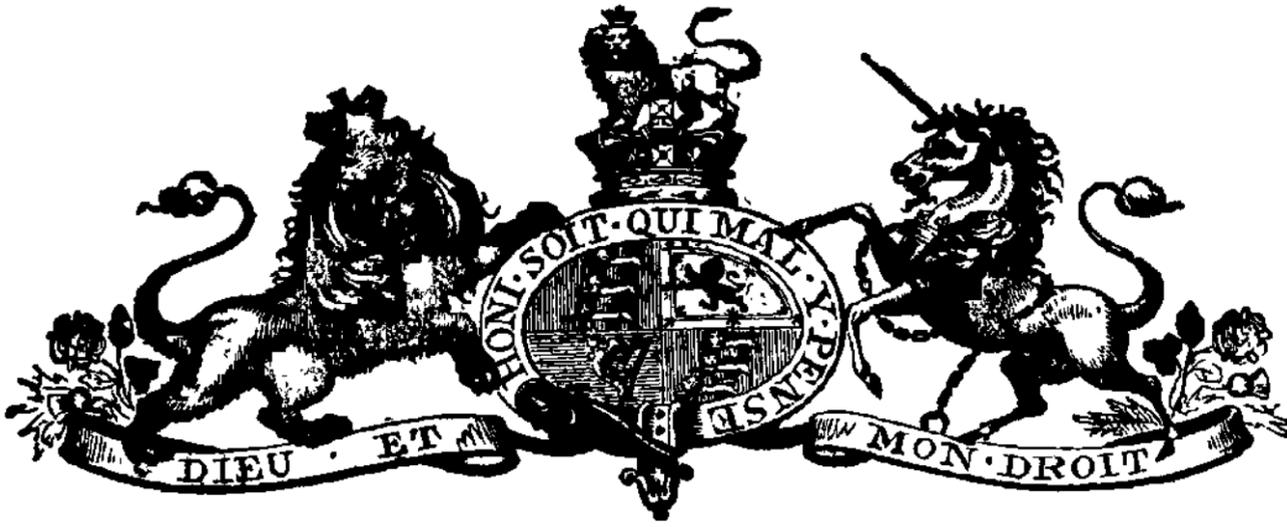


VICTORIA.



ANNO QUINQUAGESIMO QUINTO

VICTORIÆ REGINÆ.

No. 1231.

An Act to amend the *Crimes Act* 1890 and for other purposes.

[23rd December, 1891.]

BE it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):—

1. This Act may be cited as the *Crimes Act* 1891, and this Act and the *Crimes Act* 1890 may be cited together as the *Crimes Acts*. This Act is divided into Parts as follows (that is to say):—

Short title and division.
No. 1079.

- PART I.—Offences against the Person.
- PART II.—Suppression of Prostitution.
- PART III.—Larceny, &c.
- PART IV.—Perjury.
- PART V.—Punishment.
- PART VI.—Pleading and Procedure.
- PART VII.—Indecent Prints, &c.

2. The Acts mentioned in the First Schedule to this Act to the extent to which the said Acts are in and by the said Schedule expressed to be repealed are hereby repealed.

Repeal.
First Schedule.

PART I.—OFFENCES AGAINST THE PERSON.

3. This Part of this Act shall be incorporated with and shall for all purposes be read and construed as one with Division one of Part I. of the *Crimes Act* 1890, and offences against this Part of this Act shall be deemed to be offences against Division one of Part I. of the said Act.

Part I.
incorporated with
Division one of
Part I. of the
Crimes Act 1890.

4. Whosoever

Attempts to commit murder.

4. Whosoever shall attempt to commit murder shall be guilty of felony and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding fifteen years.

Abusing girl between ten and sixteen.
See 48 & 49 Vict. c. 69 s. 4.

5. (1) If any person unlawfully and carnally know any girl of or above the age of ten and under the age of sixteen years he shall be guilty of felony, and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding ten years; but if such person be a schoolmaster or teacher, and such girl his pupil, he shall be liable at the discretion of the court to be imprisoned for any term not exceeding fifteen years.

Attempt.

(2) If any person attempt to have unlawful carnal knowledge of any girl of or above the age of ten and under the age of sixteen years, or assault any such girl with intent unlawfully and carnally to know her, he shall be guilty of a misdemeanour, and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding three years; but if such person be a schoolmaster or teacher, and such girl his pupil, he shall be liable at the discretion of the court to be imprisoned for any term not exceeding five years.

Consent no defence where female under sixteen.
See 43 & 44 Vict. c. 45 s. 2.

6. It shall be no defence to any charge presentment indictment or information for unlawfully and carnally knowing, or for attempting or for assaulting with intent unlawfully and carnally to know, any girl under the age of sixteen years that such carnal knowledge or attempt to have carnal knowledge or assault with intent was or was made with the consent of such girl unless such girl be older than or of the same age as the defendant.

Limit of time when prosecution may be commenced.

7. No prosecution shall be commenced for an offence against a girl of or above twelve years of age under the last preceding section more than twelve months after the commission of the offence.

Abuse of female over ten by father or ancestor.

8. (1) If any person unlawfully and carnally know a woman or girl of or above the age of ten years and such woman or girl be to the knowledge of such person his daughter or other lineal descendant or his step-daughter he 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 the court may think fit to direct.

Attempt.

