

Larceny Act 1867

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An Act to consolidate and amend the Statute Law relating to Larceny and other similar offences.

Preamble.

WHEREAS it is expedient to consolidate and amend the Statute Law relating to larceny and other similar offences

Be it therefore enacted by the General Assembly of New Zealand in Parliament assembled and by the authority of the same as follows—

1 Interpretation of terms. 24 and 25 Vict. c. 96 s. 1.

In the interpretation of this Act

“Document of title to goods.”

The term “document of title to goods” shall include any bill of lading India warrant dock warrant warehouse keeper’s certificate warrant or order for the delivery or transfer of any goods or valuable thing bought and sold note or any other document used in the ordinary course of business as proof of the possession or control of goods or authorizing or purporting to authorize either by endorsement or by delivery the possessor of such document to transfer or receive any goods thereby represented or therein mentioned or referred to.

“Document of title to lands.”

The term “document of title to lands” shall include any deed map paper or parchment written or printed or partly written and partly printed being or containing evidence of the title or any part of the title to any real estate or to any interest in or out of any real estate.

“Banker.”

The term “banker” shall include any director or manager of an Incorporated or Joint Stock Banking Company.

“Trustee.”

The term “trustee” shall mean a trustee on some express trust created by some deed will or instrument in writing and shall include the heir or personal representative of any such trustee and any other person upon or to whom the duty of such trust shall have devolved or come and also an executor and administrator and an official administrator or curator of intestate estates and an official manager sequestrator assignee liquidator or other like officer acting under any present or future Act relating to Joint Stock Companies bankruptcy or insolvency.

“Valuable security.”

The term “valuable security” shall include any order exchequer acquittance or other security whatsoever entitling or evidencing the title of any person or body corporate to any share or interest in any public stock or fund whether of the United Kingdom or of Great Britain or of Ireland or of New Zealand or of any part of the British dominions or of any foreign state or in any fund of any body corporate company or society whether within the United Kingdom or within New Zealand or any part of the British dominions or in any foreign state or country or to any deposit in any bank and shall also include any debenture deed bond bill note warrant order or other security whatsoever for money or for payment of

money whether of the United Kingdom or of Great Britain or of Ireland or of New Zealand or of any part of the British dominions or of any foreign state and any document of title to lands or goods as hereinbefore defined.

“Property.”

The term “property” shall include every description of real and personal property money debts and legacies and all deeds and instruments relating to or evidencing the title or right to any property or giving a right to recover or receive any money or goods and shall also include not only such property as shall have been originally in the possession or under the control of any party but also any property into or for which the same may have been converted or exchanged and anything acquired by such conversion or exchange whether immediately or otherwise.

“Night.”

For the purposes of this Act the night shall be deemed to commence at nine of the clock in the evening of each day and to conclude at six of the clock in the morning of the next succeeding day.

2 All larcenies to be of the same nature. 24 and 25 Vict. c. 96 s. 2.

Every larceny whatever be the value of the property stolen shall be deemed to be of the same nature and shall be subject to the same incidents in all respects as grand larceny was in England before the twenty-first day of June one thousand eight hundred and twenty-seven.

3 Bailees fraudulently converting property guilty of larceny. Ib. s. 3.

Whosoever being a bailee of any chattel money or valuable security shall fraudulently take or convert the same to his own use or the use of any person other than the owner thereof although he shall not break bulk or otherwise determine the bailment shall be guilty of larceny and may be convicted thereof upon an indictment for larceny but this section shall not extend to any offence punishable on summary conviction.

4 Punishment for simple larceny. Ib. s. 4.

Whosoever shall be convicted of simple larceny or of any felony hereby made punishable like simple larceny shall (except in the cases hereinafter otherwise provided for) be liable at the discretion of the Court to be kept in penal servitude for the term of three years or to be imprisoned for any term not exceeding two years with or without hard labour and with or without solitary confinement and if a male under the age of sixteen years with or without whipping.

5 Three larcenies within six months may be charged in one indictment. *Ib.* s. 5.

It shall be lawful to insert several counts in the same indictment against the same person for any number of distinct acts of stealing not exceeding three which may have been committed by him against the same person within the space of six months from the first to the last of such acts and to proceed thereon for all or any of them.

6 Where a single taking is charged and several takings at different times are proved. *Ib.* s. 6.

If upon the trial of any indictment for larceny it shall appear that the property alleged in such indictment to have been stolen at one time was taken at different times the prosecutor shall not by reason thereof be required to elect upon which taking he will proceed unless it shall appear that there were more than three takings or that more than the space of six months elapsed between the first and the last of such takings and in either of such last-mentioned cases the prosecutor shall be required to elect to proceed for such number of takings not exceeding three as appear to have taken place within the period of six months from the first to the last of such takings.

7 Larceny after a conviction for felony. *Ib.* s. 7.

Whosoever shall commit the offence of simple larceny after a previous conviction for felony whether such conviction shall have taken place upon an indictment of under the provisions of the Ordinance passed in the tenth year of the reign of Her Majesty intituled “An Ordinance to provide for the establishment of Resident Magistrates’ Courts and to make special provision for the administration of justice in certain cases” or of “The Resident Magistrate’s Criminal Jurisdiction Extension and Amendment Act 1865” or of “The Resident Magistrates’ Act 1867” shall be liable at the discretion of the Court to be kept in penal servitude for any term not exceeding ten years and not less than three years or to be imprisoned for any term not exceeding two years with or without hard labour and with or without solitary confinement and if a male under the age of sixteen years with or without whipping.

8 Larceny after conviction of an indictable misdemeanour under this Act. 24 and 25 Vict. c. 96 s. 8.

Whosoever shall commit the offence of simple larceny or any offence hereby made punishable like simple larceny after having been previously convicted of any indictable misdemeanour punishable under this Act shall be liable at the discretion of the Court to be kept in penal servitude for any term not exceeding seven years and not less than three years or to be imprisoned for any term not exceeding two years with or without hard labour and with or without solitary confinement and if a male under the age of sixteen years with or without whipping.

9 Larceny after two summary convictions. Ib. s. 9.

Whosoever shall commit the offence of simple larceny or any offence hereby made punishable like simple larceny after having been twice summarily convicted of any of the offences punishable upon summary conviction under the provisions contained in this Act or the Act of this session intituled "An Act to consolidate and amend the Statute Law relating to malicious injuries to property" (whether each of the convictions shall have been in respect of an offence of the same description or not and whether such convictions or either of them shall have been or shall be before or after the passing of this Act) shall be guilty of felony and being convicted thereof shall be liable at the discretion of the Court to be kept in penal servitude for any term not exceeding seven years and not less than three years or to be imprisoned for any term not exceeding two years with or without hard labour and with or without solitary confinement and if a male under the age of sixteen years with or without whipping.

*AS TO LARCENY OF CATTLE OR OTHER ANIMALS***10 Stealing horses cows sheep &c. Ib. s. 10.**

Whoever shall steal any horse mare gelding colt or filly or any bull cow ox heifer or calf or any ram ewe sheep or lamb shall be guilty of felony and being convicted thereof shall be liable at the discretion of the Court to be kept in penal servitude for any term not exceeding fourteen years and not less than three years or to be imprisoned for any term not exceeding two years with or without hard labour and with or without solitary confinement.

