murder.

In the first case it is immaterial that the offender did not intend to hurt the particular person who is killed.

In the second case it is immaterial that the offender did not intend to hurt any person.

In the three last cases it is immaterial that the offender did not intend to cause death or did not know that death was likely to result.

Definition of  
man-  
slaughter.  
Code, s. 280.

**280.** A person who unlawfully kills another under such circumstances as not to constitute wilful murder or murder is guilty of manslaughter.

Killing on  
provocation.  
Code, s. 281.

**281.** When a person who unlawfully kills another under circumstances which, but for the provisions of this section, would constitute wilful murder or murder, does the act which causes death in the heat of passion caused by sudden provocation, and before there is time for his passion to cool, he is guilty of manslaughter only.

Punishment  
of murder.  
Code, s. 282.

**282.** Any person who commits the crime of wilful murder or murder is liable to the punishment of death.



283. Any person who—

Attempt to  
murder.  
Code, s. 283.

- (1) Attempts unlawfully to kill another; or
- (2) With intent unlawfully to kill another does any act, or omits to do any act which it is his duty to do, such act or omission being of such a nature as to be likely to endanger human life;

is guilty of a crime, and is liable to imprisonment with hard labour for life.

284. Any person who becomes an accessory after the fact to wilful murder or murder is guilty of a crime, and is liable to imprisonment with hard labour for life.

Accessory  
after the  
fact to  
murder.  
Code, s. 284.

285. Any person who, knowing the contents thereof, directly or indirectly causes any person to receive any writing threatening to kill any person, is guilty of a crime, and is liable to imprisonment with hard labour for seven years.

Written  
threats to  
murder.  
Code, s. 285.

286. Any person who conspires with any other person to kill any person, whether such person is in Western Australia or elsewhere, is guilty of a crime, and is liable to imprisonment with hard labour for fourteen years.

Conspiring  
to murder.  
Code, s. 286.

287. Any person who commits the crime of manslaughter is liable to imprisonment with hard labour for life.

Punishment  
of man-  
slaughter.  
Code, s. 287.

288. Any person who—

Aiding  
suicide.  
Code, s. 288.

- (1) Procures another to kill himself; or
- (2) Counsels another to kill himself and thereby induces him to do so; or
- (3) Aids another in killing himself;

is guilty of a crime, and is liable to imprisonment with hard labour for life.

289. Any person who attempts to kill himself is guilty of a misdemeanour, and is liable to imprisonment with hard labour for one year.

Attempting  
to commit  
suicide.  
Code, s. 289.  
Amended by  
No. 32 of  
1918, s. 13.

Added by  
No. 32 of  
1918, s. 13.

If the accused person admits that he is guilty of the offence, the justices before whom he is charged may, in their discretion, deal with the charge summarily.

The offender is liable on such summary conviction to imprisonment with hard labour for six months.

Killing  
unborn  
child.  
Code, s. 290.

**290.** Any person who, when a woman is about to be delivered of a child, prevents the child from being born alive by any act or omission of such a nature that, if the child had been born alive and had then died, he would be deemed to have unlawfully killed the child, is guilty of a crime, and is liable to imprisonment with hard labour for life.

Concealing  
the birth of  
children.  
Code, s. 291.

**291.** Any person who, when a woman is delivered of a child endeavours, by any secret disposition of the dead body of the child, to conceal its birth, whether the child died before, at, or after its birth, is guilty of a misdemeanour, and is liable to imprisonment with hard labour for two years.

Reckless or  
dangerous  
driving.  
Inserted by  
No. 40 of  
1945, s. 2.

**291A.** (1) Any person who has in his charge or under his control any vehicle and fails to use reasonable care and take reasonable precautions in the use and management of such vehicle whereby death is caused to another person is guilty of a crime and liable to imprisonment with hard labour for five years.

(2) This section shall not relieve a person of criminal responsibility for the unlawful killing of another person.

#### CHAPTER XXIX.—OFFENCES ENDANGERING LIFE OR HEALTH.

Disabling in  
order to  
commit  
indictable  
offence.  
Code, s. 292.

**292.** Any person who, by means of violence of any kind and with intent to commit or to facilitate the commission of an indictable offence, or to facilitate the flight of an offender after the commission or attempted commission of an indictable offence, renders or attempts to render any person incapable of resistance, is guilty of a crime, and is liable to imprisonment with hard labour for life, with or without whipping.

293. Any person who, with intent to commit or to facilitate the commission of an indictable offence, or to facilitate the flight of an offender after the commission or attempted commission of an indictable offence, administers, or attempts to administer any stupefying or overpowering drug or thing to any person, is guilty of a crime, and is liable to imprisonment with hard labour for life.

Stupefying  
in order to  
commit  
indictable  
offence.  
Code, s. 293.

294. Any person who, with intent to maim, disfigure, or disable any person, or to do some grievous bodily harm to any person, or to resist or prevent the lawful arrest or detention of any person,—

Acts  
intended to  
cause  
grievous  
bodily harm  
or prevent  
arrest.  
Code, s. 294.

- (1) Unlawfully wounds or does any grievous bodily harm to any person by any means whatever; or
- (2) Unlawfully attempts in any manner to strike any person with any kind of projectile; or
- (3) Unlawfully causes any explosive substance to explode; or
- (4) Sends or delivers any explosive substance or other dangerous or noxious thing to any person; or
- (5) Causes any such substance or thing to be taken or received by any person; or
- (6) Puts any corrosive fluid or any destructive or explosive substance in any place; or
- (7) Unlawfully casts or throws any such fluid or substance at or upon any person, or otherwise applies any such fluid or substance to the person of any person;

is guilty of a crime, and is liable to imprisonment with hard labour for life.

295. Any person who unlawfully—

- (1) Prevents or obstructs any person who is on board of or is escaping from a vessel which is in distress or wrecked or cast ashore, in his endeavours to save his life; or

Preventing  
escape from  
wreck.  
Code, s. 295.

- (2) Obstructs any person in his endeavours to save the life of any person so situated;

is guilty of a crime, and is liable to imprisonment with hard labour for life.

Intentionally endangering safety of persons travelling by railway.  
Code, s. 296.

**296.** Any person who, with intent to injure or to endanger the safety of any person travelling by any railway, whether a particular person or not,—

- (1) Deals with the railway, or with anything whatever, upon or near the railway, in such a manner as to affect or endanger the free and safe use of the railway or the safety of any such person; or
- (2) Shows any light or signal, or in any way deals with any existing light or signal, upon or near the railway; or
- (3) By any omission to do any act which it is his duty to do causes the safety of any such person to be endangered;

is guilty of a crime, and is liable to imprisonment with hard labour for life.

Grievous bodily harm.  
Code, s. 297.

**297.** Any person who unlawfully does grievous bodily harm to another is guilty of a crime, and is liable to imprisonment with hard labour for seven years.

Causing explosion likely to endanger life.  
Code, s. 298.

**298.** Any person who wilfully and unlawfully causes by any explosive substance an explosion likely to endanger the life of any person, whether any injury to any person is actually caused or not, is guilty of a crime, and is liable to imprisonment with hard labour for life.

Attempting to cause explosion likely to endanger life.  
Code, s. 299.

**299.** Any person who wilfully and unlawfully—

- (1) Does any act with intent to cause by an explosive substance, or conspires to cause by an explosive substance, an explosion in Western Australia of a nature likely to endanger the life of any person; or

- (2) Makes or has in his possession or under his control, any explosive substance with intent by means thereof to endanger the life of any person in Western Australia; or
- (3) Puts any explosive substance in any place whatever with intent to do any bodily harm to any person;

whether any explosion does or does not take place, and whether any injury to any person is actually caused or not, is guilty of a crime; and is liable to imprisonment with hard labour for fourteen years, and forfeiture of the explosive substance.

The term "explosive substance" in this section includes any materials for making any explosive substance; also, any apparatus, machine, implement or materials, used or intended to be used or adapted for causing, or aiding in causing, any explosion in or with any explosive substance; also, any part of any such apparatus, machine, or implement.

300. Any person who unlawfully, and with intent to injure or annoy another, causes any poison or other noxious thing to be administered to or taken by any person, and thereby endangers his life, or does him some grievous bodily harm, is guilty of a crime and is liable to imprisonment with hard labour for fourteen years.

Maliciously administering poison with intent to harm.  
Code, s. 300.

301. Any person who—

- (1) Unlawfully wounds another; or
- (2) Unlawfully, and with intent to injure or annoy any person, causes any poison or other noxious thing to be administered to or taken by any person;

Wounding and similar acts.  
Code, s. 301.

is guilty of a misdemeanour, and is liable to imprisonment with hard labour for three years.

302. Any person who, being charged with the duty of providing for another the necessaries of life, without lawful excuse fails to do so, whereby the life of that other person is or is likely to be

Failure to supply necessaries.  
Code, s. 302.

endangered or his health is or is likely to be permanently injured, is guilty of a misdemeanour, and is liable to imprisonment with hard labour for three years.

Endangering  
life or health  
of  
apprentices  
or servants.  
Code, s. 303.

303. Any person who, being charged as a master or mistress with the duty of providing necessary food, clothing, or lodging for a servant or apprentice under the age of sixteen years, unlawfully fails to perform that duty, or in any other manner does any bodily harm or causes any bodily harm to be done to such servant or apprentice, whereby, in either case, the life of such servant or apprentice is or is likely to be endangered, or his health is or is likely to be permanently injured, is guilty of a misdemeanour, and is liable to imprisonment with hard labour for three years.

Endangering  
life of  
children by  
exposure.  
Code, s. 304.

304. Any person who unlawfully abandons or exposes a child under the age of seven years, whereby the life of such child is or is likely to be endangered, or his health is or is likely to be permanently injured, is guilty of a misdemeanour, and is liable to imprisonment with hard labour for three years.

Setting  
mantraps.  
Code, s. 305.

305. Any person who sets or places any spring-gun, mantrap, or other engine calculated to destroy human life or to inflict grievous bodily harm, or causes any such thing to be set or placed in any place with the intent that it may kill or inflict grievous bodily harm upon a trespasser or other person coming in contact with it, or sets or places any such thing in any such place and in any such manner that it is likely to cause any such result, is guilty of a misdemeanour, and is liable to imprisonment with hard labour for three years.

Any person who knowingly permits any such spring-gun, mantrap, or other engine, which has been set or placed by another person in any such place and in any such manner that it is likely to cause any such result, to continue so set or placed in any place which is then in or afterwards comes into his possession or occupation, is deemed to have set and placed the gun, trap, or engine with the intent aforesaid.

This section does not make it unlawful to set any gin or trap such as is usually set for the purpose of destroying vermin; or to set any spring-gun, man-trap, or engine, at night in a dwelling-house for the protection of the dwelling-house.

306. Any person who unlawfully does any act or omits to do any act which it is his duty to do, by which act or omission bodily harm is actually caused to any person, is guilty of a misdemeanour, and is liable to imprisonment with hard labour for two years.

Negligent  
acts causing  
harm.  
Code, s. 306.

307. Any person who, by any unlawful act, or by any omission to do any act which it is his duty to do, causes the safety of any person travelling by any railway to be endangered, is guilty of a misdemeanour, and is liable to imprisonment with hard labour for two years.

Endangering  
safety of  
persons  
travelling  
by railway.  
Code, s. 307.

308. Any person who—

- (1) Sends or attempts to send a ship to sea in such an unseaworthy state that the life of any person is likely to be thereby endangered; or
- (2) Being a master of a British ship, knowingly takes or attempts to take the ship to sea in such an unseaworthy state that the life of any person is likely to be thereby endangered;

Sending or  
taking  
unseaworthy  
ships to sea.  
Code, s. 308.

is guilty of a crime, and is liable to imprisonment with hard labour for fourteen years.

It is a defence to a charge of any of the offences defined in this section to prove that the going of the ship to sea in such unseaworthy state was, under the circumstances, reasonable and justifiable.

It is a defence to a charge of either of the offences firstly defined in this section to show that the accused person used all reasonable means to ensure the ship being sent to sea in a seaworthy state.

Endangering  
steamships  
by tampering  
with  
machinery.  
Code, s. 309.

309. Any person who, being a person having actual control over a steam vessel, or over any part of the machinery of a steam vessel, does any act or makes any omission or is privy to any act or omission with respect to the machinery of the vessel, whereby, to his knowledge, the safety of any person on board the vessel is or is likely to be endangered, is guilty of a misdemeanour, and is liable to imprisonment with hard labour for three years.

The like by  
engineers.  
Code, s. 310.

310. Any person who is engineer, or one of the engineers, in charge of the machinery of a steam vessel at any time when any act is done or omitted to be done by any other person with respect to the machinery of the vessel, whereby the safety of any person on board the vessel is or is likely to be endangered, is guilty of an offence, and is liable, on summary conviction to a fine of One hundred pounds.

It is a defence to a charge of the offence defined in this section to prove that the act or omission was done or made without the knowledge of the accused person, and without any neglect or default on his part.

Evading laws  
as to  
equipment of  
ships and  
shipping  
dangerous  
goods.  
Code, s. 311.

311. Any person who—

- (1) Being a person having actual control over a vessel on board of which any article has been placed with his knowledge or consent in order to the obtaining of permission or authority to leave a port, removes or allows the removal of such article from the vessel after such permission or authority has been obtained; or
- (2) Knowingly sends by any vessel, or carries in any vessel, any explosive substance, or any acid or other thing of a dangerous or destructive nature, under a false description of the substance, or thing, or with a false description of the sender thereof;

is guilty of a misdemeanour, and is liable to imprisonment with hard labour for three years.



312. Any person who—

Landing  
explosives.  
Code, s. 312.

- (1) Being charged by law with any duty respecting the landing or delivery of any explosive substance, or of any acid or other thing of a dangerous or destructive nature, from any vessel, fails to perform that duty; or
- (2) Being concerned in the landing of any such substance or thing from any vessel, violates the provisions of the laws relating to such landing;

is guilty of a misdemeanour, and is liable to imprisonment with hard labour for three years.

This section does not apply to gunpowder the property of His Majesty while it is under the control of an officer of His Majesty's army or navy, or ordnance, or of the Defence Force of the Commonwealth of Australia.

#### CHAPTER XXX.—ASSAULTS.

313. Any person who unlawfully assaults another is guilty of a misdemeanour, and is liable, if no greater punishment is provided, to imprisonment with hard labour for one year.

Common  
assault.  
Code, s. 313.

314. Any person who assaults another with intent to have carnal knowledge of him or her against the order of nature is guilty of a crime, and is liable to imprisonment with hard labour for fourteen years.

Assault with  
intent to  
commit  
unnatural  
offence.  
Code, s. 314.

315. Any person who unlawfully and indecently assaults any male person is guilty of a misdemeanour, and is liable to imprisonment with hard labour for three years.

Indecent  
assault on  
males.  
Code, s. 315.

316. Any person who unlawfully assaults and uses actual violence to a justice or any other person while acting in the execution of his duty in or concerning the preservation of a vessel in distress, or of any vessel or goods wrecked, stranded, or cast on shore or lying under water, is guilty of a crime, and is liable to imprisonment with hard labour for seven years.

Assaults on  
persons  
protecting  
wrecks.  
Code, s. 316.

Assaults  
occasioning  
bodily harm.  
Code, s. 317.

317. Any person who unlawfully assaults another and thereby does him bodily harm is guilty of a misdemeanour, and is liable to imprisonment with hard labour for three years.

Serious  
assaults.  
Code, s. 318.

318. Any person who—

- (1) Assaults another with intent to commit a crime, or with intent to resist or prevent the lawful arrest or detention of himself or of any other person; or
- (2) Assaults, resists, or wilfully obstructs a police officer while acting in the execution of his duty, or any person acting in aid of a police officer while so acting; or
- (3) Unlawfully assaults, resists, or obstructs any person engaged in the lawful execution of any process against any property, or in making a lawful distress while so engaged; or
- (4) Assaults, resists, or obstructs any person engaged in such lawful execution of process, or in making a lawful distress, with intent to rescue any property lawfully taken under such process or distress; or
- (5) Assaults any person on account of any act done by him in the execution of any duty imposed on him by law; or
- (6) Assaults any person in pursuance of any unlawful conspiracy respecting any manufacture, trade, business, or occupation, or respecting any person or persons concerned or employed in any manufacture, trade, business, or occupation, or the wages of any such person or persons;

is guilty of a misdemeanour, and is liable to imprisonment with hard labour for three years.

#### CHAPTER XXXI.—ASSAULTS PUNISHABLE ON SUMMARY CONVICTION.

Jurisdiction  
of Justices.  
Code, s. 319.

319. Any person who unlawfully assaults another may, subject to the provisions of this chapter, be summarily convicted before two justices.

320. If the justices find that the assault complained of was accompanied by an attempt to commit a crime, or if for any reason the justices are of opinion that the charge is a fit subject for prosecution by indictment, they are required to abstain from dealing with the case summarily.

Some assaults not to be so dealt with. Code, s. 320.

321. Any person who unlawfully assaults another is liable, on summary conviction, to a fine of Ten pounds, and to payment of the costs of the prosecution, and, in default of payment, to imprisonment with hard labour for six months, unless the fine and costs are sooner paid, or to imprisonment with hard labour for six months in the first instance.

Common assaults. Code, s. 321.

If the justices are of opinion that the assault was so trifling as not to deserve any punishment, they may convict the defendant, and discharge him without inflicting any punishment.

This section does not authorise justices to deal summarily with a charge of assault on which a question arises as to the title to land or an estate in land, or to any interest in or accruing from land, or as to any bankruptcy or as to the execution of the process of any Court of justice.

322. If the person assaulted is a male child whose age does not, in the opinion of the justices, exceed fourteen years, or is a female, and the justices are of opinion that the assault is of such an aggravated nature that the offender cannot be sufficiently punished under the provisions of the last preceding section, the offender is liable on summary conviction to a fine of Twenty pounds, inclusive of costs, and in default of payment to imprisonment for six months unless the fine and costs are sooner paid, or to imprisonment with hard labour for six months in the first instance.

Aggravated assaults. Code, s. 322.

The justices may also, if they think fit, require the offender to enter into a recognisance to keep the peace and be of good behaviour for any term not exceeding six months from the expiration of the sentence.

Effect of  
summary  
conviction  
or dismissal.  
Code, s. 323.  
Amended by  
No. 32 of  
1918, s. 14.

323. When a complaint of an assault has been heard upon the merits before justices, on complaint by or on behalf of the party aggrieved, under either of the two last preceding sections, and they dismiss the complaint, they are required forthwith to make out a certificate of the fact of such dismissal and to give it to the accused person.

Any person who has obtained such a certificate of dismissal, or who has been convicted, and has paid the fine and costs or has endured the punishment adjudged, if any, is released from all further criminal proceedings for the same cause.

Assaults in  
interference  
with  
freedom  
of trade or  
work.  
Code, s. 324.

324. Any person who assaults another with intent to hinder or prevent him from working at or exercising his lawful trade, business, or occupation, or from buying, selling, or otherwise dealing with any property intended for sale, is guilty of an offence, and is liable on summary conviction to imprisonment with hard labour for three months.

#### CHAPTER XXXII.—ASSAULTS ON FEMALES: ABDUCTION.

Definition  
of rape.  
Code, s. 325.

325. Any person who has carnal knowledge of a woman or girl, not his wife, without her consent, or with her consent if the consent is obtained by force, or by means of threats or intimidation of any kind, or by fear of bodily harm, or by means of false and fraudulent representations as to the nature of the act, or, in the case of a married woman, by personating her husband, is guilty of a crime which is called rape.

Punishment  
of rape.  
Code, s. 326.

326. Any person who commits the crime of rape is liable to imprisonment with hard labour for life, with or without whipping.

Attempt to  
commit rape.  
Code, s. 327.

327. Any person who attempts to commit the crime of rape is guilty of a crime, and is liable to imprisonment with hard labour for fourteen years, with or without whipping.

328. Any person who unlawfully and indecently assaults a woman or girl is guilty of a misdemeanour, and is liable to imprisonment with hard labour for two years.

Indecent  
assaults on  
females.  
Code, s. 328.  
Amended by  
No. 32 of  
1918, s. 15.

329. Any person who—

Abduction.  
Code, s. 329.

- (1) With intent to marry or carnally know a woman, or to cause her to be married or carnally known by any other person, takes her away, or detains her against her will; or
- (2) From motives of gain, and with any such intent as aforesaid, takes or entices away or detains a woman who is under the age of twenty-one years, and who has any interest, whether legal or equitable, present or future, absolute, conditional, or contingent, in any property, or who is a presumptive heiress or co-heiress, or the presumptive next of kin, or one of the presumptive next of kin, to any person who has such an interest, out of the custody or protection of her father or mother, or other person having the lawful care or charge of her; and against the will of such father or mother or other person;

is guilty of a crime, and is liable to imprisonment with hard labour for fourteen years.

A person convicted of any of the offences defined in this section, which was committed with respect to a woman who has any such interest in property, or who is a presumptive heiress or co-heiress, or the presumptive next of kin, or one of the presumptive next of kin to any person who has such an interest as aforesaid, is incapable of taking any estate or interest, legal or equitable, in any property of such woman, or in which she has any interest, or which comes to her as such heiress, co-heiress, or next of kin as aforesaid; and if he has married the woman, such property is, upon his conviction, to be settled in such manner as the Supreme Court may, upon an information at the suit of the Attorney General, appoint.

Abduction  
of girls  
under  
sixteen.  
Code, s. 330.

330. Any person who unlawfully takes or keeps an unmarried girl under the age of sixteen years out of the custody or protection of her father or mother, or other person having the lawful care or charge of her, and against the will of such father or mother or other person, is guilty of a misdemeanour, and is liable to imprisonment with hard labour for two years.

It is immaterial that the offender believed the girl to be of or above the age of sixteen years.

It is immaterial that the girl was taken with her own consent or at her own suggestion.

Rule of  
evidence.  
Code, s. 331.

331. Upon a charge of any of the offences defined in this chapter, the wife or husband of the accused person is a competent and compellable witness.

#### CHAPTER XXXIII.—OFFENCES AGAINST LIBERTY.

Kidnapping.  
Code, s. 332.

332. Any person who forcibly takes or detains another with intent to compel that other person to work for him against his will is guilty of a crime, and is liable to imprisonment with hard labour for seven years.

Deprivation  
of liberty.  
Code, s. 333.

333. Any person who unlawfully confines or detains another in any place against his will, or otherwise unlawfully deprives another of his personal liberty, is guilty of a misdemeanour, and is liable to imprisonment with hard labour for three years.

False  
certificates  
by officers  
charged  
with duties  
relating to  
liberty.  
Code, s. 334.

334. Any person who—

- (1) Being required by law to give any certificate touching any matter by virtue whereof the liberty of any person may be affected, gives a certificate which, in any material particular, is to his knowledge false; or
- (2) Not being a person authorised by law to give such a certificate as aforesaid, gives such a certificate, and represents himself to be a person authorised to give the same;

is guilty of a misdemeanour, and is liable to imprisonment with hard labour for three years.

335. Any person who—

- (1) Being required by law to keep any record touching any matter relating to any person in confinement, refuses or neglects to keep such record, or makes in such record an entry which, in any material particular, is to his knowledge false; or
- (2) Being required by law to give any information to any person touching any person in confinement, or to show to any person any person in confinement, or any place in which a person is confined—
  - (a) Refuses or neglects to give such information, or to show such person or place, to any person to whom he is so required to give the information or show the person or place; or
  - (b) Gives to any person to whom he is so required to give it, information touching any such matter which, in any material particular, is to his knowledge false;

Concealment  
of matters  
affecting  
liberty.  
Code, s. 335.

is guilty of a misdemeanour, and is liable to imprisonment for three years.

336. Any person who, by the production of any false certificate or otherwise, knowingly and wilfully procures any person, not being insane, to be confined in any asylum upon insufficient or unreasonable grounds, is guilty of a misdemeanour, and is liable to imprisonment with hard labour for two years.

Procuring  
confinement  
of sane  
person on  
false  
certificate.  
Code, s. 336.

337. Any person who detains or assumes the custody of an insane person contrary to the provisions of the laws relating to insane persons is guilty of a misdemeanour, and is liable to imprisonment for two years.

Unlawful  
custody of  
insane  
person.  
Code, s. 337.

338. Any person who threatens to do any injury, or cause any detriment, of any kind to another with intent to prevent or hinder that other person from doing any act which he is lawfully entitled to do, or with intent to compel him to do any act which he is lawfully entitled to abstain from doing, is guilty of a misdemeanour, and is liable to imprisonment for one year or to a fine of One hundred pounds.

Threats.  
Code, s. 338.

CHAPTER XXXIV.—OFFENCES RELATING TO MARRIAGE  
AND PARENTAL RIGHTS AND DUTIES.Bigamy.  
Code, s. 339.

## 339. Any person who—

- (1) Being married, goes through the form of marriage with any other person during the life of his or her wife or husband;
- (2) Goes through the form of marriage with any person whom he or she knows to be married;

is guilty of a crime, and is liable to imprisonment with hard labour for seven years.

It is a defence to a charge of either of the offences defined in this section to prove that at the time of committing the alleged offence the wife or husband of the person already married had been continually absent from him or her for the space of seven years then last past, unless it is shown that the accused person knew that such wife or husband was living within that time.

Unlawful  
celebration  
of marriage.  
Code, s. 340.

## 340. Any person who—

- (1) Not being a person authorised by law to celebrate marriages, celebrates or professes or attempts to celebrate a marriage; or
- (2) Celebrates, or attempts or professes to celebrate, the marriage of any person who, to his knowledge, is under the age of twenty-one years, and is not a widower or widow, without the written consent of some person authorised by law to give such consent, or with a written consent which, to his knowledge, is not given by a person authorised by law to give it; or
- (3) Knowingly and wilfully celebrates, or attempts or professes to celebrate, any marriage contrary to the provisions of the laws relating to the solemnisation of marriage; or
- (4) Celebrates, or attempts or professes to celebrate, any marriage in any case in which any provision of those laws has not been complied with, knowing that it has not been complied with; or



- (5) Induces, or attempts to induce, any person to celebrate the marriage of any person who is to the knowledge of the offender under the age of twenty-one years, and is not a widower or widow, without such consent as aforesaid, or with a consent which, to his knowledge, is not given by a person authorised by law to give it, or to celebrate any marriage contrary to or without compliance with the laws relating to the solemnisation of marriage; or
- (6) Marries a person who is, to his or her knowledge, under the age of twenty-one years, and is not a widow or widower, without such consent as aforesaid, or with a consent which, to his or her knowledge, is not given by a person authorised by law to give it; or
- (7) Issues any certificate required by law to be issued by a district registrar, contrary to the provisions of the law relating to the solemnisation of marriage;

is guilty of a misdemeanour, and is liable to imprisonment with or without hard labour for five years, and to a fine of Five hundred pounds.

It is a defence to a charge of the offence defined in paragraph one if the person charged, being a minister of religion, was not duly registered as a minister authorised to celebrate marriages by reason of accident or inadvertence.

341. Any minister of religion whose name, designation, religious denomination, and usual place of residence, by accident or inadvertence, have not been, and do not continue to be duly registered as a minister authorised to celebrate marriages, and who celebrates a marriage, is guilty of an offence, and is liable on summary conviction to a fine of Twenty pounds.

Celebration of marriage by minister unregistered by inadvertence. Code, s. 341.

Unqualified persons procuring registration as persons qualified to celebrate marriages.  
Code, s. 342.

342. Any person who, not being a person entitled to be registered under the laws relating to the solemnisation of marriage, as a person authorised to celebrate marriages, and knowing that he is not such a person, procures his name to be registered as a person so entitled, is guilty of a misdemeanour, and is liable to imprisonment for two years, and to a fine of Two hundred pounds.

Child-stealing.  
Code, s. 343.

343. Any person who, with intent to deprive any parent, guardian, or other person who has the lawful care or charge of a child under the age of fourteen years, of the possession of such child, or with intent to steal any article upon or about the person of any such child—

- (1) Forcibly or fraudulently takes or entices away, or detains the child; or
- (2) Receives or harbours the child, knowing it to have been so taken or enticed away or detained;

is guilty of a crime, and is liable to imprisonment with hard labour for seven years, and if under the age of sixteen years, is also liable to whipping.

It is a defence to a charge of any of the offences defined in this section to prove that the accused person claimed a right to the possession of the child, or, in the case of an illegitimate child, is its mother or claimed to be its father.

Desertion of children.  
Code, s. 344.

344. Any person who, being the parent of a child under the age of sixteen years, and being able to maintain such child, wilfully and without lawful or reasonable cause deserts the child and leaves it without means of support, is guilty of a misdemeanour, and is liable to imprisonment for one year.

#### CHAPTER XXXV.—DEFAMATION.

Definition of "periodical."  
Code, s. 345.

345. In this chapter the term "periodical" includes any newspaper, review, magazine, or other writing or print published periodically.

346. Any imputation concerning any person, or any member of his family, whether living or dead, by which the reputation of that person is likely to be injured, or by which he is likely to be injured in his profession or trade, or by which other persons are likely to be induced to shun or avoid or ridicule or despise him, is called defamatory, and the matter of the imputation is called defamatory matter.

Definition of  
defamatory  
matter. `.  
Code, s. 346.

An imputation may be expressed either directly or by insinuation or irony.

347. The question whether any matter is or is not defamatory is a question of fact.

Questions of  
fact and law.  
Code, s. 347.

The question whether any matter alleged to be defamatory is or is not capable of bearing a defamatory meaning is a question of law.

348. Any person who, by spoken words or audible sounds, or by words intended to be read either by sight or touch, or by signs, signals, gestures, or visible representations, publishes any defamatory imputation concerning any person is said to defame that person.

Definition of  
defamation.  
Code, s. 348.

349. Publication is, in the case of spoken words, or audible sounds, the speaking of such words or making of such sounds in the presence and hearing of any other person than the person defamed, and in the case of signs, signals, or gestures, the making of such signs, signals, or gestures, so as to be seen or felt by, or otherwise come to the knowledge of, any person other than the person defamed, and, in the case of other defamatory matter, the exhibiting of it in public, or causing it to be read or seen, or showing or delivering it, or causing it to be shown or delivered, with a view to its being read or seen by any other person than the person defamed.

Publication.  
Code, s. 349.

350. It is unlawful to publish defamatory matter unless such publication is protected, or justified, or excused by law.

Publication  
of defama-  
tory matter  
*prima facie*  
unlawful.  
Code, s. 350.

Absolute  
protection:  
Privilege of  
Parliament.  
Code, s. 351.

351. (1) A member of either House of Parliament does not incur any liability as for defamation by the publication of any defamatory matter in the course of a speech made by him in Parliament.

(2) A person who presents a petition to either House of Parliament does not incur any liability as for defamation by the publication to that House of Parliament of any defamatory matter contained in the petition.

(3) A person does not incur any liability as for defamation by publishing, by order or under the authority of either House of Parliament, a paper containing defamatory matter.

Absolute  
protection:  
Privileges  
of Judges,  
witnesses  
and others  
in Courts of  
Justice.  
Code, s. 352.

352. A person does not incur any liability as for defamation by publishing, in the course of a proceeding held before or under the authority of any Court of justice, or in the course of an inquiry made under the authority of a Statute, or under the authority of His Majesty, or of the Governor in Council, or of either House of Parliament, any defamatory matter.

Absolute  
protection:  
Reports of  
official  
inquiries.  
Code, s. 353.

353. A person appointed under the authority of a Statute, or by or under the authority of His Majesty, or of the Governor in Council, to hold any inquiry, does not incur any liability as for defamation by publishing any defamatory matter in an official report made by him of the result of such inquiry.

Protection:  
Reports of  
matters of  
public  
interest.  
Code, s. 354.

354. It is lawful—

(1) To publish in good faith, for the information of the public, a fair report of the proceedings of either House of Parliament, or of any committee of either House, or of any joint committee of both Houses;

(2) To publish in good faith, for the information of the public, a copy of, or an extract from, or abstract of, any paper published by order or under the authority of either House of Parliament;

- (3) To publish in good faith, for the information of the public, a fair report of the public proceedings of any Court of justice, whether such proceedings are preliminary or interlocutory or final, or of the result of any such proceedings, unless, in the case of proceedings which are not final, the publication has been prohibited by the Court, or unless the matter published is blasphemous or obscene;
- (4) To publish in good faith, for the information of the public, a fair report of the proceedings of any inquiry held under the authority of a Statute, or by or under the authority of His Majesty, or of the Governor in Council, or a fair extract from or abstract of any such proceedings, or a copy of, or an extract from or abstract of, an official report made by the person by whom the inquiry was held;
- (5) To publish in good faith, for the information of the public, at the request of any Government Department, officer of State, or police officer, any notice or report issued by such department or officer for the information of the public;
- (6) To publish in good faith, for the information of the public, a fair report of the proceedings of any local authority, board, or body of trustees or other persons duly constituted under the provisions of any Statute, for the discharge of public functions, so far as the matter published relates to matters of public concern;
- (7) To publish in good faith, for the information of the public, a fair report of the proceedings of any public meeting, so far as the matter published relates to matters of public concern.

A publication is said to be made in good faith, for the information of the public, if the person by whom it is made is not actuated in making it by ill-will to

the person defamed, or by any other improper motive, and if the manner of the publication is such as is ordinarily and fairly used in the case of the publication of news.

The term "public meeting" means and includes any meeting lawfully held for a lawful purpose, and for the furtherance or discussion in good faith of a matter of public concern, or for the advocacy of the candidature of any person for a public office, whether the admission to the meeting was open or restricted.

In the case of a publication of a report of the proceedings of a public meeting in a periodical, it is evidence of want of good faith if the proprietor, publisher, or editor, has been requested by the person defamed to publish in the periodical a reasonable letter or statement by way of contradiction or explanation of the defamatory matter, and has refused or neglected to publish the same.

Protection:  
Fair  
comment.  
Code, s. 355.

**355. It is lawful—**

- (1) To publish a fair comment respecting any of the matters with respect to which the publication of a fair report in good faith, for the information of the public, is by the last preceding section declared to be lawful;
- (2) To publish a fair comment respecting the public conduct of any person who takes part in public affairs, or respecting the character of any such person, so far as his character appears in that conduct;
- (3) To publish a fair comment respecting the conduct of any public officer or public servant in the discharge of his public functions, or respecting the character of any such person, so far as his character appears in that conduct;
- (4) To publish a fair comment respecting the merits of any case, civil or criminal, which has been decided by any Court of justice, or respecting the conduct of any person as a judge, party, witness, counsel, solicitor,

or officer of the Court, in any such case, or respecting the character of any such person, so far as his character appears in that conduct;

- (5) To publish a fair comment respecting any published book or other literary production, or respecting the character of the author, so far as his character appears by such book or production;
- (6) To publish a fair comment respecting any composition or work of art, or performance publicly exhibited, or respecting the character of the author or performer or exhibitor, so far as his character appears from the matter exhibited;
- (7) To publish a fair comment respecting any public entertainment or sports, or respecting the character of any person conducting or taking part therein, so far as his character appears from the matter of the entertainment or sports, or the manner of conducting the same;
- (8) To publish a fair comment respecting any communication made to the public on any subject.

Whether the comment is or is not fair is a question of fact. If it is not fair, and is defamatory, the publication of it is unlawful.

356. It is lawful to publish defamatory matter if the matter is true, and if it is for the public benefit that the publication complained of should be made.

Protection:  
Truth.  
Code, s. 356.

357. It is a lawful excuse for the publication of defamatory matter—

Qualified  
protection:  
Excuse.  
Code, s. 357.

- (1) If the publication is made in good faith by a person having over another any lawful authority in the course of a censure passed by him on the conduct of that other in matters to which such lawful authority relates;

- (2) If the publication is made in good faith for the purpose of seeking remedy or redress for some private or public wrong or grievance, from a person who has, or whom the person making the publication believes, on reasonable grounds, to have, authority over the person defamed with respect to the subject matter of such wrong or grievance;
- (3) If the publication is made in good faith for the protection of the interests of the person making the publication, or of some other person, or for the public good;
- (4) If the publication is made in good faith in answer to an inquiry made of the person making the publication, relating to some subject as to which the person by whom or on whose behalf the inquiry is made has, or is believed, on reasonable grounds, by the person making the publication to have, an interest in knowing the truth;
- (5) If the publication is made in good faith for the purpose of giving information to the person to whom it is made with respect to some subject as to which that person has or is believed, on reasonable grounds, by the person making the publication to have, such an interest in knowing the truth as to make his conduct in making the publication reasonable under the circumstances;
- (6) If the publication is made in good faith on the invitation or challenge of the person defamed;
- (7) If the publication is made in good faith in order to answer or refute some other defamatory matter published by the person defamed concerning the person making the publication or some other person;
- (8) If the publication is made in good faith in the course of, or for the purposes of, the discussion of some subject of public interest, the public discussion of which is for the



public benefit, and if, so far as the defamatory matter consists of comment, the comment is fair.

For the purposes of this section, a publication is said to be made in good faith if the matter published is relevant to the matters the existence of which may excuse the publication in good faith of defamatory matter; if the manner and extent of the publication does not exceed what is reasonably sufficient for the occasion, and if the person by whom it is made is not actuated by ill-will to the person defamed, or by any other improper motive, and does not believe the defamatory matter to be untrue.

358. When any question arises whether a publication of defamatory matter was or was not made in good faith, and it appears that the publication was made under circumstances which would afford lawful excuse for the publication if it was made in good faith, the burden of proof of the absence of good faith lies upon the party alleging such absence.

Good faith.  
Code, s. 358.

359. Whether any defamatory matter is or is not relevant to any other matter, and whether the public discussion of any subject is or is not for the public benefit, are questions of fact.

Relevancy  
and public  
benefit  
questions of  
fact.  
Code, s. 359.

