



ANNO VICESIMO SECUNDO ET VICESIMO TERTIO
VICTORIÆ REGINÆ.
A.D. 1859.

No. 9.

An Act for consolidating the Statute Law in force in South Australia relating to Indictable Offences against the Person.

[Assented to, 1st September, 1859.]

WHEREAS it is expedient to amend and consolidate the Statute Law in force in the Province of South Australia relating to Indictable Offences against the Person: Be it therefore Enacted by the Governor-in-Chief of the said Province, with the advice and consent of the Legislative Council and House of Assembly of the said Province, in this present Parliament assembled, as follows:

Preamble.

As to Homicide:

1. Whosoever shall be convicted of murder, shall suffer death as a felon. Murder.
9 G. 4, c. 31, s. 3.

2. After every conviction for murder, sentence of death shall be pronounced, but it shall not be necessary to express the time for the execution thereof; if no time for the execution be expressed in the sentence, it shall take place on the twenty-first day after the day on which sentence shall be pronounced; and the Judge shall have the same power as to respiting the execution of the sentence in all respects as after convictions for other capital offences. Sentence for murder.
6 and 7 W. 4, c. 30, s. 2.
9 G. 4, c. 31, s. 4.

3. The body of every person executed for murder shall be buried within the precincts of the prison in which he shall have been last confined after conviction, and the sentence of the Court shall so direct: Provided nevertheless, that the omission so to direct shall not affect the validity of the sentence. Body, after execution where to be buried.
2 and 3 W. 4, c. 75, s. 16. 4 and 5 W. 4, c. 26, s. 1. 9 G. 4, c. 31, s. 6.

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4. Every

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

4. Every person convicted of manslaughter shall be liable, at the discretion of the Court, to be imprisoned for life, or for any less term, with or without hard labor, or to pay such fine as the Court shall award, in addition to or without any such other discretionary punishment as aforesaid.

Indictment for murder or manslaughter.
14 and 15 Vict., c. 100, s. 4.

5. In any indictment or information for murder or manslaughter it shall not be necessary to set forth the manner in which or the means by which the death of the deceased was caused, but it shall be sufficient in every indictment or information for murder to charge that the defendant did feloniously, wilfully, and of his malice aforethought kill and murder the deceased; and it shall be sufficient in every indictment or information for manslaughter, to charge that the defendant did feloniously kill and slay the deceased.

Excusable homicide.
9 G. 4, c. 31, s. 10.

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

Petit treason.
9 G. 4, c. 31, s. 2.

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

As to attempts to murder :

Administering poison, or stabbing, cutting, or wounding, with intent to murder.
1 Vict., c. 85, s. 2.

8. Whosoever shall administer to or cause to be taken by any person any poison or other destructive thing, or shall stab, cut, or wound any person, or shall by any means whatsoever cause to any person any bodily injury dangerous to life, with intent, in any of the cases aforesaid, to commit murder, shall be guilty of felony, and being convicted thereof shall suffer death as a felon.

Attempting to administer poison, or shooting, or attempting to shoot, or attempting to drown, &c., with intent to murder.
1 Vict., c. 85, ss. 3, 8.

9. Whosoever shall attempt to administer to any person any poison or other destructive thing, or shall shoot at any person, or shall, by drawing a trigger or in any other manner, attempt to discharge any kind of loaded arms at any person, or shall attempt to drown, suffocate, or strangle any person, with intent, in any of the cases aforesaid, to commit murder, shall, although no bodily injury be effected, be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned for life, or for any less term, with or without hard labor, and with or without solitary confinement.

As to acts causing or tending to cause danger to life or bodily harm :

Shooting or attempting to shoot, or stabbing, cutting, or

10. Whosoever unlawfully and maliciously shall shoot at any person, or, by drawing a trigger or in any other manner attempt to discharge any kind of loaded arms at any person, or shall stab, cut, or wound

wound any person, with intent, in any of the cases aforesaid, to maim, disfigure, or disable such person, or to do some other grievous bodily harm to such person, or with intent to resist or prevent the lawful apprehension or detainer of any person, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned for life, or for any less term, with or without hard labor, and with or without solitary confinement.

wounding, with intent to do grievous bodily harm.
1 Vict., c. 85, ss. 4, 8.