11 Killing animals with intent to steal the carcass &c. Ib. s. 11.

Whosoever shall wilfully kill any animal with intent to steal the carcass skin or any part of the animal so killed shall be guilty of felony and being convicted thereof shall be liable to the same punishment as if he had been convicted of feloniously stealing the same provided the offence of stealing the animal so killed would have amounted to felony.

12 Stealing deer in an uninclosed part of a forest. Ib. s. 12.*Second offence.*

Whosoever shall unlawfully and wilfully course hunt snare or carry away or kill or wound or attempt to kill or wound any deer being the private property of any person kept or being in or upon any uninclosed land shall for every such offence on conviction thereof before a Justice of the Peace forfeit and pay such sum not exceeding fifty pounds as to the Justice shall seem meet and whosoever having been previously convicted of any offence relating to deer for which a pecuniary penalty shall have been imposed by this or by any former Act shall afterwards commit any of the offences hereinbefore in this section enumerated whether such second offence be of the same description as the first

or not 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 two years with or without hard labour and with or without solitary confinement and if a male under the age of sixteen years with or without whipping.

13 Stealing deer in any inclosed ground. 24 and 25 Vict. c. 96 s. 13.

Whosoever shall unlawfully and wilfully course hunt snare or carry away or kill or wound or attempt to kill or wound any deer kept or being in or upon any inclosed land 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 two years with or without hard labour and with or without solitary confinement and if a male under the age of sixteen years with or without whipping.

14 Suspected persons found in possession of venison &c. and not satisfactorily accounting for it. Ib. s. 14.

Penalty. In case they cannot be convicted how the Justice may proceed.

If any deer or the head skin or other part thereof shall be found in the possession of any person or on the premises of any person with his knowledge and such person being taken or summoned before a Justice of the Peace shall not satisfy the Justice that he came lawfully by such deer or the head skin or other part thereof he shall on conviction by the Justice forfeit and pay any sum not exceeding twenty pounds and if any such person shall not under the provisions hereinbefore in this section be liable to conviction then for the discovery of the party who actually killed or stole such deer the Justice at his discretion as the evidence given and the circumstances of the case shall require may summon before him every person through whose hands such deer or the head skin or other part thereof shall appear to have passed and if the person from whom the same shall have been first received or who shall have had possession thereof shall not satisfy the Justice that he came lawfully by the same he shall on conviction by the Justice be liable to the payment of such sum of money as is hereinbefore last mentioned.

15 Setting engines for taking deer or pulling down park fences. Ib. s. 15.

Whosoever shall unlawfully and wilfully set or use any snare or engine whatsoever for the purpose of taking or killing deer in or upon any inclosed land or shall unlawfully and wilfully destroy any part of the fence of any land where any deer shall be then kept shall on conviction thereof before a Justice of the Peace forfeit and pay such sum of money not exceeding twenty pounds as to the Justice shall seem meet.

16 Deerkeepers &c. may seize the guns &c. of offenders who on demand do not deliver up the same. Ib. s. 16.

If any person shall enter into or upon any inclosed land where deer shall be usually kept with intent unlawfully to hunt course wound kill snare or carry away any deer every person intrusted with the care of such deer and any of his assistants whether in his presence or not may demand from every such offender any gun fire- arms snare or engine in his possession and any dog there brought for hunting coursing or killing deer and in case such offender shall not immediately deliver up the same he shall on conviction thereof before a Justice of the Peace forfeit and pay such sum not exceeding twenty pounds as to the Justice shall seem meet.

17 Killing &c. hares or rabbits in a warren in the night-time. Ib. s. 17.

Whosoever shall unlawfully and wilfully take or kill any hare or rabbit in any warren or ground lawfully used for the breeding or keeping of hares or rabbits whether the same be inclosed or not shall on conviction thereof before a Justice of the Peace forfeit and pay such sum of money not exceeding ten pounds as to the Justice shall seem meet.

18 Stealing dogs. Ib. s. 18.

Second offence.

Whosoever shall steal any dog shall on conviction thereof before two Justices of the Peace either be committed to any public gaol there to be imprisoned or to be imprisoned and kept to hard labour for any term not exceeding six months or shall forfeit and pay over and above the value of the said dog such sum of money not exceeding twenty pounds as to the said Justices shall seem meet and whosoever having been convicted of any such offence either against this or any former Act shall afterwards steal any dog 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 eighteen months with or without hard labour.

19 Possession of stolen dogs. 24 and 25 Vict. c. 96 s. 19.

Second offence.

Whosoever shall unlawfully have in his possession or on his premises any stolen dog or the skin of any stolen dog knowing such dog to have been stolen or such skin to be the skin of a stolen dog shall on conviction thereof before two Justices of the Peace be liable to pay such sum of money not exceeding twenty pounds as to such Justices shall seem meet and whosoever having been convicted of any such offence either against this or any former Act shall afterwards be guilty of any such offence as in this section before 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 eighteen months with or without hard labour.

20 Taking money to restore dogs. Ib. s. 20.

Whosoever shall corruptly take any money or reward directly or indirectly under pretence or upon account of aiding any person to recover any dog which shall have been stolen or which shall be in the possession of any person not being the owner thereof 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 eighteen months with or without hard labour.

21 Stealing beasts or birds ordinarily kept in confinement and not the subjects of larceny. Ib. s. 21.

Second offence.

Whosoever shall steal any bird beast or other animal ordinarily kept in a state of confinement or for any domestic purpose not being the subject of larceny at common law or shall wilfully kill any such bird beast or animal with intent to steal the same or any part thereof shall on conviction thereof before a Justice of the Peace at the discretion of the Justice either be committed to any public gaol there to be imprisoned only or to be imprisoned and kept to hard labour for any term not exceeding six months or else shall forfeit and pay over and above the value of the bird beast or other animal such sum of money not exceeding twenty pounds as to the Justice shall seem meet and whosoever having been convicted of any such offence either against this or any former Act shall afterwards commit any offence in this section before mentioned and shall be convicted thereof in like manner shall be committed to any public gaol there to be kept to hard labour for such term not exceeding twelve months as the convicting Justice shall think fit.

22 Persons found in possession of stolen beasts &c. liable to penalties. Ib. s. 22.

If any such bird or any of the plumage thereof or any dog or any such beast or the skin thereof or such animal or any part thereof shall be found in the possession or on the premises of any person any Justice may restore the same respectively to the owner thereof and any person in whose possession or on whose premises such bird or the plumage thereof or such beast or the skin thereof or such animal or any part thereof shall be so found (such person knowing that the bird beast or animal has been stolen or that the plumage is the plumage of a stolen bird or that the skin is the skin of a stolen beast or that the part is a part of a stolen animal) shall on conviction before a Justice of the Peace be liable for the first offence to such forfeiture and for every subsequent offence to such punishment as any person convicted of stealing any beast or bird is made liable to by the last preceding section.