360. Any person who unlawfully publishes any defamatory matter concerning another is guilty of a misdemeanour, and is liable to imprisonment for twelve months, and to a fine of Three hundred pounds.

Unlawful  
publication  
of defama-  
tory matter.  
Code, s. 360.

If the offender knows the defamatory matter to be false, he is liable to imprisonment with hard labour for two years, and to a fine of Five hundred pounds.

361. Any person who, not being a member of either House of Parliament, unlawfully publishes any false or scandalous defamatory matter touching the conduct of any member or members of either House of Parliament as such member or members,

Defamation  
of members  
of Parlia-  
ment by  
strangers.  
Code, s. 361.

is guilty of a misdemeanour, and is liable to imprisonment with hard labour for two years, and to a fine of Five hundred pounds.

Defence in case of defamation by words, sounds, signs, signals, or gestures.  
Code, s. 362.

362. In any case other than that of words intended to be read, it is a defence to a prosecution for publishing defamatory matter to prove that the publication was made on an occasion and under circumstances when the person defamed was not likely to be injured thereby.

Publishing or threatening to publish defamatory matter with intent to extort money.  
Code, s. 363.

363. Any person who publishes, or directly or indirectly threatens to publish, or directly or indirectly proposes to abstain from publishing, or directly or indirectly offers to prevent the publication of any defamatory matter concerning another, with intent to extort any property from such person or any other person, or with intent to induce any person to give or confer or procure, or to attempt to procure, to, upon, or for, any person any property or benefit of any kind, is guilty of a misdemeanour, and is liable to imprisonment with hard labour for three years.

Liability of proprietor, publisher, and editor of periodicals.  
Code, s. 364.

364. Upon a charge against a proprietor, publisher, or editor of a periodical, of the unlawful publication in the periodical of defamatory matter, it is a defence to prove that the matter complained of was inserted in the periodical without his knowledge and without negligence on his part.

General authority given to the person who actually inserted the defamatory matter to manage or conduct the periodical as editor or otherwise, and to insert therein what in his discretion he thinks fit, is not negligence within the meaning of this section, unless it is proved that the proprietor or publisher or editor, when giving such general authority, meant that it should extend to and authorise the unlawful publication of defamatory matter, or continued such general authority, knowing that it had been exercised by unlawfully publishing defamatory matter in any number or part of the periodical.

365. A person is not criminally responsible as for the unlawful publication of defamatory matter merely by reason of selling any number or part of a periodical containing the defamatory matter, unless he knows that such number or part contains the defamatory matter, or that defamatory matter is habitually or frequently contained in that periodical.

Protection of innocent sellers of periodicals.  
Code, s. 365.

366. A person is not criminally responsible as for the unlawful publication of defamatory matter merely by reason of selling a book, pamphlet, print, or writing, or other thing not forming part of a periodical, although it contains the defamatory matter, if at the time of the sale he does not know that the defamatory matter is contained therein.

Protection of innocent sellers of books.  
Code, s. 366.

367. An employer is not responsible as for the unlawful publication of defamatory matter merely by reason of the sale by his servant of a book, pamphlet, print, writing, or other thing, whether a periodical or not, containing the defamatory matter, unless it is proved that he authorised the sale, knowing that the book, pamphlet, print, writing, or other thing contained the defamatory matter, or, in the case of a number or part of a periodical, that defamatory matter was habitually or frequently contained in that periodical.

Protection of employers.  
Code, s. 367.

368. A criminal prosecution cannot be begun before justices against the proprietor, or publisher, or editor, or any person responsible for the publication of any periodical, for the unlawful publication of any defamatory matter contained therein, without the order of the Supreme Court or a judge thereof, made after notice to the person accused, and after that person has had an opportunity of being heard in opposition to the application for the order.

Prosecution of newspapers to be by sanction of a Judge after notice.  
Code, s. 368.

369. If, on the hearing before a justice of a charge of the unlawful publication of defamatory matter the justice is of opinion that a case has been made out against the accused person but that the case is of a trivial nature, he may ask him whether he

Summary jurisdiction in trivial cases of defamation.  
Code, s. 369.

desires to be tried by a jury, or consents to the charge being dealt with summarily: And if the accused person consents to the charge being dealt with summarily, he may be summarily convicted before two justices, and is liable on such conviction to a fine of Fifty pounds.

If a charge has been dealt with summarily and dismissed, the justices must, if required so to do, deliver to the person charged a copy certified under their hands of the order of said dismissal; and such dismissal is of the same effect as an acquittal on a trial after indictment or information for the same offence.

## PART VI.—OFFENCES RELATING TO PROPERTY AND CONTRACTS.

### *Division I.—Stealing and like Offences.*

#### CHAPTER XXXVI.—STEALING.

Things  
capable of  
being stolen.  
Code, s. 370.

370. Every inanimate thing whatever which is the property of any person, and which is movable, is capable of being stolen.

Every inanimate thing which is the property of any person, and which is capable of being made movable, is capable of being stolen as soon as it becomes movable, although it is made movable in order to steal it.

Every tame animal, whether tame by nature or wild by nature and tamed, which is the property of any person, is capable of being stolen; but tame pigeons are not capable of being stolen except while they are in a pigeon-house or on their owner's land.

Animals wild by nature, of a kind which is not ordinarily found in a condition of natural liberty in Western Australia, which are the property of any person, and which are usually kept in a state of confinement, are capable of being stolen, whether they are actually in confinement or have escaped from confinement.

Animals wild by nature, of a kind which is ordinarily found in a condition of natural liberty in Western Australia which are the property of any

person, are capable of being stolen while they are in confinement and while they are being actually pursued after escaping from confinement, but not at any other time.

An animal wild by nature is deemed to be in a state of confinement so long as it is in a den, cage, sty, tank, or other small enclosure, or is otherwise so placed that it cannot escape and that its owner can take possession of it at pleasure.

The term "animal" includes any living creature other than mankind.

Oysters and oyster brood are capable of being stolen while in oyster beds, layings, or fisheries, which are the property of any person, and which are sufficiently marked out, or are known by general repute as his property.

Wild animals in the enjoyment of their natural liberty are not capable of being stolen, but their dead bodies are capable of being stolen.

Everything produced by or forming part of the body of an animal capable of being stolen is capable of being stolen.

371. (1) A person who fraudulently takes anything capable of being stolen, or fraudulently converts to his own use or to the use of any other person any property, is said to steal that thing or that property.

Definition of stealing.  
Code, s. 371.  
Amended by No. 20 of 1954, s. 2.

(2) A person who takes anything capable of being stolen or converts any property is deemed to do so fraudulently if he does so with any of the following intents, that is to say:—

- (a) An intent to permanently deprive the owner of the thing or property of it or any part of it;
- (b) An intent to permanently deprive any person who has any special property in the thing or property of such special property;
- (c) An intent to use the thing or property as a pledge or security;

- (d) An intent to part with it on a condition as to its return which the person taking or converting it may be unable to perform;
- (e) An intent to deal with it in such a manner that it cannot be returned in the condition in which it was at the time of the taking or conversion;
- (f) In the case of money, an intent to use it at the will of the person who takes or converts it although he may intend to afterwards repay the amount to the owner.

The term "special property" includes any charge or lien upon the thing or property in question, and any right arising from or dependent upon holding possession of the thing or property in question, whether by the person entitled to such right or by some other person for his benefit.

(3) The taking or conversion may be fraudulent, although it is effected without secrecy or attempt at concealment.

(4) In the case of conversion, it is immaterial whether the property converted is taken for the purpose of conversion or whether it is at the time of the conversion in the possession, control or management of the person who converts it. It is also immaterial that the person who converts the property is the holder of a power of attorney for the disposition of it, or is otherwise authorised to dispose of the property.

(5) When the property converted has been lost by the owner and found by the person who converts it, the conversion is not deemed to be fraudulent if at the time of the conversion the person taking or converting the property does not know who is the owner, and believes, on reasonable grounds, that the owner cannot be discovered.

(6) The act of stealing is not complete until the person taking or converting the thing actually moves it or otherwise actually deals with it by some physical act.

(7) In this section, "property" includes any description of real and personal property, money, debts, bank credits, and legacies and all deeds and

instruments relating to or evidencing the title or right to any property or giving a right to recover or receive any money or goods and also includes not only such property as has been originally in the possession or in the control of any person but also any property in which or for which it has been converted or exchanged and anything acquired by the conversion or exchange, whether immediately or otherwise.

372. (1) When a wild animal in the enjoyment of its natural liberty has been killed by any person, the taking of the dead body of the animal by that person, or by any person acting under his orders, before it has been reduced into actual possession by the owner of the land on which the animal was killed or on which it died, is not deemed to be stealing.

Special  
cases.  
Code, s. 372.

(2) When a factor or agent pledges or gives a lien on any goods or document of title to goods entrusted to him for the purpose of sale or otherwise for any sum of money not greater than the amount due to him from his principal at the time of pledging or giving the lien, together with the amount of any bill of exchange or promissory note accepted or made by him for or on account of his principal, such dealing with the goods or document of title is not deemed to be stealing.

(3) When a servant, contrary to his master's orders, takes from his possession any food in order that it may be given to an animal belonging to or in the possession of his master, such taking is not deemed to be stealing.

373. When a person receives, either alone or jointly with another person, any money or valuable security, or a power of attorney for the sale, mortgage, pledge, or other disposition, of any property, whether capable of being stolen or not, with a direction in either case that such money or any part thereof, or any other money received in exchange for it, or any part thereof, or the proceeds or any part of the proceeds of such security, or of such mortgage, pledge, or other disposition, shall be applied to any purpose or paid to any person

Funds, etc.,  
held under  
direction.  
Code, s. 373.

specified in the direction, such money and proceeds are deemed to be the property of the person from whom the money, security, or power of attorney was received, until the direction has been complied with:

Provided that if the person receiving the money, security, or power of attorney, and the person from whom he receives it ordinarily deal with each other on such terms that in the absence of any special direction all money paid to the former on account of the latter would be properly treated as an item in a debtor and creditor account between them, the former cannot be charged with stealing the money or any such proceeds unless the direction is in writing.

Funds, etc.,  
received by  
agents for  
sale.  
Code, s. 374.

374. When a person receives, either alone or jointly with another person, any property from another on terms authorising or requiring him to sell it or otherwise dispose of it, and requiring him to pay or account for the proceeds of the property, or any part of such proceeds, or to deliver anything received in exchange for the property, to the person from whom it is received, or some other person, then the proceeds of the property, and anything so received in exchange for it, are deemed to be the property of the person from whom the property was so received, until they have been disposed of in accordance with the terms on which the property was received, unless it is a part of those terms that the proceeds, if any, shall form an item in a debtor and creditor account between him and the person to whom he is to pay them or account for them, and that the relation of debtor and creditor only shall exist between them in respect thereof.

Money  
received for  
another.  
Code, s. 375.

375. When a person receives, either alone or jointly with another person, any money on behalf of another, the money is deemed to be the property of the person on whose behalf it is received, unless the money is received on the terms that it shall form an item in a debtor and creditor account, and that the relation of debtor and creditor only shall exist between the parties in respect of it.



376. When any person takes or converts anything capable of being stolen, under such circumstances as would otherwise amount to stealing, it is immaterial that he himself has a special property or interest therein, or that he himself is the owner of the thing taken or converted subject to some special property or interest of some other person therein; or that he is lessee of the thing; or that he himself is one of two or more joint owners of the thing; or that he is a director or officer of a corporation or company or society who are the owners of it.

Stealing by persons having an interest in the thing stolen.  
Code, s. 376.

377. A person who, while a man and his wife are living together, procures either of them to deal with anything which is, to his knowledge, the property of the other in a manner which would be stealing if they were not married, is deemed to have stolen the thing, and may be charged with stealing it.

Husband and wife.  
Code, s. 377.

378. Any person who steals anything capable of being stolen is guilty of a crime, and is liable, if no other punishment is provided, to imprisonment with hard labour for three years.

Punishment of stealing.  
Code, s. 378.

#### PUNISHMENT IN SPECIAL CASES.

(1) If the thing stolen is a testamentary instrument, whether the testator is living or dead, the offender is liable to imprisonment with hard labour for fourteen years.

Stealing wills.

(2) If the thing stolen is anything in course of transmission by post, the offender is liable to imprisonment with hard labour for fourteen years.

Stealing things sent by post

(3) If the thing stolen is any of the things following, that is to say:—A horse, mare, gelding, ass, mule, camel, bull, cow, ox, ram, ewe, or wether, or the young of any such animal, the offender is liable to imprisonment with hard labour for seven years.

Stealing cattle.

(4) If the thing stolen is any gold or the ore of any metal or mineral in or about a mine, or in or about any claim or land comprised in any lease or held under any agreement of lease for mining purposes, the offender is liable to imprisonment with hard labour for seven years.

Stealing minerals in mines.

Stealing  
from the  
person:  
Stealing  
goods in  
transit, etc.

(5) If the offence is committed under any of the circumstances following, that is to say:—

- (a) If the thing is stolen from the person of another;
- (b) If the thing is stolen in a dwelling-house, and its value exceeds Five pounds, or the offender at or immediately before or after the time of stealing uses or threatens to use violence to any person in the dwelling-house;
- (c) If the thing is stolen from any kind of vessel or vehicle or place of deposit used for the conveyance or custody of goods in transit from one place to another;
- (d) If the thing is stolen from a vessel which is in distress or wrecked or stranded;
- (e) If the thing is stolen from a public office in which it is deposited or kept;
- (f) If the offender, in order to commit the offence, opens any locked room, box, or other receptacle by means of a key or other instrument;

the offender is liable to imprisonment with hard labour for fourteen years.

Stealing  
by persons  
in the Public  
Service.

(6) If the offender is a person employed in the Public Service, and the thing stolen is the property of His Majesty, or came into the possession of the offender by virtue of his employment, he is liable to imprisonment with hard labour for seven years.

Stealing by  
clerks and  
servants.

(7) If the offender is a clerk or servant, and the thing stolen is the property of his employer, or came into the possession of the offender on account of his employer, he is liable to imprisonment with hard labour for seven years.

Stealing by  
directors or  
officers of  
companies.

(8) If the offender is a director or officer of a corporation or company, and the thing stolen is the property of the corporation or company, he is liable to imprisonment with hard labour for seven years.

(9) If the thing stolen is any of the things following, that is to say:— Stealing by agents, etc.

- (a) Property which has been received by the offender with a power of attorney for the disposition thereof;
- (b) Money received by the offender with a direction that the same should be applied to any purpose or paid to any person specified in the direction;
- (c) The whole or part of the proceeds of any valuable security which has been received by the offender with a direction that the proceeds thereof should be applied to any purpose or paid to any person specified in the direction;
- (d) The whole or part of the proceeds arising from any disposition of any property which have been received by the offender by virtue of a power of attorney for such disposition, such power of attorney having been received by the offender with a direction that such proceeds should be applied to any purpose or paid to any person specified in the direction;

the offender is liable to imprisonment with hard labour for seven years.

(10) If the thing stolen is of the value of five hundred pounds or upwards, the offender is liable to imprisonment with hard labour for seven years. Stealing property of value of £500.

(11) If the thing stolen is a fixture or chattel let to the offender to be used by him with a house or lodging, and its value exceeds Five pounds, he is liable to imprisonment with hard labour for seven years. Stealing by tenants or lodgers.

(12) If the offender, before committing the offence, had been convicted upon indictment of any of the indictable offences, defined in this division of this part of this Code, or had been twice previously summarily convicted of an offence punishable on summary conviction under this division of this part of this Code, whether each of the convictions was Stealing after previous conviction.

in respect of an offence of the same character or not, he is liable to imprisonment with hard labour for seven years.

CHAPTER XXXVII.—OFFENCES ANALOGOUS TO STEALING.

Concealing  
registers.  
Code, s. 379.

379. Any person who, with intent to defraud, conceals or takes from its place of deposit any register which is authorised or required by law to be kept for authenticating or recording the title to any property, or for recording births, baptisms, marriages, deaths, or burials, or a copy of any part of any such register which is required by law to be sent to any public officer, is guilty of a crime, and is liable to imprisonment with hard labour for fourteen years.

Concealing  
wills.  
Code, s. 380.

380. Any person who, with intent to defraud, conceals any testamentary instrument, whether the testator is living or dead, is guilty of a crime, and is liable to imprisonment with hard labour for fourteen years.

Concealing  
deeds.  
Code, s. 381.

381. Any person who, with intent to defraud, conceals the whole or part of any document which is evidence of title to any land or estate in land is guilty of a crime, and is liable to imprisonment with hard labour for three years.

Killing  
animals with  
intent to  
steal.  
Code, s. 382.

382. Any person who kills any animal capable of being stolen with intent to steal the skin or carcass, or any part of the skin or carcass, is guilty of a crime, and is liable to the same punishment as if he had stolen the animal.

Severing  
with intent  
to steal.  
Code, s. 383.

383. Any person who makes anything movable with intent to steal it is guilty of a crime, and is liable to the same punishment as if he had stolen the thing after it became movable.

Using  
registered  
brands with  
criminal  
intention.  
Code, s. 384.

384. Any person who, with intent to facilitate the commission of a crime, brands or marks any animal with a registered brand or registered mark without the permission of the owner of the brand or mark is guilty of a misdemeanour, and is liable to imprisonment with hard labour for three years.

385. Any person who takes, conceals, or otherwise disposes of any ore of any metal or mineral in or about a mine, with intent to defraud any person, is guilty of a misdemeanour, and is liable to imprisonment with hard labour for three years.

Fraudulently  
dealing with  
minerals in  
mines.  
Code, s. 385.

386. Any person who, being the holder of any lease issued under any Act relating to mining—

Concealing  
royalty.  
Code, s. 386.

(a) By any device or contrivance defrauds, or attempts to defraud, any person of any royalty or money payable under any such lease; or

(b) Conceals or makes a false statement as to any produce of the mine with intent to defraud;

is guilty of a misdemeanour, and is liable to imprisonment with hard labour for two years.

387. Any person who collects or removes guano on or from any part of the territorial dominions of Western Australia without lawful authority is guilty of a misdemeanour, and is liable to imprisonment with hard labour for one year.

Removing  
guano  
without  
license.  
Code, s. 387.

388. Any person who, having at any place, not in Western Australia, obtained any property by any act which, if it had been done in Western Australia, would have constituted the crime of stealing, and which is an offence under the laws in force in the place where it was done, brings such property into Western Australia, or has it in his possession in Western Australia, is guilty of a crime, and is liable to the same punishment as if he had stolen it in Western Australia; but so that the punishment does not exceed that which would be incurred for the same act under the laws in force in the place where the act by which he obtained the property was done.

Bringing  
stolen goods  
into Western  
Australia.  
Code, s. 388.

389. Any person who, being the mortgagor of mortgaged goods, removes or disposes of the goods without the consent of the mortgagee, and with intent to defraud, is guilty of a misdemeanour, and is liable to imprisonment with hard labour for three years.

Fraudulent  
disposition  
of mortgaged  
goods.  
Code, s. 389.

Any person (being such a mortgagor as aforesaid) who shall destroy, break, injure, kill, or otherwise damage any mortgaged goods with intent to deprive the mortgagee of his security or any part thereof, or to defeat or anywise impair the security, is guilty of a misdemeanour and liable to imprisonment with hard labour for two years.

The term "mortgaged goods" includes any goods and chattels of any kind, and any live animals, and any progeny of any animals and any fixtures, and any crops or produce of the earth, whether growing or severed, which are subject for the time being to the provisions of any written instrument by which a valid charge or lien is created upon them by way of security for any debt or obligation.

The consent of the mortgagee may be either express or implied from the nature of the property mortgaged.

The shearing of sheep, and the sale and disposal of the wool in the ordinary course of business before default is made and possession taken, or demand for payment made, under the instrument by which the charge or lien is created is not an offence under this section.

Fraudulent  
appropriation  
of power.  
Code, s. 390.

**390.** Any person who fraudulently abstracts or diverts to his own use or to the use of any other person any mechanical, illuminating, or electrical power derived from any machine, apparatus, or substance, the property of another person, is guilty of a crime, and is liable to imprisonment with hard labour for three years.

Unauthorised  
use of  
vehicles.  
Inserted by  
No. 51 of  
1932, s. 2.

**390A.** Any person who unlawfully uses, or takes for the purpose of using, or drives or otherwise assumes control of any vehicle as defined in the Traffic Act, 1919-1931,\* without the consent of the owner or the person in charge thereof, is guilty of a misdemeanour and is liable to imprisonment with hard labour for any term not exceeding three years.

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\* Now the Traffic Act 1919-1954: See No. 47 of 1954, s. 1 (3).

CHAPTER XXXVIII.—STEALING WITH VIOLENCE:  
EXTORTION BY THREATS.

391. Any person who steals anything, and, at or immediately before or immediately after the time of stealing it, uses or threatens to use actual violence to any person or property in order to obtain the thing stolen or to prevent or overcome resistance to its being stolen, is said to be guilty of robbery.

Definition of robbery.  
Code, s. 391.

392. Any arm which is loaded in the barrel or chamber with any explosive substance, and with any solid substance, capable of being projected, is deemed to be loaded arms, although an attempt to discharge the same may fail from want of proper appliances or from any other cause.

Loaded arms.  
Code, s. 392.

393. Any person who commits the crime of robbery is liable to imprisonment with hard labour for fourteen years.

Punishment of robbery.  
Code, s. 393.

If the offender is armed with any dangerous or offensive weapon or instrument, or is in company with one or more other person or persons, or if, at or immediately before or immediately after the time of the robbery, he wounds or uses any other personal violence to any person, he is liable to imprisonment with hard labour for life, with or without whipping.

394. Any person who assaults any person with intent to steal anything, and, at or immediately before or immediately after the time of the assault, uses or threatens to use actual violence to any person or property in order to obtain the thing intended to be stolen or to prevent or overcome resistance to its being stolen, is guilty of a crime, and is liable to imprisonment with hard labour for seven years.

Attempted robbery accompanied by wounding, or in company.  
Code, s. 394.

If the offender is armed with any dangerous or offensive weapon or instrument, or is in company with one or more other person or persons, he is liable to imprisonment with hard labour for fourteen years, with or without whipping.

If the offender is armed with any kind of loaded arms, and at or immediately before or immediately after the time of the assault he wounds any person by discharging the loaded arms, he is liable to imprisonment with hard labour for life, with or without whipping.

Assault with  
intent to  
steal.  
Code, s. 395.

395. Any person who assaults any person with intent to steal anything is guilty of a crime, and is liable to imprisonment with hard labour for three years.

Demanding  
property  
with menaces  
with intent  
to steal.  
Code, s. 396.

396. Any person who, with intent to steal anything, demands it from any person with threats of any injury or detriment of any kind to be caused to him, either by the offender or by any other person, if the demand is not complied with, is guilty of a crime, and is liable to imprisonment with hard labour for three years.

Demanding  
property by  
written  
threats.  
Code, s. 397.

397. Any person who, with intent to extort or gain anything from any person, and knowing the contents of the writing, causes any person to receive any writing demanding anything from any person without reasonable or probable cause, and containing threats of any injury or detriment of any kind to be caused to any person, either by the offender or any other person, if the demand is not complied with, is guilty of a crime, and is liable to imprisonment with hard labour for fourteen years.

Attempts at  
extortion by  
threats.  
Code, s. 398.

398. Any person who, with intent to extort or gain anything from any person,—

- (1) Accuses or threatens to accuse any person of committing any indictable offence, or of offering or making any solicitation or threat to any person as an inducement to commit or permit the commission of any indictable offence; or
- (2) Threatens that any person shall be accused by any other person of any indictable offence or of any such act; or



- (3) Knowing the contents of the writing, causes any person to receive any writing containing any such accusation or threat as aforesaid;

is guilty of a crime.

If the accusation or threat of accusation is of—

- (a) An offence for which the punishment of death or imprisonment for life may be inflicted; or
- (b) Any of the offences defined in chapter twenty-two, or any attempt to commit any of such offences; or
- (c) An assault with intent to have carnal knowledge of any person against the order of nature, or an unlawful and indecent assault upon a male person; or
- (d) An attempt to commit the crime of rape, or an assault with intent to commit the crime of rape, or an unlawful and indecent assault upon a woman or girl; or
- (e) A solicitation or threat offered or made to any person as an inducement to commit or permit the commission of any of the offences aforesaid;

the offender is liable to imprisonment with hard labour for life.

In any other case the offender is liable to imprisonment with hard labour for seven years.

It is immaterial whether the person accused or threatened to be accused has or has not committed the offence or act of which he is accused or threatened to be accused.

**399.** Any person who, with intent to defraud, and by means of any unlawful violence to, or restraint of, the person of another, or by means of any threat of violence or restraint to be used to the person of another, or by means of accusing or threatening to accuse any person of committing any indictable offence, or of offering or making any solicitation or

Procuring  
execution of  
deeds, etc.,  
by threats.  
Code, s. 399.

threat to any person as an inducement to commit or permit the commission of an indictable offence, compels or induces any person,—

- (a) To execute, make, accept, indorse, alter, or destroy the whole or any part of any valuable security; or
- (b) To write, impress, or affix any name or seal upon or to any paper or parchment, in order that it may be afterwards made or converted into or used or dealt with as a valuable security;

is guilty of a crime, and is liable to imprisonment with hard labour for fourteen years.

CHAPTER XXXIX.—BURGLARY: HOUSEBREAKING:  
AND LIKE OFFENCES.

Definitions.  
Code, s. 400.

400. A person who breaks any part, whether external or internal, of a building, or opens, by unlocking, pulling, pushing, lifting, or any other means whatever, any door, window, shutter, cellar, flap, or other thing intended to close or cover an opening in a building, or an opening giving passage from one part of a building to another, is said to break the building.

A person is said to enter a building as soon as any part of his body or any part of any instrument used by him is within the building.

A person who obtains entrance into a building by means of any threat or artifice used for that purpose, or by collusion with any person in the building, or who enters any chimney or other aperture of the building permanently left open for any necessary purpose, but not intended to be ordinarily used as a means of entrance, is deemed to have broken and entered the building.

House-  
breaking:  
Burglary.  
Code, s. 401.

401. Any person who—

- (1) Breaks and enters the dwelling-house of another with intent to commit a crime therein; or

- (2) Having entered the dwelling-house of another with intent to commit a crime therein, or having committed a crime in the dwelling-house of another, breaks out of the dwelling-house;

is guilty of a crime, and is liable to imprisonment with hard labour for fourteen years.

If the offence is committed in the night, the offender is liable to imprisonment with hard labour for life.

402. Any person who enters or is in the dwelling-house of another with intent to commit a crime therein, is guilty of a crime, and is liable to imprisonment with hard labour for seven years.

Entering dwelling-house with intent to commit crime.  
Code, s. 402.

If the offence is committed in the night, the offender is liable to imprisonment with hard labour for fourteen years.

403. Any person who—

- (1) Breaks and enters a schoolhouse, shop, warehouse, or counting-house, or office, store, garage, pavilion, factory, workshop, theatre, hospital or surgery, or any building belonging to Her Majesty or to any State Department or instrumentality, or to any municipal or other public authority, or a building which is adjacent to a dwelling-house and occupied with it but is not part of it, and commits a crime therein; or

Breaking into buildings and committing crime.  
Code, s. 403.  
Amended by No. 55 of 1953, s. 7.

- (2) Having committed a crime in a schoolhouse, shop, warehouse, or counting-house, or office, store, garage, pavilion, factory, workshop, theatre, hospital or surgery, or any building belonging to Her Majesty or to any State Department or instrumentality, or to any municipal or other public authority, or in any such other building as last mentioned, breaks out of the building;

No. 55 of 1953, s. 7.

is guilty of a crime, and is liable to imprisonment with hard labour for fourteen years.

Breaking  
into  
buildings  
with intent  
to commit  
crime.

Code, s. 404.  
Amended by  
No. 55 of  
1953, s. 8.

404. Any person who breaks and enters a school-house, shop, warehouse, or counting-house, or office, store, garage, pavilion, factory, workshop, theatre, hospital, or surgery or any building belonging to Her Majesty or to any State Department or instrumentality, or to any municipal or other public authority, or a building which is adjacent to a dwelling-house and occupied with it but is not part of it, with intent to commit a crime therein, is guilty of a crime, and is liable to imprisonment with hard labour for seven years.

Breaking  
into place  
of worship  
and  
committing  
crime.

Code, s. 405.

405. Any person who breaks and enters a building ordinarily used for religious worship and commits a crime therein, or having committed a crime in any such building breaks out of it, is guilty of a crime, and is liable to imprisonment with hard labour for fourteen years.

Breaking  
into place  
of worship  
with intent  
to commit a  
crime.

Code, s. 406.

406. Any person who breaks and enters a building ordinarily used for religious worship, with intent to commit a crime therein, is guilty of a crime, and is liable to imprisonment with hard labour for seven years.

Persons  
found  
armed, etc.,  
with intent  
to commit  
crime.

Code, s. 407.

407. Any person who is found under any of the circumstances following, that is to say:—

- (a) Being armed with any dangerous or offensive weapon or instrument, and being so armed with intent to break or enter a dwelling-house, and to commit a crime therein;
- (b) Being armed as aforesaid by night, and being so armed with intent to break or enter any building whatever, and to commit a crime therein;
- (c) Having in his possession by night without lawful excuse, the proof of which lies on him, any instrument of housebreaking;
- (d) Having in his possession by day any such instrument with intent to commit a crime;
- (e) Having his face masked or blackened or being otherwise disguised, with intent to commit a crime; or

- (f) Being in any building whatever by night with intent to commit a crime therein;

is guilty of a crime, and is liable to imprisonment with hard labour for three years.

If the offender has been previously convicted of a crime relating to property, he is liable to imprisonment with hard labour for seven years.

CHAPTER XL.—OBTAINING PROPERTY BY FALSE  
PRETENCES: CHEATING.

408. Any representation made by words or otherwise of a matter of fact, either past or present, which representation is false in fact, and which the person making it knows to be false or does not believe to be true, is a false pretence.

Definition.  
Code, s. 408.

409. Any person who by any false pretence, and with intent to defraud, obtains from any other person anything capable of being stolen, or induces any other person to deliver to any person anything capable of being stolen, is guilty of a crime, and is liable to imprisonment with hard labour for three years.

Obtaining  
goods by  
false  
pretences.  
Code, s. 409.

If the thing is of the value of five hundred pounds or upwards, he is liable to imprisonment with hard labour for seven years.

It is immaterial that the thing is obtained or its delivery is induced through the medium of a contract induced by the false pretence.

The offender cannot be arrested without warrant unless found committing the offence.

410. Any person who, by any false pretence, and with intent to defraud, induces any person to execute, make, accept, indorse, alter, or destroy the whole or any part of any valuable security, or to write, impress, or affix any name or seal upon or to any paper or parchment, in order that it may be afterwards made or converted into or used or dealt with as a valuable security, is guilty of a crime, and is liable to imprisonment with hard labour for three years.

Obtaining  
execution  
of a security  
by false  
pretences.  
Code, s. 410.

The offender cannot be arrested without warrant unless found committing the offence.

Cheating.  
Code, s. 411.

411. Any person who, by means of any fraudulent trick or device, obtains from any other person anything capable of being stolen, or induces any other person to deliver to any person anything capable of being stolen, or to pay or deliver to any person any money or goods, or any greater sum of money or greater quantity of goods than he would have paid or delivered but for such trick or device, is guilty of a misdemeanour, and is liable to imprisonment with hard labour for two years.

A person found committing the offence may be arrested without warrant.

The offender cannot be arrested without warrant.

Conspiracy  
to defraud.  
Code, s. 412.

412. Any person who conspires with another by deceit or any fraudulent means to affect the market price of anything publicly sold, or to defraud the public, or any person, whether a particular person or not, or to extort any property from any person, is guilty of a crime, and is liable to imprisonment with hard labour for seven years.

Frauds on  
sale or  
mortgage of  
property.  
Code, s. 413.

413. Any person who, being a seller or mortgagor of any property, or being the solicitor or agent of any such seller or mortgagor, with intent to induce the purchaser or mortgagee to accept the title offered or produced to him, and with intent to defraud,—

- (1) Conceals from the purchaser or mortgagee any instrument material to the title, or any encumbrance; or
- (2) Falsifies any pedigree on which the title depends or may depend;

is guilty of a misdemeanour, and is liable to imprisonment with hard labour for two years.

#### CHAPTER XLI.—RECEIVING PROPERTY STOLEN OR FRAUDULENTLY OBTAINED AND LIKE OFFENCES.

Receiving  
stolen  
property,  
etc.  
Code, s. 414.  
Amended by  
No. 20 of  
1954, s. 3.

414. Any person who receives any property which has been obtained by means of any act constituting an indictable offence, or by means of any act done at a place not in Western Australia which if it had

been done in Western Australia would have constituted an indictable offence, and which is an offence under the laws in force in the place where it was done, knowing the same to have been so obtained, is guilty of a crime.

If the offence by means of which the thing was obtained is a crime, the offender is liable to imprisonment with hard labour for fourteen years.

In any other case the offender is liable to imprisonment with hard labour for seven years.

For the purpose of proving the receiving of anything, it is sufficient to show that the accused person has, either alone or jointly with some other person, had the thing in his possession, or has aided in concealing it or disposing of it.

In this section "property" as well as having the same meaning as that expression has in section one of the Code, includes not only such property as has been originally in the possession or under the control of any person, but also any property into or for which it has been converted or exchanged and anything acquired by the conversion or exchange whether immediately or otherwise.

Para. added  
by No. 20 of  
1954, s. 3.

415. When a thing has been obtained by means of any act constituting an indictable offence, or by means of an act done at a place not in Western Australia, which if it had been done in Western Australia would have constituted an indictable offence, and which is an offence under the laws in force in the place where it was done, and another person has acquired a lawful title to it, a subsequent receiving of the thing is not an offence although the receiver knows that the thing had previously been so obtained.

Receiving  
after change  
of ownership.  
Code, s. 415.

416. Any person who corruptly receives or obtains, or corruptly agrees to receive or obtain, any property or benefit of any kind upon an agreement or understanding that he will help any person to recover anything which has been obtained by means of any act constituting an indictable offence, or by means of any act done at a place not in Western Australia which if it had been done in Western Australia would have constituted an indictable

Taking  
reward for  
recovery of  
property  
obtained by  
means of  
indictable  
offences.  
Code, s. 416.

offence, and which is an offence under the laws in force in the place where it was done, is, unless he has used all due diligence to cause the offender to be brought to trial for the offence, guilty of a crime, and is liable to imprisonment with hard labour for seven years.

CHAPTER XLII.—FRAUDS BY TRUSTEES AND OFFICERS OF COMPANIES AND CORPORATIONS: FALSE ACCOUNTING.

Trustees  
fraudulently  
disposing of  
trust  
property.  
Code, s. 417.

417. Any person who, being a trustee of any property, destroys the property with intent to defraud, or with intent to defraud converts the property to any use not authorised by the trust, is guilty of a crime, and is liable to imprisonment with hard labour for seven years.

The offender cannot be arrested without warrant.

If civil proceedings have been taken against a trustee in respect of any act done by him which is an offence under the provisions of this section, he cannot be afterwards prosecuted for the same cause, as for an offence, on the complaint of the person by whom the civil proceedings were taken, without the sanction of the Court or Judge before whom the civil proceedings were had or are pending.

For the purposes of this section the term “trustee” includes the following persons and no others, that is to say:—

Trustees upon express trusts created by a deed, will, or instrument in writing, whether for a public or private or charitable purpose;

Trustees appointed by or under the authority of a Statute for any such purpose;

Persons upon whom the duties of any such trust as aforesaid devolve;

Executors and administrators;

Liquidators, trustees, and other like officers acting under any law relating to companies or to insolvent debtors, by whomsoever appointed or elected.



418. Any person who signs any memorandum of association, or any statement, abstract, or document, required by any Act relating to companies, containing any particulars false to the knowledge of such person, is guilty of a misdemeanour, and is liable to imprisonment with hard labour for one year or to a fine of One hundred pounds.

False statement relating to companies. Code, s. 418.

419. Any person who—

- (1) Being a director or officer of a corporation or company, receives or possesses himself as such of any of the property of the corporation or company otherwise than in payment of a just debt or demand, and, with intent to defraud, omits either to make a full and true entry thereof in the books and accounts of the corporation or company, or to cause or direct such an entry to be made therein; or

Directors and officers of corporations or companies fraudulently appropriating property, or keeping fraudulent accounts, or falsifying books or accounts. Code, s. 419.

- (2) Being a director, officer, or member of a corporation or company, does any of the following acts with intent to defraud, that is to say:—

- (a) Destroys, alters, mutilates, or falsifies, any book, document, valuable security, or account, which belongs to the corporation or company, or any entry in any such book, document, or account or is privy to any such act; or
- (b) Makes or is privy to making any false entry in any such book, document, or account; or
- (c) Omits or is privy to omitting any material particular from any such book, document, or account;

is guilty of a crime, and is liable to imprisonment with hard labour for seven years.

The offender cannot be arrested without warrant.

420. Any person who, being a promotor, director, officer, or auditor of a corporation or company, either existing or intended to be formed, makes, circulates, or publishes, or concurs in making, circulating, or

False statements by officials of companies. Code, s. 420.

publishing any written statement or account which, in any material particular, is to his knowledge false, with intent thereby to effect any of the purposes following, that is to say:—

- (a) To deceive or defraud any member, shareholder, or creditor of the corporation or company, whether a particular person or not;
- (b) To induce any person, whether a particular person or not, to become a member of, or to intrust or advance any property to the corporation or company, or to enter into any security for the benefit thereof;

is guilty of a crime, and is liable to imprisonment with hard labour for seven years.

The offender cannot be arrested without warrant.

False statements by officials of companies with intent to affect price of shares.  
Code, s. 421.