11. Whosoever shall unlawfully and maliciously inflict any grievous bodily harm upon any other person, either with or without any weapon or instrument, or shall unlawfully and maliciously stab, cut, or wound any other person, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned for any term not exceeding three years, with or without hard labor.

Inflicting bodily injury, with or without weapon.
14 and 15 Vict., c. 19, s. 4.

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

Party accused may be acquitted of the felony, and found guilty of the misdemeanor, in cutting, stabbing, &c.
14 and 15 Vict., c. 19, s. 5.

13. Whosoever shall unlawfully and maliciously, by the explosion of gunpowder or other explosive substance, burn, maim, disfigure, disable, or do any grievous bodily harm to any person, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned for life, or for any less term, with or without hard labor, and with or without solitary confinement.

Causing bodily injury by gunpowder.
9 and 10 Vict., c. 25, ss. 3, 5, 9, 11.

14. Whosoever shall unlawfully and maliciously cause any gunpowder or other explosive substance to explode, or send or deliver to or cause to be taken or received by any person any explosive substance or any other dangerous or noxious thing, or cast or throw at or upon or otherwise apply to any person any corrosive fluid or other destructive or explosive substance, with intent, in any of the cases aforesaid, to burn, maim, disfigure, or disable any person, or to do some grievous bodily harm to any person, shall, whether any bodily injury be effected or not, be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned for life, or for any less term, with or without hard labor, and with or without solitary confinement.

Causing gunpowder to explode, or sending to any person an explosive substance, or throwing corrosive fluid on a person with intent to do grievous bodily harm.
9 and 10 Vict., c. 25, ss. 4, 5, 9, 11.

15. Whosoever shall unlawfully and maliciously place or throw in, into, upon, against, or near any building or vessel any gunpowder

Placing gunpowder near a building, with intent to do bodily injury to any person.
or

9 and 10 Vict., c. 25,
ss. 6, 9, 11.

or other explosive substance, with intent to do any bodily damage to any person, shall, whether or not any explosion take place, or whether or not any injury is effected to any person, be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned for any term not exceeding eight years, with or without hard labor, and with or without solitary confinement.

Destroying or damaging a building with gunpowder, with intent to murder.
9 and 10 Vict., c. 25,
ss. 2, 5, 9.

16. Whosoever, by the explosion of gunpowder or other explosive substance, shall destroy or damage any building, with intent to murder any person, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned for life, or for any less term, with or without hard labor, and with or without solitary confinement.

Making or having gunpowder, &c., with intent to commit any of the offences in the four preceding sections.
9 and 10 Vict., c. 25,
ss. 8, 9, 11.

17. Whosoever shall knowingly have in his possession, or make or manufacture, any gunpowder, explosive substance, or any dangerous or noxious thing, or any machine, engine, instrument, or thing, with intent by means thereof to commit, or for the purpose of enabling any other person to commit, any of the offences in the four last preceding sections of this Act mentioned, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned for any term not exceeding two years, with or without hard labor, and with or without solitary confinement.

Setting fire to or casting away a ship, with intent to murder.
1 Vict., c. 89, s. 4.

18. Whosoever shall set fire to, cast away, or in anywise destroy any ship or vessel, with intent to murder any person, shall be guilty of felony, and being convicted thereof shall suffer death as a felon.

Impeding a person, endeavoring to save himself from shipwreck.
1 Vict., c. 89, ss. 7, 12.

19. Whosoever shall by force prevent or impede any person endeavoring to save his life from any ship or vessel which shall be in distress, or wrecked, stranded, or cast on shore (whether he shall be on board or shall have quitted the same), shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned for life, or for any less term, with or without hard labor, and with or without solitary confinement.