23 Killing pigeons. Ib. s. 23.

Whosoever shall unlawfully and wilfully kill wound or take any house-dove or pigeon under such circumstances as shall not amount to larceny at common law

shall on conviction before a Justice of the Peace forfeit and pay over and above the value of the bird any sum not exceeding two pounds Provided always that nothing herein contained shall be deemed to make it unlawful for any person to kill or destroy any house-dove or pigeon which may be trespassing on land the property of or occupied by such person.

24 Taking fish in any water situate in private property. 24 and 25 Vict. c. 96 s. 24.

Whosoever shall unlawfully and wilfully take or destroy or attempt to take or destroy any fish in any water which shall be private property or in which there shall be any private right of fishery shall on conviction thereof before a Justice of the Peace forfeit and pay over and above the value of the fish taken or destroyed (if any) such sum of money not exceeding five pounds as to the Justice shall seem meet.

25 The tackle of fishers may be seized. Ib. s. 25.

If any person shall at any time be found fishing against the provisions of this Act the owner of the ground water or fishery where such offender shall be so found his servant or any person authorized by him may demand from such offender any rod line hook net or other implement for taking or destroying fish which shall then be in his possession and in case such offender shall not immediately deliver up the same every such offender shall on conviction thereof before a Justice of the Peace forfeit and pay such sum not exceeding twenty pounds as to the Justice shall seem meet.

26 Stealing or dredging for oysters in oyster fisheries. Ib. s. 26.

Form of indictment. Proviso as to floating fish.

Whosoever shall steal any oysters or oyster brood from any oyster bed laying or fishery being the property of any other person and sufficiently marked out or known as such shall be guilty of felony and being convicted thereof shall be liable to be punished as in the case of simple larceny and whosoever shall unlawfully and wilfully use any dredge or any net instrument or engine whatsoever within the limits of any oyster bed laying or fishery being the property of any other person and sufficiently marked out or known as such for the purpose of taking oysters or oyster brood although none shall be actually taken or shall unlawfully and wilfully with any net instrument or engine drag upon the ground or soil of any such fishery 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 months with or without hard labour and with or without solitary confinement and it shall be sufficient in any indictment to describe either by name or otherwise the bed laying or fishery in which any of the said offences shall have been committed without stating the same to be in any particular township district or place Provided that nothing in this section contained shall prevent any person from catching or fishing for any

floating fish within the limits of any oyster fishery with any net instrument or engine adapted for taking floating fish only.

AS TO LARCENY OF WRITTEN INSTRUMENTS

27 Bonds bills notes &c. *Ib.* s. 27.

Whosoever shall steal or shall for any fraudulent purpose destroy cancel or obliterate the whole or any part of any valuable security other than a document of title to lands shall be guilty of felony of the same nature and in the same degree and punishable in the same manner as if he had stolen any chattel of like value with the share interest or deposit to which the security so stolen may relate or with the money due on the security so stolen or secured thereby and remaining unsatisfied or with the value of the goods or other valuable thing represented mentioned or referred to in or by the security.

28 Deeds &c. relating to real property. *Ib.* s. 28.

Form of indictment.

Whosoever shall steal or shall for any fraudulent purpose destroy cancel obliterate or conceal the whole or any part of any document of title to lands shall be guilty of felony and being convicted thereof shall be liable at the discretion of the Court to be kept in penal servitude for the term of three years or to be imprisoned for any term not exceeding two years with or without hard labour and with or without solitary confinement and in any indictment for any such offence relating to any document of title to lands it shall be sufficient to allege such document to be or to contain evidence of the title or of part of the title of the person or of some one of the persons having an interest whether vested or contingent legal or equitable in the real estate to which the same relates and to mention such real estate or some part thereof.

29 Wills or codicils. 24 and 25 Vict. c. 96 s. 29.

Other remedies not to be affected.

Whosoever shall either during the life of the testator or after his death steal or for any fraudulent purpose destroy cancel obliterate or conceal the whole or any part of any will codicil or other testamentary instrument whether the same shall relate to real or personal estate or to both shall be guilty of felony and being convicted thereof shall be liable at the discretion of the Court to be kept in penal servitude for life or for any term not less than three years or to be imprisoned for any term not exceeding two years with or without hard labour and with or without solitary confinement and it shall not in any indictment for such offence be necessary to allege that such will codicil or other instrument is the property of any person Provided that nothing in this or the last preceding section mentioned nor any preceding conviction or judgment to be had or taken thereupon shall prevent lessen or impeach any remedy which any party aggrieved by any such offence might or would have had if this Act

had not been passed but no conviction of any such offender shall be received in evidence in any action or suit against him and no person shall be liable to be convicted of any of the felonies in this and the last preceding section mentioned by any evidence whatever or in respect of any act done by him if he shall at any time previously to his being charged with such offence have first disclosed such act on oath in consequence of any compulsory process of any Court in any action suit or proceeding which shall have been *bona fide* instituted by any party aggrieved or if he shall have first disclosed the same in any compulsory examination or deposition before any Court upon the hearing of any matter in bankruptcy or insolvency.

30 Stealing records or other legal documents. *Ib.* s. 30.

Form of indictment.

Whosoever shall steal or shall for any fraudulent purpose take from its place of deposit for the time being or from any person having the lawful custody thereof or shall unlawfully and maliciously cancel obliterate injure or destroy the whole or any part of any record writ return panel process bill petition interrogatory deposition affidavit rule order decree or warrant of attorney or of any original document whatsoever of or belonging to the Supreme Court or any Court of Record or relating to any matter or cause civil or criminal begun depending or terminated in any such Court or of any original document in anywise relating to the business of any office or employment under Her Majesty and being or remaining in any office appertaining to any Court of Justice or in any Government or public office shall be guilty of felony and being convicted thereof shall be liable at the discretion of the Court to be kept in penal servitude for the term of three years or to be imprisoned for any term not exceeding two years with or without hard labour and with or without solitary confinement and it shall not in any indictment for such offence be necessary to allege that the article in respect of which the offence is committed is the property of any person.

AS TO LARCENY OF THINGS ATTACHED TO OR GROWING ON LAND

31 Metal glass wood &c. fixed to house or land. *Ib.* s. 31.

Whosoever shall steal or shall rip cut sever or break with intent to steal any glass or woodwork belonging to any building whatsoever or any lead iron copper brass or other metal or any utensil or fixture whether made of metal or other material or of both respectively fixed in or to any building whatsoever or anything made of metal fixed in any land being private property or for a fence to any dwelling- house garden or area or in any square or street or in any place dedicated to public use or ornament or in any burial ground or cemetery shall be guilty of felony and being convicted thereof shall be liable to be punished as in the case of simple larceny and in the case of any such thing fixed in any such

square street or place as aforesaid it shall not be necessary to allege the same to be the property of any person.

32 Trees in pleasure grounds of the value of £1 or elsewhere of the value of £5. 24 and 25 Vict. c. 96 s. 32.

Whosoever shall steal or shall cut break root up or otherwise destroy or damage with intent to steal the whole or any part of any tree sapling or shrub or any underwood respectively growing in any pleasure ground garden orchard or avenue or in any ground adjoining or belonging to any dwelling-house shall (in case the value of the article or articles stolen or the amount of the injury done shall exceed the sum of one pound) be guilty of felony and being convicted thereof shall be liable to be punished as in the case of simple larceny and whosoever shall steal or shall cut break root up or otherwise destroy or damage with intent to steal the whole or any part of any tree sapling or shrub or any underwood respectively growing elsewhere than in any of the situations in this section before mentioned shall (in the case the value of the article or articles stolen or the amount of the injury done shall exceed the sum of five pounds) be guilty of felony and being convicted thereof shall be liable to be punished as in the case of simple larceny.