421. Any person who, being a director, officer, or agent of a company having its share capital listed for dealings on any stock exchange in Western Australia or elsewhere, wilfully makes or is privy to making in any prospectus, return, report, certificate, account, statement of operations, or prospectus, or other document, any statement relating to the business of the company false in any material particular, knowing it to be false with intent to produce or give or having a tendency to produce or give to the stock or shares of the company a greater or less market value than such stock or shares possess, is guilty of a misdemeanour, and is liable to imprisonment with hard labour for two years, and to a fine of Two hundred pounds.

No proceedings under this section shall be commenced unless authorised by the Attorney General in writing.

Defence.  
Code, s. 422.

422. It is a defence to a charge of any of the offences hereinbefore in this chapter defined to prove that the accused person, before being charged with the offence, and in consequence of the compulsory process of a Court of justice in an action or proceeding instituted in good faith by a party aggrieved, or in a compulsory examination or deposition before a Court of justice, disclosed on oath the act alleged to constitute the offence.

A person is not entitled to refuse to answer any question or interrogatory in any civil proceeding in any Court, on the ground that his doing so might tend to show that he had committed any such offence.

423. Any person who, being a member of a local authority,—

Misappropriation by members of local authorities.  
Code, s. 423.

(1) Advisedly applies any money forming part of any fund under the control of the local authority to any purpose to which, to his knowledge, it cannot lawfully be applied; or

(2) Advisedly concurs in any such application of any such money;

is guilty of a misdemeanour, and is liable to imprisonment with hard labour for two years.

The term “local authority” includes any corporation or board constituted or appointed under the authority of a Statute, and charged with the administration of moneys for any purposes of local concern.

A prosecution for either of the offences defined in this section cannot be begun except by the direction of the Attorney General.

424. Any person who, being a clerk or servant, or being employed or acting in the capacity of a clerk or servant, does any of the acts following with intent to defraud, that is to say:—

Fraudulent false accounting.  
Code, s. 424.

(a) Destroys, alters, mutilates, or falsifies, any book, document, valuable security, or account, which belongs to or is in the possession of his employer, or has been received by him on account of his employer, or any entry in any such book, document, or account, or is privy to any such act; or

(b) Makes or is privy to making any false entry in any such book, document, or account; or

(c) Omits or is privy to omitting any material particular from any such book, document, or account;

is guilty of a crime, and is liable to imprisonment with hard labour for seven years.

False  
accounting  
by public  
officer.  
Code, s. 425.

425. Any person who, being an officer charged with the receipt, custody, or management of any part of the public revenue or property, knowingly furnishes any false statement or return of any money or property received by him or entrusted to his care, or of any balance of money or property in his possession or under his control, is guilty of a misdemeanour, and is liable to imprisonment with hard labour for two years.

CHAPTER XLIII.—SUMMARY CONVICTION FOR STEALING  
AND LIKE INDICTABLE OFFENCES.

Indictable  
offences  
which may  
be dealt with  
summarily.  
Code, s. 426

426. When a person is charged before two justices with any of the indictable offences following, that is to say:—

- (a) Stealing anything of such a kind and under such circumstances that the greatest punishment to which an offender convicted of the offence is liable does not exceed imprisonment for three years with hard labour;
- (b) Killing, with intent to steal the skin or carcass or any part of the skin or carcass, any animal of such a kind that the greatest punishment to which an offender convicted of the offence of stealing the animal is liable does not exceed imprisonment for three years with hard labour;
- (c) Stealing anything from the person of another;
- (d) Stealing by a clerk or servant of anything which is the property of his employer, or which came into his possession on account of his employer;
- (e) Making anything movable with intent to steal it, without circumstances of aggravation;
- (f) Obtaining or procuring the delivery of anything by a false pretence with intent to defraud;

- (g) Obtaining by means of a fraudulent trick or device anything capable of being stolen, or inducing, by means of any such trick or device, the delivery or payment of any money or goods or other thing capable of being stolen;
- (h) Attempting to commit any of the offences aforesaid;
- (i) Receiving anything which has been obtained by means of a crime or misdemeanour of such a nature, or committed under such circumstances, that the offender who committed the crime or misdemeanour might be summarily convicted under the provisions of this section;
- (j) Counselling or procuring the commission of any of the offences aforesaid;

then, if—

- (1) The value of the property in question does not exceed Fifty pounds; or
- (2) The accused person admits that he is guilty of the offence and it appears to the justices that the nature of the offence is such, whatever may be the value of the property in question, that the offender may be adequately punished upon summary conviction;

the justices may deal with the charge summarily.

The offender is liable on such summary conviction to imprisonment with hard labour for six months, or to a fine of Fifty pounds.

427. Before the accused person is asked to show cause why he should not be convicted, the justices are required to explain to him that he is entitled to be tried by a jury, and is not obliged to make any defence before them, and to ask him whether he objects to the charge being dealt with summarily.

*Procedure.*  
Code, s. 427.  
Amended by  
No. 32 of  
1918, s. 16.

If the accused person does not object to the justices dealing with the charge summarily, the justices are required to reduce the charge to writing

and to read it to the accused person, and then to ask him whether he is guilty or not guilty of the offence; and if he says that he is guilty they are to convict him of the offence, but if he says that he is not guilty they are required to hear his defence, and then deal with the charge summarily.

If the accused person is charged with obtaining or procuring the delivery of anything by a false pretence with intent to defraud, the justices are required, after the charge has been reduced to writing and read to the accused person, to state in effect that a false pretence means a false representation, by words, writing, or conduct that some fact exists or existed, and that a promise as to future conduct not intended to be kept is not by itself a false pretence, and may add such explanation as the justices may deem suitable to the circumstances.

If the justices find that the charge is proved, they may, whether they impose any punishment or not, order the offender to make restitution of the property, if any, in respect of which the offence was committed, to the owner thereof; and if the property is not at once restored, they may order the offender to pay the amount of its value, to be assessed by them, to the owner, either in one sum or by such instalments, and at such times, as they think fit.

- (1) If it appears that, by reason of the accused person having been previously convicted of some offence on indictment, he is liable, on conviction of the offence charged, to imprisonment for a term of more than three years; or
- (2) If for any reason the justices are of opinion that the charge is a fit subject for prosecution by indictment;

the justices are required to abstain from dealing with the case summarily.

If in any case it appears to the justices that for any reason the sentence which they are empowered by this chapter to pass on the person convicted by them is inadequate, they may, in lieu of passing sentence, commit the convicted person for sentence.

CHAPTER XLIV.—OFFENCES ANALOGOUS TO STEALING  
PUNISHABLE ON SUMMARY CONVICTION.

428. Any person who unlawfully uses or takes for the purpose of using, a horse, mare, gelding, ass, mule, camel, bull, cow, ox, ram, ewe, wether, goat, pig, or dog, or the young of any such animal, without the consent of the owner, or of the person in lawful possession thereof, and any person who takes any such animal, for the purpose of secreting the same, or obtaining a reward for the restoration or pretended finding thereof or for any fraudulent purpose, is guilty of an offence, and is liable on summary conviction to imprisonment with hard labour for one year, or to a fine of Fifty pounds for every animal so used or taken.

Unlawfully  
using  
animals.  
Code, s. 428.

429. When any horse, mare, gelding, ass, mule, camel, bull, cow, ox, ram, ewe, wether, goat, pig, or dog, or the young of any such animal, is suspected, on reasonable grounds, to have been stolen, any person in whose possession or custody the skin or carcass, or any part of the skin or carcass, of the animal so suspected to have been stolen is found, is guilty of an offence, unless he proves that he came lawfully by the thing in question; and he is liable on summary conviction to a fine of Fifty pounds.

Suspicion  
of stealing  
cattle.  
Code, s. 429.

It is a defence to a charge of the offence defined in this section to prove that the accused person came lawfully by the thing in question.

430. Any person, who knowing that he is not the owner of an animal, brands or marks it, or knowingly permits it to be branded or marked, is guilty of an offence, and is liable on summary conviction to a fine of Fifty pounds.

Illegal  
branding.  
Code, s. 430.

431. Any person who—

- (1) Alters, defaces, or otherwise renders undistinguishable, any registered brand or registered mark upon an animal; or
- (2) Knowingly permits any such act to be done by any person over whom he has control;

Defacing  
brands.  
Code, s. 431.

is guilty of an offence, and is liable on summary conviction to a fine of Fifty pounds.

Time of  
prosecution.  
Code, s. 432.

432. A prosecution for any of the offences defined in the last two preceding sections may be begun within twelve months after the offence is committed.

Committal  
for trial.  
Code, s. 433.

433. If the justices before whom any person is brought, charged with any of the offences hereinbefore in this chapter defined, are of opinion that there ought to be a prosecution for an indictable offence, they may abstain from dealing with the case summarily, and commit the defendant to take his trial for the indictable offence.

Unlawful  
possession  
of ship-  
wrecked  
goods.  
Code, s. 434.

434. Any person in whose possession or on whose premises anything which belongs to a vessel in distress, or wrecked, or stranded, is found, and which is suspected, on reasonable grounds, to have been unlawfully taken from the vessel, is guilty of an offence unless he proves that he came lawfully by the thing in question; and he is liable on summary conviction to imprisonment with hard labour for six months, or to a fine of an amount equal to the value of the thing so found, and Twenty pounds in addition.

The justices are required to order the thing in question to be delivered up to the rightful owner.

It is a defence to a charge of the offence defined in this section to prove that the accused person came lawfully by the thing in question.

Offering  
shipwrecked  
goods for  
sale.  
Code, s. 435.

435. Any person who offers or exposes for sale anything which is suspected, on reasonable grounds, to have been unlawfully taken from a vessel in distress, or wrecked, or stranded, is guilty of an offence unless he proves that he came lawfully by the thing in question; and he is liable on summary conviction to imprisonment with hard labour for six months, or to a fine of an amount equal to the value of the thing in question, and Twenty pounds in addition.

Any person employed in the Public Service may seize any such thing so offered for sale.



If the accused person is convicted, the justices before whom the charge is tried are required to order the thing in question to be delivered up to the rightful owner thereof upon payment of a reasonable reward, to be ascertained by the justices, to the person who seized the same.

It is a defence to a charge of either of the offences defined in this section to prove that the accused person came lawfully by the thing in question.

436. Any person who unlawfully and otherwise than in the course of catching or fishing for floating fish with a net or other instrument adapted for taking floating fish only,—

Unlawfully  
dredging for  
oysters.  
Code, s. 436.

- (1) Uses, for the purpose of taking oysters or oyster brood, any net or other instrument within the limits of an oyster bed, laying, or fishery, which is the property of any other person, and which is sufficiently marked out, or is known by general repute as his property, whether any oysters or oyster brood are actually taken or not; or
- (2) Drags upon the ground or soil of any such fishery with any net or instrument;

is guilty of an offence, and is liable on summary conviction to imprisonment with hard labour for three months.

437. Any person who unlawfully takes or destroys, or attempts to take or destroy, any fish in any water which is private property, or in which there is a private right of fishery, is guilty of an offence, and is liable on summary conviction to a fine of an amount equal to the value of the fish taken or destroyed, if any, and Five pounds in addition.

Unlawfully  
taking fish.  
Code, s. 437.

438. A person found committing any of the offences defined in this chapter may be arrested without warrant by a police officer, or by the owner of the property in question or his servant, or by any person authorised by such owner or servant.

Arrest  
without  
warrant.  
Code, s. 438.

Warrant in  
first instance.  
Code, s. 439.

439. A justice may issue a warrant in the first instance for the arrest of any person charged with any of the offences defined in this chapter.

Effect of  
summary  
conviction  
and of civil  
proceedings.  
Code, s. 440.

440. A person who has been summarily convicted of any of the offences defined in this chapter, except those defined in the first four sections thereof, and who has paid the fine or sum, adjudged to be paid under the conviction, together with the costs, if any, or has suffered the imprisonment adjudged for non-payment thereof, or has suffered the imprisonment adjudged in the first instance, or has received the Royal mercy, or has been discharged without punishment upon making satisfaction to the person aggrieved, or whose sentence has been conditionally suspended, is not liable to any civil proceedings for the same cause at the suit of the person on whose complaint he was convicted.

If civil proceedings have been taken against any person in respect of any act done by him which is an offence under any of the provisions of this chapter, he cannot be afterwards prosecuted for the same cause, as for an offence, on the complaint of the person by whom the civil proceedings were taken.

#### *Division II.—Injuries to Property.*

##### CHAPTER XLV.—DEFINITIONS.

Unlawful  
acts.  
Code, s. 441.

441. An act which causes injury to the property of another, and which is done without his consent, is unlawful unless it is authorised, or justified, or excused by law.

It is immaterial that the person who does the injury is in possession of the property injured, or has a partial interest in it.

A person is not criminally responsible for an injury caused to property by the use of such force as is reasonably necessary for the purpose of defending or protecting himself, or any other person, or any property from injury, which he believes, on reasonable grounds, to be imminent.

442. When an act which causes injury to property, and which would be otherwise lawful, is done with intent to defraud any person, it is unlawful.

Acts done with intent to defraud.  
Code, s. 442.

When an act which causes injury to property is done with intent to defraud any person, it is immaterial that the property in question is the property of the offender himself.

443. The term "damage" used in relation to a document, or to a writing or inscription, includes obliterating and rendering illegible, either in whole or in part.

Damage.  
Code, s. 443.

#### CHAPTER XLVI.—OFFENCES.

444. Any person who wilfully and unlawfully sets fire to any of the things following, that is to say:—

Arson.  
Code, s. 444.

- (a) Any building or structure whatever, whether completed or not;
- (b) Any vessel, whether completed or not;
- (c) A mine or the workings, fittings, or appliances of a mine;

is guilty of a crime, and is liable to imprisonment with hard labour for life.

445. Any person who—

- (1) Attempts unlawfully to set fire to any such thing as is mentioned in the last preceding section; or
- (2) Wilfully and unlawfully sets fire to anything which is so situated that any such thing as is mentioned in the last preceding section is likely to catch fire from it;

Attempts to commit arson.  
Code, s. 445.

is guilty of a crime, and is liable to imprisonment with hard labour for fourteen years.

446. Any person who wilfully and unlawfully sets fire to any stack of vegetable produce or of mineral or vegetable fuel is guilty of a crime, and is liable to imprisonment with hard labour for fourteen years.

Setting fire to stacks, etc.  
Code, s. 446.

Setting fire  
to crops and  
growing  
plants.  
Code, s. 447.

447. Any person who wilfully and unlawfully sets fire to any of the things following, that is to say:—

- (a) A crop of cultivated vegetable produce, whether standing or cut;
  - (b) A crop of hay or grass, whether the natural or indigenous product of the soil or not, and whether under cultivation or not, and whether standing or cut;
  - (c) Any standing trees, saplings, or shrubs, whether indigenous or cultivated;
  - (d) Any heath, gorse, furze, or fern;
- is guilty of a crime, and is liable to imprisonment with hard labour for fourteen years.

Attempting  
to set fire  
to crops, etc.  
Code, s. 448.

448. Any person who attempts unlawfully to set fire to any such thing as is mentioned in the last preceding section is guilty of a crime, and is liable to imprisonment with hard labour for seven years.

Casting away  
ships.  
Code, s. 449.

449. Any person who—

- (1) Wilfully and unlawfully casts away or destroys any vessel, whether complete or not; or
- (2) Wilfully and unlawfully does any act which tends to the immediate loss or destruction of a vessel in distress; or
- (3) With intent to bring a vessel into danger interferes with any light, beacon, mark, or signal, used for purposes of navigation, or for the guidance of seamen, or exhibits any false light or signal;

is guilty of a crime, and is liable to imprisonment with hard labour for life.

Attempts to  
cast away  
ships.  
Code, s. 450.

450. Any person who attempts unlawfully to cast away or destroy a vessel, whether completed or not, or attempts unlawfully to do any act tending to the immediate loss or destruction of a vessel in distress, is guilty of a crime, and is liable to imprisonment with hard labour for fourteen years.

451. Any person who unlawfully, and with intent to obstruct the use of a railway or to injure any property upon a railway—

Obstructing  
and injuring  
railways.  
Code, s. 451.

- (1) Deals with the railway or with anything whatever on or near the railway in such a manner as to endanger the free and safe use of the railway; or
- (2) Unlawfully shows any light or signal, or deals with any existing light or signal upon or near the railway; or
- (3) By any omission to do any act which it is his duty to do causes the free and safe use of the railway to be endangered;

is guilty of a crime, and is liable to imprisonment with hard labour for life.

452. Any person who wilfully and unlawfully kills, maims, or wounds an animal capable of being stolen is guilty of an indictable offence.

Injuring  
animals.  
Code, s. 452.

If the animal in question is a horse, mare, gelding, ass, mule, camel, bull, cow, ox, ram, ewe, or wether, or the young of any such animal, the offender is guilty of a crime, and is liable to imprisonment with hard labour for seven years.

In any other case the offender is guilty of a misdemeanour, and is liable to imprisonment with hard labour for two years, or, if the offence is committed by night, to imprisonment with hard labour for three years.

453. Any person who wilfully and unlawfully destroys or damages any property is guilty of an offence which, unless otherwise stated, is a misdemeanour, and he is liable, if no other punishment is provided, to imprisonment with hard labour for two years, or, if the offence is committed by night, to imprisonment with hard labour for three years.

Malignant  
injuries in  
general.  
Code, s. 453.

#### *Punishment In Special Cases.*

I.—If the property in question is a dwelling-house or a vessel, and the injury is caused by the explosion of any explosive substance, and if—

Destroying  
or damaging  
an inhabited  
house, or a  
vessel with  
explosives.

- (a) Any person is in the dwelling-house or vessel; or

- (b) The destruction or damage actually endangers the life of any person;

the offender is guilty of a crime, and is liable to imprisonment with hard labour for life.

Sea bank,  
or sea wall,  
navigation  
works, or  
bridges.

II.—(a) If the property in question is a bank or wall of the sea or of a river, canal, aqueduct, reservoir, or inland water, or a work which appertains to a port, harbour, dock, reservoir, or inland water, and the injury causes actual danger of inundation or damage to any land or building; or

(b) If the property in question is a railway, or is a bridge, viaduct, or aqueduct, which is constructed over a highway, railway, or canal, or over which a highway, railway, or canal, passes, and the property is destroyed; or

(c) If the property in question being a railway or being any such bridge, viaduct, or aqueduct, is damaged and the damage is done with intent to render the railway, bridge, viaduct, or aqueduct, or the highway, railway, or canal, passing over or under the same, or any part thereof, dangerous or impassable, and the same or any part thereof is thereby rendered dangerous or impassable;

the offender is guilty of a crime, and is liable to imprisonment with hard labour for life.

Wills and  
registers.

III.—If the property in question is a testamentary instrument, whether the testator is living or dead, or a register which is authorised, or required by law to be kept for authenticating or recording the title of any property, or for recording births, baptisms, marriages, deaths, or burials, or a copy of any part of any such register which is required by law to be sent to any public office, the offender is guilty of a crime, and is liable to imprisonment with hard labour for fourteen years.

IV.—If the property in question is a vessel in distress, or wrecked, or stranded, or anything which belongs to such a vessel, the offender is guilty of a crime, and is liable to imprisonment with hard labour for seven years.

Wrecks.

V.—If the property in question is any part of a railway, or any work connected with a railway, the offender is guilty of a crime, and is liable to imprisonment with hard labour for fourteen years.

Railways.

VI.—If the property in question is a bank, drain, sewer, dam, mill, engine, building, sluice, or any other work whatsoever erected or made for the drainage of land, the offender is guilty of a crime, and is liable to imprisonment with hard labour for seven years.

Drainage works.

- VII.—(a) If the property in question, being a vessel, whether complete or not, is destroyed; or
- (b) If the property in question being a vessel, whether complete or not, is damaged, and the damage is done with intent to destroy it or render it useless; or
- (c) If the property in question is a light, beacon, buoy, mark or signal, used for purposes of navigation, or for the guidance of seamen; or
- (d) If the property in question is a bank or wall of the sea, or of a river, canal, aqueduct, reservoir, or inland water, or a work which appertains to a port, harbour, dock, canal, aqueduct, reservoir, or inland water, or which is used for the purpose of lading or unlading goods; or
- (e) If the property in question, being a railway, or being a bridge, viaduct, or aqueduct, which is constructed over a highway, railway, or canal, or over which a highway, railway, or canal passes, is damaged, and the damage is done with intent to render the railway, bridge, viaduct, or aqueduct, or the highway, rail-

Other things of special value.

way, or canal passing over or under the same, or any part thereof, dangerous or impassable; or

- (f) If the property in question, being anything in process of manufacture, or an agricultural or manufacturing machine, or a manufacturing implement, or a machine or appliance used or intended to be used for performing any process connected with the preparation of any agricultural or pastoral produce, is destroyed; or
- (g) If the property in question, being any such thing, machine, implement, or appliance as last aforesaid, is damaged, and the damage is done with intent to destroy the thing in question, or to render it useless; or
- (h) If the property in question is a shaft, or passage of a mine, and the injury is done with intent to damage the mine or to obstruct its working; or
- (i) If the property in question is a machine, appliance, apparatus, building, erection, bridge, or road, appertaining to or used with a mine, whether the thing in question is completed or not; or
- (j) If the property in question, being a rope, chain, or tackle, of whatever material, which is used in a mine, or upon any way or work appertaining to or used with a mine, is destroyed; or
- (k) If the property in question, being any such rope, chain, or tackle, as last aforesaid, is damaged, and the damage is done with intent to destroy the thing in question or to render it useless; or
- (l) If the property in question is a well, or bore for water, or the dam, bank, wall, or floodgate of a millpond or pool;

the offender is guilty of a crime, and is liable to imprisonment with hard labour for seven years.



VIII.—If the property in question is a document which is deposited or kept in a public office, or which is evidence of title to any land or estate in land, the offender is guilty of a crime, and is liable to imprisonment with hard labour for seven years.

Deeds and records.

454. Any person who wilfully and unlawfully causes by any explosive substance, an explosion of a nature likely to cause serious injury to property, whether any injury to property has been actually caused or not, is guilty of a crime, and is liable to imprisonment with hard labour for life.

Causing explosion likely to do serious injury to property.  
Code, s. 454.

455. Any person who wilfully and unlawfully—

- (1) Does any act with intent to cause by an explosive substance, or conspires to cause by an explosive substance, an explosion in Western Australia of a nature likely to cause serious injury to property; or
- (2) Makes or has in his possession or under his control, any explosive substance with intent by means thereof to cause serious injury to property in Western Australia, or to enable any other person by means thereof to cause serious injury to property in Western Australia; or
- (3) Puts any explosive substance in any place whatever with intent to destroy or damage any property,

Attempting to cause explosion likely to do serious injury to property.  
Code, s. 455.

whether any explosion does or does not take place, and whether any injury to property has been actually caused or not, is guilty of a crime, and is liable to imprisonment with hard labour for fourteen years, and to forfeiture of the explosive substance.

The term “explosive substance” in this section includes any materials for making any explosive substance; also any apparatus, machine, implement, or materials, used or intended to be used or adapted for causing or aiding in causing, any explosion in or with any explosive substance; also any part of any such apparatus, machine, or implement.

Attempts to  
injure  
mines.  
Code, s. 456.

456. Any person who, with intent to injure a mine or to obstruct the working of a mine—

- (1) Unlawfully, and otherwise than by an act done underground in the course of working an adjoining mine,—
  - (a) Causes water to run into the mine or into any subterranean passage communicating with the mine; or
  - (b) Obstructs any shaft or passage of the mine; or
- (2) Unlawfully obstructs the working of any machine, appliance, or apparatus, appertaining to or used with the mine, whether the thing in question is completed or not; or
- (3) Unlawfully, and with intent to render it useless, injures or unfastens a rope, chain, or tackle, of whatever material which is used in the mine or upon any way or work appertaining to or used with the mine;

is guilty of a crime, and is liable to imprisonment with hard labour for seven years.

Interfering  
with marine  
signals.  
Code, s. 457.

457. Any person who wilfully and unlawfully removes, defaces, or renders invisible, any light, beacon, buoy, mark, or signal, used for purposes of navigation, or for the guidance of seamen, or unlawfully attempts to remove, deface, or render invisible, any such thing, is guilty of a crime, and is liable to imprisonment with hard labour for seven years.

Interfering  
with  
navigation  
works.  
Code, s. 458.

458. Any person who—

- (1) Wilfully and unlawfully removes or disturbs any fixed object or materials used for securing a bank or wall of the sea, or of a river, canal, aqueduct, reservoir, or inland water, or for securing any work which appertains to a port, harbour, dock, canal, aqueduct, reservoir, or inland water, or which is used for purposes of navigation, or lading or unlading goods; or
- (2) Unlawfully does any act with intent to obstruct the carrying on, completion, or maintenance, of the navigation of a

navigable river or canal, and thereby obstructs such carrying on, completion or maintenance;

is guilty of a crime, and is liable to imprisonment with hard labour for seven years.

459. Any person who wilfully and unlawfully causes or is concerned in causing, or attempts to cause, any infectious disease to be communicated to or among any animal or animals capable of being stolen, is guilty of a crime, and is liable to imprisonment with hard labour for seven years.

Communi-  
cating  
infectious  
diseases to  
animals.  
Code, s. 459.

460. Any person who causes any four-footed animal which is infected with an infectious disease to travel, or, being the owner or one of two or more joint owners of any four-footed animal which is infected with an infectious disease, permits or connives at the travelling of any such animal, contrary to the provisions of any Statute relating to infected animals of that kind, is guilty of a misdemeanour, and is liable to imprisonment for two years.

Travelling  
with infected  
animals.  
Code, s. 460.

461. Any person who, wilfully and unlawfully and with intent to defraud, removes or defaces any object or mark which has been lawfully erected or made as an indication of the boundary of any land, is guilty of a misdemeanour, and is liable to imprisonment with hard labour for three years.

Removing  
boundary  
marks.  
Code, s. 461.

462. Any person who, by any unlawful act, or by any intentional omission to do any act which it is his duty to do, causes any engine or vehicle in use upon a railway to be obstructed in its passage on the railway, is guilty of a misdemeanour, and is liable to imprisonment with hard labour for two years.

Obstructing  
railways.  
Code, s. 462.

463. Any person who, knowing the contents of the writing, causes any person to receive any writing threatening that any building or vessel, whether complete or not, or any stack of cultivated vegetable

Sending  
letters  
threatening  
to burn or  
destroy.  
Code, s. 463.

produce, or any such produce or other thing that is in or under a building, shall be burnt or destroyed, is guilty of a crime, and is liable to imprisonment with hard labour for seven years.

Arrest  
without  
warrant.  
Code, s. 464.

464. A person found committing any of the misdemeanours defined in this chapter may be arrested without warrant by a police officer, or by the owner of the property injured or his servant, or by any person authorised by such owner or servant.

#### CHAPTER XLVII.—SUMMARY CONVICTION FOR CERTAIN OFFENCES.

Offences  
which may  
be dealt with  
summarily.  
Code, s. 465.

465. When a person is charged before two justices with any of the indictable offences following, that is to say:—

- (a) Wilfully and unlawfully destroying or damaging any property, under such circumstances that the greatest punishment to which an offender convicted of the offence is liable does not exceed imprisonment for three years with hard labour;
- (b) Wilfully and unlawfully killing, maiming, or wounding any animal capable of being stolen;

then, if—

- (1) The amount of the injury done does not exceed Fifty pounds; or
- (2) The accused person admits that he is guilty of the offence and it appears to the justices that the nature of the offence is such, whatever may be the amount of the injury done, that the offender may be adequately punished upon summary conviction;

the justices may, except as hereinafter stated, deal with the charge summarily.

The offender is liable on such summary conviction to imprisonment with hard labour for six months, or to a fine of an amount equal to the amount of the injury done, to be assessed by the justices, and Twenty-five pounds in addition.

The justices may order the offender to pay the amount awarded in respect of the injury either in one sum or by such instalments and at such times as they think fit.

If it appears that the injury complained of was done in the course of hunting or fishing, or in the pursuit of game, and was not done with an intention to destroy or damage the property injured, the justices cannot deal with the case summarily.

**466.** Such summary jurisdiction is to be exercised in the manner and subject to the conditions prescribed in chapter forty-three with respect to the summary trial and punishment of offenders who may be summarily convicted of indictable offences under the provisions of that chapter.

Procedure.  
Code, s. 466.

**467.** If, on the trial of any person under the provisions of this chapter, the justices are of opinion that the injury is of so trivial a nature as not to deserve any punishment, they may convict the defendant and discharge him without inflicting any punishment.

Trivial  
charges.  
Code, s. 467.

**468.** A person who has been summarily convicted of any offence under the provisions of this chapter, and who has paid the fine or sum adjudged to be paid under the conviction, if any, together with the costs, if any, or has suffered the imprisonment adjudged for non-payment thereof, or has suffered the imprisonment adjudged in the first instance, or has received the Royal mercy, or has been discharged without punishment, or whose sentence has been conditionally suspended, is not liable to any civil proceedings for the same cause at the suit of the person on whose complaint he was convicted.

Effect of  
summary  
conviction  
and of civil  
proceedings.  
Code, s. 468.

If civil proceedings have been taken against any person in respect of any act done by him which is an offence of which he might have been convicted under the provisions of this chapter, he cannot be afterwards prosecuted for the same cause, as for an offence on the complaint of the person by whom the civil proceedings were taken.

*Division III.—Forgery and Like Offences: Personation.*

## CHAPTER XLVIII.—FORGERY IN GENERAL: DEFINITIONS.

Definitions.  
Code, s. 469.

469. In this division of this part of this Code—

The term “document” includes a register or register book or part of either, and any other book, and any paper, parchment, or other material whatever, used for writing or printing, which is marked with any letters or marks denoting words, or with any other signs capable of conveying a definite meaning to persons conversant with them; but does not include trade marks on articles of commerce;

The term “writing” includes an inscription on wood, stone, metal, or other material: It also includes a mere signature and a mark of any kind;

The terms “seal” includes any stamp, die, or other thing, of whatever material, from which an impression can be taken by means of pressure or of ink, or by any other means;

The term “bank note” includes any negotiable instrument issued by or on behalf of any person or corporation in any part of the world, or issued by the authority of any State, Prince, or Government, and intended to be used as equivalent to money, either immediately on issue or at any time afterwards: It also includes a bank bill or bank post bill.

Further  
definitions.  
Code, s. 470.

470. A document or writing is said to be false—

- (a) In the case of a document which is a register or record kept by lawful authority, or an entry in any such register, or which purports to be issued by lawful authority, as testifying to the contents of any register or record kept by lawful authority, or as testifying to any fact or event, if any material particular stated in the document is untrue;

- (b) If the whole, or some material part of the document or writing purports to be made by or on behalf of some person who did not make it, or authorise it to be made, or if, in a case when the time or place of making is material, although the document or writing is made by or by the authority of the person by whom it purports to be made, it is with a fraudulent intent falsely dated as to the time or place of making;
- (c) If the whole or some material part of the document or writing purports to be made by or on behalf of some person who does not, in fact, exist; or
- (d) If the document or writing is made in the name of an existing person, either by that person himself or by his authority, with the fraudulent intention that it should pass as being made by some person, real or fictitious, other than the person who makes it or authorises it to be made.

A seal or mark is said to be counterfeit if it is made without lawful authority, and is in such a form as to resemble a genuine seal or mark, or, in the case of a seal, in such a form as to be capable of producing impressions resembling those produced by a genuine seal.

A representation of the impression of a seal is said to be counterfeit if it is not in fact made by the seal.

The term “resemble” applied to anything, includes the case where the thing is made to resemble or is apparently intended to resemble, the object spoken of.

471. A person who makes a false document or writing, knowing it to be false, and with intent that it may in any way be used or acted upon as genuine, whether in Western Australia or elsewhere, to the prejudice of any person or with intent that any person may, in the belief that it is genuine, be

Definition  
of forgery.  
Code, s. 471.

induced to do or refrain from doing any act, whether in Western Australia or elsewhere, is said to forge the document or writing.

A person who makes a counterfeit seal or mark, or makes an impression of a counterfeit seal knowing the seal to be counterfeit, or makes a counterfeit representation of the impression of a genuine seal, or makes, without lawful authority, an impression of a genuine seal, with intent in either case that the thing so made may in any way be used or acted upon as genuine, whether in Western Australia or elsewhere, to the prejudice of any person, or with intent that any person may, in the belief that it is genuine, be induced to do or refrain from doing any act, whether in Western Australia or elsewhere, is said to forge the seal or mark.

The term "make a false document or writing" includes altering a genuine document or writing in any material part, either by erasure, obliteration, removal, or otherwise; and making any material addition to the body of a genuine document or writing; and adding to a genuine document or writing any false date, attestation, seal, or other material matter.

It is immaterial in what language a forged document or writing is expressed.

It is immaterial that the forger of anything forged may not have intended that any particular person should use or act upon it, or that any particular person should be prejudiced by it, or be induced to do or refrain from doing any act.

It is immaterial that the thing forged is incomplete, or does not purport to be a document, writing, or seal which would be binding in law for any particular purpose, if it is so made, and is of such a kind, as to indicate that it was intended to be used or acted upon.

Certain  
matters  
immaterial.  
Code, s. 472.

472. In the case of an offence which involves the forging or uttering of a document or writing relating to the payment of money, or to the delivery or transfer of any property, or to the creation or



performance of any obligation, it is immaterial in what country the money or property is, or purports to be payable, deliverable, or transferable, or the obligation is, or purports to be, performed; and, if the money or the property purports to be payable, deliverable, or transferable, or the obligation purports to be an obligation to be performed in some country out of Western Australia, it is immaterial whether the document or writing is under seal or not.

CHAPTER XLIX.—PUNISHMENT OF FORGERY  
AND LIKE OFFENCES.

473. Any person who forges any document, writing, or seal is guilty of an offence which, unless otherwise stated, is a crime, and he is liable, if no other punishment is provided, to imprisonment with hard labour for three years.

Punishment  
of forgery  
in general.  
Code, s. 473.

Punishment in Special Cases.

(1) If the thing forged—

- (a) Purports to be, or is intended by the offender to be understood to be or to be used as, the great seal of the United Kingdom or of the Commonwealth of Australia, or of Western Australia, or His Majesty's privy seal, or any privy signet of His Majesty, or His Majesty's royal sign manual, or the seal of the Governor-General, the Governor, or any public seal lawfully appointed to be used for authenticating an act of State in any part of His Majesty's dominions; or
- (b) Is a document having on it or affixed to it any such seal, signet, or sign manual, or anything which purports to be, or is intended by the offender to be understood to be, any such seal, signet, or sign manual;

Public seals,  
etc.

the offender is liable to imprisonment with hard labour for life.

Securities,  
titles,  
registers,  
etc.

(2) If the thing forged purports to be, or is intended by the offender to be understood to be or to be used as, any of the things following, that is to say:—

- (a) A document which is evidence of title to any portion of the public debt of any of His Majesty's dominions or of any foreign State, or to any dividend or interest payable in respect of any such debt, or a transfer or assignment of any such document, or a receipt or certificate for any interest or money payable or accruing on or in respect of such public debt;
- (b) A transfer or assignment of a share in any corporation, company, or society, whether domestic or foreign, or of any share or interest in the capital stock of any such corporation, company, or society, or in the debt of any such corporation, company, or society, or a receipt or certificate for any interest, or money payable or accruing on or in respect of any such share, interest, or debt;
- (c) A document acknowledging or being evidence of the indebtedness of the Government of Western Australia or of the Government of any of His Majesty's dominions, or of any Foreign Prince or State, to any person;
- (d) A document which by the law of Western Australia or any other country is evidence of the title to any land or estate in land in Western Australia or that other country, or an entry in any register or book which is such evidence;
- (e) A document which by law is required for procuring the registration of any title to any land or estate in land;
- (f) A testamentary instrument, whether the testator is living or dead, or a probate or letters of administration, whether with or without a will annexed;

- (g) A bank note, bill of exchange, or promissory note, or an acceptance, indorsement, or assignment of either;
- (h) A deed, bond, or writing obligatory, or a warrant, order, or other security for the payment of money, or for the delivery or transfer of a valuable security, or for procuring or giving credit, whether negotiable or not, or an indorsement or assignment of any such document;
- (i) An accountable receipt, or an acknowledgment of the deposit, receipt, payment, or delivery of money or goods, or of any valuable security, or an indorsement or assignment of any such document;
- (j) A bill-of-lading, dock warrant, warehouse-keeper's certificate, warrant or order for the delivery of goods, or any other document used in the ordinary course of business as proof of the possession or control of goods, or as authorising, or purporting to authorise either by indorsement or by delivery, the possessor of the document to transfer or receive the goods represented by the document, or an indorsement or assignment of any such document;
- (k) A charter-party, or a shipping document accompanying a bill-of-lading, or an indorsement or assignment of either;
- (l) A policy of insurance of any kind;
- (m) A power of attorney or other authority to execute any such document as is hereinbefore in this section mentioned;
- (n) The signature of a witness to any of the documents hereinbefore in this section mentioned to which attestation is by law required;
- (o) A register of births, baptisms, marriages, deaths, or burials, authorised or required by law to be kept or any entry in any such register;

- (p) A copy of any such register or entry as last aforesaid, which is authorised or required by law to be given or sent to or by any person;
- (q) A seal used by a registrar appointed to keep any such register as is hereinbefore mentioned, or the impression of any such seal, or the signature of any such registrar;

the offender is liable to imprisonment with hard labour for fourteen years.

Documents  
relating to  
revenue and  
acts of State,  
etc.