Setting spring guns, &c., with intent, to inflict grievous bodily harm.
7 and 8, G. 4, c. 18,
ss. 1-4.

20. Whosoever shall set or place or cause to be set or placed any spring gun, man trap, or other engine calculated to destroy human life, or inflict grievous bodily harm, with the intent that the same or whereby the same may destroy or inflict grievous bodily harm upon a trespasser or other person coming in contact therewith, shall be guilty of a misdemeanor; and whosoever shall knowingly and wilfully permit any such spring gun, man trap, or other engine as aforesaid, which may have been set, fixed, or left in any place then being in or afterwards coming into his possession or occupation by some other person to continue so set or fixed, shall be deemed to have set and fixed such gun, trap, or engine, with such intent as aforesaid: Provided, that nothing in this section contained shall extend to make it illegal to set any gin or trap such as may have been or may be usually set with the intent of destroying vermin: Provided also, that nothing

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in this section shall be deemed or construed to make it a misdemeanor, within the meaning of this section, to set or cause to be set or to be continued set, from sunset to sunrise, any spring gun, man trap, or other engine which shall be set or caused or continued to be set in a dwelling house for the protection thereof.

21. Whosoever 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 and 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 other matter or thing, with intent, in any of the cases aforesaid, to endanger the safety of any person travelling or being upon such railway, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned for life, or for any less term, with or without hard labor.

Placing wood, &c., on a railway with intent to endanger passengers.
14 and 15 Vict., c. 19, s. 6.

22. Whosoever 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, shall be guilty of felony, and being convicted thereof shall be liable at the discretion of the Court, to be imprisoned for life, or for any less term, with or without hard labor.

Casting stone, &c., upon a railway carriage, with intent to endanger the safety of any person therein.
14 and 15 Vict., c. 19, s. 7.

23. Whosoever shall wilfully do or cause to be done anything in such manner as to endanger the safety of any person conveyed in or upon a railway, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned for any term not exceeding two years, with or without hard labor.

Doing anything to endanger passengers by railway.
3 and 4 Vict., c. 97, s. 15.

24. Whosoever, being a coachman or other person having the charge of any stage coach or public carriage, shall, by wanton or furious driving or racing, or other wilful misconduct, maim or otherwise injure any person whatsoever, shall be guilty of a misdemeanor.

Drivers of stage coaches maiming persons by furious driving.
1 G. 4, c. 4.

25. Whosoever, being the master or mistress of any person and legally liable to provide for such person, as an apprentice or as a servant, necessary food, clothing, or lodging, shall wilfully and without lawful excuse refuse or neglect to provide the same, or shall unlawfully and maliciously assault such person, so that in any of the cases aforesaid the life of such person shall be endangered, or the health of such person shall have been or shall be likely to be permanently injured, shall be guilty of a misdemeanor, and being convicted thereof shall be liable at the discretion of the Court, to be imprisoned for any term not exceeding three years, with or without hard labor.

Not providing apprentices or servants with food, &c., or assaulting them, whereby life endangered.
14 Vict., c. 11, s. 1.

Using chloroform, &c.,
to commit felony.
14 and 15 Vict., c. 19,
s. 3.

26. Whosoever shall unlawfully apply or administer, or attempt to apply or administer, to any person, any chloroform, laudanum, or other stupifying or overpowering drug, matter, or thing, with intent thereby to enable himself or any other person to commit, or with intent to assist himself or any other person in committing any felony, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned for life, or for any less term, with or without hard labor.

As to assaults :

Assaulting a magis-
trate, &c., on account
of his preserving
wreck.
9 G. 4, c. 31, s. 24.

27. Whosoever shall assault and strike or wound any magistrate, officer, or other person whatsoever lawfully authorized, on account of the exercise of his duty in or concerning the preservation of any vessel in distress, or of any vessel, goods, or effects wrecked, stranded, or cast on shore, or lying under water, being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned for four years, or for such term as the Court shall award, with or without hard labor.