33 Stealing trees shrubs &c. wheresoever growing and of any value above 1s. punishable on summary conviction for first and second offence third offence felony. Ib. s. 33.

Second offence. Third offence.

Whosoever shall steal or shall cut break root up or otherwise destroy or damage with intent to steal the whole or any part of any tree sapling or shrub or any underwood wheresoever the same may be respectively growing the stealing of such article or articles or the injury done being to the amount of a shilling at the least shall on conviction thereof before a Justice of the Peace forfeit and pay over and above the value of the article or articles stolen or the amount of the injury done such sum of money not exceeding five pounds as to the Justice shall seem meet and whosoever having been convicted of any such offence either against this or any former Act shall afterwards commit any of the said offences in this section before mentioned and shall be convicted thereof in like manner shall for such second offence be committed to any public gaol there to be kept to hard labour for such term not exceeding twelve months as the convicting Justice shall think fit and whosoever having been twice convicted of any such offence (whether both or either of such convictions shall have taken place before or after the coming into operation of this Act) shall afterwards commit any of the offences in this section before mentioned shall be guilty of felony and being convicted thereof shall be liable to be punished in the same manner as in the case of simple larceny.

34 Stealing &c. any live or dead fence wooden fence stile or gate. Ib. s. 34.*Second offence.*

Whosoever shall steal or shall cut break or throw down with intent to steal any part of any live or dead fence or any wooden post pale wire or rail set up or used as a fence or any stile or gate or any part thereof respectively shall on conviction thereof before a Justice of the Peace forfeit and pay over and above the value of the article or articles so stolen or the amount of the injury done such sum of money not exceeding five pounds as to the Justice shall seem meet and whosoever having been convicted of any such offence either against this or any former Act shall afterwards commit any of the said offences in this section before mentioned and shall be convicted thereof in like manner shall be committed to any public gaol there to be kept to hard labour for such term not exceeding twelve months as the convicting Justice shall think fit.

35 Suspected persons in possession of wood &c. not satisfactorily accounting for it. 24 and 25 Vict. c. 96 s. 35.

If the whole or any part of any tree sapling or, shrub or any underwood or any part of any live or dead fence or any post pale wire rail stile or gate or any part thereof being of the value of one shilling at the least shall be found in the possession of any person or on the premises of any person with his knowledge and such person being taken or summoned before a Justice of the Peace shall not satisfy the Justice that he came lawfully by the same he shall on conviction by the Justice forfeit and pay over and above the value of the article or articles so found any sum not exceeding two pounds.

36 Stealing &c. any fruit or vegetable production in a garden &c. punishable on summary conviction for first offence. Ib. s. 36.*Second offence felony.*

Whosoever shall steal or shall destroy or damage with intent to steal any plant root fruit or vegetable production growing in any garden orchard pleasure ground nursery ground hothouse greenhouse or conservatory shall on conviction thereof before a Justice of the Peace at the discretion of the Justice either be committed to any public gaol there to be imprisoned only or to be imprisoned and kept to hard labour for any term not exceeding six months or else shall forfeit and pay over and above the value of the article or articles so stolen or the amount of the injury done such sum of money not exceeding twenty pounds as to the Justice shall seem meet and whosoever having been convicted of any such offence either against this or any former Act shall afterwards commit any of the offences in this section before mentioned shall be guilty of felony and being convicted thereof shall be liable to be punished in the same manner as in the case of simple larceny.

37 Stealing &c. vegetable productions not growing in gardens &c. Ib. s. 37.*Second offence.*

Whosoever shall steal or shall destroy or damage with intent to steal any cultivated root or plant used for the food of man or beast or for medicine or for distilling or for dyeing or for or in the course of any manufacture and growing in any land open or inclosed not being a garden orchard pleasure ground or nursery ground shall on conviction thereof before a Justice of the Peace at the discretion of the Justice either be committed to a public gaol there to be imprisoned only or to be imprisoned and kept to hard labour for any term not exceeding one month or else shall forfeit and pay over and above the value of the article or articles so stolen or the amount of the injury done such sum of money not exceeding twenty shillings as to the Justice shall seem meet and in default of payment thereof together with the costs (if ordered) shall be committed as aforesaid for any term not exceeding one month unless payment be sooner made and whosoever having been convicted pf any such offence either against this or any former Act shall afterwards commit any of the said offences in this section before mentioned and shall be convicted thereof in like manner shall be committed to a public gaol there to be kept to hard labour for such term not exceeding six months as the convicting Justice shall think fit.

*AS TO LARCENY FROM MINES***38 Ore of metal coal &c. Ib. s. 38.**

Whosoever shall steal or sever with intent to steal any gold or the ore of any metal or any lapis calaminaris manganese or mundick or any wad black cawke or black lead or any coal or cannel coal from any mine bed or vein thereof respectively or from any claim or from any land comprised in any lease for mining purposes granted or to be granted by or on behalf of the Crown or the Governor or the Governor in Council 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 two years with or without hard labour and with or without solitary confinement.

39 Miners removing ore with intent to defraud. 24 and 25 Vict. c. 96 s. 39.

Whosoever being employed in or about any mine or claim or any land comprised in any such lease as aforesaid shall take remove or conceal any gold or the ore of any metal or any lapis calaminaris manganese mundick or other mineral found or being in such mine claim or land with intent to defraud any proprietor of or any adventurer in such mine claim or land or any workman or miner employed therein 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 two years with or without hard labour and with or without solitary confinement.

*AS TO LARCENY FROM THE PERSON AND OTHER LIKE OFFENCES***40 Robbery or stealing from the person. *Ib.* s. 40.**

Whosoever shall rob any person or shall steal any chattel money or valuable security from the person of another shall be guilty of felony and being convicted thereof shall be liable at the discretion of the Court to be kept in penal servitude for any period not exceeding fourteen years and not less than three years or to be imprisoned for any term not exceeding two years with or without hard labour and with or without solitary confinement.

41 On trial for robbery jury may convict of an assault with intent to rob. *Ib.* s. 41.

If upon the trial of any person upon any indictment for robbery it shall appear to the jury upon the evidence that the defendant did not commit the crime of robbery but that he did commit an assault with intent to rob the defendant shall not by reason thereof be entitled to be acquitted but the jury shall be at liberty to return as their verdict that the defendant is guilty of an assault with intent to rob and thereupon such defendant shall be liable to be punished in the same manner as if he had been convicted upon an indictment for feloniously assaulting with intent to rob and no person so tried as is herein lastly mentioned shall be liable to be afterwards prosecuted for an assault with intent to commit the robbery for which he was so tried.