(3) If the thing forged purports to be, or is intended by the offender to be understood to be or to be used as any of the things following, that is to say:—

- (a) The signature of the Governor, or of a member of the Executive Council, or of any of His Majesty's Principal Secretaries of State, or Under Secretaries of State, upon any grant, commission, warrant, or order;
- (b) A seal or stamp used for the purposes of the public revenue in Western Australia or of any other part of His Majesty's dominions or in any foreign State;
- (c) A document relating to the obtaining or receiving of any money payable on account of the public service of Western Australia or any other part of His Majesty's dominions or any other property of His Majesty in any part of his dominions or a power of attorney or other authority to execute any such document;

the offender is liable to imprisonment with hard labour for fourteen years.

Court seals,  
records,  
process,  
evidence,  
etc.

(4) If the thing forged purports to be, or is intended by the offender to be understood to be or to be used as, any of the things following, that is to say:—

- (a) The seal of a Court of Record in any part of His Majesty's dominions, or a seal used at the chambers of a Judge of the Supreme Court for stamping or sealing summonses or orders;

- (b) A seal or signature by virtue whereof any document can by law be used as evidence;
- (c) Any process of any Court of justice in any part of His Majesty's dominions;
- (d) A document issued or made by or out of or by the authority of any such Court as last aforesaid;
- (e) A document or copy of a document of any kind which document or copy is intended by the offender to be used as evidence in any such Court as last aforesaid;
- (f) A record or other document of or belonging to a Court of Record in any part of His Majesty's dominions;
- (g) A copy or certificate of any record of any such Court as last aforesaid;
- (h) An instrument, whether written or printed, or partly written and partly printed, which is made evidence by any Statute in force in Western Australia;
- (i) A document which a justice, notary public, or commissioner to administer oaths is required or authorised by law to make, attest, or issue, and purporting to be made, attested, or issued by any such person;
- (j) A stamp used for denoting the payment of fees or percentages in any Court of justice;
- (k) A license or certificate required or authorised by law to be given for the celebration of a marriage;
- (l) A consent to the marriage of a minor given by a person authorised by law to give it;
- (m) A certificate of marriage given under the provisions of the laws relating to the solemnisation of marriage;
- (n) A copy of the registry of a marriage;
- (o) A power of attorney or letter of attorney;

- (p) The signature of a witness to a power of attorney or letter of attorney;
- (q) A contract, or a writing which with other writings constitutes a contract or is evidence of a contract;
- (r) An authority or request for the payment of money or for the delivery of property;
- (s) An acquittance or discharge, or a voucher of having received any property, or any document which is evidence of the receipt of any property;
- (t) Any mark which under the authority of any Statute is impressed upon or otherwise attached to or connected with any article for the purpose of denoting the quality of the article or the fact that it has been examined or approved by or under the authority of some public body or public officer;
- (u) A certificate given under the provisions of the laws relating to quarantine;

the offender is liable to imprisonment with hard labour for seven years.

Telegrams.

(5) If the thing forged purports to be, or is intended by the offender to be understood to be, or to be used as, a message to be sent by telegraph, the offender is liable to the same punishment as if he had forged a document to the same effect as the message.

Uttering  
false  
documents  
and  
counterfeit  
seals.  
Code, s. 474.

474. Any person who knowingly and fraudulently utters a false document or writing, or a counterfeit seal, is guilty of an offence of the same kind and is liable to the same punishment as if he had forged the thing in question.

It is immaterial whether the false document or writing, or counterfeit seal, was made in Western Australia or elsewhere.

The term "fraudulently" means an intention that the thing in question shall be used or acted upon as genuine, whether in Western Australia or elsewhere,

to the prejudice of some person, whether a particular person or not, or that some person, whether a particular person or not, shall, in the belief that the thing in question is genuine, be induced to do or refrain from doing some act, whether in Western Australia or elsewhere.

475. Any person who knowingly utters as and for a subsisting and effectual document any document which has by any lawful authority been ordered to be revoked, cancelled or suspended, or the operation of which has ceased by effluxion of time or by death, or by the happening of any other event, is guilty of an offence of the same kind and is liable to the same punishment as if he had forged the document.

Uttering  
cancelled or  
exhausted  
documents.  
Code, s. 475.

476. Any person who knowingly utters as and for a valid and uncanceled stamp a stamp, or an impression of a seal used for any purpose connected with the public revenue of Western Australia or of any other part of His Majesty's dominions, which has been already used, or which has been cancelled, is guilty of an offence of the same kind and is liable to the same punishment as if he had forged the stamp or seal.

Uttering  
cancelled  
stamps.  
Code, s. 476.

477. Any person who, by means of any false and fraudulent representation as to the nature, contents, or operation of a document, procures another to sign or execute the document, is guilty of an offence of the same kind and is liable to the same punishment as if he had forged the document.

Procuring  
execution of  
documents  
by false  
pretences.  
Code, s. 477.

478. Any person who, with intent to defraud—

- (1) Obliterates, adds to, or alters the crossing on a cheque; or
- (2) Knowingly utters a crossed cheque, the crossing on which has been obliterated, added to, or altered;

Obliterating  
crossings on  
cheques.  
Code, s. 478.

is guilty of a crime and is liable to imprisonment with hard labour for seven years.

Making documents without authority.  
Code, s. 479.

479. Any person who, with intent to defraud—

- (1) Without lawful authority or excuse, makes, signs, or executes, for or in the name or on account of another person, whether by procuration or otherwise, any document or writing; or
- (2) Knowingly utters any document or writing so made, signed, or executed by another person;

is guilty of a crime, and is liable to imprisonment with hard labour for seven years.

Demanding property upon forged testamentary instruments.  
Code, s. 480.

480. Any person who procures the delivery or payment to himself or any other person of any property or money by virtue of any probate or letters of administration granted upon a forged testamentary instrument, knowing the testamentary instrument to have been forged, or upon or by virtue of any probate or letters of administration obtained by false evidence, knowing the grant to have been so obtained, is guilty of an offence of the same kind and is liable to the same punishment as if he had forged the document or thing by virtue whereof he procures the delivery or payment.

Purchasing forged bank notes.  
Code, s. 481.

481. Any person who, without lawful authority or excuse, the proof of which lies on him, purchases or receives from any person, or has in his possession, a forged bank note, whether filled up or in blank, knowing it to be forged, is guilty of a crime, and is liable to imprisonment with hard labour for seven years.

False certificate of message received by telegraph.  
Code, s. 482.

482. Any person who knowingly signs upon a document, which purports to be a copy of a document the contents whereof have been received by telegraph under the provisions of the laws authorising the transmission by telegraph of the contents of documents requiring signature or seal, a false certificate that it has been duly received under the provisions of those laws, is guilty of an offence of the same kind, and is liable to the same punishment as if he had forged the document of which it purports to be a copy.



483. Any person who, being employed in the Public Service, knowingly and with intent to defraud makes out or delivers to any person a warrant for the payment of any money payable by public authority for a greater or less amount than that to which the person on whose behalf the warrant is made out is entitled, is guilty of a crime, and is liable to imprisonment with hard labour for seven years.

Falsifying warrants for money payable under public authority.  
Code, s. 483.

484. Any person who, having the actual custody of any register or record kept by lawful authority, knowingly permits any entry which, in any material particular, is to his knowledge false, to be made in the register or record, is guilty of a crime, and is liable to imprisonment with hard labour for seven years.

Falsification of registers.  
Code, s. 484.

The offender cannot be arrested without warrant.

485. Any person who signs or transmits to a person authorised by law to register marriages a certificate of marriage, or any document purporting to be a certificate of marriage, which, in any material particular, is to his knowledge false, is guilty of a crime, and is liable to imprisonment with hard labour for seven years.

Sending false certificate of marriage to registrar.  
Code, s. 485.

486. (1) Any person who, knowingly and with intent to procure the same to be inserted in a register of births, deaths, and marriages, makes any false statement touching any matter required by law to be registered in any such register, is guilty of a misdemeanour, and is liable to imprisonment with hard labour for two years, and to a fine of Two hundred pounds.

False statements for the purpose of registers of births, deaths, and marriages.  
Code, s. 486.  
amended by No. 20 of 1954, s. 4.

(2) If on the hearing before justices of a charge made under this section the justices are of opinion that a case has been made out against the accused person but that the case is of a trivial nature or in the circumstances of the case the offender may be adequately punished upon summary conviction, the justices may ask him whether he desires to be tried by a jury or consents to the charge being dealt with summarily and if the accused person so consents he may be summarily convicted before two justices and is liable on the conviction to a fine of one hundred pounds.

Subsec. (2) added by No. 20 of 1954, s. 4.

False statements relating to registration of births, deaths, or marriages.  
Code, s. 487.

487. Every person required or permitted by the law relating to the registration of births, deaths, or marriages, or the law relating to cemeteries or burials, to give or supply to any person any certificate, information, or particulars, who wilfully gives or supplies any such certificate, information, or particulars which is or are false, misleading, or defective in any material respect, is guilty of a misdemeanour, and is liable to imprisonment with hard labour for two years, and to a fine of two hundred pounds.

Attempts to procure unauthorised status.  
Code, s. 488.

488. Any person who—

- (1) By any false representation procures any authority authorised by any Statute to issue certificates testifying that the holders thereof are entitled to any right or privilege, or to enjoy any rank or status, to issue to himself or any other person any such certificate; or
- (2) Falsely represents to any person that he has obtained any certificate issued by any such authority; or
- (3) By any false representation procures himself or any other person to be registered on any register kept by lawful authority as a person entitled to such a certificate, or as a person entitled to any right or privilege, or to enjoy any rank or status;
- (4) Falsely advertises or publishes himself as having obtained any such certificate, or as having been so registered;

is guilty of a misdemeanour, and is liable to imprisonment with hard labour for three years.

Circulating false copies of rules or lists of members of societies or companies.  
Code, s. 489.

489. Any person who knowingly, and with intent to deceive or defraud, or to enable another person to deceive or defraud, utters to any person a document which purports to be a copy of the memorandum or articles of association or other constitution of a corporation or joint stock company, or of the rules or by-laws of any corporation or society constituted under the authority of any Statute, but is not a true copy thereof, or a document which purports to be a list of the members of any such

corporation, company, or society, but is not a true list of such members, is guilty of a misdemeanour, and is liable to imprisonment with hard labour for three years.

CHAPTER L.—FORGERY AND LIKE OFFENCES PUNISHABLE ON SUMMARY CONVICTION.

490. Any person who—

- (1) Forges any document purporting to be, or intended by the offender to be understood to be, or to be used as a document required to be obtained or used under the provisions of the laws relating to the engagement or discharge of seamen, or the laws relating to the regulation of factories and shops; or
- (2) Utters any document which is required to be obtained or used under the provisions of these laws, and which has been issued to another person, and falsely represents himself to be the person named in the document;

Forgery  
of seaman's  
tickets.  
Code, s. 490.

is guilty of an offence, and is liable, on summary conviction, to imprisonment with hard labour for one year, or to a fine of Fifty pounds.

491. Any person who—

- (1) Fraudulently, and with intent that the stamp may be used again, removes an adhesive stamp, or causes an adhesive stamp to be removed, from any document; or
- (2) Fraudulently, and with intent that the stamp may be used again, affixes an adhesive stamp which has been removed from any document to another document; or
- (3) Knowingly utters an adhesive stamp which has been fraudulently, and with intent that it may be used again, removed from any document; or

Fraudulent  
use of  
adhesive  
stamps.  
Code, s. 491.

- (4) Knowingly utters any document which has on it an adhesive stamp that has been fraudulently, and with intent that it may be used again, removed from another document;

is guilty of an offence, and is liable, on summary conviction to a fine of Fifty pounds.

False  
warranties  
or labels  
relating to  
the sale of  
food.  
Code, s. 492.

**492.** Any person who—

- (1) Knowingly gives to a purchaser a false warranty in writing with respect to an article of food or a drug sold by him, whether as principal or agent; or
- (2) Knowingly gives with any article of food or or drug sold by him a label which falsely describes the article or drug sold; or
- (3) In any proceedings under the laws relating to the sale of food and drugs knowingly applies to an article of food or a drug a certificate or warranty given with respect to another article or drug;

is guilty of an offence, and is liable, on summary conviction, to a fine of Twenty pounds.

Provisions  
of this  
chapter  
alternative.  
Code, s. 493.

**493.** The provisions of this chapter are alternative and without prejudice to any other provisions of this Code relating to the same matters, but so that an offender cannot be twice convicted for the same act.

CHAPTER LI.—PREPARATION FOR FORGERY.

Instruments  
and materials  
for forgery.  
Code, s. 494.

**494.** Any person who, without lawful authority or excuse, the proof of which lies on him,—

- (1) Makes, or begins or prepares to make, or uses, or knowingly has in his possession or disposes of any paper resembling any paper such as is specially provided by the proper authority for the purpose of being used for making any of the things following, that is to say:—

- (a) Any document acknowledging or being evidence of the indebtedness of the Government of Western Australia, or of the Government of any

of His Majesty's dominions, or of any foreign Prince or State, or of any person carrying on the business of banking, to any person; or

- (b) Any stamp, license, permit, or other document used for the purposes of the public revenue of Western Australia, or of any other part of His Majesty's dominions; or
- (c) Any bank note; or any machinery or instrument or material for making any such paper, or capable of producing in or on paper any words, figures, letters, marks, or lines, resembling any words, figures, letters, marks, or lines, used in or on any paper specially provided for any such purpose; or
- (2) Impresses or makes upon any plate or material any words, figures, letters, marks, or lines, the print whereof resembles, in whole or part, the words, figures, letters, marks, or lines used in any such document as aforesaid; or
- (3) Uses, or knowingly has in his possession, or disposes of any plate or material upon which any such words, figures, letters, marks, or lines are impressed or made; or
- (4) Uses, or knowingly has in his possession, or disposes of any paper on which is written or printed the whole or any part of the usual contents of any such document as aforesaid;

is guilty of a crime, and is liable to imprisonment with hard labour for fourteen years.

495. Any person who, without lawful authority or excuse, the proof of which lies on him,—

Counterfeit  
stamps.  
Code, s. 495.

- (1) Makes or mends, or begins or prepares to make or mend, or uses, or knowingly has in his possession or disposes of, any die, plate, or instrument, capable of making an impression resembling that made by any die, plate, or instrument used for the purpose of making any stamp, whether

impressed or adhesive, which is used for the purposes of the public revenue in Western Australia or any other part of His Majesty's dominions or in any foreign State, or capable of producing in or on paper any words, figures, letters, marks, or lines, resembling any words, figures, letters, marks, or lines used in or on any paper specially provided by the proper authority for any such purpose; or

- (2) Knowingly has in his possession or disposes of any paper or other material which has on it the impression of any such die, plate, or instrument, or any paper which has on it or in it any such words, figures, letters, marks, or lines, as aforesaid; or
- (3) Fraudulently, and with intent that use may be made of any such stamp as aforesaid, or of any part of it, removes the stamp from any material in any way whatever; or
- (4) Fraudulently, and with intent that use may be made of any part of any such stamp, mutilates the stamp; or
- (5) Fraudulently fixes or places upon any material, or upon any such stamp, any stamp or part of a stamp which has been in any way removed from any other material or out of or from any other stamp; or
- (6) Fraudulently, and with intent that use may be made of any such stamp which has been already impressed upon or attached to any material, erases or otherwise removes, either really or apparently, from such material anything whatever written on it; or
- (7) Knowingly has in his possession or disposes of anything obtained or prepared by any such unlawful act as aforesaid;

is guilty of a crime and is liable to imprisonment with hard labour for fourteen years.

- (b) Falsely applies to goods any trade mark or any mark so nearly resembling a trade mark as to be calculated to deceive; or
- (c) Makes any die, block, machine, or other instrument for the purpose of forging, or of being used for forging, a trade mark; or
- (d) Applies any false trade description to goods; or
- (e) disposes of or has in his possession any die, block, machine, or other instrument for the purpose of forging a trade mark; or
- (f) Causes any of the things abovementioned to be done,

unless he proves that he acted without intent to defraud, is guilty of an offence.

(2) Any person who sells, or exposes for, or has in his possession for sale or any purpose of trade or manufacture, any goods or things to which any forged trade mark or false trade description is applied, or to which any trade mark or mark so nearly resembling a trade mark as to be calculated to deceive is falsely applied, as the case may be, is guilty of an offence, unless he proves—

- (a) That having taken all reasonable precautions against committing an offence, he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the trade mark, mark, or trade description; and
- (b) That on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things; or
- (c) That otherwise he had acted innocently.

(3) Any person guilty of an offence under this chapter is liable—

- (i) On conviction on indictment to imprisonment with hard labour for two years, or to fine at the discretion of the Court, or to both imprisonment and fine; or

- (ii) On summary conviction to imprisonment with hard labour for four months, or to a fine of Twenty pounds, and in the case of a second or subsequent conviction to imprisonment with hard labour for six months, or to a fine of Fifty pounds; and
- (iii) In any case to forfeit to His Majesty every chattel, article, instrument, or thing by means of or in relation to which the offence has been committed.

(4) The Court before whom any person is convicted under this section may order any forfeited article to be destroyed or otherwise disposed of as the Court thinks fit.

(5) Any person charged with an offence under this section before a Court of summary jurisdiction, on appearing before the Court, and before the charge is gone into, must be informed of his right to be tried on indictment, and if he requires, be so tried accordingly.

*Definitions.*  
Code, s. 497.

**497.** (1) For the purposes of this chapter—

The term “trade mark” includes any word or mark of any kind whatever which is lawfully used by any person to denote that any article is of his manufacture, workmanship, production, or merchandise, or is a thing of a peculiar or particular description made or sold by him.

The term “trade description” means any description, statement, or other indication direct or indirect:

- (a) As to the number, quantity, measure, gauge, or weight of any goods; or
- (b) As to the place or country in which any goods were made or produced; or
- (c) As to the mode of manufacturing or producing any goods; or
- (d) As to the material of which any goods are composed; or



- (e) as to any goods being the subject of an existing patent, privilege, or copyright:

and the use of any figure, word, or mark which, according to the custom of the trade, is commonly taken to be an indication of any of the above matters, is deemed to be a "trade description."

The term "false trade description" means a trade description which is false in a material respect as regards the goods to which it is applied, and includes every alteration of a trade description, whether by way of addition, effacement, or otherwise, where that alteration makes the description false in a material respect, and the fact that a trade description is a trade mark, or part of a trade mark, does not prevent such trade description being a false trade description.

The term "goods" means anything which is the subject of trade, manufacture, or merchandise.

The terms "person," "manufacturer," "dealer," or "trader," and "proprietor," include any body of persons corporate or unincorporate.

The term "name" includes any abbreviation of name.

(2) The provisions of this chapter respecting the application of a false trade description to goods extend to the application to goods of any such figures, words, or marks, or arrangement or combination thereof, whether including a trade mark or not, as are reasonably calculated to lead persons to believe that the goods are the manufacture or merchandise of some person other than the person whose manufacture or merchandise they really are.

(3) The provisions of this chapter respecting the application of a false trade description to goods, or respecting goods to which a false trade description is applied, extend to the application to goods of any

false name or initials of a person, and to goods with the false name or initials of a person applied, in like manner as if such name or initials were a trade description, and for the purpose of this chapter the term "false name or initials" means, as applied to any goods, any name or initials of a person which—

- (a) Are not a trade mark, or part of a trade mark; and
- (b) Are identical with, or a colourable imitation of, the name or initials of a person carrying on business in connection with goods of the same description, and not having authorised the use of such name or initials; or
- (c) Are either those of a fictitious person or of some person not *bona fide* carrying on business in connection with such goods.

Forging  
trade mark.  
Code, s. 498.

498. A person is deemed to forge a trade mark who either—

- (a) Without the assent of the proprietor of the trade mark makes that trade mark or a mark so nearly resembling that trade mark so as to be calculated to deceive; or
- (b) Falsifies any genuine trade mark, whether by alteration, addition, effacement, or otherwise;

and any trade mark or mark so made or falsified is in this chapter referred to as a forged trade mark.

In any prosecution for forging a trade mark the burden of proving the assent of the proprietor lies on the defendant.

Applying  
marks and  
descriptions.  
Code, s. 499.

499. (1) A person is deemed to apply a trade mark or mark or trade description to goods who—

- (a) Applies it to the goods themselves; or
- (b) Applies it to any covering, label, reel, or other thing in or with which the goods are sold or exposed or had in possession for any purpose of sale, trade, or manufacture; or

- (c) Places, encloses, or annexes any goods which are sold or exposed or had in possession for any purpose of sale, trade, or manufacture, in, with, or to any covering, label, reel, or other thing to which a trade mark or trade description has been applied;
- (d) Uses a trade mark or mark or trade description in any manner calculated to lead to the belief that the goods in connection with which it is used are designated or described by that trade mark or mark or trade description.

(2) The expression "covering" includes any stopper, case, bottle, vessel, box, cover, capsule, case, frame, or wrapper; and the expression "label" includes any band or ticket.

A trade mark or mark, or trade description, is deemed to be applied whether it is woven, impressed, or otherwise worked into, or annexed or affixed to the goods, or to any covering, label, reel, or other thing.

(3) A person is deemed to falsely apply to goods a trade mark or mark who without the assent of the proprietor of a trade mark applies such trade mark, or a mark so nearly resembling it as to be calculated to deceive.

In any prosecution for falsely applying a trade mark or mark to goods, the burden of proving the assent of the proprietor lies on the defendant.

**500.** Where any person is charged with making any die, block, machine, or other instrument for the purpose of forging, or being used for forging, a trade mark, or with falsely applying to goods any trade mark or any mark so nearly resembling a trade mark as to be calculated to deceive, or with applying to goods any false trade description, or causing any of the things in this section abovementioned to be done, and proves:

- (a) That in the ordinary course of his business he is employed, on behalf of other persons, to make dies, blocks, machines, or other instruments for making, or being used in making, trade marks, or as the case may be,

Exemption of certain persons employed in ordinary course of business.  
Code, s. 500.

to apply marks or descriptions to goods, and that in the case which is the subject of the charge he was so employed by some person resident in the State, and was not interested in the goods by way of profit or commission, dependent on the sale of such goods; and

- (b) That he took reasonable precautions against committing the offence charged; and
- (c) That he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the trade mark, mark, or trade description; and
- (d) That he gave to the prosecutor all the information in his power with respect to the persons on whose behalf the trade mark, mark, or trade description was applied;

he must be discharged from the prosecution, but is liable to pay the costs incurred by the prosecutor, unless he has given due notice to him that he will rely on the above defence.

Application  
to watches.  
Code, s. 501.

501. Where a watch case has thereon any words or marks which constitute, or are by common repute considered as constituting, a description of the country in which the watch was made, and the watch bears no description of the country where it was made, those words or marks *prima facie* are deemed to be a description of that country within the meaning of this chapter, and the provisions of this chapter, with respect to goods to which a false trade description has been applied, and with respect to selling or exposing for or having in possession for sale, or any purpose of trade or manufacture, goods with a false trade description, apply accordingly, and for the purpose of this section the term "watch" means all that portion of a watch which is not the watch case.

Trade mark,  
how  
described.  
Code, s. 502.

502. In any information, indictment, or other document, in which any trade mark or forged trade mark is intended to be mentioned, it is sufficient, without further description, and without any copy or *fac simile*, to state such trade mark or forged trade mark to be a trade mark or forged trade mark.

503. In any prosecution for an offence under this chapter, in the case of imported goods, evidence of the port of shipment is *prima facie* evidence of the place or country in which the goods were made or produced.

Rule as to  
evidence.  
Code, s. 503.

504. (1) When, upon complaint of an offence under this chapter, a justice issues either a summons requiring the defendant charged by such complaint to appear to answer to the same, or a warrant for the arrest of such defendant, and either the said justice on or after issuing such summons or warrant, or any other justice, is satisfied by complaint on oath that there is reasonable cause to suspect that any goods or things by means of or in relation to which such offence has been committed are in any house or premises of the defendant, or otherwise in his possession or under his control in any place, such justice may issue a warrant under his hand by virtue of which it shall be lawful for any constable named or referred to in the warrant to enter such house, premises, or place at any reasonable time by day, and to search there for and seize and take away those goods or things; and any goods or things seized under any such warrant must be brought before a Court of summary jurisdiction for the purpose of its being determined whether the same are or are not liable to forfeiture under this chapter.

Search  
warrant.  
Code, s. 504.

(2) If the owner of any goods or things which, if the owner thereof had been convicted, would be liable to forfeiture under this chapter, is unknown or cannot be found, a complaint may be laid for the purpose only of enforcing such forfeiture, and a Court of summary jurisdiction may cause notice to be advertised stating that, unless cause is shown to the contrary at the time and place named in the notice, such goods or things will be forfeited, and at such time and place the Court, unless the owner or any person on his behalf, or other person interested in the goods or things, shows cause to the contrary, may order such goods or things or any of them to be forfeited.

(3) Any goods or things forfeited under this section, or under any other provision of this chapter, may be destroyed or otherwise disposed of in such manner as the Court by which the same are forfeited may direct, and the Court may, out of any proceeds which may be realised by the disposition of such goods (all trade marks and trade descriptions being first obliterated), award to any innocent person any loss he may have innocently sustained in dealing with such goods.

Costs of  
defence or  
prosecution.  
Code, s. 505.

505. On any prosecution under this chapter the Court may order costs to be paid to the defendant by the prosecutor or to the prosecutor by the defendant, having regard to the information given by and the conduct of the defendant and prosecutor respectively.

Limitation of  
prosecution.  
Code, s. 506.

506. No prosecution for an offence under this chapter may be commenced after the expiration of three years next after the commission of the offence, or one year next after the first discovery thereof by the prosecutor, whichever expiration first happens.

Provisions  
of this  
chapter as to  
false  
description  
not to apply  
in certain  
cases.  
Code, s. 507.

507. Where, on the twenty-sixth day of November, one thousand eight hundred and eighty-eight, a trade description was lawfully and generally applied to goods of a particular class, or manufactured by a particular method, to indicate the particular class or method of manufacture of such goods, the provisions of this chapter with respect to false trade descriptions do not apply to such trade description: Provided that where such trade description includes the name of a place or country, and is calculated to mislead as to the place or country where the goods to which it is applied were actually made or produced, and the goods are not actually made or produced in that place or country, the provisions of this section do not apply unless there is added to the trade description, immediately before or after the name of that place or country, in an equally conspicuous manner with that name, the name of the place or country in which the goods were actually made or produced, with a statement that they were made or produced there.

508. (1) Nothing in this chapter exempts any person from any action, suit, or other proceeding which might, but for the provisions of this chapter, be brought against him.

Savings.  
Code, s. 508.

(2) Nothing in this chapter entitles any person to refuse to make a complete discovery, or to answer any question or interrogatory in any action, but such discovery or answer shall not be admissible in evidence against such person in any prosecution for an offence under this chapter.

(3) Nothing in this chapter may be construed so as to render liable to any prosecution or punishment any servant of a master resident in the State who *bona fide* acts in obedience to the instructions of such master, and, on demand made by or on behalf of the prosecutor, gives full information as to his master.

509. Any person who falsely represents that any goods are made by a person holding a Royal Warrant, or made for the service of His Majesty, or made for any of the Royal Family, or made for any Government Department either in the United Kingdom or in any of His Majesty's possessions, is liable, on summary conviction, to a fine of Twenty pounds.

False representation  
as to Royal  
Warrant, etc.  
Code, s. 509.

#### CHAPTER LIII.—PERSONATION.

510. Any person who, with intent to defraud any person, falsely represents himself to be some other person living or dead, is guilty of an offence which, unless otherwise stated, is a misdemeanour; and he is liable to imprisonment with hard labour for three years.

Personation  
in general.  
Code, s. 510.

If the representation is that the offender is a person entitled by will or operation of law to any specific property, and he commits the offence with intent to obtain such property, or possession thereof, he is guilty of a crime, and is liable to imprisonment with hard labour for fourteen years.

511. Any person who falsely and deceitfully personates any owner of any share or interest in any company, or of any share certificate or coupon

Personation  
of owner of  
shares.  
Code, s. 511.

issued under any Act relating to companies, and thereby obtains, or endeavours to obtain any such share or interest, or share certificate or coupon or receives or endeavours to receive any money due to any such owner, as if the offender were the true and lawful owner, is guilty of a crime, and is liable to imprisonment with hard labour for life.

Falsely  
acknowledg-  
ing deeds,  
recognis-  
ances, etc.  
Code, s. 512.

512. Any person who, without lawful authority or excuse, the proof of which lies on him, makes, in the name of any other person, before any Court or person lawfully authorised to take such an acknowledgment, an acknowledgment of liability of any kind, or an acknowledgment of a deed or other instrument, is guilty of a crime, and is liable to imprisonment with hard labour for seven years.

Personation  
of a person  
named in a  
certificate.  
Code, s. 513.

513. Any person who utters any document which has been issued by lawful authority to another person, and whereby that other person is certified to be a person possessed of any qualification recognised by law for any purpose, or to be the holder of any office, or to be entitled to exercise any profession, trade, or business, or to be entitled to any right or privilege, or to enjoy any rank or status, and falsely represents himself to be the person named in the document, is guilty of an offence of the same kind, and is liable to the same punishment as if he had forged the document.

Lending  
certificate  
for  
personation.  
Code, s. 514.

514. Any person who, being a person to whom any document has been issued by lawful authority, whereby he is certified to be a person possessed of any qualification recognised by law for any purpose, or to be the holder of any office, or to be entitled to exercise any profession, trade, or business, or to be entitled to any right or privilege, or to enjoy any rank or status, lends the document to another person with intent that that other may represent himself to be the person named therein, is guilty of a misdemeanour, and is liable to imprisonment with hard labour for three years.



*Division IV.—Offences connected with Trade and Breach of Contract, and Corruption of Agents, Trustees, and others.*

CHAPTER LIV.—FRAUDULENT DEBTORS.

515. In this chapter the term “a bankrupt” means a person with respect to whom any proceedings have been taken under the provisions of the laws relating to bankrupt debtors which result in his affairs being administered under the provisions of those laws for the benefit of his creditors.

Definition.  
Code, s. 515.

Such a person is deemed to have been a bankrupt from the time when the proceedings were taken, whether that result had or had not happened when the unlawful act in question was done.

516. Any person who—

- (1) Being a bankrupt, departs from Western Australia and takes with him, or attempts or prepares to depart from Western Australia and to take with him any part of his property to the amount of Twenty pounds, which ought by law to be divided amongst his creditors; or
- (2) Departs from Western Australia and takes with him, or attempts or prepares to depart from Western Australia and to take with him any part of his property to the amount of Twenty pounds, which ought by law, in the event of his becoming bankrupt, to be divided among his creditors, and within four months afterwards becomes a bankrupt;

Absconding with property in contemplation of or immediately after bankruptcy.  
Code, s. 516.

is guilty of a crime, and is liable to imprisonment with hard labour for two years.

It is a defence to a charge of any of the offences defined in this section to prove that the accused person had no intent to defraud.

517. Any person who—

- (1) Being a bankrupt—

- (a) Fraudulently removes any part of his property to the value of Ten pounds or upwards; or

Frauds by bankrupts.  
Code, s. 517.

- (b) Fraudulently parts with, alters, or makes any omission in, or is privy to fraudulently parting with, altering, or making any omission in, any document affecting or relating to his property or affairs; or
- (2) Does any such act as aforesaid, and within four months afterwards becomes a bankrupt; or
- (3) Being a bankrupt, attempts to account for any part of his property by alleging fictitious losses or expenses; or
- (4) Attempts, at a meeting of his creditors, to account for any part of his property by fictitious losses or expenses, and within four months afterwards becomes a bankrupt; or
- (5) By any false representation or other fraud obtains any property on credit and does not pay for the same, and within four months afterwards becomes a bankrupt;

is guilty of a misdemeanour, and is liable to imprisonment with hard labour for two years.

Other  
frauds by  
bankrupts.  
Code, s. 518.

**518.** Any person who—

- (1) Being a bankrupt—
  - (a) Conceals any part of his property to the amount of Ten pounds; or
  - (b) Conceals any debt due to or from him; or
- (2) Does any of the following acts, that is to say—
  - (a) Conceals any part of his property to the amount of Ten pounds; or
  - (b) Conceals any debt due to or from him; or
  - (c) Obtains any property on credit under the false pretence of carrying on business and dealing in the ordinary way of trade, and does not pay for the same; or

- (d) Pawns, pledges, or disposes of, otherwise than in the ordinary way of trade, any property which he has obtained on credit and has not paid for;

and within four months afterwards becomes a bankrupt;

is guilty of a misdemeanour, and is liable to imprisonment with hard labour for two years.

It is a defence to a charge of any of the offences defined in this section to prove that the accused person had no intent to defraud.

**519.** Any person who—

(1) Being a bankrupt—

- (a) Conceals, destroys, alters, mutilates, or falsifies, any book, document, valuable security, or account relating to his property or affairs, or any entry in any such book, document, or account, or is privy to any such act; or
- (b) Makes or is privy to making any false entry in any such book, document, or account; or

(2) Does or is privy to any such act as aforesaid, and within four months afterwards becomes a bankrupt;

is guilty of a misdemeanour, and is liable to imprisonment with hard labour for two years.

It is a defence to a charge of any of the offences defined in this section to prove that the accused person had no intent to conceal the state of his affairs or to defraud.

**520.** Any person whose affairs are in course of administration under the provisions of the laws relating to bankrupt debtors who—

- (1) Knowing or believing that a false debt has been proved by any person in the course of such administration, fails for the period of a month to give information thereof to the trustee of his property; or

Falsification  
of books by  
bankrupts.  
Code, s. 519.

Frauds by  
bankrupts in  
course of  
bankruptcy  
proceedings.  
Code, s. 520.

- (2) Makes any false representation or commits any other fraud for the purpose of obtaining the consent of his creditors or any of them to any agreement with reference to his affairs or to any proceedings taken under or by virtue of such administration;

is guilty of a misdemeanour, and is liable to imprisonment with hard labour for two years.

Failure by  
bankrupts to  
discover  
property.  
Code, s. 521.

521. Any person whose affairs are in course of administration under the provisions of the laws relating to bankrupt debtors who—

- (1) Fails to fully and truly discover to the trustee of his property, to the best of his knowledge and belief, all his property, real and personal, and how, and to whom, and for what consideration, and when, he disposed of every part thereof, except such part as has been disposed of in the ordinary way of his trade, if any, or laid out in the ordinary expense of his family; or
- (2) Fails to deliver to the trustee, or as he directs, any part of his real and personal property which is in his custody or under his control, and which he is required by law to deliver; or
- (3) Fails to deliver to the trustee, or as he directs, any book, document, paper, or writing, which is in his custody or under his control, and which relates to his property or affairs; or
- (4) Omits or is privy to omitting any material particular from any statement relating to his affairs;

is guilty of a misdemeanour, and is liable to imprisonment with hard labour for two years.

It is a defence to a charge of any of the offences defined in this section to prove that the accused person had no intent to conceal the state of his affairs or to defraud.

522. Any person who omits to keep proper books of account showing the true state of his affairs, and who, within three years, afterwards becomes a bankrupt, is guilty of a misdemeanour, and is liable to imprisonment with hard labour for two years.

Failure to  
keep proper  
books.  
Code, s. 522.

It is a defence to a charge of the offence defined in this section to prove that the accused person had no intention to conceal the state of his affairs, or to defraud.

523. Any person who, being a bankrupt, prevents the production of any book, document, paper or writing, affecting or relating to his property or affairs, is guilty of a misdemeanour, and is liable to imprisonment with hard labour for two years.

Concealing  
documents.  
Code, s. 523.

It is a defence to a charge of the offence defined in this section to prove that the accused person had no intent to conceal the state of his affairs or to defraud.

524. Any person who, with intent to defraud the creditors of a bankrupt, receives any property from the bankrupt, or fails to deliver to the trustee of the property of the bankrupt any property which forms part of the estate of the bankrupt, is guilty of a misdemeanour, and is liable to imprisonment with hard labour for two years.

Receiving  
bankrupt's  
property  
with intent  
to defraud.  
Code, s. 524.

525. Any person who—

- (1) Being a creditor of a bankrupt, or being a creditor of a debtor who has taken proceedings for a composition, assignment, or arrangement with or for the benefit of his creditors under the provisions of the laws relating to bankrupt or insolvent debtors, makes in the bankruptcy, or in the proceedings for a composition, assignment, or arrangement, with intent to defraud, a proof or declaration of debt or statement of account, which, in any material particular, is to his knowledge false; or
- (2) Not being a creditor of a bankrupt, or of a person who has taken any such proceedings, makes in the bankruptcy, or in the

Making false  
claim in  
bankruptcy.  
Code, s. 525.

proceedings for a composition, assignment, or arrangement, with intent to defraud, a proof or declaration of debt;

is guilty of a misdemeanour, and is liable to imprisonment with hard labour for one year.

Concealing  
property of  
bankrupts.  
Code, s. 526.

526. Any person who conceals any part of the property of a bankrupt, and does not, within forty-two days after the appointment of a trustee of the property of the bankrupt, discover such property to the trustee, or to the Registrar of the Supreme Court, is guilty of an offence, and is liable, on summary conviction, to imprisonment with hard labour for six months.

Fraudulent  
dealing with  
property by  
debtors.  
Code, s. 527.

527. Any person who, with intent to defraud his creditors or any of them,—

- (1) Makes any gift, delivery, or transfer of his property, or any charge on his property; or
- (2) Conceals or removes any part of his property after or within two months before the date of any unsatisfied judgment or order for payment of money obtained against him;

is guilty of a misdemeanour, and is liable to imprisonment with hard labour for one year.

Undischarged  
bankrupt  
obtaining  
credit to  
extent of  
£20.  
Code, s. 528.

528. Any person who, being an undischarged bankrupt, obtains credit to the extent of Twenty pounds or upwards from any person without informing such person that he is an undischarged bankrupt, is guilty of a misdemeanour, and is liable to imprisonment with hard labour for two years.

