



1854.

No. 10.

An Act to amend the Criminal Law.

[Assented to, December 4, 1854.]

WHEREAS it is expedient to amend the Law relating to certain offences, and to provide for the more easy enforcement of recognizances—Be it therefore Enacted, by the Lieutenant-Governor of the Province of South Australia, with the advice and consent of the Legislative Council of the same, as follows:

Preamble.

1. When any person shall be charged before any Local Court with an assault upon any female whatever, or upon any male child whose age shall not, in the opinion of such Court, exceed fourteen years, either upon the complaint of the party aggrieved, or otherwise, it shall be lawful for the said Court, if the assault is of such an aggravated nature that it cannot, in the opinion of such Court, be sufficiently punished under the provisions of any law heretofore applicable thereto, to proceed to hear and determine the matter of such charge in a summary way; and if such Court shall find the same to be proved, to convict the person accused; and every offender so convicted, shall be liable to be sentenced to penal servitude for a period not exceeding twelve calendar months, or to pay a fine not exceeding (together with costs) the sum of Fifty Pounds, and in default of payment, to be sentenced as aforesaid for a period not exceeding twelve calendar months, unless such fine and costs be sooner paid; and, if the said Court shall so think fit, shall be bound to keep the peace and be of good behavior for any period not exceeding twelve calendar months from the expiration of such sentence; and such conviction shall be a bar to all future proceedings, civil or criminal, for or in respect of the same assault; and no person convicted under this clause shall be entitled to appeal against such conviction.

Punishment for assaults upon women and children.

2. If any person shall be found by night armed with any dangerous or offensive weapon or instrument whatsoever, with intent to break or enter into any dwelling-house or other building whatsoever,

Any person found by night, armed, &c., with intent to break into any house and commit any felony therein, or

having in his possession, without lawful excuse any implements of housebreaking, or by having his face disguised, or being found by night in any house, with intent to commit any felony therein, shall be guilty of a misdemeanor.

and to commit any felony therein, or if any person shall be found by night having in his possession without lawful excuse (the proof of which excuse shall lie upon such person), any picklock key, crow, jack, bil, or other implement of housebreaking, or if any person shall be found by night having his face blackened or otherwise disguised with intent to commit any felony, or if any person shall be found by night in any dwelling-house or other building whatsoever with intent to commit any felony therein, every such offender shall be guilty of a misdemeanor, and, being convicted thereof, shall be liable, at the discretion of the Court, to be sentenced to penal servitude for any term not exceeding three years.

Any person convicted of such misdemeanor after a previous conviction of felony or such misdemeanor, guilty of misdemeanor.

3. If any person shall be convicted of any such misdemeanor as aforesaid, committed after a previous conviction, either for felony or such misdemeanor as aforesaid, such person shall on such subsequent conviction be liable, at the discretion of the Court, to be sentenced to penal servitude for a period not less than two years nor more than six years; and in any information for such misdemeanor committed after a previous conviction as aforesaid, it shall be sufficient to state that the offender was at a certain time and place convicted of felony or misdemeanor, without otherwise describing the previous felony or misdemeanor, and a certificate containing the substance and effect only (omitting the formal part) of the information and conviction for the previous felony or misdemeanor, purporting to be signed by the Clerk of the Court or other officer having the custody of the records of the Court where the offender was first convicted, or by the deputy of such Clerk or officer (for which certificate a fee of Five Shillings and no more shall be demanded and taken) shall, upon proof of the identity of the person of the offender, be sufficient evidence of the first conviction, without proof of the signature or official character of the person appearing to have signed the same.

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

4. And whereas it is expedient to make further provisions for the punishment of persons using chloroform or other stupifying things in order the better to enable them to commit felonies—Be it Enacted, That if any person shall unlawfully apply or administer, or attempt to apply or administer, to any other person any chloroform, laudanum, or other stupifying or overpowering drug, matter, or thing, with intent thereby to enable such offender or any other person to commit, or with intent to assist such offender or other person in committing, any felony, every such offender shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be sentenced to penal servitude for any term not being less than four years.

Persons inflicting grievous bodily harm, guilty of a misdemeanor, and liable to three years' imprisonment.

5. And whereas it is expedient to make further provision for the punishment of aggravated assaults—Be it Enacted, That if any person shall unlawfully and maliciously inflict upon any other person, either with or without any weapon or instrument, any grievous bodily harm, or unlawfully and maliciously cut, stab, or wound any other person, every such offender shall be guilty of a misdemeanor, and, being convicted thereof, shall be liable, at the discretion of the Court, to be sentenced to penal servitude for any term not exceeding three years.