42 Assault with intent to rob. *Ib.* s. 42.

Whosoever shall assault any person with intent to rob shall be guilty of felony and being convicted thereof shall (save and except in the cases where a greater punishment is provided by this Act) be liable at the discretion of the Court to be kept in penal servitude for the term of three years or to be imprisoned for any term not exceeding two years with or without hard labour and with or without solitary confinement.

43 Robbery or assault by a person armed or by two or more or robbery and wounding. *Ib.* s. 43.

Whosoever shall being armed with any offensive weapon or instrument rob or assault with intent to rob any person or shall together with one or more other person or persons rob or assault with intent to rob any person or shall rob any person and at the time of or immediately before or immediately after such robbery shall wound beat strike or use any other personal violence to any person shall be guilty of felony and being convicted thereof shall be liable at the discretion of the Court to be kept in penal servitude for life or for any term not less than three years or to be imprisoned for any term not exceeding two years with or without hard labour and with or without solitary confinement.

44 Letter demanding money &c. with menaces. Ib. s. 44.

Whosoever shall send deliver or utter or directly or indirectly cause to be received knowing the contents thereof any letter or writing demanding of any person with menaces and without any reasonable or probable cause any property chattel money valuable security or other valuable thing shall be guilty of felony and being convicted thereof shall be liable at the discretion of the Court to be kept in penal servitude for life or for any term not less than three years or to be imprisoned for any term not exceeding two years with or without hard labour and with or without solitary confinement and if a male under the age of sixteen years with or without whipping.

45 Demanding money &c. with menaces or by force with intent to steal. 24 and 25 Vict. c. 96 s. 45.

Whosoever shall with menaces or by force demand any property chattel money valuable security or other valuable thing of any person with intent to steal the same shall be guilty of felony and being convicted thereof shall be liable at the discretion of the Court to be kept in penal servitude for the term of three years or to be imprisoned for any term not exceeding two years with or without hard labour and with or without solitary confinement.

46 Letter threatening to accuse of crime with intent to extort. Ib. s. 46.

Whosoever shall send deliver or utter or directly or indirectly cause to be received knowing the contents thereof any letter or writing accusing or threatening to accuse any other person of any crime punishable by law with death or penal servitude for not less than seven years or of any assault with intent to commit any rape or of any attempt or endeavour to commit any rape or of any infamous crime as hereinafter defined with a view or intent in any of such cases to extort or gain by means of such letter or writing any property chattel money valuable security or other valuable thing from any person shall be guilty of felony and being convicted thereof shall be liable at the discretion of the Court to be kept in penal servitude for life or for any term not less than three years or to be imprisoned for any term not exceeding two years with or without hard labour and with or without solitary confinement and if a male under the age of sixteen years with or without whipping and the abominable crime of buggery committed either with mankind or with beast and every assault with intent to commit the said abominable crime and every attempt or endeavour to commit the said abominable crime and every solicitation persuasion promise or threat offered or made to any person whereby to move or induce such person to commit or permit the said abominable crime shall be deemed to be an infamous crime within the meaning of this Act.

47 Accusing or threatening to accuse with intent to extort. Ib. s. 47.

Whosoever shall accuse or threaten to accuse either the person to whom such accusation or threat shall be made or any other person of any of the infamous

or other crimes lastly hereinbefore mentioned with the view or intent in any of the cases last aforesaid to extort or gain from such person so accused or threatened to be accused or from any other person any property chattel money valuable security or other valuable thing shall be guilty of felony and being convicted thereof shall be liable at the discretion of the Court to be kept in penal servitude for life or for any term not less than three years or to be imprisoned for any term not exceeding two years with or without hard labour and if a male under the age of sixteen years with or without whipping.

48 Inducing a person by violence or threats to execute deeds &c. with intent to defraud. *Ib.* s. 48.

Whosoever with intent to defraud or injure any other person shall by any unlawful violence to or restraint of or threat of violence to or restraint of the person of another or by accusing or threatening to accuse any person of any treason felony or infamous crime as hereinbefore defined compel or induce any person to execute make accept endorse alter or destroy the whole or any part of any valuable security or to write impress or affix his name or the name of any other person or of any company firm or copartnership or the seal of any body corporate company or society upon or to any paper or parchment in order that the same may be afterwards made or converted into or used or dealt with as a valuable security shall be guilty of felony and being convicted thereof shall be liable at the discretion of the Court to be kept in penal servitude for life or for any term not less than three years or to be imprisoned for any term not exceeding two years with or without hard labour and with or without solitary confinement.

49 It shall be immaterial from whom the menaces proceed. *Ib.* s. 49.

It shall be immaterial whether the menaces or threats hereinbefore mentioned be of violence injury or accusation to be caused or made by the offender or by any other person.

AS TO SACRILEGE BURGLARY AND HOUSEBREAKING

50 Breaking and entering a church or chapel and committing any felony. 24 and 25 Vict. c. 96 s. 50.

Whosoever shall break and enter any church chapel meeting house or other place of divine worship and commit any felony therein or being in any church chapel meeting-house or other place of divine worship shall commit any felony therein and break out of the same shall be guilty of felony and being convicted thereof shall be liable at the discretion of the Court to be kept in penal servitude for life or for any term not less than three years or to be imprisoned for any term not exceeding two years with or without hard labour and with or without solitary confinement.

51 Burglary by breaking out. Ib. s. 51.

Whosoever shall enter the dwelling-house of another with intent to commit any felony therein or being in such dwelling-house shall commit any felony therein and shall in either case break out of the said dwelling-house in the night shall be deemed guilty of burglary.

52 Burglary. Ib. s. 52.

Whosoever shall be convicted of the crime of burglary shall be liable at the discretion of the Court to be kept in penal servitude for life or for any term not less than three years or to be imprisoned for any term not exceeding two years with or without hard labour and with or without solitary confinement.

53 What building within the curtilage shall be deemed part of the dwelling-house. Ib. s. 53.

No building although within the same curtilage with any dwelling-house and occupied therewith shall be deemed to be part of such dwelling-house for any of the purposes of this Act unless there shall be a communication between such building and dwelling-house either immediate or by means of a covered and inclosed passage leading from the one to the other.

54 Entering a dwelling-house in the night with intent to commit any felony. Ib. s. 54.

Whosoever shall enter any dwelling-house in the night with intent to commit any felony therein shall be guilty of felony and being convicted thereof shall be liable at the discretion of the Court to be kept in penal servitude for any term not exceeding seven years and not less than three years or to be imprisoned for any term not exceeding two years with or without hard labour and with or without solitary confinement.

55 Breaking into any building within the curtilage which is no part of the dwelling-house and committing any felony. Ib. s. 55.

Whosoever shall break and enter any building and commit any felony therein such building being within the curtilage of a dwelling-house and occupied therewith but not being part thereof according to the provision hereinbefore mentioned or being in any such building shall commit any felony therein and break out of the same shall be guilty of felony and being convicted thereof shall be liable at the discretion of the Court to be kept in penal servitude for any term not exceeding fourteen years and not less than three years or to be imprisoned for any term not exceeding two years with or without hard labour and with or without solitary confinement.