#### CHAPTER LV.—CORRUPTION OF AGENTS, TRUSTEES, AND OTHERS IN WHOM CONFIDENCE IS REPOSED.

Receipt or  
solicitation  
of secret  
commission  
by an agent a  
misdemean-  
our.  
Code, s. 529.

529. If any agent corruptly receives or solicits from any person, for himself or for any other person, any valuable consideration—

- (a) as an inducement or reward for, or otherwise on account of, doing or forbearing to do or having done or foreborne to do any act in relation to his principal's affairs or business; or

- (b) the receipt or any expectation of which would in any way tend to influence him to show or to forbear to show favour or disfavour to any person in relation to his principal's affairs or business,

he shall be guilty of a misdemeanour.

530. If any person corruptly gives or offers to any agent any valuable consideration—

Gift or offer of secret commission to an agent a misdemeanour.

Code, s. 530.

- (a) as an inducement or reward for, or otherwise on account of, doing or forbearing to do or having done or forborne to do any act in relation to his principal's affairs or business; or

- (b) the receipt or any expectation of which would in any way tend to influence him to show or forbear to show favour or disfavour to any person in relation to his principal's affairs or business,

he shall be guilty of a misdemeanour.

531. (1) Any valuable consideration given or offered to any parent, husband, wife, or child of any agent, or to his partner, clerk or employee, or at the agent's request to any person by any person having business relations with the principal of such agent, shall be deemed to have been given or offered to the agent.

Secret gifts to parent, wife, child, partner, etc., of agent deemed gifts to agent.

Code, s. 531.

(2) Any valuable consideration received or solicited by any parent, husband, wife, or child of any agent, or by his partner, clerk, or employee, from any person having business relations with the principal of such agent shall be deemed to have been received or solicited by the agent, unless it be proved that the valuable consideration was so received or solicited without the consent, knowledge, or privity of the agent.

Secret gifts received by parent, wife, child, partner, etc., of agent deemed received by agent.

532. If, with intent to deceive or defraud the principal, any person gives to any agent, or if any agent receives or uses or gives to the principal, any receipt, invoice, account, or document in respect of

Giving to agent false or misleading receipt or account a misdemeanour.

Code, s. 532.

which or in relation to a dealing, transaction, or matter in which the principal is interested and which—

- (a) contains any statement which is false or erroneous or defective in any important particular, or is in any way likely to mislead the principal; or
- (b) omits to state explicitly and fully the fact of any commission, percentage, bonus, discount, rebate, repayment, gratuity, or deduction having been made, given, or allowed or agreed to be made, given, or allowed,

he shall be guilty of a misdemeanour.

Gift or receipt of secret commission in return for advice given.  
Code, s. 533.

533. Whenever any advice is given by one person to another, and such advice is in any way likely or intended to induce or influence the person advised—

- (a) to enter into a contract with any third person; or
- (b) to appoint or join with another in appointing, or to vote for or to aid in obtaining the election or appointment, or to authorise or join with another in authorising the appointment, of any third person as trustee,

and any valuable consideration is given by such third person to the person giving the advice without the assent of the person advised, the gift or receipt of the valuable consideration shall be a misdemeanour, but this section shall not apply when the person giving the advice was, to the knowledge of the person advised, the agent of such third person, or when the valuable consideration was not given in respect of such advice.

Offer or solicitation of secret commission in return for advice given.  
Code, s. 534.

534. Any offer or solicitation of a valuable consideration in respect of any advice given or to be given by one person to another with a view to induce or influence the person advised—

- (a) to enter into a contract with the person offering or solicited; or



- (b) to appoint or join with another in appointing, or to vote for or to aid in obtaining the election or appointment, or to authorise or join with another in authorising the appointment, of the person offering or solicited as trustee,

and with the intent that the gift or receipt of such valuable consideration is not to be made known to the person advised, shall be a misdemeanour, but this section shall not apply when such firstmentioned person is the agent of the person offering or solicited.

535. If any person offers or gives any valuable consideration to a trustee, or if any trustee receives or solicits any valuable consideration for himself or for any other person, without the assent of the persons beneficially entitled to the estate, or of a Judge of the Supreme Court, as an inducement or reward for appointing or having appointed or for joining or having joined with another in appointing, or for authorising or having authorised or for joining or having joined with another in authorising any person to be appointed in his stead or instead of him and any other person as trustee he shall be guilty of a misdemeanour.

Secret commission to trustee in return for substituted appointment.  
Code, s. 535.

536. Any person who, being within Western Australia, knowingly aids, abets, counsels, or procures, or who attempts or takes part in or is in any way privy to—

- (a) doing any act or thing in contravention of this Chapter;
- (b) doing any act or thing outside Western Australia, or partly within and partly outside Western Australia, which if done within Western Australia, would be in contravention of this Chapter;

Aiding and abetting offences within or outside Western Australia.  
Code, s. 536.

shall be guilty of a misdemeanour.

537. Any director, manager, or officer of a company, or any person acting for another, who knowingly takes part in or is in any way privy to doing or who attempts to do any act or thing without authority which, if authorised, would be in contravention of any of the provisions of this Chapter shall be guilty of a misdemeanour.

Liability of directors, etc., acting without authority.  
Code, s. 537.

Penalty on  
conviction.  
Code, s. 538.

538. Any person, on conviction of a misdemeanour under any of the provisions of this Chapter, shall—

- (a) be liable, if a corporation, to a penalty not exceeding five hundred pounds, and if any other person, to be imprisoned for any period not exceeding two years, with hard labour; and
- (b) in addition, be liable to be ordered to pay to such person, and in such manner as the court directs, the amount or value, according to the estimation of the court, of any valuable consideration received or given by him or any part thereof; and such order shall be enforceable in the same manner as a judgement of the court.

Court may  
order with-  
drawal of  
trifling or  
technical  
cases.  
Code, s. 539.

539. Upon the trial of a person for any offence under this Chapter, if it appears to the court that the offence charged is in the particular case of a trifling or merely technical nature, or that in the particular circumstances it is inexpedient to proceed to a conviction, the court may in its discretion, and for reasons stated on the application of the accused, withdraw the case from the jury, and this shall have the same force and effect as if the jury had returned a verdict of not guilty, except that the court may, if it think fit, make the order mentioned in the last preceding section.

Protection  
of witness  
giving  
answers  
criminating  
himself.  
Code, s. 540.

540. A person who is called as a witness in any proceedings shall not be excused from answering any question relating to any offence under this Chapter on the ground that the answer thereto may criminate or tend to criminate him—

Provided that—

- (a) a witness who, in the judgment of the court or justices, answers truly all questions which he is required by the court or justices to answer shall be entitled to receive a certificate from the court or justices stating that such witness has so answered; and

- (b) an answer by a person to a question put by or before the court or justices in any proceeding under this Chapter shall not, except in the case of any criminal proceedings for perjury in respect of such evidence, be in any proceeding civil or criminal admissible in evidence against him.

541. When a person has received a certificate as aforesaid, and any criminal proceeding is at any time instituted against him in respect of the offence which was in question in the proceeding in which the said person was called as a witness, the court or justices having cognizance of the case shall, on proof of the certificate and of the identity of the offence in question the two cases, stay the proceedings.

Stay of proceedings against such witness.  
Code, s. 541.

542. In any prosecution under this Chapter it shall not amount to a defence to show that any such valuable consideration as is mentioned in this Chapter is customary in any trade or calling.

Custom of itself no defence.  
Code, s. 542.

543. For the purposes of this Chapter, where it is shown that any valuable consideration has been received or solicited by an agent from or given or offered to any agent by any person having business relations with the principal, without the assent of the principal, the burden of proving that such valuable consideration was not received, solicited, given, or offered in contravention of any of the provisions of this Chapter shall be on the accused.

Burden of proof that gift not secret commission.  
Code, s. 543.

544. No prosecution for an offence under this Chapter shall be commenced after the expiration of two years next after the commission of the offence, or six months next after the first discovery thereof by the principal or the person advised, as the case may be, whichever expiration first happens.

Limit of time for prosecution.  
Code, s. 544.

545. No prosecution for an offence under this Chapter shall be commenced without the consent of the Attorney General.

Consent of Attorney General to prosecution.  
Code, s. 545.

Interpre-  
tations.  
Code, s. 546.

546. In the construction of this Chapter, the following provisions shall apply:—

- (1) The word “Agent” shall include any corporation or other person acting or having been acting or desirous or intending to act for or on behalf of any corporation or other person, whether as agent, partner, co-owner, clerk, servant, employee, banker, broker, auctioneer, architect, clerk of works, engineer, solicitor, surveyor, buyer, salesman, foreman, trustee, executor, administrator, liquidator, trustee in bankruptcy or of a deed of arrangement, receiver, director, manager or other officer or member of committee or governing body of any corporation, club, partnership, or association, or in any other capacity, either alone or jointly with any other person, and whether in his own name or in the name of his principal, or otherwise; and a person serving under the Crown is an agent within the meaning of this Chapter:
- (2) The word “principal” shall include a corporation or other person for or on behalf of whom the agent acts, has acted, or is desirous or intending to act:
- (3) The word “trustee” shall include trustee, executor, administrator, liquidator, trustee in bankruptcy or of a deed of arrangement, receiver, director, committee of the estate of an insane person having power to appoint a trustee or person entitled to obtain probate of the will or letters of administration to the estate of a deceased person:
- (4) The words “valuable consideration” shall include any money, loan, office, place, employment, agreement to give employment, benefit, or advantage whatsoever, and any commission or rebate, deduction, or percentage, bonus, or discount, or any forbearance to demand any money or money’s worth or valuable thing; and the acceptance of any of the said things shall be deemed the receipt of a valuable consideration:

- (5) The words "valuable consideration," when used in connection with the offer thereof, shall include any offer of any agreement or promise to give, and every holding out of any expectation of valuable consideration:
- (6) The words "valuable consideration," when used in connection with the receipt thereof, shall include any acceptance of any agreement, promise, or offer to give, and of any holding out of any expectation of valuable consideration:
- (7) The word "contract" shall include contract of sale or of employment or any other contract whatever:
- (8) Any act or thing prohibited by this Chapter is prohibited whether done directly or indirectly by the person mentioned or by or through any other person:
- (9) The words "solicit any valuable consideration," and "valuable consideration solicited," and words to the like effect shall be construed with the following direction, namely:—That every agent who shall divert, obstruct, or interfere with the proper course of business or manufacture, or shall impede or obstruct, or shall fail to use due diligence in the prosecution of any negotiation or business with the intent to obtain the gift of any valuable consideration from any person interested in the said negotiation or business or with intent to injure any such person shall be deemed to have solicited a valuable consideration from a person having business relations with the principal of such agent:
- (10) The words "person having business relations with the principal" shall include every corporation or other person, whether as principal or agent, carrying on or having carried on or desirous or intending to carry on any negotiation or business with or engaged or having been engaged or

desirous or intending to be engaged in the performance of any contract with or in the execution of any work or business for or in the supply of any goods or chattels to any principal, and shall also include any agent of such corporation or other person:

- (11) The words "in relation to his principal's affairs or business" shall imply the additional words "whether within the scope of his authority or course of his employment as agent or not": and
- (12) The words "advice given" and words to the like effect shall include every report, certificate, statement, and suggestion intended to influence the person to whom the same may be made or given, and every influence exercised by one person over another.

#### CHAPTER LVI.—OTHER OFFENCES.

Concealment  
by officers of  
companies  
on reduction  
of capital.  
Code, s. 547.

547. Any person who, being a director or officer of a joint stock company, the capital of which is proposed to be reduced,—

- (1) Conceals the name of any creditor of the company who is entitled to object to the proposed reduction; or
- (2) Knowingly misrepresents the nature or amount of the debt or claim of any creditor of the company; or
- (3) Is privy to any such concealment or misrepresentation as aforesaid;

is guilty of a misdemeanour, and is liable to imprisonment with hard labour for three years.

Falsification  
of books of  
companies.  
Code, s. 548.

548. Any person who, being a director, officer, or contributory of a company which is in course of being wound up, under the provisions of the laws relating to joint stock companies, does any of the

following acts with intent to deceive or defraud, or to cause or enable another person to deceive or defraud, that is to say:—

- (1) Conceals, destroys, alters, mutilates, or falsifies any book, document, valuable security, or account relating to the affairs of the company, or any entry in any such book, document, or account, or is privy to any such act; or
- (2) Makes or is privy to making any false entry in any book, document, or account, belonging to the company;

is guilty of a misdemeanour, and is liable to imprisonment with hard labour for two years.

549. When a mark has been attached to any article, or a certificate has been given with respect to any article, under the authority of any Statute, for the purpose of denoting the quality of the article, or the fact that it has been examined or approved by or under the authority of some public body or public officer, any person who mixes with the article so marked or certified any other article which has not been so examined or approved, is guilty of a misdemeanour, and is liable to imprisonment with hard labour for three years.

Mixing  
uncertified  
with certified  
articles.  
Code, s. 549.

550. Any person who, with a view to compel any other person to abstain from doing or to do, any act which such other person has a legal right to do or abstain from doing, wrongfully and without legal authority:—

Intimidation  
or annoyance  
by violence  
or otherwise.  
Code, s. 550.

- (1) Uses violence to, or threatens with violence, such other person, or his wife or children, or injures his property, real or personal; or
- (2) Persistently follows such other person from place to place; or
- (3) Hides any tools, clothes, or other property owned or used by such other person, or deprives him of or hinders him in the use thereof; or

- (4) Watches or besets the house or other place where such person resides, or works, or carries on his business, or happens to be, or the approach to such house or place; or
- (5) Follows such other person with two or more other persons in a disorderly manner in or through any street or road;

is guilty of an offence, and is liable on summary conviction, or on indictment as hereinafter mentioned, to imprisonment with hard labour for three months, or to a fine of Twenty pounds.

Attending at or near the house or place where a person resides, or carries on business, or happens to be, or the approach to such house, or place, in order merely to obtain or communicate information, is not watching or besetting within the meaning of this section.

Person  
accused  
before Court  
of summary  
jurisdiction  
may elect  
to be tried on  
indictment.  
Code, s. 551.

551. Any person charged before a Court of summary jurisdiction under the last preceding section may, on appearing before such Court, declare that he objects to being tried for such offence by a Court of summary jurisdiction, and thereupon the Court may deal with the case in all respects as if the accused were charged with an indictable offence, and not with an offence punishable on summary conviction, and the offence may be prosecuted by indictment accordingly.

#### PART VII.—PREPARATION TO COMMIT OFFENCES: CONSPIRACY: ACCESSORIES AFTER THE FACT.

##### CHAPTER LVII.—ATTEMPTS AND PREPARATION TO COMMIT OFFENCES.

Attempts to  
commit  
offences.  
Code, s. 552.

552. Any person who attempts to commit any indictable offence is guilty of an indictable offence, which, unless otherwise stated, is a misdemeanour.

When a person who commits an indictable offence is punishable on summary conviction, a person who attempts to commit such an offence may also be summarily convicted.



553. Any person who attempts to commit a crime of such a kind that a person convicted of it is liable to the punishment of death or of imprisonment with hard labour for a term of fourteen years or upwards, with or without any other punishment, is liable, if no other punishment is provided, to imprisonment with hard labour for seven years.

Punishment  
of attempts  
to commit  
crimes.  
Code, s. 553.

Any person who attempts to commit a crime of any other kind is liable, if no other punishment is provided, to a punishment equal to one-half of the greatest punishment to which an offender convicted of the crime which he attempted to commit is liable.

554. Any person who attempts to commit a misdemeanour is liable, if no other punishment is provided, to a punishment equal to one-half of the greatest punishment to which an offender convicted of the offence which he attempted to commit is liable.

Punishment  
of attempts  
to commit  
misdemean-  
ours.  
Code, s. 554.

555. When a person is convicted of attempting to commit an offence, if it is proved that he desisted of his own motion from the further prosecution of his intention, without its fulfilment being prevented by circumstances independent of his will, he is liable to one-half only of the punishment to which he would otherwise be liable. If that punishment is imprisonment with hard labour for life, the greatest punishment to which he is liable is imprisonment with hard labour for seven years.

Reduction of  
punishment.  
Code, s. 555.

556. Any person who attempts to procure another to do any act or make any omission, whether in Western Australia or elsewhere, of such a nature that, if the act were done or the omission were made, an offence would thereby be committed under the laws of Western Australia, or the laws in force in the place where the act or omission is proposed to be done or made, whether by himself or by that other person, is guilty of an offence of the same kind, and is liable to the same punishment as if he had himself attempted to do the same act or make the same omission in Western Australia.

Attempts to  
procure  
commission  
of criminal  
acts.  
Code, s. 556.

Provided that if the act or omission is proposed to be done or made at a place not in Western Australia, the punishment cannot exceed that which he would have incurred under the laws in force where the act or omission was proposed to be done or made, if he had himself attempted to do the proposed act or make the proposed omission.

Provided also, that in the last-mentioned case, a prosecution cannot be instituted except at the request of the Government of the State having jurisdiction in the place where the act or omission was proposed to be done or made.

Making or possession of explosives under suspicious circumstances.  
Code, s. 557.

557. Any person who makes, or knowingly has in his possession or under his control, any explosive substance under such circumstances as to give rise to a reasonable suspicion that he is not making it, or does not have it in his possession or under his control for a lawful object, unless he can show that he made it, or had it in his possession or under his control for a lawful purpose, is guilty of a crime, and is liable to imprisonment with hard labour for fourteen years, and forfeiture of the explosive substance.

In this section "explosive substance" includes any materials for making any explosive substance; also any apparatus, machine, implement, or materials used or intended to be used or adapted for causing or aiding in causing any explosion in or with any explosive substance; also any part of any such apparatus, machine, or implement.

#### CHAPTER LVIII.—CONSPIRACY.

Conspiracy to commit crime.  
Code, s. 558.

558. Any person who conspires with another to commit any crime, or to do any act in any part of the world which, if done in Western Australia, would be a crime, and which is an offence under the laws in force in the place where it is proposed to be done, is guilty of a crime, and is liable, if no other punishment is provided, to imprisonment with hard labour for seven years; or, if the greatest punish-

ment to which a person convicted of the crime in question is liable is less than imprisonment with hard labour for seven years, then to such lesser punishment.

559. Any person who conspires with another to commit any offence which is not a crime, or to do any act in any part of the world which, if done in Western Australia, would be an offence, but not a crime, and which is an offence under the laws in force in the place where it is proposed to be done, is guilty of a misdemeanour, and is liable to imprisonment with hard labour for three years.

*Conspiracy to commit other offences.*  
Code, s. 559.

560. Any person who conspires with another to effect any of the purposes following, that is to say:—

*Other conspiracies.*  
Code, s. 560.

- (1) To prevent or defeat the execution or enforcement of any Statute law;
- (2) To cause any injury to the person or reputation of any person or to depreciate the value of any property of any person; or
- (3) To prevent or obstruct the free and lawful disposition of any property by the owner thereof for its fair value; or
- (4) To injure any person in his trade or profession; or
- (5) To prevent or obstruct, by means of any act or acts which, if done by an individual person would constitute an offence on his part, the free and lawful exercise by any person of his trade, profession, or occupation; or
- (6) To effect any unlawful purpose; or
- (7) To effect any lawful purpose by any unlawful means;

is guilty of a misdemeanour, and is liable to imprisonment with hard labour for three years.

Conspiracy  
in trade  
disputes.  
Code, s. 561.

561. An agreement or combination by two or more persons to do or procure to be done any act in contemplation or furtherance of a trade dispute between employers and workmen is not indictable as a conspiracy if such act committed by one person would not be punishable as a crime.

Nothing in this section affects the law relating to riots, unlawful assembly, breach of the peace, or sedition, or any offence against the State or the Sovereign.

A crime for the purpose of this section means an offence punishable on indictment, or an offence which is punishable on summary conviction, and for the commission of which the offender is liable to be imprisoned either absolutely or at the discretion of the Court as an alternative for some other punishment.

When a person is convicted of any such agreement or combination as aforesaid to do or procure to be done any act which is punishable only on summary conviction and is sentenced to imprisonment, the imprisonment may not exceed three months with hard labour, or such longer time, if any, as may be prescribed by this Code or by Statute for the punishment of the said act when committed by one person.

#### CHAPTER LIX.—ACCESSORIES AFTER THE FACT.

Accessories  
after the fact  
to crimes.  
Code, s. 562.

562. Any person who becomes an accessory after the fact to a crime is guilty of a crime, and is liable, if no other punishment is provided, to imprisonment with hard labour for two years.

Accessories  
after the  
fact to mis-  
demeanours  
and some  
other  
offences.  
Code, s. 563.

563. Any person who becomes an accessory after the fact to a misdemeanour, or to any offence of such a nature that the offender may be sentenced, on summary conviction, to imprisonment with or without hard labour for one year, is guilty of a misdemeanour, and is liable to a punishment equal to one-half of the greatest punishment to which the principal offender is liable on conviction.

If the principal offence is such that an offender is punishable on summary conviction, the accessory may also be summarily convicted.

## PART VIII.—PROCEDURE.

## CHAPTER LX.—ARREST.

564. When an offence is such that the offender may be arrested without warrant generally—

Arrest  
without  
warrant  
generally.  
Code, s. 564

- (a) It is lawful for a police officer who believes, on reasonable grounds, that the offence has been committed, and that any person has committed it, to arrest that person without warrant, whether the offence has been actually committed or not, and whether the person arrested committed the offence or not:
- (b) It is lawful for any person who is called upon to assist a police officer in the arrest of a person suspected of having committed the offence, and who knows that the person calling upon him to assist is a police officer, to assist him, unless he knows that there is no reasonable ground for the suspicion:
- (c) It is lawful for any person who finds another committing the offence to arrest him without warrant:
- (d) If the offence has been actually committed, it is lawful for any person who believes, on reasonable grounds, that another person has committed the offence to arrest that person without warrant, whether that other person has committed the offence or not:
- (e) It is lawful for any person who finds another by night, under such circumstances as to afford reasonable grounds for believing that he is committing the offence, and who does in fact so believe, to arrest him without warrant:
- (f) It is lawful for a police officer who finds any person lying or loitering in any place by night, under such circumstances as to afford reasonable grounds for believing that he has committed or is about to commit the offence, and who does in fact so believe, to arrest him without warrant.

Arrest  
without  
warrant in  
special  
cases.  
Code, s. 565.

565. When it is provided with respect to an offence that the offender may be arrested without warrant subject to certain conditions, the provisions of the last preceding section apply to the offence in question, subject to those conditions.

Arrest of  
persons  
found  
committing  
offences.  
Code, s. 566.

566. (1) It is lawful for a justice or police officer to arrest without warrant any person whom he finds committing any indictable offence or committing any simple offence with respect to which it is provided that a person found committing it may be arrested by a police officer without warrant.

(2) When it is provided with respect to an offence that a person found committing the offence may be arrested without warrant generally, it is lawful for any person who finds another committing the offence to arrest him without warrant.

(3) When it is provided with respect to an offence that a person found committing the offence may be arrested without warrant by a specified person, or specified persons, it is lawful for any such person who finds another committing the offence to arrest him without warrant.

Arrest of  
offender  
committing  
indictable  
offences by  
night.  
Code, s. 567.

567. It is lawful for any person who finds another person by night committing any indictable offence to arrest him without warrant.

Arrest during  
flight.  
Code, s. 568.

568. It is lawful for any person to arrest without warrant any other person whom he believes, on reasonable grounds, to have committed an offence, and to be escaping from, and to be freshly pursued by some person whom, on reasonable grounds, he believes to have authority to arrest him for that offence.

Arrest of  
persons  
offering  
stolen  
property for  
sale, etc.  
Code, s. 569.

569. It is lawful for any person to whom another offers to sell, pawn, or deliver, any property, and who believes, on reasonable grounds, that the property has been acquired by means of an offence with respect to which it is provided that a person found committing it may be arrested without warrant, to arrest that other person without warrant.

570. It is the duty of a person who has arrested another upon a charge of an offence to take him forthwith before a justice to be dealt with according to law.

Duty of persons arresting.  
Code, s. 570.

CHAPTER LXI.—JURISDICTION: PRELIMINARY  
PROCEEDINGS: BAIL.

571. The jurisdiction of Courts of justice with respect to the trial of offenders is set forth in the laws relating to the constitution and jurisdiction of those Courts respectively.

Jurisdiction.  
Code, s. 571.

572. The practice and procedure relating to the examination and committal for trial of persons charged with indictable offences are set forth in the laws relating to justices of the peace, their powers and authorities.

Preliminary proceeding on charges of indictable offences.  
Code, s. 572.

573. The Supreme Court or a Judge thereof may admit to bail any person who has been committed for trial or for sentence or is in custody, upon a charge of an indictable offence, whether bail has been refused or not, or may reduce the bail of any such person to whom bail has been granted.

Bail.  
Code, s. 573.

574. The procedure upon the prosecution of offenders in order to their summary conviction, and for enforcing summary convictions and orders made by justices upon such prosecutions, is set forth in the laws relating to justices of the peace, their powers and authorities.

Summary convictions: Time.  
Code, s. 574.

A prosecution for a simple offence, or for an indictable offence, in order to the summary conviction of the offender must, unless otherwise expressly provided, be begun within six months after the offence is committed.

575. (1) A person charged with committing an offence may be tried in any jurisdiction within which any act or omission or event which is an element of the offence takes place.

Place of trial.  
Code, s. 575.

(2) A person charged with stealing any property may also be tried in any jurisdiction within which he has the stolen property in his possession.

(3) A person charged with stealing anything while employed in the Public Service may also be tried in any jurisdiction within which he is arrested or is in custody.

(4) A person charged with an offence which involves the receiving of any property by him may also be tried in any jurisdiction within which he has the property in his possession.

(5) A person charged with forging anything, or with uttering any false document or writing or anything counterfeit, may also be tried in any jurisdiction within which he is arrested or is in custody.

(6) A person who is charged with counselling or procuring the commission of an offence, or with becoming an accessory after the fact to an offence, may also be tried in any jurisdiction within which the principal offender might be tried.

(7) A person who is charged with an offence committed out of Western Australia, and who may lawfully be tried in Western Australia, may be tried in any jurisdiction within which he is arrested or is in custody.

Persons  
brought  
before  
wrong  
Court.  
Code, s. 576.

576. If, on the trial of a person charged with any offence before any Court, it appears that he is not properly triable before that Court under any of the provisions of the last preceding section, he is not by reason thereof entitled to be acquitted, but the Court may, at the request of the accused person, discharge the jury from giving a verdict, and direct that he be tried before some proper Court, and may remand him for trial accordingly.

If he does not make such request, the trial is to proceed, and the verdict and judgment have the same effect in all respects as if the Court had originally had jurisdiction to try the accused person.



This section does not affect the right of an accused person to plead to the jurisdiction of the Court.

577. When a person has been committed for trial for an indictable offence at a Court held at any place, whether he has been admitted to bail or not, the Supreme Court or a Judge thereof may, on the application of the Crown or, upon good cause shown, of the accused person, order that the trial shall be held at some other place, either before the same Court or before some other Court of competent jurisdiction, at a time to be named in the order.

Change of  
place of  
trial.  
Code, s. 577.  
Amended by  
No. 55 of  
1953, s. 9.

When an indictment has been presented against any person in the Supreme Court, Court of Session or a Circuit Court or a Court of Quarter Sessions, the Court may, on the application of the Crown or, upon good cause shown, of the accused person, order that the trial shall be held at some place other than that named in the margin of the indictment and at a time to be named in the order.

When an order is made under the provisions of this section, the consequences are the same in all respects, and with regard to all persons as if the accused person had been committed for trial at the place named in the order and at the sittings named therein; and, if he has been admitted to bail, the recognisances of bail are to be deemed to be enlarged to that time and place accordingly.

The recognisances of any person who are bound to attend as witnesses are in like manner to be deemed to be enlarged to the same time and place.

Notice of such time and place must be given to the persons bound by the recognisances, otherwise their recognisances cannot be forfeited.

#### CHAPTER LXII.—INDICTMENTS.

578. When a person charged with an indictable offence has been committed for trial, and it is intended to put him on his trial for the offence, the charge is to be reduced to writing in a document which is called an indictment.

Nature of  
indictments.  
Code, s. 578.

The indictment is to be signed and presented to the Court by the Attorney General or some other person appointed in that behalf by the Governor.

*Ex officio*  
informa-  
tions.  
Code, s. 579,  
amended by  
No. 20 of  
1954, s. 5.

579. The Attorney General may present an indictment in any Court of criminal jurisdiction against any person for any indictable offence, whether the accused person has been committed for trial or not and thereupon subject to section five hundred and eighty of the Code the accused shall be dealt with in all respects and the indictment and proceedings upon it are subject to the same procedure as if the accused person had been committed for trial in respect of the indictable offence alleged by the indictment to have been committed by him.

An officer appointed by the Governor to present indictments in any court of criminal jurisdiction may present an indictment in that Court against any person for any indictable offence within the jurisdiction of the Court, whether the accused person has been committed for trial or not.

All Courts and judges exercising jurisdiction with regard to indictable offences shall take judicial notice of the signature of the Attorney General and all past Attorneys General, and of his and their authority to sign and present indictments; and all indictments presented which purport to be signed by an officer or person duly appointed to prosecute shall be deemed to be duly signed and presented, excepting always any such indictment in regard to which it shall be proved that the same was not in fact signed by the officer or person whose signature it purports to bear, or that the officer or person signing the same was not in fact authorised or appointed to sign such indictment.

With regard to any person who has been committed for trial in respect of an indictable offence alleged to have been committed by him, the Attorney General and, if otherwise acting within the scope of their authority, all officers and persons authorised to sign and present indictments may present indictments against such person for any indictable offences which the Attorney General or such officers or persons shall consider to be *prima facie* disclosed by the evidence taken before the committing magis-

trates or coroner, irrespective of whether the said offences are mentioned in the commitment for trial or not:

Provided always that in the case of any person committed for sentence, if indictments presented against such person allege any offences not mentioned in the commitment for sentence, the accused person may, without the leave of any court or person, plead not guilty to having committed any offences not mentioned in the commitment for sentence, and thereupon shall be tried or dealt with in all respects as if he had been committed for trial and not for sentence.

580. When an indictment has been presented against a person who is not in custody, and has not been committed for trial or held to bail to attend to be tried upon the charge set forth in the indictment, a Judge or the Chairman of the Court in which the indictment is presented may issue a warrant under his hand to arrest the accused person and bring him before a justice of the peace; and the justice before whom he is brought may commit him to prison until he can be tried on the indictment or may, in a proper case, admit him to bail with sufficient sureties to attend to be tried on the indictment.

Arrest of person charged in *ex officio* information. Code, s. 580.

581. The Attorney General may inform any Court, by writing under his hand, that the Crown will not further proceed upon any indictment then pending in the Court.

*Nolle prosequi.* Code, s. 581.

An officer appointed by the Governor to present indictments in any Court of criminal jurisdiction may inform that Court, by writing under his hand, that the Crown will not further proceed upon any indictment then pending in that Court.

When such information is given to the Court the accused person is to be discharged from any further proceedings upon that indictment.

582. An indictment is to be intituled with the name of the Court in which it is presented, and must, subject to the provisions hereinafter contained, set forth the offence with which the accused

Form of indictment. Code, s. 582. Amended by No. 32 of 1918, s. 17.

person is charged in such a manner and with such particulars as to the alleged time and place of committing the offence, and as to the person, if any, alleged to be aggrieved, and as to the property, if any, in question, as may be necessary to inform the accused person of the nature of the charge.

If any circumstance of aggravation is intended to be relied upon, it must be charged in the indictment.

It is sufficient to describe an offence in the words of this Code or of the Statute defining it.

Inserted by  
No. 32 of  
1918, s. 17.

Where an enactment constituting an offence states the offence to be the doing or the omission to do any one of any different acts in the alternative or the doing or the omission to do any act in any one of any different capacities or with any one of any different intentions or states any part of the offence in the alternative, the acts, omissions, capacities, or intentions or other matters stated in the alternative in the enactment may be stated in the alternative in the statement of the offence in the indictment charging the offence: provided that the court may at any stage of the proceedings amend the statement if it appears to the court to be so framed as to be embarrassing.

The place of trial is to be named in the margin of the indictment.

General  
rules  
applicable  
to  
indictments.  
Code, s. 583.

583. The following rules are applicable to all indictments—

- (1) Any document or other thing may be described by any name or designation by which it is usually known, and any document may be described by its purport without setting out a copy or facsimile of the whole or any part of it;
- (2) A trade mark may be described by that name, and any other mark may be described in any way which will indicate its nature, without setting out a copy or facsimile of it;
- (3) It is not necessary to set forth the value of anything mentioned in an indictment unless the value is an essential element of the offence;

- (4) It is not necessary to set forth the means or instrument by which any act is done, unless the means or instrument are an essential element of the offence;
- (5) It is not necessary to set forth any particulars as to any person or thing which need not be proved nor any other matter which need not be proved.

584. (1) An indictment for treason must state overt acts of the treason alleged.

Particular  
indictments.  
Code, s. 584.

(2) In an indictment for an offence which relates to taking or administering an oath or engagement, or to giving false testimony, or to making a false statement, or solemn declaration or otherwise, or to procuring the giving of false testimony or the making of a false statement, it is not necessary to set forth the words of the oath or engagement or testimony or statement, but it is sufficient to set forth the purport thereof, or so much of the purport as is material.

(3) In an indictment for an offence which relates to giving false testimony, or procuring or attempting to procure the giving of false testimony, it is not necessary to allege the jurisdiction of the Court or tribunal before which the false testimony was given, or intended or proposed to be given.

(4) In an indictment for an offence committed with respect to the Postmaster General's Department, or to the revenue of that department, or to anything sent by post or telegraph, or to anything under the control of the Postmaster General, any property of which the ownership must be alleged, may be alleged to be the property of the Postmaster General.

And in any such case the Postmaster General may be described by that term alone, without mentioning his name or using any other addition or description.

(5) In an indictment in which it is necessary to mention money, such money may be described simply as money, without specifying any particular form of money.

Such an averment, so far as regards the description of the property, will be sustained by proof that the offender obtained or dealt with any coin or anything which is included in the term "money," or any portion of the value of either, in such a manner as to constitute the offence, although such coin or thing was delivered to him in order that some part of the value thereof should be returned to the person who delivered the same or to some other person, and has been returned accordingly.

(6) In an indictment in which it is necessary to mention any co-owners of property it is sufficient to name one of such persons, adding the words "and another" or "and others," as the case may be, and to state that the property belonged to the person so named and another or others, as the case may be.

(7) In an indictment against a man for an offence committed by him with respect to his wife's separate property, the property may be alleged to be the property of the wife.

(8) In an indictment for an offence relating to any property of a company which is authorised to sue and be sued in the name of a public officer, the property may be alleged to be the property of the public officer.

(9) In an indictment for an offence relating to any property which by any Statute is to be deemed to be the property of any officer of any institution, the property in question may be alleged to be the property of the officer of the institution for the time being by his name of office.

(10) In an indictment for an offence relating to a testamentary instrument, it is not necessary to allege that the instrument is the property of any person.

(11) In an indictment for an offence relating to anything fixed in a square or street, or in a place dedicated to public use or ornament, or to anything in or taken from a public office, it is not necessary to allege that the thing in respect of which the offence is committed is the property of any person.

(12) In an indictment for an offence relating to a document which is evidence of title to land or an estate in land, the document may be described as being evidence of the title of the person or some one of the persons having an estate in the land to which the document relates, the land or some part thereof being described in some manner sufficient to identify it.

(13) In an indictment for stealing a chattel or fixture let to the offender, the chattel or fixture may be described as the property of the person who actually let it to hire.

(14) In an indictment against a person employed in the Public Service for an offence committed with respect to anything which came into his possession by virtue of his employment, the thing in question may be described as the property of His Majesty.

(15) In an indictment for an offence respecting any property, if it is uncertain to which of two or more persons the property belonged at the time when the offence was committed, the property may be described as being the property of one or other of such persons, naming each of them, but without specifying which of them; and the indictment will be sustained, so far as regards the allegation of ownership, upon proof that at the time when the offence was committed the property belonged to one or other of such persons without ascertaining which of them.

(16) In an indictment for the offence of obtaining or procuring the delivery of anything capable of being stolen by a false pretence and with intent to defraud, or of obtaining any property by means of a fraudulent trick or device, or of inducing by means of any such trick or device the payment or delivery of any money or goods, or of attempting to commit, or to procure the commission of any such offence, it is not necessary to mention the owner of the property in question.

(17) In an indictment for an offence which involves any fraud or fraudulent pretence or trick or device, it is not necessary to set forth the details of the fraud or pretence or trick or device.

(18) In an indictment for an offence relating to a bankrupt it is not necessary to set forth any debt, act of bankruptcy, adjudication, or other proceeding in any Court, or any order, warrant, or document, made or issued by or out of, or by the authority of any Court.

Indictment  
to contain  
one matter  
of charge  
only.  
Code, s. 585,  
amended by  
No. 20 of  
1954, s. 6.

585. Except as hereinafter stated, an indictment must charge one offence only, and not two or more offences:

Provided that when several distinct indictable offences form or are a part of a series of offences of the same or a similar character or when several distinct indictable offences are alleged to be constituted by the same acts or omissions, or by a series of acts done or omitted to be done in the prosecution of a single purpose, charges of such distinct offences may be joined in the same indictment against the same person.

In any such case the several statements of the offences may be made in the same form as in other cases, without any allegation of connection between the offences.

But, if in any such case it appears to the Court that the accused person is likely to be prejudiced by such joinder, the Court may require the prosecutor to elect upon which of the several charges he will proceed, or may direct that the trial of the accused person upon each or any of the charges shall be had separately.