(2) If any person attempt to have unlawful carnal knowledge of a woman or girl of or above the age of ten years, or assault any such woman or girl with intent unlawfully and carnally to know her, and such woman or girl be to the knowledge of such person his daughter or other lineal descendant or his step-daughter, he shall be guilty of felony, and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding ten years.

Consent no defence.

(3) It shall be no defence to any such charge presentment indictment or information that such carnal knowledge or attempt or assault with intent to have unlawful carnal knowledge was or was made with the consent of such woman or girl.

9. (1) If

9. (1) If any woman or girl of or above the age of eighteen years consent to her father or other lineal ancestor or her step-father having carnal knowledge of her and permit him (knowing him to be her father or other lineal ancestor or her step-father as the case may be) so to do she shall be guilty of felony, and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding five years.

When female is an adult and consents.

(2) It shall be sufficient to prove in support of any charge presentment indictment or information for any offence against this or the last preceding section that the woman or girl on whose person or by whom the offence is alleged to have been committed is or is reputed to be the daughter or other lineal descendant or step-daughter of the person charged or with whom the offence is alleged to have been committed, and it shall not be necessary to prove that such woman or girl (or any person being her parent or ancestor or step-father and descendant of the person charged or with whom the offence is alleged to have been committed) was born in lawful wedlock.

Sufficient evidence of woman or girl being daughter of person charged with offence.

(3) In all proceedings under this or the last preceding section knowledge on the part of the accused of the relationship or affinity existing between the woman or girl on whose person or by whom the offence is alleged to have been committed and the person charged or with whom the offence is alleged to have been committed shall unless or until evidence to the contrary be given be presumed to have existed at the time at which the offence is alleged to have been committed.

Knowledge of relationship to be presumed unless contrary is shown.

(4) In all proceedings against any woman or girl for an offence against this section, it shall be a sufficient defence to prove that such woman or girl was at the time she consented to her father or other lineal ancestor or her step-father having carnal knowledge of her or permitted him so to do acting under his coercion.

Woman or girl acting under coercion excused.

10. If on the trial of any person charged with the offence of rape the jury are satisfied that the offence charged has been committed, but that there were circumstances connected with the commission of the crime which appear to mitigate the offence, the jury may return as their verdict that such person is guilty of the offence so charged with mitigating circumstances.

On trial for rape, verdict of guilty with mitigating circumstances.

11. (1) If any superintendent medical attendant officer nurse attendant or other person employed in any asylum (including an asylum for the criminal insane) hospital receiving house or licensed house or benevolent asylum or charitable institution; or
if any person having the care or charge of any female being a patient within the meaning of the *Lunacy Act* 1890; or
if any attendant of any female being a single lunatic within the meaning of the said Act—

Abuse of female lunatic.
See 52 & 53 Vict. c. 41 s. 82.

carnally

carnally knows or attempts or assaults with intent to carnally know such female or any female under care or treatment as a lunatic in an asylum hospital receiving house or licensed house or benevolent asylum or charitable institution he shall be guilty of a misdemeanour, and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding five years, and no consent or alleged consent of such female thereto shall be any defence to a prosecution for such offence.

48 & 49 Vict. c. 69
s. 3.

(2) No person shall be convicted of an offence against this section upon the evidence of one witness only unless such witness be corroborated in some material particular by evidence implicating the accused.

Indecent assault.
See 24 & 25 Vict.
c. 100 s. 52.

12. (1) If any person unlawfully and indecently assault any woman or girl he shall be guilty of a misdemeanour, and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding three years.

Consent no defence.
See 43 & 44 Vict.
c. 45 s. 2.

(2) It shall be no defence to any charge presentment indictment or information for an indecent assault on a girl under the age of sixteen years that such assault was made with the consent of such girl.

Second offence.
Compare s. 49
No. 1079.

(3) Whosoever having been convicted of such misdemeanour as in this section or section forty-eight of the *Crimes Act* 1890 mentioned shall afterwards commit such misdemeanour as in this section mentioned shall be guilty of felony, and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding ten years.

Assault occasioning
actual bodily harm.
24 & 25 Vict. c. 100
s. 47.
Common assault.

13. Whosoever shall be convicted upon presentment or indictment of any assault occasioning actual bodily harm shall be guilty of a misdemeanour, and shall be liable at the discretion of the court to be imprisoned for any term not exceeding five years; and whosoever shall be convicted upon presentment or indictment for a common assault shall be liable at the discretion of the court to be imprisoned for any term not exceeding two years.

PART II.—SUPPRESSION OF PROSTITUTION.

Procuration.
See 48 & 49 Vict.
c. 69 s. 12.

14. (1) Any person who—

- (a) procures or attempts to procure any woman or girl under twenty-one years of age not being a common prostitute or of known immoral character to have unlawful carnal connexion either within or without Victoria with any other person or persons; or
- (b) procures or attempts to procure any woman or girl to become either within or without Victoria a common prostitute; or
- (c) procures or attempts to procure any woman or girl to leave Victoria with intent that she may become an inmate of a brothel elsewhere; or
- (d) procures

See No. 1079 s. 44

(d) procures or attempts to procure any woman or girl to leave her place of abode in Victoria, such place not being a brothel, with intent that she may become an inmate of a brothel within or without Victoria—

shall be guilty of a misdemeanour, and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding two years.

(2) No person shall be convicted of any offence under this section upon the evidence of one witness only unless such witness be corroborated in some material particular by evidence implicating the accused.

Corroboration
necessary.