56 Breaking into any house shop warehouse &c. and committing any felony. Ib. s. 56.

Whosoever shall break and enter any dwelling-house schoolhouse shop warehouse or counting-house and commit any felony therein or being in any dwelling-house schoolhouse shop warehouse or counting-house shall commit any felony therein and break out of the same shall be guilty of felony and being convicted thereof shall be liable at the discretion of the Court to be kept in penal servitude for any term not exceeding fourteen years and not less than three years or to be imprisoned for any term not exceeding two years with or without hard labour and with or without solitary confinement.

57 House-breaking &c. with intent to commit any felony. Ib. s. 57.

Whosoever shall break and enter any dwelling-house church chapel meeting-house or other place of divine worship or any building within the curtilage schoolhouse shop warehouse or counting-house with intent to commit any felony therein shall be guilty of felony and being convicted thereof shall be liable at the discretion of the Court to be kept in penal servitude for any term not exceeding seven years and not less than three years or to be imprisoned for any term not exceeding two years with or without hard labour and with or without solitary confinement.

58 Being armed with intent to break and enter any house in the night. 24 and 25 Vict. c. 96 s. 58.

Whosoever 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 and to commit any felony therein or shall be found by night having in his possession without lawful excuse (the proof of which excuse shall lie on such person) any picklock key crow jack bit or other implement of housebreaking or shall be found by night having his face blackened or otherwise disguised with intent to commit any felony or shall be found by night in any dwelling-house or other building whatsoever with intent to commit any felony therein shall be guilty of a misdemeanour and being convicted thereof shall be liable at the discretion of the Court to be kept in penal servitude for the term of three years or to be imprisoned for any term not exceeding two years with or without hard labour.

59 The like after a previous conviction for felony &c. Ib. s. 59.

Whosoever shall be convicted of any such misdemeanour as in the last preceding section mentioned committed after a previous conviction either for felony or such misdemeanour shall on such subsequent conviction be liable at the discretion of the Court to be kept in penal servitude for any term not exceeding ten years and not less than three years or to be imprisoned for any term not exceeding two years with or without hard labour.

*AS TO LARCENY IN THE HOUSE***60 Stealing in a dwelling house to the value of £5. Ib. s. 60.**

Whosoever shall steal in any dwelling-house any chattel money or valuable security to the value in the whole of five pounds or more shall be guilty of felony and being convicted thereof shall be liable at the discretion of the Court to be kept in penal servitude for any term not exceeding fourteen years and not less than three years or to be imprisoned for any term not exceeding two years with or without hard labour and with or without solitary confinement.

61 Stealing in a dwelling house with menaces. Ib. s. 61.

Whosoever shall steal any chattel money or valuable security in any dwelling-house and shall by any menace or threat put any one being therein in bodily fear shall be guilty of felony and being convicted thereof shall be liable at the discretion of the Court to be kept in penal servitude for any term not exceeding fourteen years and not less than three years or to be imprisoned for any term not exceeding two years with or without hard labour and with or without solitary confinement.

*AS TO LARCENY IN MANUFACTORIES***62 Stealing goods in process of manufacture. Ib. s. 62.**

Whosoever shall steal to the value of ten shillings any woollen linen hempen or cotton yarn or any goods or article of silk woollen linen cotton alpaca or mohair or of any one or more of those materials mixed with each other or mixed with any other material whilst laid placed or exposed during any stage process or progress of manufacture in any building field or other place shall be guilty of felony and being convicted thereof shall be liable at the discretion of the Court to be kept in penal servitude for any term not exceeding fourteen years and not less than three years or to be imprisoned for any term not exceeding two years with or without hard labour and with or without solitary confinement.

*AS TO LARCENY IN SHIPS WHARVES ETC***63 Stealing from ships docks wharves &c. Ib. s. 63.**

Whosoever shall steal any goods or merchandise in any vessel barge or boat of any description whatsoever in any haven or in any port of entry or discharge or upon any navigable river or canal or in any creek or basin belonging to or communicating with any such haven port river or canal or shall steal any goods or merchandise from any dock wharf or quay adjacent to any such haven port river canal creek or basin shall be guilty of felony and being convicted thereof shall be liable at the discretion of the Court to be kept in penal servitude for any term not exceeding fourteen years and not less than three years or to be

imprisoned for any term not exceeding two years with or without hard labour and with or without solitary confinement.

64 Stealing from ship in distress or wrecked. 24 and 25 Vict. c. 96 s.64.

Whosoever shall plunder or steal any part of any ship or vessel which shall be in distress or wrecked stranded or cast on shore or any goods merchandise or articles of any kind belonging to such ship or vessel shall be guilty of felony and being convicted thereof shall be liable at the discretion of the Court to be kept in penal servitude for any term not exceeding fourteen years and not less than three years or to be imprisoned for any term not exceeding two years with or without hard labour and with or without solitary confinement and the offender may be indicted and tried either in the district jurisdiction or place in which the offence shall have been committed or in any district jurisdiction or place next adjoining.

65 Person in possession of shipwrecked goods not giving a satisfactory account. Ib. s. 65.

If any goods merchandise or articles of any kind belonging to any ship or vessel in distress or wrecked stranded or cast on snore shall be found in the possession of any person or on the premises of any person with his knowledge and such person being taken or summoned before a Justice of the Peace shall not satisfy the Justice that he came lawfully by the same then the same shall by order of the Justice be forthwith delivered over to or for the use of the rightful owner thereof and the offender shall on conviction of such offence before the Justice at the discretion of the Justice either be committed to any public gaol there to be imprisoned only or to be imprisoned and kept to hard labour for any term not exceeding six months or else shall forfeit and pay over and above the value of the goods merchandise or articles such sum of money not exceeding twenty pounds as to the Justice shall seem meet.

66 If any person offers shipwrecked goods for sale the goods may be seized &c. Ib. s. 66.

If any person shall offer or expose for sale any goods merchandise or articles whatsoever which shall have been unlawfully taken or shall be reasonably suspected so to have been taken from any ship or vessel in distress or wrecked stranded or cast on shore in every such case any person to whom the same shall be offered for sale or any officer of the customs or excise or peace officer may lawfully seize the same and shall with all convenient speed carry the same or give notice of such seizure to some Justice of the Peace and if the person who shall have offered or exposed the same for sale being summoned by such Justice shall not appear and satisfy the Justice that he came lawfully by such goods merchandise or articles then the same shall by order of the Justice be forthwith delivered over to or for the use of the rightful owner thereof upon payment of a reasonable reward (to be ascertained by the Justice) to the person

who seized the same and the offender shall on conviction of such offence by the Justice at the discretion of the Justice either be committed to any public gaol there to be imprisoned only or to be imprisoned and kept to hard labour for any term not exceeding six months or else shall forfeit and pay over and above the value of the goods merchandise or articles such sum of money not exceeding twenty pounds as to the Justice shall seem meet.

*AS TO LARCENY OR EMBEZZLEMENT BY CLERKS SERVANTS OR
PERSONS IN THE PUBLIC SERVICE*

67 Larceny by clerks or servants. *Ib.* s. 67.

Whosoever being a clerk or servant or being employed for the purpose or in the capacity of a clerk or servant shall steal any chattel money or valuable security belonging to or in the possession or power of his master or employer shall be guilty of felony and being convicted thereof shall be liable at the discretion of the Court to be kept in penal servitude for any term not exceeding fourteen years and not less than three years or to be imprisoned for any term not exceeding two years with or without hard labour and with or without solitary confinement and if a male under the age of sixteen years with or without whipping.