Arresting a clergy-
man during Divine
Service.
9 G. 4, c. 31, s. 23.

28. If any person shall arrest any clergyman upon any civil process, while he shall be performing Divine Service, or shall with the knowledge of such person, be going to perform the same, or be returning from the performance thereof, every such offender shall be guilty of a misdemeanor.

Assault with intent
to commit felony, or
on peace officers, &c.
9 G. 4, c. 31, s. 25.

29. Where any person shall be charged with and convicted of any of the following offences as misdemeanors, that is to say, of any assault with intent to commit felony, of any assault upon any peace officer or revenue officer in the due execution of his duty, or upon any person acting in aid of such officer, of any assault upon any person with intent to resist or prevent the lawful apprehension or detainer of the party so assaulting, or of any other person for any offence for which he or such other person may be liable by Law to be apprehended or detained, or of any assault committed in pursuance of any conspiracy to raise the rate of wages, in any such case the Court may sentence the offender to be imprisoned for any term not exceeding two years, with or without hard labor.

Assaulting a person
apprehending for an
offence within 14 and
15 Vict., c. 19, s. 11.

30. Whosoever, being found committing any indictable offence in the night, that is to say, between the hour of nine at night and the hour of six in the next morning, and being liable to be apprehended therefor, shall assault or offer any violence to any person by Law authorized to apprehend or detain him for such offence, and endeavoring so to do, or any person acting in his aid or assistance, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned for any term not exceeding three years, with or without hard labor.

Indecent assault, or
assault occasioning
bodily harm.
14 and 15 Vict., c.
100, s. 29.

31. Whosoever shall be convicted of an indecent assault, or any assault occasioning actual bodily harm, may be sentenced by the Court to be imprisoned for any term now warranted by law, and also

also to be kept to hard labor during the whole or any part of such term of imprisonment.

As to rape, abduction, or defilement of women :

32. Whosoever shall be convicted of the crime of rape, shall be liable, at the discretion of the Court, to be imprisoned for life, or for any term not less than four years, with or without hard labor.

Rape.
9 G. 4, c. 31, ss. 16,
18. 4 and 5 Vict., c.
56, s. 3. 9 & 10 Vict.,
c. 24, s. 1.

33. Whosoever shall, by false pretences, false representations, or other fraudulent means, procure any woman or child under the age of twenty-one years to have any illicit carnal connexion with any man, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned, and kept to hard labor, for any term not exceeding two years.

Procuring the defile-
ment of a girl under
age.
12 and 13 Vict., c. 76,
s. 1.

34. Whosoever shall unlawfully and carnally know and abuse any girl under the age of ten years shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned for life, or for any term not less than four years, with or without hard labor.

Carnally knowing a
girl under ten years
of age.
9 G. 4, c. 31, ss. 17,
18. 4 and 5 Vict., c.
56, s. 3.

35. Whosoever shall unlawfully and carnally know and abuse any girl being above the age of ten years and under the age of twelve years, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned for such term as the Court shall award, with or without hard labor.

Carnally knowing a
girl between the ages
of ten and twelve.
9 G. 4, c. 31, ss. 17, 18.

36. Whosoever shall be convicted of any attempt to have carnal knowledge of any girl under twelve years of age, may be sentenced by the Court to be imprisoned for any term now warranted by law, and also to be kept to hard labor during the whole or any part of such term of imprisonment.

Attempt to commit
the last two offences.
14 & 15 Vict., c. 100,
s. 29

37. Whosoever shall, from motives of lucre, take away or detain against her will any woman who shall have any interest, whether legal or equitable, present or future, absolute, conditional, or contingent, in any real or personal estate, or who shall be an heiress presumptive or next of kin to any one having such interest, with intent to marry or defile her, or to cause her to be married or defiled by any other person, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned for life, or for any less term, with or without hard labor.

Abduction of a woman
against her will, from
motives of lucre.
9 G. 4, c. 31, s. 19.