15. (1) Any person who—

(a) by threats or intimidation procures or attempts to procure any woman or girl to have unlawful carnal connexion either within or without Victoria; or

(b) by false pretences or false representations procures or attempts to procure any woman or girl not being a common prostitute or of known immoral character to have any unlawful carnal connexion either within or without Victoria—

Procuring defilement
of woman by threats
or fraud or adminis-
tering drugs.

See 48 & 49 Vict.
c. 69 s. 3.

shall be guilty of a misdemeanour, and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding two years.

(2) Any person who applies administers to or causes to be taken by any woman or girl any drug matter or thing with intent to stupefy or overpower so as thereby to enable any person to have unlawful carnal connexion with such woman or girl shall be guilty of a misdemeanour, and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding ten years.

(3) No person shall be convicted of an offence under this section upon the evidence of one witness only unless such witness be corroborated in some material particular by evidence implicating the accused.

16. (1) Any person who being the owner or occupier of any premises or having or acting or assisting in the management or control thereof induces or knowingly suffers 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 and carnally known by any man whether such carnal knowledge is intended to be with any particular man or generally—

Householder &c.
permitting defle-
ment of girl on his
premises.

Ib. s. 6.

(a) shall if such girl is under the age of thirteen years 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 ten years; and

(b) if such girl is of or above the age of thirteen and under the age of sixteen years, shall be guilty of a misdemeanour, and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding two years.

17. (1) Any

Abduction of girl
under eighteen with
intent to have
carnal knowledge.
See No. 1079 s. 51.
See 48 & 49 Vict.
c. 69 s. 7.

17. (1) Any person who—
with intent that any girl or woman under the age of eighteen
years should be unlawfully and carnally known by any man
whether such carnal knowledge is intended to be with any
particular man or generally—
takes or causes to be taken such girl or woman out of the
possession and against the will of her father or mother or
any other person whomsoever having the lawful care or
charge of her—

shall be guilty of a misdemeanour, and being convicted thereof shall be
liable at the discretion of the court to be imprisoned for any term not
exceeding two years.

Unlawful detention
with intent to have
carnal knowledge.
Ib. s. 8.

18. Any person who detains any woman or girl against her will—
(a) in or upon any premises with intent that she may be unlaw-
fully and carnally known by any man whether any
particular man or generally; or

(b) in any brothel—

See No. 1079 s. 51.

shall be guilty of a misdemeanour, and being convicted thereof shall be
liable at the discretion of the court to be imprisoned for any term not
exceeding two years.

What constitutes
unlawful detention.

19. (1) When a woman or girl is in or upon any premises for the
purpose of having an unlawful carnal connexion or is in any brothel, a
person shall be deemed to detain such woman or girl in or upon such
premises or in such brothel if with intent to compel or induce her to
remain in or upon such premises or in such brothel such person with-
holds from such woman or girl any wearing apparel or other property
belonging to her, or where wearing apparel has been lent or otherwise
supplied to such woman or girl by or by the direction of such person
such person threatens such woman or girl with legal proceedings if she
takes away with her the wearing apparel so lent or supplied.

(2) No legal proceedings whether civil or criminal shall be taken
against any such woman or girl for taking away or being found in
possession of any such wearing apparel as was necessary to enable her
to leave such premises or brothel.

Power of search
when it is supposed
female is detained
for immoral pur-
poses.
See 48 & 49 Vict.
c. 69 s. 10.

20. (1) If it appear to any justice, on information made before him
on oath by any parent relative or guardian of any woman or girl or by
any other person whomsoever who in the opinion of such justice is *bonâ
fide* acting in the interest of any 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 the jurisdiction
of such justice, such justice may issue a warrant authorizing any person
named therein to search for and when found to take to and detain in
a place of safety such woman or girl until she can be brought before a
justice.

(2) The

(2) The justice before whom such woman or girl is brought may cause her to be delivered up to her parent or guardian or otherwise dealt with as circumstances may permit and require.

(3) The justice at the time of or after issuing such warrant may issue another warrant for the arrest of any person accused of so unlawfully detaining such woman or girl and may order proceedings to be taken for punishing such person according to law.

(4) A woman or girl shall be deemed to be unlawfully detained for an immoral purpose if she is so detained for the purpose of being unlawfully and carnally known by any man whether any particular man or generally, and—

What constitutes detention for immoral purposes.

(a) either is under the age of sixteen years; or

(b) if of or above the age of sixteen 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 having the lawful care or charge of her; or

(c) if of or above the age of eighteen years is so detained against her will.

(5) Any person authorized by warrant under this section to search for any woman or girl so detained as aforesaid may enter (if need be, by force) any house building or other place specified in such warrant, and may remove such woman or girl therefrom.

Powers conferred by search-warrant.

(6) Every warrant issued under this section shall be addressed to and executed by some senior constable sergeant or other officer of police of higher rank, who shall be accompanied by the parent relative or guardian or other person making the information if such person so desire unless the justice shall otherwise direct.

Execution of search warrant.

21. Where on the trial of any offence under the provisions of this Act it is proved to the satisfaction of the court that the seduction or prostitution of a girl under the age of sixteen has been caused encouraged favoured or knowingly permitted by her father mother step-father step-mother guardian master or mistress, it shall be in the power of the court to divest such father mother step-father step-mother guardian master or mistress of all authority over her and to appoint the Secretary of the Department of Neglected Children or any person or persons willing to take charge of such girl to be her guardian until she has attained the age of twenty-one years or any age below that as the court may direct, and the Supreme Court or any Judge thereof shall have from time to time power to rescind or vary such order by the appointment of any other person or persons as such guardian or in any other respect.