This section does not authorise the joinder of a charge of wilful murder, murder, or manslaughter, with a charge of any other offence.

Cases in  
which  
several  
charges  
may be  
joined.  
Code, s. 586.  
Amended by  
No. 55 of  
1953, s. 10,  
No. 20 of  
1954, s. 7.

586. (1) In an indictment against a person for stealing money the accused person may be charged and proceeded against for the amount of a general deficiency, notwithstanding that such general deficiency is made up of any number of specific sums of money the taking or conversion of which extended over any space of time.



(2) In an indictment against a person for stealing, he may be charged with two or three distinct acts of stealing the property of the same person, committed by him within the space of six months from the first to the last of such acts.

(3) If, on the trial of a person charged with stealing, it appears that property alleged to have been stolen at one time was stolen at different times, the prosecutor is not by reason thereof, required to elect upon which act of stealing he will proceed, unless it appears that there were more than three acts of stealing, or that more than six months elapsed between the first and the last of such acts:

In either of such last-mentioned cases, the prosecutor is to be required to elect to proceed in respect of two or three acts of stealing which appear to have taken place within the period of six months from the first to the last of such acts.

(4) Charges of stealing any property and of receiving the same property, or any part thereof, knowing it to have been stolen, may be joined in the same indictment, and the accused person may, according to the evidence, be convicted either of stealing the property or of receiving it, or any part of it, knowing it to have been stolen.

When such an indictment is preferred against two or more persons, all or any of the accused persons may, according to the evidence, be convicted either of stealing the property, or of receiving it, or any part of it, knowing it to have been stolen; or, according to the evidence, one or more of them may be convicted of stealing the property, and the other or others of them of receiving it, or any part of it, knowing it to have been stolen.

(4a) (a) Charges of breaking and entering with intent to commit a crime under any of the provisions of sections four hundred and one to four hundred and six of the Code inclusive where the crime alleged to have been intended and committed by the accused is stealing any property and of receiving the same property or any part thereof, knowing it to have been stolen, may be joined in the

Subsec. (4a)  
(a) and (b)  
added by  
No. 20 of  
1954, s. 7.

same indictment and the accused person may according to the evidence be convicted either of the charge of breaking and entering or of the charge of receiving.

(b) When such an indictment is preferred against two or more persons all or any of the accused persons may, according to the evidence, be convicted either of the charge of breaking and entering or of the charge of receiving, or, according to the evidence, one or more of them may be convicted of the charge of breaking and entering and the other or others of them of the charge of receiving.

(5) Any number of persons charged with committing or with procuring the commission of the same offence, although at different times, or of being accessories after the fact, to the same offence, although at different times, and any number of persons charged with receiving, although at different times, any property which has been obtained by means of a crime or misdemeanour, or by means of an act which, if it had been done in Western Australia, would be a crime or misdemeanour, and which is an offence under the laws in force in the place where it was done, or any part of any property so obtained, may be charged with substantive offences in the same indictment, and may be tried together, notwithstanding that the principal offender or the person who so obtained the property is not included in the same indictment, or is not amenable to justice.

(6) In an indictment against a person for a crime, he may also be charged with being an habitual criminal.

Accessories.  
Code, s. 587.

587. A person who counsels or procures another person to commit an offence, or who aids another person in committing an offence, or who becomes an accessory after the fact to an offence, may be charged in the same indictment with the principal offender, and may be tried with him or separately, or may be indicted and tried separately, whether the principal offender has or has not been convicted, or is or is not amenable to justice.

588. In an indictment for an offence charged to have been committed after a conviction for any offence, it is sufficient, after charging the subsequent offence, to state the substance and effect of the indictment or complaint, and the conviction, for the previous offence, and the time and place of such conviction.

Statement  
of previous  
conviction.  
Code, s. 588.

589. [*Repealed by No. 32 of 1918, s. 23.*]

590. An indictment is not open to objection by reason of the designation of any person by a name of office or other descriptive appellation instead of by his proper name, nor for omitting to state the time at which the offence was committed, unless the time is an essential element of the offence, nor for stating imperfectly the time at which the offence was committed, nor for stating the offence to have been committed on an impossible day, or on a day that never happened or has not yet happened.

Formal  
defects.  
Code, s. 590.

Every objection to an indictment for any defect apparent on its face must be taken by motion to quash the indictment before the jury is sworn, and not afterwards; and the Court upon such motion may, unless it considers that the accused person will be prejudiced thereby in his defence, order the indictment to be amended, so far as is necessary, on such terms, if any, as to postponing the trial or otherwise as the Court may think reasonable. The indictment is thereupon to be amended in accordance with the order of the Court.

591. If, on the trial of a person charged with an indictable offence, there appears to be a variance between the indictment and the evidence, or it appears that any words that ought to have been inserted in the indictment have been omitted, or that any words that ought to have been omitted have been inserted, the Court shall unless it considers that the variance, omission, or insertion, is material to the merits of the case, and that the accused person will be prejudiced thereby in his defence on the merits, order the indictment to be amended, so far

Amend-  
ment of  
indictments.  
Code, s. 591.

as it is necessary, on such terms, if any, as to postponing the trial, and directing it to be had before the same jury or another jury, as the Court may think reasonable.

The indictment is thereupon to be amended in accordance with the order of the Court.

When an indictment has been amended, the trial is to proceed, at the appointed time, upon the amended indictment, and the same consequences ensue, in all respects and as to all persons, as if the indictment had been originally in its amended form.

If it becomes necessary to draw up a formal record in any case in which an amendment has been made, the record is to be drawn up setting out the indictment as amended, and without taking any notice of the fact of the amendment having been made.

Particulars.  
Code, s. 592.

592. The Court may, in any case, if it thinks fit, direct particulars to be delivered to the accused person of any matter alleged in the indictment, and may adjourn the trial for the purpose of such delivery.

Summary  
convictions.  
Code, s. 593.

593. The provisions of this chapter relating to indictments apply to complaints preferred against offenders upon their trial before Justices in order to their summary conviction of an indictable offence.

#### CHAPTER LXIII.—EFFECT OF INDICTMENT.

Conviction  
for offence  
other than  
that  
charged.  
Code, s. 594.  
Repealed  
and new  
section  
inserted by  
No. 32 of  
1918, s. 18.

594. Except as hereinafter stated, upon an indictment charging a person with an offence he may be convicted of any offence which is established by the evidence, and which is an element or would be involved in the commission of the offence charged in the indictment.

Charge of  
murder or  
man-  
slaughter.  
Code, s. 595.  
Amended by  
No. 40 of  
1945, s. 3.

595. Upon an indictment charging a person with the crime of wilful murder, he may be convicted of the crime of murder or of the crime of manslaughter, if either of those crimes is established by the evidence, but not, except as herein expressly provided, of any other offence than that with which he is charged.

Upon an indictment charging a person with the crime of murder, he may be convicted of the crime of manslaughter, if that crime is established by the evidence, but not, except as herein expressly provided, of any other offence than that with which he is charged.

Upon an indictment charging a person with the crime of manslaughter he cannot, except as herein expressly provided, be convicted of any other offence. Provided that upon an indictment charging a person with the wilful murder or murder of any person, or with unlawfully killing any person, if upon the evidence it appears that the person alleged to have been killed was a child of which a woman had recently been delivered, the accused person may be convicted of the offence of preventing the child from being born alive by an act or omission of such a nature that, if the child had been born alive and had then died, he would be deemed to have unlawfully killed the child, or of the offence of endeavouring by a secret disposition of the dead body of the child to conceal the birth, if either of those offences is established by the evidence.

Proviso:  
Charge of  
homicide  
of child.

Provided also that upon an indictment charging a person with the crime of manslaughter he may be convicted of a crime under section two hundred and ninety-one A hereof, if that crime is established by the evidence.

Added by  
No. 40 of  
1945, s. 3.

596 Upon an indictment charging a person with the crime of rape, or with the crime of having unlawful carnal knowledge of a girl under the age of thirteen years, he may be convicted of any offence which is established by the evidence, and of which the unlawful carnal knowledge of a woman or girl, whether of a particular age or description or not, is an element, and blood relationship is not an element, or of which procuring the woman or girl to have unlawful carnal connection with any man is an element:

Charge of  
rape, and  
like offences.  
Code, s. 596.

Or he may be convicted of any of the offences following, that is to say:—

- (a) Administering to the woman or girl, or causing her to take, any drug or other thing, with intent to stupefy or overpower her in order to enable any man to have unlawful carnal knowledge of her; or
- (b) Unlawfully and indecently assaulting the woman or girl; or
- (c) Unlawfully and indecently dealing with a girl under the age of thirteen years or a girl under the age of sixteen years;

if any such offence is established by the evidence.

Power to  
convict for  
assault on  
charge of  
defilement.  
Inserted by  
No. 32 of  
1918, s. 19.

**596A.** Upon an indictment charging a person with having or attempting to have unlawful carnal knowledge of a girl under a particular age, he may be convicted of unlawfully and indecently assaulting or dealing with her (she being a girl under that particular age, or a girl or woman of or over that age) if such offence is established by the evidence.

Charge of  
specific  
injury:  
Charge of  
injury with  
specific  
intent.  
Code, s. 597.

**597.** Upon an indictment charging a person with an offence of which the causing of some specific result is an element, he may be convicted of any offence which is established by the evidence, and of which an intent to cause that result, or a result of a similar but less injurious nature, is an element.

Upon an indictment charging a person with an offence of which an intent to cause some specific result is an element, he may be convicted of an offence which is established by the evidence and of which the unlawful causing of that result is an element.

Charge of  
injury to  
property.  
Code, s. 598.

**598.** Upon an indictment charging a person with an offence of which destruction of property, or wilfully and unlawfully doing any specific damage to property is an element, he may be convicted of wilfully and unlawfully damaging the property, or of wilfully and unlawfully damaging the property in any lesser degree, if either of such offences is established by the evidence.

599. Upon an indictment charging a person with any of the offences following, that is to say:—

Stealing,  
false  
pretences,  
and  
cheating.  
Code, s. 599.

- (a) Stealing any property;
- (b) Obtaining or inducing the delivery of any property by a false pretence and with intent to defraud;
- (c) Procuring any other person to commit any such offence;
- (d) Obtaining or inducing the delivery or payment of any property or money by means of a fraudulent trick or device;

he may be convicted of any other of such offences committed with respect to the same property, if such other offence is established by the evidence.

600. Upon an indictment charging a person with procuring the commission of any offence, he may be convicted of procuring the commission of any other offence of such a nature that a person may be convicted of it upon an indictment charging him with committing the offence of which the accused person is alleged to have procured the commission.

Charge of  
procuring  
commission  
of offence  
or wrongful  
act.  
Code, s. 600.

Upon an indictment charging a person with procuring another to do an act or make an omission of such a nature that if the accused person had himself done the act or made the omission he would have been guilty of an offence, he may be convicted of procuring that other person to do any other act or make any other omission which is established by the evidence, and which is of such a nature that if the accused person had himself done that act or made that omission he would have been guilty of an offence, such last-named offence being itself of such a nature that a person may be convicted of it upon an indictment charging him with committing the offence of which the accused person would have been guilty if he had himself done the act or made the omission which he is alleged to have procured to be done or made.

Conviction  
for attempt  
to commit  
offence.  
Code, s. 601.

**601.** Upon an indictment charging a person with committing any offence, he may be convicted of attempting to commit that offence, or of attempting to commit any other offence of which he might be convicted upon the indictment.

Upon an indictment charging a person with procuring the commission of any offence, he may be convicted of attempting to procure the commission of that offence, or of attempting to procure the commission of any other offence of such a nature that a person may be convicted of it upon an indictment charging him with committing the offence of which the accused person is alleged to have procured the commission.

Upon an indictment charging a person with attempting to commit any offence, he may be convicted of attempting to commit any other offence of such a nature that a person may be convicted of it upon an indictment charging him with committing the offence which the accused person is alleged to have attempted to commit.

Upon an indictment charging a person with attempting to procure the commission of any offence, he may be convicted of attempting to procure the commission of any other offence of such a nature that a person may be convicted of it upon an indictment charging him with committing the offence of which the accused person is alleged to have attempted to procure the commission.

Upon an indictment charging a person with attempting to procure another to do an act or make an omission of such a nature that if the act had been done or the omission had been made an offence would thereby have been committed, he may be convicted of attempting to procure that other person to do any other act or make any other omission of such a nature that if the act had been done or the omission had been made an offence would thereby have been committed, such last-mentioned offence being itself of such a nature that a person may be convicted of it upon an indictment charging



him with doing the act or making the omission which the accused person is alleged in the indictment to have attempted to procure that other person to do or make.

602. If, on the trial of a person charged with an indictable offence, the evidence establishes that he is guilty of another indictable offence of such a nature that upon an indictment charging him with it he might have been convicted of the offence with which he is actually charged, he may be convicted of the offence with which he is so charged.

When evidence shows offence of similar nature.  
Code, s. 602.  
Amended by No. 55 of 1953, s. 11.

A person so tried is not liable to be afterwards prosecuted for the offence so established by the evidence, unless the Court before which the trial is had thinks fit to discharge the jury from giving any verdict, and to direct the accused person to be indicted for that offence; in which case he may be dealt with in all respects as if he had not been put upon his trial for the offence with which he is actually charged.

603. A person convicted under any of the foregoing provisions of this chapter is liable to the same punishment as if he had been convicted on an indictment charging him with the offence of which he is actually convicted.

Effect of conviction.  
Code, s. 603.

604. If, on the trial of a person charged with an indictable offence relating to elections, the evidence establishes that he is not guilty of the offence charged, but is guilty of an offence relating to elections and punishable on summary conviction, he may be convicted of such last-mentioned offence, and is liable to the same punishment as if he had been summarily convicted of that offence.

Corrupt practices.  
Code, s. 604.

605. If, on the trial of a person charged with an offence relating to elections and punishable on summary conviction, the evidence establishes that

Illegal practices.  
Code, s. 605.

he is guilty of an indictable offence relating to elections, he is not entitled to have the charge dismissed if the evidence also establishes that he did any act or acts such as to constitute the offence with which he is actually charged.

Charge of  
stealing  
cattle.  
Code, s. 606.

606. If, on the trial of a person charged with stealing a horse, mare, gelding, ass, mule, camel, bull, cow, ox, ram, ewe, wether, goat, pig, or dog, or the young of any such animal, the evidence establishes that he is not guilty of the offence charged, but is guilty of any of the offences following, that is to say:—

- (a) Unlawfully using, or taking for the purpose of using the animal without the consent of the owner, or of the person in lawful possession thereof;
- (b) Branding or marking the animal, or knowingly permitting it to be branded or marked, with his registered brand or registered mark, knowing that he is not the owner of the animal;
- (c) Altering or defacing, or otherwise rendering undistinguishable, any registered brand or registered mark upon the animal;
- (d) Knowingly permitting any such act as last aforesaid to be done by any person over whom he has control;

he may be convicted of the offence so established by the evidence, and is liable to the same punishment as if he had been summarily convicted of that offence.

Indictment  
for joint  
receiving.  
Code, s. 607.

607. Upon an indictment charging two or more persons jointly with an offence of which the receiving of any property is an element, if the evidence establishes that one or more of them separately received any part or parts of the property under such circumstances as to constitute an offence, such one or more of the accused persons may be convicted of the offence or offences so established by the evidence.

607A. Nothing in this chapter shall be deemed to authorise the conviction of any person of any offence on any prosecution which has not been commenced within the time (if any) limited by law for the commencement of a prosecution for such offence.

Saving of provisions as to time. Added by No. 32 of 1918, s. 20.

CHAPTER LXIV.—TRIAL: ADJOURNMENT: PLEAS:  
PRACTICE.

608. A person committed for trial before any Court for an indictable offence may make application in open Court at any time during the first sittings of the Court held after his committal to be brought to his trial.

Right to be tried. Code, s. 608.

If an indictment is not presented against him at some time during those sittings, the Court may, upon motion made on his behalf on the last day of such sittings, admit him to bail, and is required so to do, unless it appears upon oath that some material evidence for the Crown could not be produced at those sittings.

Any person committed as aforesaid, who has made such an application to be brought to his trial, and who is not brought to trial at the second sittings after his committal for trial, is entitled to be discharged.

609. When an indictment is presented in any Court against any person who has not been committed for trial or held to bail upon the charge set forth in the indictment, and the accused person is not brought to trial within a year after the indictment is presented, the Court may, upon the application of the accused person, or any of the accused persons, if more than one, authorise him to bring on the trial, and he may bring on the trial accordingly, unless in the meantime the Court is informed that the Crown will not further proceed upon the indictment.

Accelerating trial of persons not under committal. Code, s. 609.

Adjourn-  
ment of  
trial.  
Code, s. 610.

610. The Court before which an indictment is presented may, in any case, if it thinks fit, adjourn the trial of the accused person.

A trial may be adjourned at any period of the trial, whether a jury has or has not been sworn, and whether evidence has or has not been given.

On adjourn-  
ment of trial  
accused  
may be  
remanded  
to another  
Court  
having  
jurisdiction.  
Code, s. 611.

611. When the trial of a person charged with an offence on indictment is adjourned, the Court may direct the trial to be held either at a later sitting of the same Court, or before some other Court of competent jurisdiction, and may remand the accused person accordingly, and may, in a proper case, admit him to bail, or enlarge his bail if he has already been admitted to bail, and may enlarge the recognisances of the witnesses.

In any such case, the indictment and other proceedings are to be transmitted to the proper officer of the Court to which the accused person is so remanded, and that Court has the same jurisdiction to try him as if he had been originally committed to be tried before it; and the accused person is bound to attend to be tried, and the witnesses are bound to attend to give evidence at the time and place to which the trial is adjourned, without entering into any fresh recognisances for that purpose, in the same manner as if they had respectively been originally bound by their recognisances to appear and to attend and give evidence at the time and place to which the trial is adjourned.

Accused  
person to be  
called upon  
to plead to  
indictment.  
Code, s. 612.

612. At the time appointed for the trial of an accused person he is to be informed in open Court of the offence with which he is charged, as set forth in the indictment, and is to be called upon to plead to the indictment, and to say whether he is guilty or not guilty of the charge.

The trial is deemed to begin when he is so called upon.

Delivery of  
copy of  
indictment.  
Code, s. 613.

613. When an indictment is presented against any person, the Court is required, upon his application, to order a copy of the indictment to be delivered to him without fee.

614. The accused person may, before pleading, apply to the Court to quash the indictment on the ground that it is calculated to prejudice or embarrass him in his defence to the charge, or that it is formally defective.

Motion to  
quash  
indictment.  
Code, s. 614.

Upon such motion the Court may quash the indictment, or may order it to be amended in such manner as the Court thinks just, or may refuse the motion.

615. If the accused person says that he is wrongly named in the indictment, the Court shall, on being satisfied by affidavit or otherwise of the error, order the indictment to be amended.

Misnomer.  
Code, s. 615.

616. If the accused person does not apply to quash the indictment, he must either plead to it or demur to it on the ground that it does not disclose any offence cognisable by the Court. If he pleads, he may plead either—

Pleas.  
Code, s. 616.

- (1) That he is guilty of the offence charged in the indictment, or, with the consent of the Crown, of any other offence of which he might be convicted upon the indictment;
- (2) That he is not guilty;
- (3) That he has already been convicted upon an indictment on which he might have been convicted of the offence with which he is charged, or has already been convicted of an offence of which he might be convicted upon the indictment;
- (4) That he has already been acquitted upon an indictment on which he might have been convicted of the offence with which he is charged, or has already been acquitted upon indictment of an offence of which he might be convicted upon the indictment;
- (5) That he has already been tried and convicted or acquitted of an offence committed or alleged to be committed under such circumstances that he cannot, under the provisions of this Code, be tried for the offence charged in the indictment;
- (6) That he has received the Royal pardon for the offence charged in the indictment; or

- (7) That the Court has no jurisdiction to try him for the offence.

Two or more pleas may be pleaded together, except that the plea of guilty cannot be pleaded with any other plea to the same charge.

An accused person may plead and demur together.

Defence of truth of defamatory matter to be specially pleaded.  
Code, s. 617.

617. A person charged with the unlawful publication of defamatory matter, who sets up as a defence that the defamatory matter is true, and that it was for the public benefit that the publication should be made, must plead that matter specially, and may plead it with any other plea, except the plea of guilty.

Persons committed for sentence.  
Code, s. 618.  
Amended by No. 32 of 1918, s. 21.

618. When a person has been committed by a justice for sentence for an offence, he is to be called upon to plead to the indictment in the same manner as other persons, and may plead either that he is guilty of the offence charged in the indictment, or, with the consent of the Crown, of any other offence of which he might be convicted upon the indictment.

If he pleads that he is not guilty, the Court, upon being satisfied that he was duly convicted of the offence charged in the indictment or that he duly admitted before the justice that he was guilty of the offence charged in the indictment, is to direct a plea of guilty to be entered, notwithstanding his plea of not guilty. A plea so entered has the same effect as if it had been actually pleaded.

If the Court is not so satisfied, or if, notwithstanding that the accused person pleads that he is guilty, it appears to the Court upon examination of the depositions of the witnesses that he has not in fact committed the offence charged in the indictment, or any other offence of which he might be convicted upon the indictment, the plea of not guilty is to be entered, and the trial is to proceed as in other cases when that plea is pleaded.

A person who has been committed for sentence may plead any of the other pleas mentioned in the last preceding section but one.

619. If an accused person, on being called upon to plead to an indictment, will not plead or answer directly to the indictment, the Court may, if it thinks fit, order a plea of not guilty to be entered on behalf of the accused person. A plea so entered has the same effect as if it had been actually pleaded.

Standing  
mute.  
Code, s. 619.

620. In a plea that the accused person has already been convicted or acquitted, it is sufficient to state that he has been lawfully convicted or acquitted, as the case may be, of the offence charged in the indictment, or of the other offence of which he alleges that he has been convicted or acquitted, and, in the latter case, to describe the offence by any term by which it is commonly known.

Plea of  
*autrefois*  
convict or  
*autrefois*  
acquitt.  
Code, s. 620.

621. Upon a plea to the jurisdiction of the Court, the Court is to proceed to satisfy itself in such manner and upon such evidence as it thinks fit, whether it has jurisdiction or not, and may ascertain the fact by the verdict of a jury or otherwise.

Trial on  
plea to the  
jurisdiction.  
Code, s. 621.

622. If the accused person pleads any plea or pleas other than the plea of guilty, or a plea to the jurisdiction of the Court, he is by such plea, without any further form, deemed to have demanded that the issues raised by such plea or pleas shall be tried by a jury, and is entitled to have them tried accordingly.

Trial by  
jury.  
Code, s. 622.

623. When an accused person demurs only and does not plead any plea, the Court is to proceed to hear and determine the matter forthwith. If the demurrer is overruled, he is to be called upon to plead to the indictment.

Demurrer.  
Code, s. 623.

When an accused person pleads and demurs together, it is in the discretion of the Court whether the plea or demurrer shall be first disposed of.

No joinder in demurrer is necessary.

Upon the hearing of a demurrer, the Court may allow the demurrer or may order the indictment to be amended in such manner as the Court thinks just, or may overrule the demurrer.

Separate  
trials.  
Code, s. 624.

624. When two or more persons are charged in the same indictment, whether with the same offence or with different offences, the Court may at any time during the trial, on the application of any of the accused persons, direct that the trial of the accused persons, or any of them, shall be had separately from the trial of the other or others of them, and for that purpose may, if a jury has been sworn, discharge the jury from giving a verdict as to any of the accused persons.

Juries.  
Code, s. 625.

625. The law respecting the qualifications of jurors and the summoning of jurors to attend for the trial of persons charged with indictable offences, and the challenges allowed to such persons, is set forth in the laws relating to juries and jurors.

Accused  
person to be  
informed  
of his right  
of challenge.  
Code, s. 626.

626. When an accused person has demanded to be tried by a jury, the proper officer of the Court is to inform him in open Court that the persons whose names are to be called are the jurors to be sworn for his trial, and is further to inform him that if he desires to challenge any of them he must do so before they are sworn.

Challenge to  
array.  
Code, s. 627.

627. If the accused person desires to object to the whole panel of jurors, he must do so before any juror is sworn for his trial.

Challenges  
to  
individual  
jurors for  
cause.  
Code, s. 628.

628. The Crown or the accused person may object to a particular juror on either of the following grounds, that is to say:—

- (1) That the juror is not qualified by law to act as a juror;
- (2) That the juror is not indifferent as between the Crown and the accused person.

Such objections are in addition to any peremptory challenges to which the Crown or the accused person is by law entitled.

Time for  
challenging.  
Code, s. 629.

629. An objection to a juror, either by way of peremptory challenge or by way of challenge for cause, may be made at any time before the officer has begun to recite the words of the oath to the juror, but not afterwards.



630. If at any time it becomes necessary to ascertain the truth of any matter alleged as cause for challenge, the fact shall be tried by the jurors already sworn, if more than one, or, if one juror only has been sworn, by such juror together with some indifferent person chosen by the Court from the panel of jurors, or, if no juror has been sworn, by two indifferent persons chosen by the Court from such panel. The persons so appointed are to be sworn to try the cause for challenge, and their decision on the fact is final and conclusive.

Ascertain-  
ment of  
facts as to  
challenge.  
Code, s. 630.

If the persons so appointed cannot agree, the Court may discharge them from giving a decision, and may appoint two other persons to try the fact, to be chosen as in the case when no juror has been sworn.

631. If, when the accused person is called upon to plead to the indictment, it appears to be uncertain, for any reason, whether he is capable of understanding the proceedings at the trial, so as to be able to make a proper defence, a jury of twelve men, to be chosen from the panel of jurors, are to be empanelled forthwith, who are to be sworn to find whether he is so capable or no.

Want of  
understand-  
ing of  
accused  
person.  
Code, s. 631.

If the jury finds that he is capable of understanding the proceedings, the trial is to proceed as in other cases.

If the jury find that he is not so capable, the finding is to be recorded, and the Court may order the accused person to be discharged, or may order him to be kept in custody in such place and in such manner as the Court thinks fit, until he can be dealt with according to law.

A person so found to be incapable of understanding the proceedings at the trial may be again indicted and tried for the offence.

632. The jury are to be sworn to give a true verdict according to the evidence upon the issues to be tried by them.

Jury to be  
sworn and  
informed of  
charge.  
Code, s. 632.

When the jury have been sworn, the proper officer of the Court is to inform them of the charge set forth in the indictment, and of their duty as jurors upon the trial.

Discharge  
of juror by  
Court.  
Code, s. 633.

633. If, after a juror has been sworn, it appears to the Court from his own statement that he is not indifferent as between the Crown and the accused person, or that for any other reason he ought not to be allowed or required to act as a juror on the trial, the Court may, without discharging the whole of the jury, discharge that particular juror, and direct another juror to be sworn in his place.

Defence by  
counsel.  
Code, s. 634.

634. Every person charged with an offence is entitled to make his defence at his trial and to have the witnesses examined and cross-examined by his counsel.

The term "counsel" includes any person entitled to audience as an advocate.

Presence of  
accused.  
Code, s. 635.

635. The trial must take place in the presence of the accused person, unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable, in which case the Court may order him to be removed, and may direct the trial to proceed in his absence.

Provided that the Court may, in any case, if it thinks fit, permit a person charged with a misdemeanour to be absent during the whole or any part of the trial on such conditions as it thinks fit.

If the accused person absents himself during the trial without leave, the Court may direct a warrant to be issued to arrest him and bring him before the Court forthwith.

Exclusion of  
persons  
from  
hearing.  
Inserted by  
No. 32 of  
1918, s. 22.

635a. At the trial on indictment of any person under eighteen years of age (either alone or in conjunction with any other person) for any offence, or at the trial on indictment of any person for any offence of an indecent character committed against a person under the age of eighteen years, the court may exclude all or any persons not directly

interested in the case from the court-room or place of trial, and may prohibit the publication of all or any portion of the evidence or proceedings.

636. At the close of the evidence for the prosecution the proper officer of the Court is required to ask the accused person whether he intends to adduce evidence in his defence.

Evidence in  
defence.  
Code, s. 636.

637. Before any evidence is given at the trial of an accused person the counsel for the Crown is entitled to address the jury for the purpose of opening the evidence intended to be adduced for the prosecution.

Speeches by  
counsel.  
Code, s. 637.  
Amended by  
No. 55 of  
1953, s. 12.

If the accused person or any of the accused persons, if more than one, is defended by counsel, and if such counsel or any of such counsel says that he does not intend to adduce evidence, the counsel for the Crown is entitled to address the jury a second time for the purpose of summing up the evidence already given against such accused person or persons for whom evidence is not intended to be adduced.

At the close of the evidence for the prosecution the accused person, and each of the accused persons, if more than one, may by himself or his counsel address the jury for the purpose of opening the evidence, if any, intended to be adduced for the defence, and after the whole of the evidence is given may again address the jury upon the whole case.

Where the only witness to the facts of the case called by the defence is the accused person, he shall be called as a witness immediately after the close of the evidence for the prosecution.

Added by  
No. 55 of  
1953, s. 12.

If evidence is adduced for an accused person, the counsel for the Crown is entitled to reply.

If evidence is adduced for one or more of several accused persons, but not for all of them, the counsel for the Crown is entitled to reply with respect to the person or persons by whom evidence is so adduced, but not with respect to the other or others of them.

Provided that the Attorney General is entitled to reply in all cases, whether evidence is adduced by any accused person or not.

Added by  
No. 55 of  
1953, s. 12.

In this section the expression, "Attorney General" does not include Minister for Justice.

Summing  
up.  
Code, s. 638.

638. After the evidence is concluded and the counsel or the accused person or persons, as the case may be, have addressed the jury, it is the duty of the Court to instruct the jury as to the law applicable to the case, with such observations upon the evidence as the Court thinks fit to make.

After the Court has instructed the jury they are to consider their verdict.

Jury not  
to separate.  
Code, s. 639.

639. Except as hereinafter stated, after the jury have been sworn and the charge has been stated to them by the proper officer, they must not separate until they have given their verdict or are discharged by the Court.

And no person except the officer of the Court who has charge of them is to be allowed to speak to or communicate with any of them without the leave of the Court until they are discharged.

Provided that on the trial of a person charged with any indictable offence other than a crime punishable with death, the Court may, in its discretion, permit the jury to separate before considering their verdict for such period during any adjournment of the trial as the Court may think fit.

If any person disobeys the directions of this section he may be punished summarily as for contempt of Court.

The validity of the proceedings is not affected by any such disobedience, but, if the fact is discovered before the verdict is given, the Court, if it is of opinion that such disobedience is likely to prejudice the fair trial of the charge, may discharge the jury, and may direct that a fresh jury be sworn during the same sittings of the Court, or may adjourn the trial.

Confinement  
of  
jury.  
Code, s. 640.

640. While the jury are kept together, and until they have given their verdict, they are to be kept, during any adjournment of the Court, and while they are considering their verdict, in some private place under the charge of an officer of the Court,

and are to be provided with necessary fire and lights and with such reasonable refreshment, if any, as the Court may allow.

641. The court may in any case, if it thinks fit, direct that the jury shall view any place or thing which the Court thinks it desirable that they should see, and may give any necessary directions for that purpose.

View.  
Code, s. 641.  
Amended by  
No. 55 of  
1953, s. 13.

The validity of the proceedings is not affected by disobedience to any such directions, but, if the fact is discovered before the verdict is given, the Court, if it is of opinion that such disobedience is likely to prejudice the fair trial of the charge, may discharge the jury, and may direct that a fresh jury be sworn during the same sittings of the Court, or may adjourn the trial.

642. In any case in which it appears to the Court that the question whether an accused person ought or ought not to be convicted of an offence may depend upon some specific fact, or that the proper punishment to be awarded upon conviction may depend upon some specific fact, the Court may require the jury to find that fact specially.

Special  
verdict.  
Code, s. 642.

643. Notwithstanding the provisions of the last preceding section, the jury, on the trial of a person charged with the unlawful publication of defamatory matter, may give a general verdict of guilty or not guilty upon the whole matter in issue in like manner as in other cases.

General  
verdict on  
charge of  
defamation.  
Code, s. 643.

644. When the trial of an accused person is adjourned after the jury have been sworn, the Court may discharge the jury.

Discharge  
of jury.  
Code, s. 644.

If the jury cannot agree as to the verdict to be given, or if any emergency arises of such a nature as to render it, in the opinion of the court, necessary or highly expedient for the ends of justice to do so, the Court may, in its discretion, discharge the jury without giving a verdict, and may direct that a fresh jury be sworn during the same sittings of the Court, or may adjourn the trial.

Such an exercise of discretion is not subject to review by any Court.

Incapacity  
of Judge.  
Code, s. 645.

645. If the presiding Judge becomes incapable of proceeding with the trial or directing the discharge of the jury, it is the duty of some officer of the Court to discharge the jury.

In any such case the accused person must remain in custody, and may be again put on his trial. But he has the same rights with respect to admission to bail as upon an original committal for trial for the offence with which he is charged, and any justice may, in a proper case, admit him to bail accordingly.

Incapacity  
of juror.  
Code, s. 646.  
Amended by  
No. 55 of  
1953, s. 14.

646. If at any time during the trial a juror dies, or becomes, in the opinion of the Court, incapable of continuing to act as a juror, the Court may, in its discretion, discharge the jury under the provisions hereinbefore contained, or may, if it thinks fit, at the request of the accused person, and with the consent of the Crown, discharge the juror, if any, so becoming incapable, and direct that the trial shall proceed with the remaining jurors. In any such case the verdict of the remaining jurors, not being less than ten, shall have the same effect as if all the jurors had continued present.

Verdict on  
Sunday.  
Code, s. 647.

647. The taking of a verdict or any other proceeding of the Court is not invalid by reason of its happening on a Sunday.

Procedure  
on charge  
of an offence  
committed  
after  
previous  
conviction.  
Code, s. 648.

648. The proceedings upon an indictment for committing an offence after a previous conviction or convictions are required to be as follows, that is to say:—

- (1) The accused person is, in the first instance, to be called upon to plead to so much only of the indictment as charges the subsequent offence;
- (2) If he pleads any plea which raises an issue to be tried by a jury, the jury are to be charged in the first instance to inquire concerning the subsequent offence only;

- (3) If he pleads guilty, or if upon trial he is convicted of the subsequent offence, he is then, and not before, to be asked whether he had been previously convicted as alleged in the indictment;
- (4) If he answers that he had been so previously convicted, the Court may proceed to pass sentence upon him accordingly;
- (5) If he denies that he had been so previously convicted, or will not answer directly to the question, the jury are then to be charged to inquire concerning the previous conviction or convictions; and in that case it is not necessary that the jury should be sworn afresh, but the oath already taken by them is deemed to extend to such last-mentioned inquiry.

649. [*Repealed by No. 32 of 1918, s. 23.*]

650. A charge in an indictment of having been previously convicted or of being an habitual criminal shall, for all purposes of procedure and evidence, be deemed a charge of having committed an offence.

Procedure and evidence to be as on charge of an offence. Code, s. 650.

651. When the issues raised by any plea or pleas, except the plea of not guilty, have been found against an accused person who has not pleaded the plea of not guilty, he is to be called upon to plead afresh, and if those issues have been tried by a jury, the Court may direct the issues raised by any fresh plea to be tried by the same jury or by another jury. If the Court directs them to be tried by the same jury, it is not necessary that the jury should be sworn afresh; but the oath already taken by them is to be deemed to extend to the trial of such fresh issues.

Further pleas. Code, s. 651.

#### CHAPTER LXV.—VERDICT: JUDGMENT.

652. If on the trial of any person charged with an indictable offence it is alleged or appears that he is not of sound mind, the jury are to be required to consider the matter, and if the jury find that he is not of sound mind, the finding is to be recorded,

Accused person insane during trial. Code, s. 652.

and thereupon the Court is required to order him to be kept in strict custody, in such place and in such manner as the Court thinks fit, until he is dealt with under the laws relating to insane persons.

A person so found to be not of sound mind may be again indicted and tried for the offence.

Discharge  
of person  
acquitted.  
Code, s. 653.

Acquittal  
on ground  
of insanity.

653. If the jury find that the accused person is not guilty, or give any other verdict which shows that he is not liable to punishment, he is entitled to be discharged from the charge of which he is so acquitted; provided that if on the trial of a person charged with any indictable offence, it is alleged or appears that he was not of sound mind at the time when the act or omission alleged to constitute the offence occurred, the jury are to be required to find specially if they find that he is not guilty, whether he was of unsound mind at the time when such act or omission took place, and to say whether he is acquitted by them on account of such unsoundness of mind; and if they find that he was of unsound mind, at the time when such act or omission took place, and say that he is acquitted by them on account of such unsoundness of mind, the Court is required to order him to be kept in strict custody in such place and in such manner as the Court thinks fit, until His Majesty's pleasure is known.

In any such case the Governor, in the name of His Majesty, may give such order for the safe custody of such person during his pleasure, in such place of confinement and in such manner as the Governor may think fit.

Convicted  
person to be  
called on to  
show cause.  
Code, s. 654.

654. When an accused person pleads that he is guilty of any offence, and when, upon trial, an accused person is convicted of any offence, the proper officer is required to ask him whether he has anything to say why sentence should not be passed upon him: But an omission to do so does not invalidate the judgment.



655. A person convicted of an indictable offence, whether on his plea of guilty or otherwise, may at any time before sentence move that judgment be arrested on the ground that the indictment does not disclose any offence.

Arrest of judgment.  
Code, s. 655.  
Amended by  
No. 55 of  
1953, s. 15.

Upon the hearing of the motion, the Court may allow any such amendments of the indictment as it might have allowed before verdict.

The Court may either hear and determine the motion forthwith or may reserve the question of law for the consideration of the Court of Criminal Appeal.