68 Embezzlement by clerks or servants. 24 and 25 Vict. c. 96 s. 68.

Whosoever being a clerk or servant or being employed for the purpose or in the capacity of a clerk or servant shall fraudulently embezzle any chattel money or valuable security which shall be delivered to or received or taken into possession by him for or in the name or on the account of his master or employer or any part thereof shall be deemed to have feloniously stolen the same from his master or employer although such chattel money or security was not received into the possession of such master or employer otherwise than by the actual possession of his clerk servant or other person so employed and being convicted thereof shall be liable at the discretion of the Court to be kept in penal servitude for any term not exceeding fourteen years and not less than three years or to be imprisoned for any term not exceeding two years with or without hard labour and with or without solitary confinement and if a male under the age of sixteen years with or without whipping.

69 Larceny by persons in the Queen's service or by the police. *Ib.* s. 69.

Whosoever being employed in the public service of Her Majesty in New Zealand or being a constable or other person employed in the police or constabulary force of any province city borough district or place whatsoever shall steal any chattel money or valuable security belonging to or in the possession or power of Her Majesty or intrusted to or received or taken into possession by him by virtue of his employment shall be guilty of felony and being convicted thereof shall be liable at the discretion of the Court to be kept in penal servitude for any term not exceeding fourteen years and not less than three years or

to be imprisoned for any term not exceeding two years with or without hard labour and with or with solitary confinement.

70 Embezzlement by persons in the Queen's service or by the police. Ib. s. 70.

Venue. Form of warrant of commitment and indictment.

Whosoever being employed in the public service of Her Majesty in New Zealand or being a constable or other person employed in the police or constabulary force of any province city borough district or place whatsoever and intrusted by virtue of such employment with the receipt custody management or control of any chattel money or valuable security shall embezzle any chattel money or valuable security which shall be intrusted to or received or taken into possession by him by virtue of his employment or any part thereof or in any manner fraudulently apply or dispose of the same or any part thereof to his own use or benefit or for any purpose whatsoever except for the public service shall be deemed to have feloniously stolen the same from Her Majesty and being convicted thereof shall be liable at the discretion of the Court to be kept in penal servitude for any term not exceeding fourteen years and not less than three years or to be imprisoned for any term not exceeding two years with or without hard labour and every offender against this or the last preceding section may be dealt with indicted tried and punished either in the district jurisdiction or place in which he shall be apprehended or be in custody or in which he shall have committed the offence and in every case of larceny embezzlement or fraudulent application or disposition of any chattel money or valuable security in this and the last preceding section mentioned it shall be lawful in the warrant of commitment by the Justice of the Peace before whom the offender shall be charged and in the indictment to be preferred against such offender to lay the property of any such chattel money or valuable security in Her Majesty notwithstanding anything in any Act to the contrary.

71 Distinct acts of embezzlement may be charged in the same indictment. 24 and 25 Vict. c. 96 s.71.

For preventing difficulties in the prosecution of offenders in any case of embezzlement fraudulent application or disposition hereinbefore mentioned it shall be lawful to charge in the indictment and proceed against the offender for any number of distinct acts of embezzlement or of fraudulent application or disposition not exceeding three which may have been committed by him against Her Majesty or against the same master or employer within the space of six months from the first to the last of such acts and in every such indictment where the offence shall relate to any money or any valuable security it shall be sufficient to allege the embezzlement or fraudulent application or disposition to be of money without specifying any particular coin or valuable security and such allegation so far as regards the description of the property shall be sustained if the offender shall be proved to have embezzled or fraudulently applied or disposed of any amount although the particular species of coin or

valuable security of which such amount was composed shall not be proved or if he shall be proved to have embezzled or fraudulently applied or disposed of any piece of coin or any valuable security or any portion of the value thereof although such piece of coin or valuable security may have been delivered to him in order that some part of the value thereof should be returned to the party delivering the same or to some other person and such part shall have been returned accordingly.

72 Person indicted for embezzlement as a clerk &c. not to be acquitted if the offence turn out to be larceny and *vice versa*.. Ib. s. 72.

If upon the trial of any person indicted for embezzlement or fraudulent application or disposition as aforesaid it shall be proved that he took the property in question in any such manner as to amount in law to larceny he shall not by reason thereof be entitled to be acquitted but the jury shall be at liberty to return as their verdict that such person is not guilty of embezzlement or fraudulent application or disposition but is guilty of simple larceny or of larceny as a clerk servant or person employed for the purpose or in the capacity of a clerk or servant or as a person employed in the public service or in the police or constabulary force (as the case may be) and thereupon such person shall be liable to be punished in the same manner as if he had been convicted upon an indictment for such larceny and if upon the trial of any person indicted for larceny it shall be proved that he took the property in question in any such manner as to amount in law to embezzlement or fraudulent application or disposition as aforesaid he shall not by reason thereof be entitled to be acquitted but the jury shall be at liberty to return as their verdict that such person is not guilty of larceny but is guilty of embezzlement or fraudulent application or disposition (as the case may be) and thereupon such person shall be liable to be punished in the same manner as if he had been convicted upon an indictment for such embezzlement fraudulent application or disposition and no person so tried for embezzlement fraudulent application or disposition or larceny as aforesaid shall be liable to be afterwards prosecuted for larceny fraudulent application or disposition or embezzlement upon the same facts.

AS TO LARCENY BY TENANTS OR LODGERS

73 Tenant or lodger stealing chattel or fixture let to hire with house or lodgings. Ib. s. 74.

Whosoever shall steal any chattel or fixture let to be used by him or her in or with any house or lodging whether the contract shall have been entered into by him or her or by her husband or by any person on behalf of him or her or her husband 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 two years with or without hard labour and with or without solitary confinement and if a male under the age of sixteen years with or without whipping and in case the value of such chattel or fixture shall exceed the sum of five pounds shall be

liable at the discretion of the Court to be kept in penal servitude for any term not exceeding seven years and not less than three years or to be imprisoned for any term not exceeding two years with or without hard labour and with or without solitary confinement and if a male under the age of sixteen years with or without whipping and in every case of stealing any chattel in this section mentioned it shall be lawful to prefer an indictment in the common form as for larceny and in every case of stealing any fixture in this section mentioned to prefer an indictment in the same form as if the offender were not a tenant or lodger and in either case to lay the property in the owner or person letting to hire.

AS TO FRAUDS BY AGENTS BANKERS OR FACTORS

74 Agent banker &c. embezzling money or selling securities &c. intrusted to him. 24 and 25 Vict. c. 96 s. 75.

Or goods &c. intrusted to him for safe custody. Punishment. Not to affect trustees or mortgagees. Nor bankers &c. receiving money due on securities Or disposing of securities on which they have a lien.