Custody of girls under sixteen where attempt has been at defilement with connivance of parents or guardians.

48 & 49 Vict. c. 69 s. 12.

PART III.—LARCENY, ETC.

22. This Part of this Act shall be incorporated with and shall for all purposes be read and construed as one with Division two of Part I. of the *Crimes Act* 1890.

Part III. incorporated with Division two of Part I. of the *Crimes Act* 1890.

23. (1) Whosoever

Stealing or
damaging books
&c. in a public
library.

23. (1) Whosoever shall steal or remove secretly or damage with intent to steal any book print manuscript or other article or any part thereof, kept for the purposes of reference or exhibition or of art science or literature in any public library or any building belonging to the Crown or to any university or college affiliated to any university or any municipality, shall on conviction before any two justices be liable to be imprisoned for any term not exceeding twelve months and to pay a sum equal to four times the value of such article so stolen removed secretly or damaged.

Term "public
library."

(2) Every collection of books prints manuscripts or similar articles kept in any school of arts or mechanics' institute or in any building or room occupied or habitually used by the members of any association or municipality as a reading room or library shall be deemed a public library within the meaning of this section.

PART IV.—PERJURY.

Part IV.
incorporated with
Division six of Part
I. of the *Crimes Act*
1890.

24. This Part of this Act shall be incorporated with and shall for all purposes be read and construed as one with Division six of Part I. of the *Crimes Act* 1890.

Perjury.

25. Whosoever shall be convicted of wilful and corrupt perjury or of subornation of perjury shall be liable in the discretion of the court to be imprisoned for any term not exceeding fifteen years.

PART V.—PUNISHMENT.

Part V.
incorporated with
Division two of Part
III. of the *Crimes*
Act 1890.

26. This Part of this Act shall be incorporated with and shall for all purposes be read and construed as one with Division two of Part III. of the *Crimes Act* 1890.

Where verdict of
rape with
mitigating
circumstances.

27. Notwithstanding anything in any Act of Parliament contained, no person convicted of the felony of rape with mitigating circumstances shall be condemned to or suffer death therefor, but any person so convicted shall be liable at the discretion of the court to be imprisoned for any term not exceeding ten years.

Offences against
Part I. of this Act.

28. Where any male person of the age of sixteen years or upwards is convicted under the provisions of Part I. of this Act or of an offence against any of the said provisions (other than an assault unaccompanied by circumstances of indecency), or is convicted of the crime of rape with mitigating circumstances, the provisions of section five hundred and nineteen of the *Crimes Act* 1890 shall apply to and with respect to every such male person in like manner as to and with respect to persons convicted as in the first sub-section thereof mentioned.

Where cruelty or
great personal
violence is used.

29. Where any male person of the age of sixteen years or upwards is convicted before the Supreme Court or a court of general sessions of the peace of any offence against the person of another, and if in the opinion of the court the commission of such offence was attended or accompanied

accompanied by cruelty or great personal violence on the part of the offender against the person of another, then the provisions of section five hundred and nineteen of the *Crimes Act* 1890 shall apply to and with respect to such person in like manner as to and with respect to persons convicted as in the first sub-section thereof mentioned.

30. In every case in which the Governor exercises the powers vested in him by section five hundred and forty-one of the *Crimes Act* 1890 the Governor may if he see fit exercise in addition the powers vested (with respect to persons convicted as in the first sub-section of section five hundred and nineteen of the said Act mentioned) in the court by the said last-mentioned section and the word "sentence" in the said last-mentioned section shall for this purpose mean the direction given by the Governor in that behalf; and the said section five hundred and forty-one and every provision thereof shall apply to and in respect of such direction in like manner as to the other matters which the Governor is thereby empowered to direct.

Where sentence of death commuted.

PART VI.—PLEADING AND PROCEDURE.

31. This Part of this Act shall be incorporated with and shall for all purposes be read and construed as one with Division one of Part III. of the *Crimes Act* 1890.

Part VI. incorporated with Division one of Part III. of the *Crimes Act* 1890.

32. If upon the trial of any presentment indictment or information for rape or for any offence made felony by section forty-five of the *Crimes Act* 1890 or by sections five or eight of this Act the jury are satisfied that the defendant is guilty of any offence against section forty-three of the *Crimes Act* 1890 or any misdemeanour under this Act, but are not satisfied that the defendant is guilty of the felony charged in such presentment indictment or information or of an attempt to commit the same, then and in every such case the jury may acquit the defendant of such felony and find him guilty of such misdemeanour as aforesaid, and thereupon such defendant shall be liable to be punished in the same manner as if he had been convicted upon a presentment indictment or information for such misdemeanour as aforesaid.

Power on charge of rape or certain felonies to convict of certain misdemeanours.

See 48 & 49 Vict. c. 69 s. 9.

33. (1) Where upon the hearing before a justice of a charge of rape or of unlawfully and carnally knowing or of attempting or assaulting with intent unlawfully and carnally to know or of indecently assaulting any girl; or where upon the trial before a Judge of the Supreme Court of any person for any of such offences—

Where girl is a child of tender years, her unsworn testimony may be received in certain cases.