656. If a motion to arrest the judgment is not made or is dismissed, the Court may either pass sentence upon the offender forthwith or may discharge him on his recognisance, as hereinbefore provided, conditioned that he shall appear and receive judgment at some future sittings of the Court, or when called upon.

Sentence.  
Code, s. 656.  
Amended by  
No. 32 of  
1918, s. 24;  
No. 55 of  
1953, s. 16.

If the trial was had in a Circuit Court or Court of Session, the recognisance may, in the discretion of the Court, be conditioned to appear and receive judgment before the Supreme Court at some fixed future time, or when called upon.

Amended by  
No. 55 of  
1953, s. 16.

If sentence is not passed forthwith, the court or any judge or chairman of the court may, at any subsequent sitting of the court at which the offender is present, pass sentence upon him.

Substituted  
by No. 32 of  
1918, s. 24.

When an offender has been discharged on his recognisance as aforesaid, any judge or chairman of the court may at any time, on an *ex parte* application made by or on behalf of the Attorney General, issue a warrant under his hand to arrest the offender and bring him before a justice of the peace, and the justice may commit him to prison until he can be brought before the court to receive sentence, and the sheriff or other proper officer shall bring him before the court to receive sentence as soon as practicable.

Substituted  
by No. 32 of  
1918, s. 24.

The Court may, before passing sentence, receive such evidence as it thinks fit in order to inform itself as to the sentence proper to be passed.

Sentence  
of death.  
Code, s. 657.  
Amended  
by No. 32 of  
1918, s. 25.

657. The sentence to be pronounced upon a person who is convicted of a crime punishable with death is that he be returned to his former custody, and that, at a time and place to be appointed by the Governor, he be hanged by the neck until he is dead: Provided that when a person is convicted of any crime punishable with death, except treason and wilful murder, if the Court is of opinion that, under the circumstances of the case, it is proper that the offender should be recommended for the Royal mercy, the Court may, if it thinks fit, direct the proper officer, instead of asking the offender whether he has anything to say why sentence of death should not be passed upon him, to ask the offender, and thereupon such officer is to ask the offender, whether he has anything to say why judgment of death should not be recorded against him.

Recording  
sentence of  
death.

In any such case the Court may abstain from pronouncing sentence of death, and may, instead thereof, order judgment of death to be entered on record.

And thereupon the proper officer is to enter judgment of death on record against the offender in the usual form, as if sentence of death had actually been pronounced by the Court against the offender in open Court.

A record of a judgment of death so entered has the same effect in all respects as if sentence of death had been pronounced in open Court.

Pregnant  
women.  
Code, s. 658.

658. When sentence of death is passed upon a woman, she may apply for an order to stay execution on the ground that she is with child of a quick child.

If such application is made, the Court is required to direct one or more legally qualified medical practitioners to be sworn to examine the woman in some private place either together or successively, and to ascertain whether she is with child of a quick child or not.

If upon his or their report, verified on oath, it appears that she is with child of a quick child, the Court is required to order that execution of the sentence be respited until she is delivered of a child or until it is no longer possible, in the course of nature, that she should be delivered.

659. When an offender is sentenced to whipping, the Court is required to give directions in the sentence as to the whipping. The number of strokes, which may not exceed twenty-five, and, in the case of an offender under the age of eighteen years, may not exceed twelve, and the instrument with which they are to be given, must be specified in the sentence.

Whipping.  
Code, s. 659.  
Amended  
by No. 32 of  
1918, s. 31.

The instrument must be either a birch rod, a cane, a leather strap, or the instrument commonly called a cat, which shall be made of leather or cord without any metallic substance interwoven therewith: Provided that the cat shall not be used in the case of an offender under the age of eighteen years.

660. (1) When any person is convicted upon an indictment of a crime, after a previous conviction of a crime, the Court may, in addition to any other punishment, direct that such person be subject to the supervision of the police for two years, or for such less period as the Court may direct, commencing immediately after the expiration of the sentence passed on him for the last of such crimes.

Police  
supervision.  
Code, s. 660.

(2) Any person subject to the supervision of the police, who is at large in Western Australia, is required to notify his place of residence to the police officer in charge of the police district where he resides, and whenever he changes his residence within the same district to notify such change to the police officer in charge of the district, and whenever he is about to leave the police district to notify his intention to the police officer in charge of the district, stating the place to which he is going, and, if required, and so far as is practicable, his address at that place, and whenever he arrives in any police district to forthwith notify his place of residence to the police officer in charge of such last mentioned district.

(3) Any person failing to comply with the requirements of this section is guilty of an offence, and is liable on summary conviction to imprisonment with hard labour for one year.

It is a defence to a charge of an offence defined in this section to prove that the accused person, being on a journey, tarried no longer in the place in which he is charged with failing to notify his place of residence than was reasonably necessary, or that otherwise he did his best to act in conformity with the law.

Indeterminate sentence on habitual criminal.  
Code, s. 661.  
Repealed by No. 32 of 1918, s. 26.  
New section substituted by No. 32 of 1918, s. 27.

661. When any person apparently of the age of eighteen years or upwards is convicted of any indictable offence, not punishable by death, and has been previously so convicted on at least two occasions, the court before whom such person is convicted may declare that he is an habitual criminal, and direct that on the expiration of the term of imprisonment then imposed upon him, he be detained during the Governor's pleasure in a reformatory prison.

Indeterminate sentence on person convicted of indictable offence.  
Code, s. 662.  
Repealed by No. 32 of 1918, s. 26.  
New section substituted by No. 32 of 1918, s. 27.  
Amended by No. 40 of 1945, s. 4.

662. When any person is convicted of any indictable offence, not punishable by death (whether such person has been previously convicted of any indictable offence or not), the court before which such person is convicted may, if it thinks fit, having regard to the antecedents, character, age, health, or mental condition of the person convicted, the nature of the offence or any special circumstances of the case—

- (a) direct that on the expiration of the term of imprisonment then imposed upon him he be detained during the Governor's pleasure in a reformatory prison; or,
- (b) without imposing any term of imprisonment upon him sentence him to be forthwith committed to a reformatory prison, and to be detained there during the Governor's pleasure.

663. Any question arising under this chapter as to whether any person is or is not an habitual criminal or has or has not been previously convicted, or should or should not be detained in a reformatory prison, shall be determined by the court on such evidence as the court may think fit to hear.

Question of liability to detention in a reformatory prison to be determined by the Court.

Code, s. 663.  
Repealed by No. 32 of 1918, s. 26.

New section substituted by No. 32 of 1918, s. 27.

664. A person shall be deemed to have been previously convicted of an offence for the purposes of this chapter if so convicted anywhere or at any time whether heretofore or hereafter, and whether within or outside of Western Australia, and any conviction for any offence outside of Western Australia shall, if such offence is of the same or substantially the same nature as any offence defined by the law of this State, be deemed for the purposes aforesaid a conviction for the offence so defined.

What to be deemed previous convictions.

Code, s. 664.  
Repealed by No. 32 of 1918, s. 26.

New section substituted by No. 32 of 1918, s. 27.

665. (1) An indeterminate sentence shall commence and become operative on the expiry or sooner determination of any sentence involving deprivation of liberty which the convicted person is undergoing or has been sentenced to undergo.

Service of indeterminate sentence.

Code, s. 665.  
Repealed by No. 32 of 1918, s. 26.

New section substituted by No. 32 of 1918, s. 27.

(2) Indeterminate sentences shall be served in a reformatory prison under and subject to such provisions as shall be made by law for the establishment of such prisons and for prescribing the manner of serving such sentences and regulating the treatment, employment, and discipline of persons undergoing such sentences.

(3) The fact that any person is subject to an indeterminate sentence shall not prevent him from undergoing or suffering any other punishment to which he may be or become liable.

666. (1) The Governor may at any time, subject to any provisions to be made under any law relating to prisons, and subject to any conditions which he may see fit to impose, direct the release on probation for two years of any person undergoing an indeterminate sentence hereunder, and such person shall be so released accordingly.

Release on probation.

Code, s. 666.  
Repealed by No. 32 of 1918, s. 26.

New section substituted by No. 32 of 1918, s. 27.

(2) Any such license may prescribe as a condition that the released person be placed and remain under the supervision or authority of any society named in the license which may be willing to take charge of the case, and such society shall, whenever required by the Governor or Comptroller General of Prisons, report on the conduct and circumstances of the released person.

(3) Every person so released while he remains in Western Australia shall (except in so far as the Governor shall, in the case of a person placed under the supervision or authority of some society, otherwise order) be subject to police supervision, and the provisions of subsections two and three of section six hundred and sixty of this Code shall apply to him accordingly.

(4) Nothing herein shall prevent the exercise by the Governor of the Royal Prerogative of Mercy in respect of any person on whom an indeterminate sentence has been imposed.

Recommittal of person released on probation or termination of his reformatory detention. Code, s. 667. Repealed by No. 32 of 1918, s. 26. New section substituted by No. 32 of 1918, s. 27.

**667.** (1) If, during the period of probation, a person so released—

- (a) is proved at any court of petty sessions to have failed (without some excuse which such court deems reasonable) to comply with any of the said provisions of section six hundred and sixty, or with any condition on which he has been released, or to have been associating with reputed thieves or other reputed criminals; or
- (b) is convicted of any indictable offence or of any simple offence which is punishable by imprisonment for a period exceeding one month,

then the court of petty sessions or the court before which he is so convicted as aforesaid, as the case may be, may by order direct that such person forthwith or on the completion of the term of imprisonment (if any) then imposed upon him be recommitted to a reformatory prison during the Governor's pleasure,

and he shall be so recommitted and the indeterminate sentence shall, subject to any such imprisonment as aforesaid, again become operative.

(2) Complaint of any matter necessary to secure an order of recommitment by a court of petty sessions hereunder may be made in manner provided in the Justices Act, 1902\*, in respect of a charge of a simple offence, and for the purpose of having such matter heard and determined such summonses, warrants, and other proceedings may be issued and taken as could be issued or taken if the complaint were in respect of such a charge.

(3) An order of recommitment under this section on the ground of the conviction of the person concerned may be made at any time during the period of probation and before the expiry of the sentence (if any) imposed on the conviction and, when the order is not made at the time of the conviction, the person concerned may be brought before the court or justice having power to make such order in the same manner as if he were charged with an offence to be dealt with by such court or justice, and (if he is in prison) the provisions of section fifty-two of the Prisons Act, 1903†, shall be deemed to apply to the case accordingly.

(4) If during the period of probation none of the events aforesaid happens, or if no order of recommitment is made in consequence of any such event which has happened, then the indeterminate sentence shall be deemed to be annulled as from the end of such period.

668. Any person at or immediately prior to the commencement of these provisions undergoing or liable to undergo a sentence of preventive detention, which has been heretofore imposed on him as an habitual criminal, or released on probation from such detention, shall be deemed to have been sentenced or released under these provisions, and these provisions shall apply to him accordingly: provided that if a period shall have been fixed as the dura-

Application of these provisions to sentences of preventive detention heretofore imposed.  
Code, s. 668.  
Repealed by No. 32 of 1918, s. 26.  
New section substituted by No. 32 of 1918, s. 27.

\* Now the Justices Act 1902-1948.

† Now the Prisons Act. 1903-1918.

tion of the preventive detention of such person, then the sentence to which he is subject by virtue of these provisions shall be deemed to be annulled at the end of that period.

First  
offenders.  
Code, s. 669.

**669.** (1) When upon the trial of any person on a charge of any offence not punishable with more than three years imprisonment, with or without any alternative punishment, such person shall plead guilty, or the Court shall think the offence proved, if it appears to the Court that regard being had to the youth, character, or antecedents of the offender, or the trivial nature of the offence, or to any extenuating circumstances under which the offence was committed, it is inexpedient to inflict any punishment, and provided that no previous conviction is proved against the offender,—

- (a) The Court may, without proceeding to conviction, dismiss the indictment or complaint and make an order to that effect, and if the Court thinks fit may, upon such dismissal, order the offender to make restitution of any property in respect of which the offence was committed, or to pay compensation for any injury done to such property, or compensation for any injury done to any person injured, as the case may be, and may assess the amount to be paid by the offender in any such case with such costs of the prosecution as the Court may think reasonable, and may direct when and to whom and in what instalments the amount ordered to be paid is to be paid, and such order may be enforced in the same manner as orders made by Justices on summary conviction; or
- (b) The Court may convict the offender and discharge him conditionally on his entering into a recognisance with or without sureties, and during such period as the Court may direct, to appear and receive judgment when called upon, and, in the meantime, to keep the peace and be of good



behaviour, and either without payment of damages and costs as aforesaid, or subject to the payment of such damages and costs, or either of them, as the Court may think reasonable.

(2) Any order of dismissal or conviction and conditional discharge under the provisions of this section is a bar to all further or other proceedings, civil or criminal, for the same cause.

(3) (a) If it is proved to the Court having power to deal with the offender in respect of his original offence, or to any justices, that the offender has failed to observe any of the conditions of his recognisance, the Court or justices may forfeit the recognisance, and issue a warrant for his apprehension.

(b) The offender when apprehended on any such warrant if not brought before the Court having power to sentence him, is required to be brought before two justices, who may either remand him by warrant until the time at which he was required by his recognisance to appear for judgment, or until the sitting of a Court having power to deal with the original offence, or may admit him to bail with a sufficient surety conditional on his appearing for judgment.

(c) The offender when so remanded may be committed to any prison near the place where he is bound to appear for judgment; and the warrant of remand must order him to be brought before the Court before which he was bound to appear for judgment, or to answer as to his conduct since his release.

(4) The term "Court" in this section includes a Court of summary jurisdiction.

670. Any convicted offender under the age of eighteen years, or being any aboriginal native, and being a male, may, in addition to or in substitution for any other punishment, be sentenced to whipping.

Juvenile offenders or aboriginal natives may be sentenced to whipping. Code, s. 670. Amended by No. 32 of 1918, s. 31.

Discharge  
of offender  
in certain  
cases.  
Code, s. 671.

671. When a person is summarily convicted of any offence relating to property, the justices may discharge the offender without inflicting any punishment, upon his making such satisfaction to the person aggrieved for damages, with or without costs, as may be approved by the justices.

When such satisfaction has been made, the offender is not liable to any civil proceedings for the same cause at the suit of the person aggrieved.

Assessment  
of value  
of property:  
Appropriation  
of  
fines  
dependent  
on value.  
Code, s. 672.

672. On a summary conviction by which any penalty is imposed upon the basis of the value of any property taken, killed, or destroyed, or of the amount of any injury done to any property, such value or amount is to be assessed by the convicting justices, and the amount, when recovered, is to be paid to the person aggrieved, unless he is unknown, or unless the property taken or injured is of a public nature; in either of which cases it is to be applied in the same manner as other fines imposed by justices:

Provided that when several persons join in the commission of the same offence, and on conviction a penalty is imposed upon each of them upon the basis of the value of the property or of the amount of the injury, no further sum than such value or amount is to be paid to the person aggrieved, and the remainder is to be applied in the same manner as other fines imposed by justices.

Effect of  
summary  
conviction  
for  
indictable  
offences.  
Code, s. 673.

673. When a person has been summarily convicted of an indictable offence, the conviction is to be deemed a conviction of a simple offence only, and not of an indictable offence.

#### CHAPTER LXVI.—COSTS.

Costs of  
prosecution  
in certain  
cases.  
Code, s. 674.

674. When a person is convicted on indictment of any indictable offence relating to the person of any person, the Court, on the application of the

person aggrieved by the offence, may, in addition to any sentence which is passed upon the offender, adjudge him to pay to the person aggrieved his costs of prosecution, together with a sum by way of compensation for any loss of time suffered by him by reason of the offence of which the offender is convicted.

An order for the payment of such costs, or of any sum so awarded by way of compensation, may be enforced in the same manner as a judgment of the Court given in an action.

If any money was found on the person of the offender on his arrest, the Court may order it to be applied towards the payment of any money so ordered to be paid by him.

When an order is made under the provisions of this section for the payment of money by way of compensation to an aggrieved person, the offender is not liable to any civil proceedings for the same cause at the suit of that person.

675. (1) In the case of a prosecution of any person on the complaint of a private prosecutor on a charge of the unlawful publication of defamatory matter, if the accused person is indicted and acquitted he is entitled to recover from the prosecutor his costs of defence, unless the Court otherwise orders.

Costs in  
cases of  
defamation.  
Code, s. 675.

(2) In the case of a prosecution of any person on the complaint of a private prosecutor on a charge of the unlawful publication of defamatory matter, if the accused person pleads that the defamatory matter was true, and that it was for the public benefit that the publication should be made, then, if that issue is found for the Crown, the prosecutor is entitled to recover from the accused person the costs sustained by him by reason of such plea, unless the Court otherwise orders.

Taxation.  
Code, s. 676.  
Amended by  
No. 55 of  
1953, s. 17.

**676.** Costs of a prosecution or defence must be taxed by the proper officer of the Court in which the indictment is presented.

If the indictment is presented in a Circuit Court, Court of Session or Court of General or Quarter Sessions, the costs must be taxed by the proper officer of the Supreme Court.

The term "costs of prosecution" includes costs incurred by the person aggrieved in order to the committal of the offender, and costs incurred by him with the consent of the Crown for the purposes of the trial.

The term "costs of defence" includes costs incurred by the accused person both before and after his committal.

Enforce-  
ment of  
judgment  
of Circuit  
Court, Court  
of Session, or  
Court of  
General or  
Quarter  
Sessions.  
Code, s. 677.  
Amended by  
No. 55 of  
1953, s. 18.

**677.** When an order is made by a Circuit Court, Court of Session or Court of General or Quarter Sessions under the provisions of this chapter, it may be recorded in the Supreme Court, and may then be enforced in the same manner as a judgment of that Court given in an action.

#### CHAPTER LXVII.—EXECUTION OF SENTENCE.

Execution  
of sentence  
of death.  
Code, s. 678.  
Amended by  
No. 32 of  
1918, s. 28;  
No. 27 of  
1952, s. 2.

**678.** The punishment of death is executed by hanging the offender by his neck until he is dead. The execution is required to take place within the walls or enclosed yard of a prison. The time and place of execution are to be appointed by the Governor.

Substituted  
by No. 32 of  
1918, s. 28.

Notwithstanding the provisions of any law heretofore enacted, every sentence of death shall be executed by the Comptroller General of Prisons or his deputy, or by some substitute appointed by such Comptroller General or deputy by writing under his hand.

Substituted  
by No. 32 of  
1918, s. 28.

The Comptroller General or his deputy is required to be present at the execution, together with the superintendent or gaoler and proper officers of the prison, including the medical officer. Such adult spectators as the Comptroller General or his deputy may think fit may also be present.

All the persons attending the execution are required to remain in the enclosure until execution has been done according to law, and until the medical officer has signed a certificate in the form following, that is to say:—

I (A.B.), being the medical officer of the prison at.....do hereby certify that I have this day witnessed the execution of C.D., lately, as I am informed, convicted and duly sentenced to death at the.....Court; and I further certify that the said C.D. was, in pursuance of such sentence, hanged by the neck until he was dead.

Given under my hand this.....day of  
in the year.....

The Comptroller General of Prisons or his deputy, and the superintendent, or gaoler, and officers of the prison, and the police officers, who are present, are required to subscribe, and such other persons as aforesaid who are present may subscribe, before their departure from the prison, a declaration in the form following, adding their description, that is to say:—

Amended by  
No. 32 of  
1918, s. 28.

We, the undersigned, do hereby declare and testify that we were this day present when the extreme penalty of the law was executed on C.D., lately, as we are informed, convicted at the.....Court, and duly sentenced to death on the.....day of.....; and that the said C.D. was, in pursuance of such sentence, hanged by the neck until he was dead.

Every such certificate and declaration is to be transmitted by the sheriff, or under sheriff, or such deputy, whichever is present at the execution, to the Registrar of the Supreme Court at Perth, and is to be entered and kept in his office as a record of the Court, and a copy of it is to be twice published in the *Government Gazette*.

The body of the offender is to be buried at such place as the Chief Secretary\* may direct.

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\*Formerly Colonial Secretary; amended by No. 8 of 1925, s. 2.

Commuta-  
tion of  
capital  
sentence.  
Code, s. 679.

679. In any case in which the Governor is authorised to extend the Royal mercy conditionally to an offender under sentence of death, he may extend mercy on condition of the offender being imprisoned, with or without hard labour, for such term as the Governor may think fit.

Any such extension of mercy is to be signified in writing to the Chief Secretary\*, and the Chief Secretary\* is required thereupon to allow the offender the benefit of a conditional pardon, and to make an order that he be imprisoned with or without hard labour, according to the direction of the Governor. Such allowance or order has the effect of a valid sentence passed by the Court before which the offender was convicted.

Whipping.  
Code, s. 680.  
Amended  
by No. 32  
of 1918, s. 31.

680. The punishment of whipping is not in any case to be inflicted after the expiration of six months from the passing of the sentence.

The punishment of whipping, except in the case of a boy under the age of eighteen, summarily convicted, and except in the case of an aboriginal native, must be inflicted in some gaol or prison, and no person who is not officially connected with the gaol or prison may be present at the infliction of the punishment.

The punishment of whipping in the case of a boy under the age of eighteen, summarily convicted, must be inflicted privately.

The punishment of whipping in the case of an aboriginal native must be inflicted in the presence of a justice of the peace, the Protector of Aborigines, or an officer of police not under the rank of sergeant.

The punishment of whipping must be inflicted before the offender is put to any employment or labour at any place outside the walls of any prison in which he is confined.

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\*Formerly Colonial Secretary; amended by No. 8 of 1925, s. 2.

681. When any person is convicted of the unlawful publication of any defamatory matter which was published by means of printing, the prosecutor may levy the fine, if any, and costs out of any property of the offender in like manner as in civil actions, and also out of the whole of the types, presses, or printing materials, which, at the time when the offence was committed, belonged to any person to whom any types, presses, or printing materials, used in printing such defamatory matter, belonged at the time when the offence was committed, to whomsoever the same may belong at the time of the levy.

Levy of fine and costs on conviction for defamation. Code, s. 681.

682. Any judgment or order by any Court (including a court of summary jurisdiction) under this Code for payment of any fine or costs or any other sum of money whatsoever by any person or corporation may, without prejudice to any other method of enforcement, be entered up as a judgment of the Supreme Court on the order of a Judge, and shall be enforceable with costs accordingly.

Enforcement of order for payment of money. Code, s. 682.

682A. (1) When any decision of the Supreme Court, Court of Session or any court of general or quarter sessions of the peace adjudges or orders the payment of a pecuniary penalty or compensation or sum of money or costs, then such decision may be enforced in such manner and by such means as a similar decision of justices is enforceable, and shall for that purpose be deemed an order made by justices, and the relative provisions of the Justices Act, 1902\*, shall apply thereto accordingly.

Enforcement of order for payment of penalty, compensation, or costs. Added by No. 32 of 1918, s. 29; amended by No. 55 of 1953, s. 19.

(2) For the purposes of enforcing such decision the Registrar or Clerk of the Court, as the case may be, shall have power to make such subsidiary orders and to sign and issue such warrants as any justices might make and sign in a similar case or as may be authorised by rules of court.

\* Now the Justices Act 1902-1948.

(3) The provisions of this section shall be without prejudice to any other method of enforcement.

(4) "Decision" means any judgment, sentence, or order given, pronounced, or made in or in connection with a criminal cause or matter.

CHAPTER LXVIII.—EFFECT OF CONVICTION AS REGARDS PRISONERS' PROPERTY.

Forfeitures  
abolished.  
Code, s. 653.

683. Forfeitures, escheats, attainders and corruptions of blood on account of crime or conviction stand abolished.

Curator  
may be  
appointed  
of prisoner's  
estate.  
Code, s. 684.

684. (1) Whilst any person heretofore or hereafter sentenced to a term of imprisonment or detention exceeding twelve months or to detention during the Governor's pleasure is under and subject to such sentence the Court may, on the application of the Comptroller-General of Prisons, appoint a curator of such prisoner's estate, and may at any time remove such curator, and, if deemed expedient, appoint another person in his place.

Estate to  
vest in  
curator.

(2) Subject to any order or direction of the Court, the prisoner's real and personal estate shall vest in the curator, and such vesting shall be deemed a transmission within the meaning of the Transfer of Land Act, 1893\*, and may be registered under that Act accordingly, subject to such and the like conditions as apply in the case of transmissions of the lands of a deceased person; provided that nothing herein shall affect the prisoner's right to dispose of his estate whilst there is no curator thereof.

Powers of  
curator.

(3) The curator shall have power—

- (a) to pay and discharge out of the said estate all such debts and liabilities as are justly payable out of the same;
- (b) to make and pay out of the said estate all such allowances for the support or maintenance of any wife or child or reputed wife or child of the prisoner or of any other relative or reputed relative of such prisoner

\* Now the Transfer of Land Act, 1893-1950.



dependent upon him for support or for the benefit of the prisoner himself if and while he shall be lawfully at large under any license, as to such curator shall seem fit;

- (c) to manage the said estate and take such steps and do such things for the preservation and advantage thereof (including the carrying on of any business) as shall be approved by the Court;
- (d) to lease, sell or otherwise dispose of any part of the said estate whenever he shall judge it expedient so to do;
- (e) to sue or defend any action on behalf of the prisoner;
- (f) to exercise such powers in respect of the said estate as an administrator may exercise in respect of the estate of his intestate:

Provided that no real estate shall be leased for a longer term than one year or sold or mortgaged except pursuant to an order of the Court.

(4) The Court may require any curator to give security or may make any appointment subject to security being given, and may impose any such conditions, restrictions and limitations on the appointment as may appear expedient, and may allow the curator such remuneration as shall be just.

Security.

(5) Notwithstanding anything herein no property acquired by a prisoner whilst he shall be lawfully at large under any license shall vest in any curator, but such prisoner shall be entitled thereto without interference.

Prisoner may retain property acquired whilst on license.

(6) A curator shall be entitled at any time to apply to the Court for advice and directions as to the performance of his duties and the exercise of his powers, and any person may summon the curator before the Court to show cause why he should not do or submit to any act, matter, or thing in his character as such curator, and the Court may make such order as shall be just.

Curator may apply to Court for directions.

Interpretation.

(7) In this chapter the word "Court" means the Supreme Court or any Judge thereof, and the word "prisoner" includes any person under and subject to such sentence as aforesaid though he be not in actual custody, and the provisions of this chapter shall extend to any person who is undergoing or subject to a term of imprisonment by way of commuted sentence as if he had been originally sentenced to such term.

Vesting of property on death, bankruptcy, or liberation of prisoner.  
Code, s. 685.

685. When any person for whose estate a curator has been appointed under this chapter shall die or be made bankrupt or shall cease to be a prisoner the powers, authorities, and discretions of any curator of his estate shall cease, and the estate and all accretions thereto shall, subject and without prejudice to the administration and application thereof under and according to this chapter, vest in the person who would be entitled thereto if no curator had been appointed: Provided that the curator may do such things as may be necessary for the care and preservation of the estate or any part thereof until it can be handed over to the person entitled thereto.

Curator to account.  
Code, s. 686.

686. A curator shall be accountable to the person entitled to the estate that was vested in him in the same manner in which a trustee is accountable to his *cestui que trust*, without prejudice, however, to the administration and application of the estate under this chapter, and on his authority coming to an end the curator shall pass his accounts before the Master of the Supreme Court in manner to be prescribed by rules which the Judges of the Supreme Court or a majority of them are hereby empowered to make: Provided that a curator shall not be answerable to any person for any property which shall not actually have come to his hands by virtue of this Chapter nor for any loss or damage which may happen through any mere omission or non-feasance on his part.

## CHAPTER LXIX.—APPEAL: PARDON.

687. (1) The Full Court (as defined by section fifty-seven of the Supreme Court Act, 1935-1950\*) shall, subject as hereinafter provided, have jurisdiction to hear and determine appeals under this chapter, and the expression *Court of Criminal Appeal* in this Code shall mean the said Full Court.

Court of Criminal Appeal.  
Code, s. 687.  
Amended by No. 55 of 1953, s. 20.

(2) The determination of any question before the Court of Criminal Appeal shall be according to the opinion of the majority of the members of the Court hearing the case.

(3) The Court of Criminal Appeal shall, for the purposes of and subject to the provisions of this chapter, have full power to determine, in accordance with this chapter, any questions necessary to be determined for the purpose of doing justice in the case before the Court.

(4) Rules of Court shall provide for securing sittings of the Court of Criminal Appeal, if necessary, during vacation.

(5) The Registrar of the Supreme Court shall be Registrar of the Court of Criminal Appeal.

(6) It shall be no objection to a Judge taking part in the determination of any question that he presided at the trial of the appellant or that the appeal is against his own decision.

(7) Appeals under this chapter shall be heard and determined before an uneven number of Judges.

688. (1) A person convicted on indictment may appeal to the Court of Criminal Appeal—

- (a) against his conviction on any ground of appeal which involves a question of law alone; and
- (b) with the leave of the Court of Criminal Appeal or upon the certificate of the Judge who tried him that it is a fit case for appeal against his conviction on any ground of appeal which involves a question of fact alone, or a question of mixed law and fact,

Right of appeal in criminal cases.  
Code, s. 688.  
Amended by No. 32 of 1918, s. 30; No. 20 of 1954, s. 8.

\* Now Supreme Court Act, 1935-1954: See No. 21 of 1954, s. 1 (3).

or any other ground which appears to the Court to be a sufficient ground of appeal; and

- (c) against any sentence of detention in a reformatory prison passed upon him; and
- (d) with the leave of the Court of Criminal Appeal against any other sentence passed on his conviction, unless the sentence is one fixed by law.

(2) An appeal may be made to the Court of Criminal Appeal on the part of the prosecution—

- (a) against any decision allowing a demurrer to an indictment or arresting judgment on an indictment or quashing an indictment; or
- (b) against any verdict of acquittal on an indictment and any judgment founded thereon when such verdict has been found by direction of the Judge or other authority entitled to give directions on law to the jury at the trial; or
- (c) against any judgment (including any verdict on which the same is founded) given on a plea to the jurisdiction of a Court to try an accused person for an offence alleged in an indictment.
- (d) against any sentence which in the circumstances of the case cannot lawfully be passed on the convicted person for the offence of which he stands convicted.

Para. (d)  
added by No.  
20 of 1954, s. 8.

Determina-  
tion of  
appeals in  
ordinary  
cases.  
Code, s. 689.  
Amended by  
No. 20 of  
1954, s. 9.

**689.** (1) The Court of Criminal Appeal on any such appeal against conviction shall allow the appeal, if they think that the verdict of the jury should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence, or that the judgment of the Court before whom the appellant was convicted should be set aside on the ground of a wrong decision of any question of law or that on any ground there was a miscarriage of justice, and in any other case shall dismiss the appeal:

Provided that the Court may, notwithstanding that they are of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if they consider that no substantial miscarriage of justice has actually occurred.

(2) Subject to the appeal provisions of this chapter the Court of Criminal Appeal shall, if they allow an appeal against conviction, quash the conviction and either direct a judgment and verdict of acquittal to be entered or order a new trial.

(3) On an appeal against sentence the Court of Criminal Appeal shall, if they think that a different sentence should have been passed, quash the sentence passed at the trial, and pass such other sentence warranted in law by the verdict or which may lawfully be passed for the offence of which the appellant or an accused person stands convicted (whether more or less severe) in substitution therefor as they think ought to have been passed and in any other case shall dismiss the appeal.

**690.** (1) On any appeal against a decision allowing a demurrer, quashing an indictment, or arresting judgment the Court may affirm, reverse, or modify the decision, and give any judgment and make any order which ought to have been given or made in the first instance, and exercise any powers of amendment or any other powers and direct any step to be taken which ought to have been exercised or taken in the first instance.

How other  
appeals  
disposed of.  
Code, s. 690

(2) If an order arresting judgment is reversed, the Court is to direct that judgment be pronounced upon the offender, and he is to be ordered to appear, at such time and place as the Court may direct, to receive judgment, and any justice or the Registrar may, for the purpose of securing such appearance, issue his warrant for the arrest and detention of the offender. An offender so arrested may be admitted to bail by order of the Court, which may be made at the time when the order directing judgment to be pronounced is made or afterwards.

(3) On any appeal against an acquittal by direction or on an appeal against any judgment given on a plea to the jurisdiction, the Court, if it allows

the appeal, may reverse any judgment, decision, or verdict, the correctness of which was in question in the appeal, and may order a new trial or that the accused shall stand his trial, as the case may require.

Court may  
give  
directions  
as to new  
trial.  
Code, s. 691.

691. (1) When the Court orders a new trial or that any person do stand his trial or be called upon to plead to an indictment, or when there is or may be any issue to be tried in consequence of the Court's decision, the Court may fix the time and place of the trial, and may give such directions with regard thereto as may appear necessary.

(2) Any justice or the Registrar may, with a view to securing such person's appearance at and during the trial, issue his warrant for the arrest and detention of the person to be tried or directed to be called upon to plead, and such person may be admitted to bail by order of the Court of Criminal Appeal or of the Court before which he is being or to be tried, which order may be made at any time.

Appeal by  
person  
acquitted  
on the  
ground of  
insanity.  
Code, s. 692.

692. When a person charged on indictment has been acquitted on account of unsoundness of mind, he shall have the like right of appeal as if he had been convicted, and the verdict shall for the purposes of the appeal be deemed to be a verdict convicting the accused with a declaration of his unsoundness of mind added, and the Court shall deal with the appeal accordingly: provided that if the appeal be allowed, the Court shall either order an unqualified verdict and judgment of acquittal to be entered or order a new trial.

Powers of  
Court in  
special  
cases.  
Code, s. 693.

693. (1) If it appears to the Court of Criminal Appeal that an appellant, though not properly convicted on some count or part of the indictment, has been properly convicted on some other count or part of the indictment, the Court may either affirm the sentence passed on the appellant at the trial, or pass such sentence in substitution therefor as they think proper, and as may be warranted in law by the verdict on the count or part of the indictment on which the Court consider that the appellant has been properly convicted.

(2) Where an appellant has been convicted of an offence and the jury could on the indictment have found him guilty of some other offence, and on the finding of the jury it appears to the Court of Criminal Appeal that the jury must have been satisfied of facts which proved him guilty of that other offence, the Court may, instead of allowing or dismissing the appeal, substitute for the verdict found by the jury a verdict of guilty of that other offence, and pass such sentence in substitution for the sentence passed at the trial as may be warranted in law for that other offence not being a sentence of greater severity.

(3) Where on the conviction of the appellant the jury have found a special verdict, and the Court of Criminal Appeal consider that a wrong conclusion has been arrived at by the Court before which the appellant has been convicted on the effect of that verdict, the Court of Criminal Appeal may, instead of allowing the appeal, order such conclusion to be recorded as appears to the Court to be in law required by the verdict, and pass such sentence in substitution for the sentence passed at the trial as may be warranted in law.

(4) When it appears to the Court that a convicted appellant ought to have been acquitted on account of unsoundness of mind, they may quash the conviction and direct a judgment and verdict of acquittal on account of unsoundness of mind to be entered, and shall thereupon order the appellant to be kept in strict custody until His Majesty's pleasure is known, and in any such case the Governor in the name of His Majesty may give such order for the safe custody of the appellant during the pleasure of the Governor, in such place of confinement and in such manner as the Governor may think fit.

694. The operation of any order for the restitution of any property to any person made on a conviction on indictment, and the operation, in case of any such conviction, of the provisions of subsection one of section twenty-four of the Sale of Goods Act, 1895, as to the re-vesting of the property in stolen goods on conviction, shall (unless the Court

Re-vesting  
and  
restitution  
of property  
on  
conviction.  
Code, s. 694.

before whom the conviction takes place direct to the contrary in any case in which, in their opinion, the title to the property is not in dispute) be suspended—

- (a) in any case until the expiration of ten days after the date of the conviction; and
- (b) in cases where notice of appeal or leave to appeal is given within ten days after the date of conviction, until the determination of the appeal;

and in cases where the operation of any such order, or the operation of the said provisions, is suspended until the determination of the appeal, the order or provisions, as the case may be, shall not take effect as to the property in question if the conviction is quashed on appeal. Provision may be made by rules of Court for securing the safe custody of any property, pending the suspension of the operation of any such order or of the said provisions.

(2) The Court of Criminal Appeal may by order annul or vary any order made on a trial for the restitution of any property to any person, although the conviction is not quashed; and the order, if annulled, shall not take effect, and if varied, shall take effect as so varied.

(3) Any person against whom an order of restitution is made may, subject to rules of Court, appeal to the Court of Criminal Appeal against such order.

Time for  
appealing.  
Code, s. 695.

695. (1) Where a person convicted desires to appeal under this Chapter to the Court of Criminal Appeal, or to obtain the leave of that Court to appeal, he shall give notice of appeal or notice of his application for leave to appeal, in such manner as may be directed by rules of court, within ten days of the date of conviction. Such rules shall enable any convicted person to present his case and his argument in writing instead of by oral argument if he so desires. Any case or argument so presented shall be considered by the Court.

In other cases notice of appeal must be given within ten days after the pronouncement, finding, or making of the judgment, verdict, order, or decision complained of.



Except in the case of a conviction involving sentence of death, the time within which notice of appeal or notice of an application for leave to appeal may be given may be extended at any time by the Court of Criminal Appeal, and such extension may be ordered although the application for the same is not made until after the expiration of the time appointed.

(2) In the case of a conviction involving sentence of death or corporal punishment—

- (a) the sentence shall not in any case be executed until after the expiration of the time within which notice of appeal or of an application for leave to appeal may be given under this section; and
- (b) if notice is so given, the appeal or application shall be heard and determined with as much expedition as practicable, and the sentence shall not be executed until after the determination of the appeal, or, in cases where an application for leave to appeal is finally refused, of the application.