38. Whosoever shall unlawfully take or cause to be taken any unmarried girl, being under the age of sixteen years, out of the possession and against the will of her father or mother, or of any other person having the lawful care or charge of her, shall be guilty of a misdemeanor.

Abduction of a girl
under sixteen years of
age.
9 G. 4, c. 31, s. 20.

39. Whosoever

Child-stealing
9 G. 4, c. 31, s. 21.

39. Whosoever shall maliciously, either by force or fraud, lead or take away, or decoy or entice away or detain, any child under the age of ten years, with intent to deprive the parent or parents, or any other person having the lawful care or charge of such child, of the possession of such child, or with intent to steal any article upon or about the person of such child, to whomsoever such article may belong, or whosoever shall, with any such intent as aforesaid, receive or harbor any such child knowing the same to have been by force or fraud, led, taken, decoyed, enticed away, or detained as in this section before mentioned, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned for the term of four years, or any less term, with or without hard labor: Provided that no person who shall have claimed to be the father of an illegitimate child, or to have any right to the possession of such child, shall be liable to be prosecuted by virtue hereof on account of his getting possession of such child, or taking such child out of the possession of the mother or any other person having the lawful charge thereof.

As to procuring abortion, and as to concealment of birth:

Administering drugs,
or using instruments,
to procure abortion.
1 Vict., c. 85, ss. 6, 7,
8.

40. Whosoever, with intent to procure the miscarriage of any woman, shall unlawfully administer to her or cause to be taken by her any poison or other noxious thing, or shall unlawfully use any instrument or other means whatsoever with the like intent, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned for life, or for any less term, with or without hard labor, or with or without solitary confinement.

Concealing the birth
of a child.
9 G. 4, c. 31, s. 14.

41. If any woman shall be delivered of a child, and shall, by secret burying or otherwise disposing of the dead body of the said child, endeavor to conceal the birth thereof, every such offender shall be guilty of a misdemeanor, and, being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned for any term not exceeding two years, with or without hard labor; and it shall not be necessary to prove whether the child died before, at, or after its birth: Provided that if any woman tried for the murder of her child shall be acquitted thereof, it shall be lawful for the jury by whose verdict she shall be acquitted to find, in case it shall so appear in evidence, that she was delivered of a child, and that she did, by secret burying or otherwise disposing of the dead body of such child, endeavor to conceal the birth thereof, and thereupon the Court may pass such sentence as if she had been convicted upon an indictment for the concealment of the birth.

As to unnatural offences:

Sodomy and beas-
tiality.
9 G. 4, c. 31, s. 15.

42. Whosoever shall be convicted of the abominable crime of buggery, committed either with mankind or with any animal, shall be imprisoned for life, with solitary confinement.

43. It

43. It shall not be necessary upon the trial for any of the offences mentioned in the thirty-second, thirty-fourth, thirty-fifth, or forty-second sections of this Act, to prove the actual emission of seed in order to constitute a carnal knowledge, but the carnal knowledge shall be deemed complete upon proof of penetration only.

Carnal knowledge defined.
9 G. 4, c. 31.

As to other matters:

44. In all cases where any person shall be convicted of a misdemeanor under this Act, it shall be lawful for the Court, if it shall think fit, in addition to or in lieu of any of the punishments by this Act authorized, to fine the offender, and to require him to find sureties for keeping the peace and being of good behaviour, both or either; and in all cases of felonies in this Act mentioned, not punishable with death, it shall be lawful for the Court, if it shall think fit, to require the offender to find sureties for keeping the peace, in addition to any of the punishments by this Act authorized.

Fine and sureties for the Peace, in what cases.

45. Every accessory after the fact to murder shall be liable, at the discretion of the Court, to be imprisoned for life, or for any less term, with or without hard labor.

Accessories after the fact to murder.
9 G. 4, c. 31, s. 3.

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

Hard labor, solitary confinement, and whipping.

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

Interpretation clause.

48. This Act shall commence and take effect from the passing thereof.

Commencement of Act.