See 48 & 49 Vict. c. 69 s. 4.

the girl in respect of whom the offence is charged to have been committed or any other child of tender years who is tendered as a witness does not in the opinion of the court or justices understand the nature of an oath, the evidence of such girl or other child of tender years may

may be received though not given upon oath if in the opinion of the court or justices (as the case may be) such girl or other child of tender years is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth.

Corroboration
necessary.

(2) No person shall be liable to be convicted of the offence unless the testimony admitted by virtue of this section and given on behalf of the prosecution be corroborated by some other material evidence in support thereof implicating the accused.

(3) Any witness whose evidence has been admitted under this section shall be liable to be presented indicted or informed against and punished for perjury in all respects as if he or she had been sworn.

Person charged with
offence and wife or
husband to be com-
petent as witness.

34. Where in any court or before any judge or justice a person is presented indicted informed against or charged with an indictable offence or an offence punishable on summary conviction, whether solely or with others, such person and his wife or her husband (as the case may be) may be called as a witness at any stage of the proceedings at which witnesses may be called. Provided as follows:—

- (1) The person presented indicted informed against or charged shall not be called as a witness without his consent:
- (2) The wife or husband of the person presented indicted informed against or charged shall not be called as a witness without the consent of that person except in any case in which such wife or husband might have been compelled to give evidence before the commencement of this Act:
- (3) A person called as a witness in pursuance of this section shall not be asked, and if asked shall not be required to answer, either on examination cross-examination or re-examination any question not relevant to the particular offence with which he is charged unless such person has given evidence of good character. Provided always that no comment shall be made upon the fact that any such person has not given evidence in his own behalf.

Caution to be given
to person charged.

35. Where a person charged with an offence is not defended by counsel or solicitor, the following caution or words to the like effect shall, before he is called as a witness, be handed to him in writing under the direction of the court judge or justice before whom he is charged (that is to say):—"Having heard the evidence against you, do you wish to be called as a witness and give evidence in answer to the charge. You are not obliged to be called and give evidence unless you wish, but if you are called the evidence you give may be used against you and you will be liable to be cross-examined."

Punishment of
persons for pub-
lishing reports of
legal proceedings
when forbidden.

36. (1) The provisions of section two hundred of the *Justices Act 1890* shall extend and apply to courts of general sessions.

(2) If

(2) If any person commit an offence against any Act by publishing a report of any proceedings or any part thereof in any cause or matter heard before any judge court of general sessions or police magistrate or any justices sitting in petty sessions contrary to an order made by such judge court police magistrate or justices under the provisions of such Act such person may be called upon by such judge court police magistrate or justices to appear before him or it or them (as the case may be) on some future day by him or them specified to show cause why he should not be punished for such offence.

(3) Such person may upon such specified day appear by himself or his counsel or by his attorney in courts where attorneys may practise as advocates and show cause accordingly and such judge court police magistrate or justices may then or on any subsequent day if he or it or they (as the case may be) think fit proceed to adjudge that such person shall pay any fine or shall undergo any period of imprisonment to which he is liable.

37. (1) Any Judge of the Supreme Court or Judge of a county court any court of general sessions of the peace or any police magistrate or any justices sitting in petty sessions may if it appear desirable on grounds of public decency and morality order that all or any persons or any class or description of persons shall be excluded from the court during all or any part of the proceedings in any cause or matter then being heard before such judge police magistrate or justices (as the case may be).

Power to exclude the public from court on grounds of public decency.

(2) Nothing in this section contained shall be construed to authorize the exclusion from the court of the mother or any female friend of any prisoner or party to or witness actually being examined in such cause or matter or of any party to or witness in such cause or matter or of any counsel or solicitor.

(3) Nevertheless all witnesses in any cause or matter may at any time be ordered to leave the court in the same manner as though this Act had not been passed.

38. Where any person is charged upon indictment presentment or information with the commission of any indictable offence and upon his trial makes answer or defence thereto by his counsel, and such person desires also to make a statement of facts (without oath) in lieu of or in addition to any evidence on his behalf, such statement of facts shall only be made by such person, but where it is intended to be so made may be opened by the counsel of such person. Such statement shall in all cases be made by such person after the counsel appearing for the defence of such person or for the defence of other persons also charged in such indictment presentment or information has or have concluded his or their final addresses to the jury. Whenever any such statement is made the counsel for the Crown shall have the right of reply.

Provision as to statements by prisoners.

Rule.

39. Where

Counts for previous convictions may be added to presentment at any time before verdict.

39. Where any person has been presented for an indictable offence it shall be lawful at any time before or after the jury have been charged to inquire of such offence, but before such jury have given their verdict, for Her Majesty's Attorney-General or Solicitor-General for Victoria or for any prosecutor for the Queen in the name of a law officer to add a count or counts to such presentment averring that the person so presented as aforesaid was at a certain time and place or at certain times and places previously convicted of any offence or offences; and such count or counts may be added notwithstanding other previous convictions are already averred in such presentment; and such count or counts so added may be proved after verdict upon the count or counts for such indictable offence in the same manner and shall have the same effect in all respects as such count or counts might have been proved and would have had if it or they had been part of such presentment at the time the person charged therein was arraigned.

Previous convictions in other Australian colonies may be averred and proved.

40. The previous conviction in any of the colonies on the continent of Australia (other than Victoria) or in Tasmania New Zealand Fiji British New Guinea or New Hebrides of any person for any indictable offence or offence punishable summarily by justices may in any presentment indictment or information for any subsequent offence in Victoria be averred in like manner as any previous conviction in Victoria, and such averment may in the case of colonies other than Victoria be proceeded upon in like order and manner as in the case of any previous conviction in a court of justice in Victoria and may be proved subject to the provisions hereinafter contained.