696. The Judge or chairman of any Court before whom a person is convicted shall, in the case of an appeal under this Chapter against the conviction or against the sentence, or in the case of an application for leave to appeal under this Chapter, furnish to the Registrar, in accordance with rules of court, his notes of the trial; and in all cases of an appeal against sentence, and in any other case if he thinks it desirable in the interests of justice to do so, or if required by the Court of Criminal Appeal, shall also furnish to the Registrar in accordance with the rules of court a report giving his opinion upon the case or upon any point arising in the case.

Judge's  
notes and  
report to be  
furnished  
on appeal.  
Code, s. 696.

697. For the purposes of this Chapter, the Court of Criminal Appeal may, if they think it necessary or expedient in the interests of justice—

- (a) order the production of any document, exhibit, or other thing connected with the proceedings the production of which appears to them necessary for the determination of the case; and

Sup-  
plemental  
powers of  
Court.  
Code, s. 697.

- (b) if they think fit order any witnesses who would have been compellable witnesses at the trial to attend and be examined before the Court, whether they were or were not called at the trial, or order the examination of any such witnesses to be conducted in manner provided by rules of the Court before any Judge of the Court or before any officer of the Court or justice of the peace or other person appointed by the Court for the purpose, and allow the admission of any depositions so taken as evidence before the Court; and
- (c) if they think fit receive the evidence, if tendered, of any witness (including a convicted appellant) who is a competent but not compellable witness: Provided that the evidence of the wife or husband of a convicted appellant shall not be received, except on behalf of the appellant, unless she or he has been first informed by the Court that she or he is not compellable to give evidence if she or he is unwilling to do so.
- (d) where any question arising on the appeal involves prolonged examination of documents or accounts, or any scientific or local investigation, which cannot in the opinion of the Court conveniently be conducted before the Court, order the reference of the question in manner provided by rules of court for inquiry and report to a special commissioner appointed by the Court, and act upon the report of any such commissioner so far as they think fit to adopt it; and
- (e) appoint any person with special expert knowledge to act as assessor to the Court in any case where it appears to the Court that such special knowledge is required for the proper determination of the case;

and exercise in relation to the proceedings of the Court any other powers which may for the time being be exercised by the Supreme Court on appeals in civil matters, and issue any warrants necessary

for enforcing the orders or sentences of the Court: Provided that in no case shall any sentence be increased by reason of or in consideration of any evidence that was not given at the trial.

698. The Court of Criminal Appeal may at any time assign a convicted appellant a solicitor and counsel or counsel only in any appeal or proceedings preliminary or incidental to an appeal in which, in the opinion of the Court, it appears desirable in the interests of justice that the appellant should have legal aid, and that he has not sufficient means to enable him to obtain that aid.

Legal assistance to appellant.  
Code, s. 698.

699. (1) Subject to any order to the contrary made by the Court of Criminal Appeal, a convicted appellant, notwithstanding that he is in custody, shall be entitled to be present if he desires it on the hearing of his appeal, except where the appeal is on some ground involving a question of law alone, but in that case and on an application for leave to appeal and on any proceedings preliminary or incidental to an appeal shall not be entitled to be present, except where rules of court provide that he shall have the right to be present, or where the Court gives him leave to be present.

Right of appellant to be present.  
Code, s. 699.

(2) The power of the Court to pass any sentence under this Chapter may be exercised notwithstanding that the appellant is for any reason not present.

700. (1) A convicted appellant who is not admitted to bail shall, pending the determination of his appeal or of his application for leave to appeal, be treated in accordance with the special regulations for the time being applicable to prisoners unconvicted of crime during the period of their detention for safe custody only.

Admission of appellant to bail, and custody when attending Court.  
Code, s. 700.

(2) The Court of Criminal Appeal may, if it seems fit, on the application of an appellant, admit the appellant to bail pending the determination of his appeal.

701. (1) The registrar shall take all necessary steps for obtaining a hearing under this Chapter of any appeals or applications, notice of which is given to him under this Chapter, and shall obtain

Duties of registrar with respect to notices of appeal, etc.  
Code, s. 701.

and lay before the Court in proper form all documents, exhibits, and other things relating to the proceedings in the Court before which any convicted appellant or applicant was tried, which appear necessary for the proper determination of the appeal or application.

(2) If it appears to the registrar that any notice of an appeal against a conviction purporting to be on a ground of appeal which involves a question of law alone does not show any substantial ground of appeal, the registrar may refer the appeal to the Court for summary determination, and where the case is so referred, the Court may, if they consider that the appeal is frivolous or vexatious, and can be determined without adjourning the same for a full hearing, dismiss the appeal summarily, without calling on any persons to attend the hearing or to appear for the Crown thereon.

(3) Any documents, exhibits, or other things connected with the proceedings on the trial of any person on indictment, who, if convicted, is entitled to or may be authorised to appeal under this Chapter, shall be kept in the custody of the Court of trial in accordance with rules of court made for the purpose, for such time as may be provided by the rules, and subject to such power as may be given by the rules for the conditional release of any such documents, exhibits, or things from that custody.

(4) The registrar shall furnish the necessary forms and instructions in relation to notices of appeal or notices of application under this chapter to any person who demands the same, and to officers of Courts, governors of prisons, and such other officers or persons as he thinks fit, and the governor of a prison shall cause those forms and instructions to be placed at the disposal of prisoners desiring to appeal, or to make any application under this chapter, and shall cause any such notice given by a prisoner in his custody to be forwarded on behalf of the prisoner to the registrar.

(5) The registrar shall report to the Court or some Judge thereof any case in which it appears to him that, although no application has been made

for the purpose, a solicitor and counsel or counsel only ought to be assigned to an appellant under the powers given to the Court by this chapter.

**702.** The powers of the Court of Criminal Appeal under this Act to give leave to appeal, to extend the time within which notice of appeal or of an application for leave to appeal may be given, to assign legal aid to an appellant, to allow the appellant to be present at any proceedings in cases where he is not entitled to be present without leave, and to admit an appellant to bail, may be exercised by any Judge of the Supreme Court in the same manner as they may be exercised by the Court of Criminal Appeal, and subject to the same provisions; but if the Judge refuses an application on the part of the appellant to exercise any such power in his favour, the appellant shall be entitled to have the application determined by the Court of Criminal Appeal as duly constituted for the hearing and determination of appeals under this chapter.

Powers which may be exercised by a Judge of the Court. Code, s. 702.

**703.** In the provisions of this Code relating to appeals to the Court of Criminal Appeal, unless the context otherwise requires—

Definitions. Code, s. 703.

The expression “convicted appellant” includes a person who has been convicted, or who has been acquitted on account of unsoundness of mind, and who desires to appeal or to obtain the leave of the said Court to appeal under this chapter, and has given notice of appeal or of his application for leave to appeal within the time or extended time limited by or pursuant to this chapter for that purpose; and

The expression “sentence” includes any order of the Court made on conviction with reference to the person convicted, and the power of the Court of Criminal Appeal to pass a sentence includes a power to make any such order of the Court.

The expression "Judge who tried him," used in relation to any convicted appellant, means the Judge or Chairman of the Court from the conviction before which such appellant desires to appeal.

Writs of error and motions for new trials in criminal cases abolished.  
Code, s. 704.

704. Proceedings in error in cases to which any of the preceding provisions of this chapter apply and any powers or practice which may now exist in the Supreme Court in respect of motions for new trials or the granting thereof in such cases other than such as are provided for in this chapter are hereby abolished.

Conditional remission of sentence by Governor.  
Code, s. 705.

705. In any case in which the Governor is authorised, on behalf of His Majesty, to extend the Royal mercy to an offender under sentence of imprisonment with or without hard labour, he may extend mercy upon condition of the offender entering into a recognizance conditioned to keep the peace and be of good behaviour for a period from the date of the sentence equal to the term of the sentence or for any less period. Upon complaint being made on oath before any Justice of any breach of the condition of recognizance, such Justice may issue his warrant for the apprehension of the offender, and for his detention in custody until he can be brought before a Justice to be dealt with hereunder, and any Justice, on such offender being brought before him, may, on due proof of such breach, declare the recognizance forfeited, and commit the offender to prison to serve, as under the sentence aforesaid, any unexpired balance of the term of such sentence, which, for this purpose, shall be deemed to be revived.

Pardon in case of imprisonment for non-payment of money.  
Code, s. 706.

706. The Governor may extend the Royal mercy to any person imprisoned upon conviction of any of the offences defined in chapters forty-four and forty-seven, although he is imprisoned for non-payment of money which is payable to some private person.

Effect of pardon.  
Code, s. 707.

707. A pardon by the Governor, on behalf of His Majesty, has the effect of discharging the convicted person from the consequences of the conviction.

CHAPTER LXX.—SUMMARY TRIAL OF CHILDREN  
UNDER TWELVE.

708. (1) A child who is charged with committing or attempting to commit any indictable offence other than treason, wilful murder, murder, or manslaughter, and whose age at the time of the commission or attempted commission of the offence did not, in the opinion of the justices before whom he is brought, exceed the age of twelve years, may be tried in a summary manner before two justices, if they think it expedient so to do, and if, in case the charge is one in respect of which the right to trial by jury exists, the parent or guardian of the child so charged, when informed of his right to have the child tried by jury, consent to the case being dealt with summarily.

Summary jurisdiction of Justices in case of indictable offences committed by children not more than twelve years of age.  
Code, s. 708.

In any such case the justices may, except as hereinafter provided, award the same kind of punishment as might have been awarded if the offender had been convicted on indictment.

Provided that—

- (a) When imprisonment is awarded, the term of imprisonment cannot exceed one month;
- (b) When a fine is imposed, the amount cannot exceed Forty shillings; and
- (c) When the child is a male, the justices may, either in addition to or instead of any other punishment, adjudge that the child be, as soon as practicable, privately whipped with not more than six strokes of a birch rod, cane, or leather strap, in the presence of some police officer of higher rank than a constable, and also in the presence, if he desires to be present, of the parent or guardian of the child.

(2) If, when a child is charged before justices with committing or attempting to commit an indictable offence, the parent or guardian of the child is not present, the justices may remand the child for the purpose of causing notice to be served on such

parent or guardian in order, if practicable, to secure his attendance at the hearing of the charge; or they may proceed to deal with the case summarily under the provisions of this section.

(3) If the parent or guardian of the child is present, then, whenever during the hearing of the charge the justices become satisfied by the evidence that it is expedient to deal with the case summarily under the provisions of this section, they are required to cause the charge to be reduced into writing and read to the parent or guardian of the child, and then, if the case is one in which the right to trial by jury exists, to address a question to such parent or guardian to the following effect:—

Do you desire the child to be tried by a jury,  
or do you consent to the case being dealt with  
summarily?

adding a statement, if they think such statement desirable for the information of the parent or guardian, of the meaning of the case being dealt with summarily, and also a statement of the sittings of the Court at which the child will be tried if he is committed for trial by a jury.

(4) The provisions of this section do not render punishable for an offence any child who is not, in the opinion of the justices before whom he is charged, above the age of seven years and of sufficient capacity to commit the offence in question.

(5) The provisions of this section do not affect any power of justices under any Statute to send a child to an industrial or reformatory school, and they may exercise such power instead of dealing with him summarily under this section.

(6) No right to trial by jury shall be deemed to exist in the case of a child to whom this chapter applies in respect of any charge of having committed or attempted to commit an offence which is of such a nature that a person of full age might be convicted thereof summarily before justices without any consent on his part.



## CHAPTER LXXI.—SUMMARY TRIAL OF YOUNG PERSONS.

**709.** When a young person is charged with committing or attempting to commit any indictable offence other than treason, wilful murder, murder, or manslaughter, and whose age at the time of the commission or attempted commission of the offence was over twelve years, but did not, in the opinion of the justices before whom he is brought, exceed the age of eighteen years, the justices may deal with the charge summarily.

Summary jurisdiction of justices in case of indictable offences committed by young persons.  
Code, s. 709.  
Amended by No. 32 of 1918, s. 31.

The offender is liable on such summary conviction to imprisonment with hard labour for three months, or to a fine of Ten pounds; and if the offender is a male the justices may, either in addition to or instead of any other punishment, adjudge that the offender be, as soon as practicable, privately whipped with not more than twelve strokes of a birch rod, cane, or leather strap, in the presence of some police officer of higher rank than a constable, and also in the presence, if he desires to be present, of the parent or guardian of the offender.

**710.** (1) Before the accused young person is asked to show cause why he should not be convicted of any offence of which he could not if of full age be summarily convicted without his consent, the justices are required to explain to him that he is entitled to be tried by a jury, and is not obliged to make any defence before them, and to ask whether he objects to the charge being dealt with summarily, adding a statement of the meaning of the case being dealt with summarily, and also a statement of the sittings of the Court at which the young person will be tried if he is committed for trial by jury.

Procedure.  
Code, s. 710.

(2) In the case of every charge proposed to be dealt with summarily under this chapter, the justices are required to reduce the charge to writing, and to read it to the accused young person, and then to ask him whether he is guilty or not guilty of the offence; and if he says that he is guilty they are to convict him of the offence, but if he says that he is not guilty they are required to hear his defence, and then deal with the charge summarily.

(3) If the accused young person is charged with obtaining or procuring the delivery of anything by a false pretence with intent to defraud, the justices are required, after the charge has been reduced to writing and read to the accused young person, to state in effect that a false pretence means a false representation by words, writing, or conduct that some fact exists or existed, and that a promise as to future conduct not intended to be kept is not by itself a false pretence, and may add such explanation as the justices may deem suitable to the circumstances.

(4) If the justices find that the charge is proved, they may, whether they impose any punishment or not, order the offender to make restitution of the property, if any, in respect of which the offence was committed, to the owner thereof, and if the property is not at once restored, they may order the offender to pay the amount of its value, to be assessed by them, to the owner, either in one sum or by such instalments, and at such times, as they think fit.

(5)—(a) If it appears that by reason of the accused young person having been previously convicted of some offence, he is liable, on conviction of the offence charged, to imprisonment for a term of more than three years; or

(b) If for any reason the justices are of opinion that the charge is a fit subject for prosecution by indictment;

the justices are required to abstain from dealing with the case summarily.

(6) The provisions of this section do not affect the right of justices under any Statute to send a young person to an industrial or reformatory school, and they may exercise such powers instead of dealing with him summarily under this section.

CHAPTER LXXII.—SEIZURE AND DETENTION OF PROPERTY  
CONNECTED WITH OFFENCES: CUSTODY OF WOMEN  
UNLAWFULLY DETAINED FOR IMMORAL PURPOSES:  
RESTITUTION OF PROPERTY UNLAWFULLY ACQUIRED.

711. If it appears to a justice, on complaint made on oath, that there are reasonable grounds for suspecting that there is in any house, vessel, or place—

Search  
warrant.  
Code, s. 711.  
Amended  
by No. 32  
of 1918, s. 32.

- (a) Anything with respect to which any offence has been or is suspected, on reasonable grounds, to have been committed; or
- (b) Anything as to which there are reasonable grounds for believing that it will afford evidence as to the commission of any offence; or
- (c) Anything as to which there are reasonable grounds for believing that it is intended to be used for the purpose of committing any offence;

he may issue his warrant directing a police officer or police officers named therein, or all police officers, to search such house, vessel, or place, and to seize any such thing if found, and to take it before a justice to be dealt with according to law.

Any such warrant is to be executed by day, unless the justice, by the warrant, specially authorises it to be executed by night, in which case it may be so executed.

712. When, on the arrest of any person on a charge of an offence relating to property, the property in respect of which the offence is alleged to be committed is found in his possession, the person arresting him may take such property before a Justice to be dealt with according to law.

Property  
found on  
offenders  
on arrest.  
Code, s. 712.

713. If any person finds in any place whatever, or in the possession of any person who has the same without lawful authority or excuse—

Seizure of  
counterfeit  
coin, tools  
for coining,  
etc.  
Code, s. 713.

- (a) Any counterfeit gold, silver, or copper coin; or
- (b) Any tool, instrument, or machine adapted and intended for making any such counterfeit coin; or

- (c) Any filings or clippings of gold or silver, or any gold or silver in bullion, dust, solution, or any other state, which are or is suspected, on reasonable grounds, to have been obtained by dealing with any current gold or silver coin in such a manner as to diminish its weight;

the person who so finds the same may seize the thing or things found, and take the same forthwith before a justice to be dealt with according to law.

Disposal of  
property  
seized.  
Code, s. 714.

714. When anything is seized or taken under the provisions of this Code, the person seizing or taking it is required forthwith to carry it before a justice.

The justice may cause the thing so seized or taken to be detained in such custody as he may direct, taking reasonable care for its preservation, until the conclusion of any investigation that may be held with respect to it; and if any person is committed for trial for any offence committed with respect to the thing so seized or taken, or committed under such circumstances that the thing so seized or taken is likely to afford evidence at the trial, he may cause it to be further detained in like manner for the purpose of being produced in evidence at such trial.

If no person is so committed, the justice is required to direct that the thing be returned to the person from whom it was taken, unless he is authorised or required by law to dispose of it otherwise.

If the thing so seized or taken is anything forged or counterfeit, or is of such a nature that a person who has it in his possession without lawful authority or excuse is guilty of an offence, then if any person is committed for trial for any offence committed with respect to it, or committed under such circumstances as aforesaid and is convicted, the Court before which he is convicted, or, in any other case, any justice may cause it to be defaced or destroyed.

If the thing so seized or taken is of such a nature that a person who has it in his possession, knowing its nature and without lawful authority or excuse, is guilty of an offence, then, as soon as it appears that it will not be required, or further required, in

evidence against the person who had it in his possession, it is to be delivered to the Treasurer\*, or some person authorised by him to receive it.

715. If the thing seized or taken is an explosive substance found in a vessel or vehicle, the person acting in the execution of the warrant may for twenty-four hours after seizure, and for such longer time as is necessary for the purpose of removal to a safe place of deposit, use the vessel or the vehicle, with the tackle and furniture thereof, or the beasts and accoutrements belonging thereto, as the case may be, paying afterwards to the owner of the vessel or vehicle a sufficient recompense for its use, which is to be assessed by the justice or justices before whom the suspected offender is brought, and, in case of non-payment, immediately after such assessment, may be recovered before two justices in a summary way.

Explosives.  
Code, s. 715.

716. If it appears to a justice, on complaint made on oath by a parent, relative, or guardian of a woman or girl, or any other person, who in the opinion of the justice is acting in good faith in the interests of a woman or girl, that there is reasonable cause to suspect that such woman or girl is unlawfully detained for immoral purposes by any person in any place within his jurisdiction, he may issue a warrant directed to a police officer, and authorising him to search for such woman or girl, and, when found, to take her to and detain her in a place of safety until she can be brought before a justice; and the justice before whom she is brought may cause her to be delivered up to her parents or guardians, or otherwise dealt with as the circumstances may permit and require.

Women  
detained  
for immoral  
purposes.  
Code, s. 716.

The Justice issuing the warrant may, by the same or any other warrant, direct any person accused of so unlawfully detaining the woman or girl to be arrested and brought before a justice, and may direct proceedings to be taken for punishing him according to law.

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\* Formerly Colonial Treasurer; amended by No. 8 of 1925, s. 2.

A woman or girl is deemed to be unlawfully detained for immoral purposes if she—

- (a) Is under the age of seventeen years; or
- (b) Being of or over the age of seventeen years, and under the age of eighteen years, is so detained against her will, or against the will of her father or mother, or of any other person who has the lawful care or charge of her; or
- (c) Being of or above the age of eighteen years, is so detained against her will;

and, in either case, is detained by any person in order to her being unlawfully carnally known by any man, whether a particular man or not.

A person authorised by warrant under this section to search for a woman or girl may enter, and if need be, by force, any house or other place specified in the warrant, and may remove the woman or girl therefrom.

The warrant must be executed by the police officer mentioned in it, who must, unless the justice otherwise directs, be accompanied by the parent, relative, guardian, or other person by whom the complaint is made, if such person so desires.

Restitution  
of property.  
Code, s. 717.  
Amended by  
No. 55 of  
1953, s. 21.

**717.** When a person is prosecuted, on the complaint of the owner of property, or any person on whom the right to property has devolved by operation of law, on a charge of an indictable offence of which the unlawful acquisition of the property by him is an element, and is convicted of the offence on indictment, the Court may order the property to be restored to the owner.

Such an order has the effect of a judgment, and is binding on the offender, and any person claiming through him as determining the ownership of the property, but as regards any other person has the effect only of changing the possession of the property, and does not affect any right of property or right of action.

In any such case the Court before which the offender is convicted may order that any personal property which is found in his possession, and which appears to the Court to have been derived, directly or indirectly, from such unlawful acquisition of property, shall be delivered to any person who appears to the Court to be entitled to the property so unlawfully acquired.

This section does not apply to a valuable security if it appears that the security has been paid or discharged in good faith by some person liable to the payment thereof, or being a negotiable instrument, has been taken or received by transfer or delivery in good faith by some person for a valuable consideration, without any notice, and without any reasonable cause to suspect that the same had been so unlawfully acquired.

718. When a person has been convicted on indictment or summarily of stealing, and the offender has sold the stolen property to any person, and such person had no knowledge that the property was stolen, and any money was taken from the offender on his apprehension, the Court, on the application of such purchaser, and on restitution of the stolen property to the owner, may order that out of such money a sum not exceeding the amount of the proceeds of such sale may be delivered to the purchaser.

Money found on prisoner may be paid to purchaser of stolen property on restitution.  
Code, s. 718.

719. It shall be lawful for any court before which any person shall have been convicted (whether on indictment or summarily) upon the application of any person aggrieved, and immediately after the conviction, to award any sum of money, to be paid by the person convicted to the person aggrieved, by way of satisfaction or compensation for any loss of property suffered or expenses incurred by the applicant through or by means of the said offence, but the sum awarded shall not exceed in the case of a summary conviction, twenty-five pounds, and in other cases, one

Power to award compensation to persons aggrieved by offence.  
Code, s. 719.

hundred pounds: Provided that such an order may be varied, annulled or appealed against as if it were an order for restitution, and that it shall be deemed to be annulled if the conviction is quashed on appeal.

CHAPTER LXXIII.—INFORMATION BY PRIVATE PERSONS  
FOR INDICTABLE OFFENCES: EX OFFICIO INDICTMENTS.

Information  
by leave of  
the court by  
private  
prosecutors.  
Code, s. 720.

720. Any person may, by leave of the Supreme Court, present an information against any other person for any indictable offence not punishable with death, alleged to have been committed by such other person.

An information presented by leave of the Court is to be signed by the person on whose application the leave is granted, or some other person appointed by the Court in that behalf, and filed in the Supreme Court.

The person who signs the information is called the prosecutor.

The information is to be intituled "The King on the prosecution of the prosecutor (naming him) against the accused person" (naming him), and must state that the prosecutor informs the Court by leave of the Court.

Except as otherwise expressly provided, the information and the proceedings upon it are subject to the same rules and incidents in all respects as an indictment presented by the Attorney General and the proceedings upon such an indictment as hereinbefore set forth.

Security to  
be given by  
prosecutor  
for costs of  
defence.  
Code, s. 721.

721. Before the information is presented, the prosecutor is to be required to give security in such amounts and in such manner as the Court on giving leave to present the information may direct, that he will prosecute the information without delay, and will pay to the accused person such costs incurred by him in respect of his defence to the charge as the Court may order him to pay.



722. An office copy of the information is to be served upon the accused person, upon which copy there must be indorsed a summons, under the hand of the Registrar and seal of the Court, requiring him to plead to the information within the same time after service within which he would be required to file a defence after service of a writ in a civil action.

Service of  
information.  
Code, s. 722,  
amended by  
No. 20 of  
1954, s. 10.

723. (1) The accused person is required within the time so limited to file his plea in writing in the Supreme Court, and to deliver a copy thereof forthwith to the prosecutor.

Plea.  
Code, s. 723,  
amended by  
No. 20 of  
1954, s. 11.

(2) The plea in writing shall contain an address for service of notices and other documents required to be served on the accused person.

Subsec. (2)  
added by  
No. 20 of  
1954, s. 11.

724. If the accused person does not plead to the information according to the exigency of the summons indorsed on the copy served on him, the prosecutor may serve him with a notice to the effect that, unless he pleads or demurs within eight days, a plea of not guilty will be filed in his name. Upon filing an affidavit setting forth the service of the information and of such notice, and of default of pleading in accordance with the exigency of the notice, the prosecutor may cause a plea of not guilty to be filed for the accused person, and thereupon the same proceedings may be had as if the accused person had filed a plea of not guilty.

Default of  
plea.  
Code, s. 724.

Or, in the case of a misdemeanour, judgment of conviction may, by leave of the Court or a Judge, be entered against him for want of a plea.

But the Court or a Judge may, either before or after the time so prescribed, allow further time for the accused person to plead or demur to the information.

725. When the accused person pleads any plea, or when a plea of not guilty is filed for him by the prosecutor, either party may apply to a Judge to appoint the time and place of trial, of which notice is to be given to the accused person.

Time and  
place of  
trial.  
Code, s. 725.

Effect and judgment for prosecutor on demurrer.  
Code, s. 726.

726. If the accused person demurs only, and does not plead any plea, and judgment is given against him on demurrer, he is required to plead to the information within such time as the Court or a Judge may allow. If he makes default in doing so, the same proceedings may be taken as if he had made default in pleading in the first instance.

Effect of judgment by default.  
Code, s. 727.

727. If judgment of conviction is entered against the accused person for want of a plea, he is required to attend to receive the judgment of the Court at a time and place to be appointed by a Judge. If he does not so attend, any justice may issue his warrant to arrest him and bring him before the Court to receive judgment.

Costs of defence.  
Code, s. 728.

728. In either of the following cases, that is to say:—

- (1) If the accused person pleads to the information, and is not brought to trial within a year after filing his plea; or
- (2) If the Attorney General informs the Court that he will not further proceed on the information; or
- (3) If the accused person is acquitted upon trial;

the Court, or the Judge before whom the trial, if any, is had, may award costs to the accused person.

Practice to be applied on *ex officio* information.  
Code, s. 729.  
Amended by No. 55 of 1953, s. 22; No. 20 of 1954, s. 12.

729. When an indictment is presented in any court of criminal jurisdiction by the Attorney General against any person who has not been committed for trial for the offence charged in the indictment, subject to section five hundred and eighty of the Code, the accused person shall be dealt with in all respects and the indictment and the proceedings upon it are subject to the same procedure as if the accused person had been committed for trial for the offence charged in the indictment.

When the indictment is presented in any court other than the Supreme Court, the foregoing provisions of this chapter shall be read and construed with reference thereto as if such court were

mentioned in such provisions in lieu of the Supreme Court and as if in lieu of an officer of the Supreme Court the corresponding officer of such other court were mentioned. For the purposes of this section a Chairman of General or Quarter Sessions or a Court of Session shall be deemed to correspond to a Judge of the Supreme Court and a Clerk of General or Quarter Sessions or a Court of Session to the Registrar of the Supreme Court.

#### CHAPTER LXXIV.—MISCELLANEOUS PROVISIONS.

730. When a person is to be tried for the crime of treason, or of becoming an accessory after the fact to treason, or of failing, when he knows that any person intends to commit treason, to give information thereof with all reasonable despatch to a justice or use other reasonable endeavours to prevent the commission of the crime, a list of the jurors, with their Christian names and surnames written at full length, and with the true place of abode and description of every juror, is required to be given to him, in the presence of two credible witnesses, ten days before he is called upon to plead to the indictment.

Names of jury to be given to person charged with treason or concealment of treason.  
Code, s. 730.

731. If it appears to any Court that any person has been guilty of perjury in any testimony given before it, the Court may commit him to take his trial for such perjury before any Court of competent jurisdiction in the same manner as if he had been charged before a justice with the same perjury, and sufficient evidence had been given against him.

Court may direct certain persons to be prosecuted for perjury.  
Code, s. 731.

A person so committed may be admitted to bail in the same manner as if he had been committed for trial by a justice.

The Court may require any person to enter into a recognisance conditioned to appear and give evidence at the trial of a person so directed to be prosecuted.

In this section the term "Court" includes any person before whom a writ of inquiry is executed, but does not include justices in petty sessions.

Committal  
of  
fraudulent  
debtors.  
Code, s. 732.

732. If, on the examination of any person whose affairs are in course of administration under the provisions of the laws relating to bankrupt debtors before a Court which has jurisdiction to examine him in the course of such administration, it appears to the Court that he has been guilty of any of the offences defined in chapter *fifty-four*, the Court may commit him to take his trial for such offence before some Court of competent jurisdiction, or may hold him to bail to appear before a justice to answer any charge that may be brought against him for any such offence.

A person so committed may be admitted to bail in the same manner as if he had been committed for trial by a justice.

Staying  
prosecution  
for  
publication  
of  
Parlia-  
mentary  
paper.  
Code, s. 733.

733. A person prosecuted on a charge of the unlawful publication of defamatory matter which is contained in any paper published by him, or by his servant, by order or under the authority of either House of Parliament, may at any stage of the proceedings apply to the Supreme Court or a Judge thereof, or to the Court in which the proceedings are pending, for an order staying the prosecution, first giving twenty-four hours' notice of his intention so to do to the prosecutor; and upon production to the Court or Judge of a certificate under the hand of the President or Clerk of the Legislative Council, or Speaker or Clerk of the Legislative Assembly, as the case may be, stating that the paper in respect of which the prosecution is instituted was published by the defendant, or by his servant, by order or under the authority of the Council or Assembly, together with an affidavit verifying such certificate, the Court or Judge is required immediately to stay the prosecution, and may order the prosecutor to pay to the defendant his costs of defence.

A person prosecuted on a charge of the unlawful publication of defamatory matter which is contained in a copy of, or an extract from or abstract of, any such paper, may, at any stage of the proceedings, apply to the Supreme Court or a Judge thereof, or to the Court in which the proceedings are pending,

for an order, staying the prosecution; and upon production to the Court or Judge of an original of such paper, together with such a certificate as aforesaid, and an affidavit verifying the same, the Court or Judge is required to stay the prosecution, and may order the prosecutor to pay to the defendant his costs of defence.

734. When justices dismiss a complaint of an offence punishable on summary conviction, whether an indictable offence or not, they may, if required, and if they think fit, give the accused person a certificate of dismissal. Such a certificate is a bar to any further prosecution of the accused person for the same cause.

Certificate  
of dismissal  
by justices.  
Code, s. 734.

735. On the summary conviction of any aboriginal native for any indictable offence the justices are required to transmit to the Registrar of the Supreme Court a record of the conviction, and to the Minister for Native Welfare a report of such conviction together with an abstract of the information and of the evidence for and against the convicted person.

Record and  
report of  
conviction  
of aboriginal  
native.  
Code, s. 735.  
Amended by  
No. 55 of  
1953, s. 23.

736. When, on the trial of a person charged with any of the offences defined in chapter twenty-two, relating to women or girls, it is proved to the satisfaction of the Court that the seduction or prostitution of a girl under the age of seventeen has been caused, encouraged, or favoured by her father, mother, guardian, master, or mistress, the Court may make an order divesting such father, mother, guardian, master, or mistress of all authority over her, and may appoint any person or persons who is or are willing to take charge of the girl to be her guardian or guardians until she has attained the age of twenty-one years, or any such age under twenty-one years as the Court may direct.

Custody of  
girls under  
seventeen.  
Code, s. 736.

The Supreme Court, or a Judge thereof, may from time to time rescind or vary any such order by the appointment of any other person or persons as such guardian or guardians, or in any other respect.

Saving of  
civil  
remedies.  
Code, s. 737.

737. Except when expressly so provided, the prosecution or conviction of a person for an offence does not affect any civil remedy which any person aggrieved by the offence may have against the offender.

Incriminating  
answers  
and  
discovery.  
Code, s. 738.

738. No person shall in any civil or criminal proceeding be excused from answering any question put either *viva voce* or by interrogatory or from making any discovery of documents on the ground that the answer or discovery may criminate or tend to criminate him in respect of any offence against Chapter XXXV. or Chapter LV.: Provided that his answer shall not be admissible in evidence against him in any criminal proceedings other than a prosecution for perjury.

Limitation  
of  
proceedings.  
Code, s. 739.  
Amended by  
No. 55 of  
1953, s. 24;  
and by No. 35  
of 1935, s.  
48A and 2nd  
Sched. as  
inserted by  
No. 73 of  
1954, ss. 5  
and 8.

739. A prosecution against any person for anything done in pursuance of any of the provisions of this Code with respect to the arrest of offenders or the seizure of goods must be commenced within six months after the fact committed, and not otherwise.

No Court  
fees in  
criminal  
cases.  
Code, s. 740.

740. No fees can be taken in any Court of criminal jurisdiction or before any justice from any person who is charged with an indictable offence for any proceeding had or taken in the Court or before the justice with respect to the charge.

Court may  
order  
payment of  
witnesses  
for defence.  
Code, s. 741.

741. The Attorney General may, in his discretion, order payment of the expenses of any witnesses bound by recognisance to appear on behalf of an accused person as if such witness were bound over on behalf of the prosecution, and any such payment is deemed to be part of the expenses of the prosecution.

Police and  
Resident  
Magistrates  
may act  
alone.  
Code, s. 742.

742. Any Police Magistrate or Resident Magistrate may exercise alone any jurisdiction conferred by this Code on two justices in Petty Sessions.

743. Any one justice may exercise the jurisdiction of two justices under this Code whenever no other justice usually residing in the district can be found at the time within a distance of ten miles; provided that the justice, on any conviction, certifies, in writing, that no other justice can be found within ten miles. But no sentence of whipping inflicted by one justice may be inflicted until approved by the Governor.

Jurisdiction of one justice in certain circumstances. Code, s. 743. Amended by No. 55 of 1953, s. 25.

A certificate under this section is conclusive evidence of the facts stated.

744. In the case of the absence of the Attorney General or of his inability to perform the duties of his office, or of a vacancy in the office, the Solicitor General or the Crown Solicitor may exercise, perform, and discharge all the powers, duties, and functions which the Attorney General is required or able to perform or discharge under the provisions of this Code, and the warrant of the Governor directing the Solicitor General or the Crown Solicitor to exercise, perform, and discharge such powers, duties, and functions is conclusive evidence of the absence or inability of the Attorney General, or of a vacancy in the office, as the case may be.

Powers of Attorney General may be delegated to Solicitor General or Crown Solicitor. Code, s. 744.

745. Any person who is committed for trial or held to bail for any indictable offence is entitled to have on demand, from the person who has the lawful custody thereof, copies of the depositions of the witnesses on whose depositions he has been so committed or held to bail.

Copies of depositions to be allowed to persons committed for trial.

Provided that, if the demand is not made before the day appointed for the commencement of the sittings of the Court at which the trial of the person on whose behalf the demand is made is to take place, he is not entitled to have any such copy unless the Judge is of opinion that the copy may be made and delivered without delay or inconvenience to the trial.

Demand for copy to be made prior to commencement of sittings. Code, s. 745.

The Court may postpone a trial on account of the accused person not having previously had a copy of the depositions.

Inspection  
of  
depositions  
at trial.  
Code, s. 746.

746. Any person who is tried for any offence is entitled, at the time of his trial, to inspect without fee all depositions or copies of depositions which have been taken against him and returned into the Court before which the trial is had.

Enforcing  
recognis-  
ances.  
Inserted by  
No. 32  
of 1918, s. 33;  
amended by  
No. 55 of  
1953, s. 26.

746A. When a person bound by recognisance (by whomsoever ordered or permitted to be entered into and before whomsoever taken) to take his trial or attend any other proceeding before the Supreme Court, a Court of Session or a court of general or quarter sessions of the peace in any criminal cause or matter or bound by any other recognisance, before whomsoever taken (entered into pursuant to any judgment, order, or sentence of any such court, given, made, or pronounced in a criminal cause or matter), to keep the peace or be of good behaviour or receive judgment or do or refrain from doing anything or observe or comply with any other condition whatsoever, fails in any condition of the recognisance, such court or any judge or chairman thereof, on the production of the recognisance, and on the application of counsel for the Crown may order that the recognisance be estreated forthwith, and that such person and any surety bound by the recognisance shall forthwith pay to the Attorney General to the use of the Crown the sum in which he is bound.

The provisions of this section shall be without prejudice to any other method of enforcing recognisances.

Rules and  
Forms of  
criminal  
proceedings.  
Code, s. 747.

747. The Judges of the Supreme Court, or a majority of them, may make general rules prescribing forms of complaint, summonses, depositions, indictments, judgments, records, convictions, warrants, recognisances, and other proceedings, to be used in any Court, or before justices in respect of any offences; and every form so prescribed is to be deemed sufficient for the purpose, and sufficiently to state the offence or matter for or in respect of which it is prescribed to be used.

The Judges, or a majority of them, may also make general rules not inconsistent with the provisions of this Code, regulating the proceedings upon the trial



of persons charged with indictable offences, and the proceedings upon informations presented by leave of the Court, and the procedure and practice relative to appeals to the Court of Criminal Appeal.

Rules so made for the regulation of the procedure and practice relative to such appeals may make provision with respect to any matter for which provision is to be made under chapter sixty-nine by rules of court or which it may be necessary or convenient to prescribe for any of the purposes of that chapter or for the efficient conduct of any proceeding thereunder, and may regulate generally the practice and procedure under that chapter; and the officers of any Court before whom an appellant has been convicted, and the governor or other officers of any prison or other officer having the custody of an appellant, and any other officers or persons, shall comply with any requirements of those rules so far as they affect those officers or persons, and compliance with those rules may be enforced by order of the Court of Criminal Appeal.

The Judges or a majority of them may also, subject to this Code, make general rules for regulating the practice and procedure of the said Court in its criminal jurisdiction.

748. [*Repealed by No. 32 of 1918, s. 34.*]



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