6. If,

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

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

7. If any person shall wilfully and maliciously put, place, cast, or throw upon or across any railway any wood, stone, or other matter or thing, or shall wilfully or maliciously take up, remove, or displace any rail, sleeper, or other matter or thing belonging to any railway, or shall wilfully and maliciously turn, move, or divert any points or other machinery belonging to any railway, or shall wilfully and maliciously make or show, hide, or remove any signal or light upon or near to any railway, or shall wilfully and maliciously do, or cause to be done, any matter or thing, with intent in any of the cases aforesaid, to obstruct, upset, overthrow, injure, or destroy any engine, tender, carriage, or truck, using such railway, or to endanger the safety of any person travelling or being upon such railway, every such offender shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the Court, to be sentenced to penal servitude for any term not exceeding ten years, and not less than four years.

Persons wilfully placing wood, &c., on railways, taking up rails, &c., turning machinery, or showing signals, &c., with intent to commit injuries to railway or endanger the safety of persons, guilty of felony.

8. If any person shall wilfully and maliciously cast, throw, or cause to fall or strike against, into, or upon any engine, tender, carriage, or truck used upon any railway, any wood, stone, or other matter or thing, with intent to endanger the safety of any person being in or upon such engine, tender, carriage, or truck, every such offender shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the Court, to be sentenced to penal servitude for any period not less than two years, and not exceeding eight years.

If any person shall cast any wood, &c., upon any railway carriage, with intent to endanger the safety of any person therein, such person to be guilty of felony.

9. If any person shall wilfully and maliciously set fire to any station, engine-house, warehouse, or other building belonging or appertaining to any railway, dock, canal, or other navigation, every such person shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the Court, to be sentenced to penal servitude for the term of his natural life, or for any term not less than four years; and if any person shall wilfully and maliciously set fire to any goods or chattels, being in any building, the setting fire to which is made felony by this or any other Act of Council, every such offender shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the Court, to be sentenced to penal servitude for any term not exceeding six years

Any person wilfully setting fire to any railway station, &c., guilty of felony.

Any person may apprehend persons committing offences against this Act, and convey them before a Justice.

10. It shall be lawful for any person whatsoever, to apprehend any person who shall be found committing any offence against the provisions of this Act, and to convey him or deliver him to some Police Constable or other peace officer, in order to his being conveyed, as soon as conveniently may be, before a Justice of the Peace, to be dealt with according to Law.

Any person may apprehend persons committing indictable offences in the night, and convey them before a Justice.

11. And whereas doubts have been entertained as to the authority to apprehend persons found committing indictable offences in the night, for remedy thereof—Be it Enacted, That it shall be lawful for any person whatsoever to apprehend any person who shall be found committing any indictable offence in the night, and to convey him or deliver him to some Police Constable or other peace officer, in order to his being conveyed, as soon as conveniently may be, before a Justice of the Peace, to be dealt with according to Law.

Any person assaulting a person entitled to apprehend him, to be guilty of a misdemeanor.

12. If any person liable to be apprehended under the provisions of this Act, shall assault or offer any violence to any person by Law authorized to apprehend or detain him, or to any person acting in his aid or assistance, every such offender shall be guilty of a misdemeanor, and being convicted thereof, shall be liable to be sentenced to penal servitude for any period not exceeding three years.

The night, in offences against this Act, to be as in burglary.

13. The time at which the night shall commence and conclude in any offence against the provisions of this Act shall be the same as in cases of burglary.

Enforcement of recognizances.

14. Where any recognizance is entered into by any person as principal or surety before any Justice of the Peace or Special Magistrate, it shall be lawful for any Local Court of Full Jurisdiction to declare such recognizance to be forfeited upon proof of any offence, act, matter, or thing, which is in Law a breach of the condition of the same; and upon further proof that a notice in writing, in the name of Her Majesty's Attorney or Advocate-General, has, fourteen clear days before the holding of such Court, been personally served upon or left at the usual place of abode of the party, or each of the parties (if more than one), who entered into such recognizances, that an application will be made to the said Court that the said recognizance shall be declared forfeited; and if such recognizance shall be declared forfeited, the said Court shall order the same to be paid, and thereupon the same proceedings shall be had and taken as are by Law directed in the case of a conviction adjudging a pecuniary penalty or compensation to be paid.