Mode of proving previous convictions in other Australian colonies.

41. Whenever in any legal proceeding whatsoever it may be necessary to prove a conviction in any of such colonies (other than Victoria) as aforesaid of any person charged with any offence such conviction may be proved by the production of a certificate containing the substance and effect only (omitting the formal part) of the conviction purporting to be signed by the officer having the custody of the records of the court where the offender was convicted or by the deputy of such officer or by the officer for the time being acting in such first-mentioned capacity and purporting to be attested by a justice of the peace, and by proof of the identity of the person named in such certificate with the prisoner, and it shall not be necessary to prove the signature or official character of the persons appearing to have signed such certificate.

Repeal of s. 21 of Evidence Act 1890 and substitution of new provision.

Proof of trial or conviction or acquittal for an indictable offence by certified copy.

42. For section twenty-one of the *Evidence Act* 1890 the following section shall be substituted, namely:—

“21. Whenever in any legal proceeding whatsoever it may be necessary to prove the trial or conviction or acquittal in Victoria of any person charged with any indictable offence, it shall not be necessary to produce the record of the conviction or acquittal of such person or a copy thereof; but a certificate containing the substance and effect only
“ (omitting

“(omitting the formal part) of the presentment indictment or information
 “or of the conviction or of the acquittal (as the case may be) of or for
 “such offence purporting to be signed by the officer having the custody
 “of the records of the court where such first-mentioned person was
 “tried convicted or acquitted or by the deputy of such officer or by
 “the officer for the time being acting in such first-mentioned capacity
 “(for which certificate a fee of Five shillings and no more shall be
 “demanded or taken) shall upon proof of the identity of the person
 “be sufficient evidence of the said trial conviction or acquittal without
 “proof of the signature or official character of the person appearing to
 “have signed the same.

See No. 1088 s. 21.
 See 17 & 18 Vict.
 c. 125 s. 25.
 See 14 & 15 Vict.
 c. 99 s. 13.

“But no fee shall be demanded or taken for any such certificate if
 “the same be applied for by any prosecutor for the Queen or person
 “acting on his behalf or by any person acting under the direction of a
 “law officer or by any person acting for the prisoner.”

43. Whenever in any legal proceeding whatsoever it may be necessary to prove any previous summary conviction before a court of petty sessions, it shall not be necessary to produce a copy of such conviction; but the register of such court of petty sessions (kept in pursuance of the provisions of the *Justices Act* 1890 or any Act thereby repealed) or a certificate containing an extract from such register of such conviction purporting to be signed by the clerk or acting clerk or assistant clerk of the court at which such register is kept shall upon proof of the identity of the person therein stated to have been convicted, and notwithstanding anything in any Act of Parliament contained, be sufficient evidence of such conviction without proof of the signature or official character of the person appearing to have signed the same; and the conviction shall be deemed to have been unappealed against until the contrary is shown.

Evidence of previous
 summary
 conviction.

44. When any person has been presented indicted or informed against for committing any offence after a previous conviction or convictions and has been convicted of such subsequent offence (hereinafter in this section termed the “first-mentioned principal offence”) and such previous conviction or convictions or any of them have thereupon been admitted by or proved against him, and

Provision for
 simplifying proof
 of previous offences
 when same have
 already been once
 proved.

If at any subsequent time such person be presented indicted or informed against for committing any other offence subsequent to the committing of such first-mentioned principal offence and to such previous conviction or convictions as aforesaid then such first-mentioned principal offence and such other previous conviction or convictions as aforesaid may notwithstanding anything contained in this or any other Act of Parliament be proved against such person as follows:—

A certificate containing the substance and effect only of the conviction for such first-mentioned principal offence purporting to be signed by the officer having the custody
 of

of the records of the court where the offender was convicted or by the deputy of such officer or by the officer for the time being acting in such first-mentioned capacity and setting forth that at the time of such conviction such previous convictions (at the places and times therein mentioned, for the offences therein specified or generally for felonies indictable misdemeanours or offences punishable on summary conviction, as the case may be) were admitted by or proved against such offender may be given in evidence; such certificate shall (upon proof of the identity of the person against whom the same is given in evidence with the offender mentioned in the certificate as having been convicted of such first-mentioned principal offence) be sufficient evidence of the conviction of such person not only for such first-mentioned principal offence but also of the previous conviction or convictions therein mentioned without proof of the signature or official character of the person appearing to have signed the same;

Or a certificate purporting to be signed by the governor keeper or officer in charge of any gaol prison hulk or penal establishment or by the officer for the time being acting in that capacity and setting forth that the person therein mentioned underwent the whole or a portion of the sentence of imprisonment therein mentioned may be given in evidence; such certificate shall contain a copy of the record warrant or other authority under which such person was detained in such gaol prison hulk or penal establishment, and shall (upon proof of the identity of the person against whom the same is given in evidence with the offender mentioned in the certificate as having so undergone the whole or a portion of such sentence of imprisonment) be sufficient evidence not only of the conviction of such person for the crime for which such sentence of imprisonment appears from such certificate to have been awarded but also of the admission by or proof against such person immediately before such sentence was awarded of any previous conviction or convictions mentioned in such copy of the record warrant or other authority.

Nothing in this section contained shall be construed to affect or alter the law with respect to the proper stage of the proceedings upon such presentment indictment or information for proving any previous conviction therein averred.

Previous convictions
to be noted in new
sentence.

45. Where any person has been presented indicted or informed against for committing any offence after a previous conviction or convictions and has been convicted of such subsequent offence and such previous

previous conviction or convictions or any of them have been proved against him the fact that such previous conviction or convictions have been so proved and the date or dates thereof and the term or terms of imprisonment awarded therefor respectively shall be entered upon the minutes or record of such subsequent offence.

46. Any person in custody in any gaol police gaol prison hulk or penal establishment for any cause whatsoever may upon an order in writing (which may be in the form or to the effect in the Second Schedule to this Act) made as hereinafter provided be brought before any court judge or justice to give evidence in or upon any trial or proceedings (whether civil or criminal) without a writ of *habeas corpus*; and every person in custody brought before such court judge or justice under any such order shall be deemed to be in the legal custody of the police constable local gaoler or other officer having the temporary custody of such person and acting under such order, who shall in due course return such person into the custody from which he was brought under such order.

Prisoner may be brought before court to give evidence without writ of *habeas*.
Second Schedule.

Where such trial or proceedings is or are to take place before any court of which there is a judge appointed and commonly known by that name then such order shall be made by and be under the hand of a judge of such court.

Where such trial or proceedings is or are to take place before a court of general sessions then such order shall be made by and be under the hand of a chairman of a court of general sessions; and

In all other cases such order shall be made by and be under the hand of a judge or police magistrate.

47. Whenever any person has been bound over by a justice to appear and give evidence on the trial of any one before a Judge of the Supreme Court or before a court of general sessions of the peace, or

whenever a subpoena *ad testificandum* subpoena *duces tecum* or summons has been issued for the attendance of any person to give evidence on the trial of any one before a Judge of the Supreme Court or before a court of general sessions of the peace, and a copy thereof has been duly served upon such person, and a reasonable sum of money has been paid or tendered to him for his costs and expenses in that behalf,

Such Judge of the Supreme Court or the chairman of such court of general sessions of the peace may if such person neglects or refuses to attend issue his warrant to apprehend such person (or any person for whose attendance such subpoena has been issued and who is proved to be keeping out of the way to avoid service thereof), and may also order any such person to pay a fine not exceeding Twenty pounds, but no such fine shall exempt such person from any other proceedings for disobeying such subpoena or summons.

Issue of warrant when witness does not appear.

48. When

Witness how dealt with if arrested.

48. When a witness has been apprehended under a warrant as hereinbefore provided any justice may discharge such witness upon his entering into a recognisance with or without sureties at the discretion of such justice conditioned for his appearance at the time and place mentioned in the said warrant.

Proof of marriage in other portions of Her Majesty's dominions on trial for bigamy.

49. On the trial of any person for having (during the life of his or her wife or husband) married some other person, the production of a copy of the register or other official record of such marriage or of an extract from such register or other official record shall on proof of the identity of such first-mentioned person be *prima facie* evidence of his or her marriage or of his or her having gone through the ceremony of marriage—

if such copy or extract be proved to be an examined copy or extract of or from the register or other official record of marriages kept in any portion of Her Majesty's dominions ; or if such copy or extract be signed and certified as a true copy or extract by the officer to whose custody the original is intrusted, and if the facts that such officer is an officer intrusted with the custody of the original register or official record and that the signature thereto is the signature of such officer and that such register or other official record is an official record within the meaning of this Act purport to be certified to by a Judge of a superior court or Governor or Administrator of the Government of that portion of Her Majesty's dominions in which such register or official record is kept.

Meaning of term "official record."

50. For the purposes of the last preceding section, an official record of a marriage shall be such record of marriages as is required by law to be kept, or as is made by law evidence of marriages celebrated in that portion of Her Majesty's dominions in which the same is kept.

Nothing in this or the last preceding section contained shall apply to the proof of marriages celebrated or of ceremony of marriage performed in Victoria.

Husband and wife may be witnesses on trial for bigamy.

51. On the trial of any person for having (during the life of his or her wife or husband) married some other person, such wife or husband (as the case may be) of the first marriage shall be competent but not compellable to give evidence for or against the accused, but no such marriage shall be proved by the evidence of such witness alone.

Subpoenas in criminal cases may be issued by sheriffs and deputy sheriffs.

52. Every sheriff and deputy sheriff may issue subpoenas *ad testificandum* and subpoenas *duces tecum* in any criminal case to be tried at the sittings of the Supreme Court within the bailiwick for which he acts. Every such subpoena shall be sealed by the sheriff or deputy sheriff issuing the same, and every person served with any such subpoena shall be liable and subject to the like penalties for disobedience thereof as if the same had been issued out of the Supreme Court.

53. Where

53. Where it is made to appear to any justice that any person is so ill as to be unable safely to travel or to leave any house or place whatsoever within Victoria where he may then be and that such person is able and willing to give material information relating to any indictable offence or relating to any person accused of any indictable offence, then such justice may direct that any person accused of such indictable offence shall be taken or conveyed in custody to the house or place where such first-mentioned person then is, or such justice may if such accused person is brought before him remand him in custody or on bail to such house or place; and thereupon any justice may notwithstanding anything in any Act of Parliament contained sit in such house or place or in any place convenient thereto, and such accused person may there be brought before such justice and he may there take the preliminary examination or statement of the witnesses or of such of them as he thinks fit and he may commit the accused for trial discharge him or remand him to appear again at such house or place or at any other place.

Power to take preliminary examination in place where witness is lying ill.

54. (1) Every justice shall notwithstanding anything contained in any Act of Parliament or in the commission by which he is assigned to keep the peace in any one or more bailiwicks have jurisdiction (in the same manner and to the same extent only as if the same were exercised in respect of any offence committed within the bailiwick to which he has been assigned) to do all or any of the things following in any proceedings against any person for an offence for which he is liable to be convicted before justices or to be committed for trial and committed or alleged to have been committed by such person in some bailiwick to which such justice has not been assigned to keep the peace (provided that if any of such things so done be judicial acts and not ministerial acts on the part of such justice he be at the time he does the same within the limits of the bailiwick or bailiwicks to which he has been assigned).

Justice empowered to do certain preliminary acts in criminal proceedings for offence committed outside his local jurisdiction.

(2) Such justice may receive any information in respect of any offence of whatsoever kind whether indictable or not.

(3) He may if he thinks fit issue his warrant to apprehend the person against whom the information is lodged or to search anything or any place for any person or any property for whom or for which such search is allowed by law or both to apprehend or to search as aforesaid.

(4) He may summon witnesses to give evidence and to produce documents respecting the subject-matter of any such search or information and may by warrant compel the attendance of witnesses and the production of documents.

(5) He may do all necessary acts preliminary to the hearing.

(6) He may remand the accused person to the same place or to any other place whether within or without the same bailiwick, or may admit such accused person or any witnesses in custody to bail to appear at any specified place.

(7) He

B

And to commit for trial or adjudicate where no objection raised.

(7) He may in any case where the accused person and the witnesses are present before him take the evidence or statements on oath of the witnesses and may discharge such accused person or convict him or commit him for trial (as the case may be). Provided that before he shall so take such evidence or statements he shall inform the prosecution and the accused person that he is not a justice for the bailiwick in which the offence was committed; and he shall not take such evidence or statements pursuant to this sub-section if before taking such evidence or statements either the accused person or the prosecution object to him so doing.

PART VII.—INDECENT PRINTS, ETC.

Summary proceedings against persons affixing exhibiting printing or vending indecent or obscene pictures or printed or written matter.

55. Whoever affixes to or inscribes on any house building wall hoarding gate fence pillar post board tree or any other thing whatsoever so as to be visible to a person being in or passing along any street public highway or footpath and whoever affixes to or inscribes on any public urinal or delivers or attempts to deliver or exhibits to any inhabitant or to any person being in or passing along any street public highway or footpath or throws down the area of any house or exhibits to public view in the window of any house or shop any picture or printed or written matter which is of an indecent or obscene nature shall on summary conviction thereof before two justices be liable to a penalty not exceeding Forty shillings or in the discretion of the court to imprisonment for any term not exceeding one month with or without hard labour.

Summary proceedings against persons sending others to do the acts punishable under preceding section.

56. Whoever sells gives or delivers to any other person any such picture or printed or written matter mentioned in the foregoing section with the intent that the same or some portion thereof should be affixed inscribed delivered or exhibited as therein mentioned shall on conviction thereof before two justices be liable to a penalty not exceeding Five pounds or in the discretion of the court to imprisonment to any term not exceeding three months with or without hard labour.

Certain advertisements declared indecent.

57. Any advertisement relating to syphilis gonorrhœa nervous debility or other complaint or infirmity arising from or relating to sexual intercourse shall be deemed to be printed or written matter of an indecent nature within the meaning of the two foregoing sections of this Act if such advertisement is affixed to or inscribed on any house building wall hoarding gate fence pillar post board tree or other thing whatsoever so as to be visible to a person being in or passing along any street public highway or footpath or is affixed to or inscribed on any public urinal or is delivered or attempted to be delivered to any person being in or passing along any street public highway or footpath.

Any constable may arrest without warrant any person whom he shall find committing any offence against this or the two next preceding sections.

SCHEDULES.

SCHEDULES.

FIRST SCHEDULE.

Section 2.

Number and Date of Act.	Short Title.	Extent of Repeal.
No. 1079 ...	<i>Crimes Act 1890</i> ...	Sections forty-seven forty-eight and forty-nine. In section one hundred and thirty the words "to the value in whole of Five pounds or more."
No. 1088 ...	<i>Evidence Act 1890</i> ...	In section fifty the words "or infant" where they last occur in the said section.

SECOND SCHEDULE.

Section 46.

To the Governor [*Keeper or Officer in charge*] of the Gaol [*Prison Hulk or Penal Establishment*], and to all members of the police force in the colony of Victoria.

It is hereby ordered, under the provisions of the *Crimes Acts*, that [*here insert name of prisoner*], a person now in your custody at the gaol at [*here insert name of place of detention*], be brought before the [*here insert name of court, &c.*] at [*insert place where court to be holden*] on the day of 18 then and there to testify what he shall know concerning the matters then to be inquired of in the hearing of [*here specify name of cause or matter*], and the said [*here repeat name of prisoner*] is to remain in the custody of the officers local gaolers and constables acting under this order until the said [*name of prisoner*] is in due course returned to the governor [*keeper or officer in charge of prison hulk or penal establishment*] at [*here insert place of detention*].

Dated this day of

Signature and description of Judge, Chairman of a Court of General Sessions of the Peace, or Police Magistrate.

MELBOURNE:

By Authority: ROBT. S. BRAIN, Government Printer.