Whosoever having been intrusted either solely or jointly with any other person as a banker merchant broker or auctioneer attorney or other agent with any money or security for the payment of money with any direction in writing to apply pay or deliver such money or security or any part thereof respectively or the proceeds or any part of the proceeds of such security for any purpose or to any person specified in such direction shall in violation of good faith and contrary to the terms of such direction in anywise convert to his own use or benefit or the use or benefit of any person other than the person by whom he shall have been so intrusted such money security or proceeds or any part thereof respectively and whosoever having been intrusted either solely or jointly with any other person as a banker merchant broker or auctioneer attorney or other agent with any chattel or valuable security or any power of attorney for the sale or transfer of any share or interest in any public stock or fund whether of the United Kingdom or any part thereof or of the Colony of New Zealand or of any part of the British dominions or of any foreign state or in any stock or fund of any body corporate company or society for safe custody or for any special purpose without any authority to sell negotiate transfer or pledge shall in violation of good faith and contrary to the object or purpose for which such chattel security or power of attorney shall have been intrusted to him sell negotiate transfer pledge or in any manner convert to his own use or benefit or the use or benefit of any person other than the person by whom he shall have been so entrusted such chattel or security or the proceeds of the same or any part thereof or the share or interest in the stock or fund to which such power of attorney shall relate or any part thereof shall be guilty of a misdemeanour and being convicted thereof shall be liable at the discretion of the Court to be kept in penal servitude for any term not exceeding seven years

and not less than three years or to be imprisoned for any term not exceeding two years with or without hard labour and with or without solitary confinement but nothing in this section contained relating to agents shall affect any trustee in or under any instrument whatsoever or any mortgagee of any property real or personal in respect of any act done by such trustee or mortgagee in relation to the property comprised in or affected by any such trust or mortgage nor shall restrain any banker merchant broker or auctioneer attorney or other agent from receiving any money which shall be or become actually due and payable upon or by virtue of any valuable security according to the tenor and effect thereof in such manner as he might have done if this Act had not been passed nor from selling transferring or otherwise disposing of any securities or effects in his possession upon which he shall have any lien claim or demand entitling him by law so to do unless such sale transfer or other disposal shall extend to a greater number or part of such securities or effects than shall be requisite for satisfying such lien claim or demand.

75 Bankers &c. fraudulently selling &c. property intrusted to their care. 24 and 25 Vict. c. 96 s. 76.

Whosoever being a banker merchant broker or auctioneer attorney or agent and being intrusted either solely or jointly with any other person with the property of any other person for safe custody shall with intent to defraud sell negotiate transfer pledge or in any manner convert or appropriate the same or any part thereof to or for his own use or benefit or the use or benefit of any person other than the person by whom he was so entrusted shall be guilty of a misdemeanour and being convicted thereof shall be liable at the discretion of the Court to any of the punishments which the Court may award as hereinbefore last mentioned.

76 Persons under powers of attorney fraudulently selling property. Ib. s. 77.

Whosoever being intrusted either solely or jointly with any other person with any power of attorney for the sale or transfer of any property shall fraudulently sell or transfer or otherwise convert the same or any part thereof to his own use or benefit or the use or benefit of any person other than the person by whom he was so intrusted shall be guilty of a misdemeanour and being convicted thereof shall be liable at the discretion of the Court to any of the punishments which the Court may award as hereinbefore last mentioned.

77 Factors obtaining advances on the property of their principals. Ib. s. 78.

Clerks wilfully assisting. Cases excepted where the pledge does not exceed the amount of their lien.

Whosoever being a factor or agent intrusted either solely or jointly with any other person for the purpose of sale or otherwise with the possession of any goods or of any document of title to goods shall contrary to or without the authority of his principal in that behalf for his own use or benefit or the use or

benefit of any person other than the person by whom he was so intrusted and in violation of good faith make any consignment deposit transfer or delivery of any goods or document of title so intrusted to him as in this section before mentioned as and by way of a pledge lien or security for any money or valuable security borrowed or received by such factor or agent at or before the time of making such consignment deposit transfer or delivery or intended to be thereafter borrowed or received or shall contrary to or without such authority for his own use or benefit or the use or benefit of any person other than the person by whom he was so intrusted and in violation of good faith accept any advance of any money or valuable security on the faith of any contract or agreement to consign deposit transfer or deliver any such goods or document of title shall be guilty of a misdemeanour and being convicted thereof shall be liable at the discretion of the Court to any of the punishments which the Court may award as hereinbefore last mentioned and every clerk or other person who shall knowingly and wilfully act and assist in making any such consignment deposit transfer or delivery or in accepting or procuring such advance as aforesaid shall be guilty of a misdemeanour and being convicted thereof shall be liable at the discretion of the Court to any of the same punishments Provided that no such factor or agent shall be liable to any prosecution for consigning depositing transferring or delivering any such goods or documents of title in case the same shall not be made a security for or subject to the payment of any greater sum of money than the amount which at the time of such consignment deposit transfer or delivery was justly due and owing to such agent from his principal together with the amount of any bill of exchange drawn by or on account of such principal and accepted by such factor or agent.

78 Definitions of terms. *Ib.* s. 79.

*“Intrusted.” “Pledge.” “Possessed.” “Advance.” “Contract or agreement.”
“Advance.” Possessing to be evidence of intrusting.*

Any factor or agent intrusted as aforesaid and possessed of any such document of title whether derived immediately from the owner of such goods or obtained by reason of such factor or agent having been intrusted with the possession of the goods or of any other document of title thereto shall be deemed to have been intrusted with the possession of the goods represented by such document of title and every contract pledging or giving a lien upon such document of title as aforesaid shall be deemed to be a pledge of and lien upon the goods to which the same relates and such factor or agent shall be deemed to be possessed of such goods or document whether the same shall be in his actual custody or shall be held by any other person subject to his control or for him or on his behalf and where any loan or advance shall be *bona fide* made to any factor or agent intrusted with and in possession of any such goods or document of title on the faith of any contract or agreement in writing to consign deposit transfer or deliver such goods or document of title and such goods or document of title shall actually be received by the person making such loan or advance without

notice that such factor or agent was not authorized to make such pledge or security every such loan or advance shall be deemed to be a loan or advance on the security of such goods or document of title within the meaning of the last preceding section though such goods or document of title shall not actually be received by the person making such loan or advance till the period subsequent thereto and any contract or agreement whether made direct with such factor or agent or with any clerk or other person on his behalf shall be deemed a contract or agreement with such factor or agent and any payment made whether by money or bill of exchange or other negotiable security shall be deemed to be an advance within the meaning of the last preceding section and a factor or agent in possession as aforesaid of such goods or document shall be taken for the purposes of the last preceding section to have been intrusted therewith by the owner thereof unless the contrary be shown in evidence.

79 Trustees fraudulently disposing of property guilty of a misdemeanour. 24 and 25 Vict. c. 96 s. 80.

No prosecution shall be commenced without the sanction of some Judge or the Attorney-General.

Whosoever being a trustee of any property for the use or benefit either wholly or partially of some other person or for any public or charitable purpose shall with intent to defraud convert or appropriate the same or any part thereof to or for his own use or benefit or the use or benefit of any person other than such person as aforesaid or for any purpose other than such public or charitable purpose as aforesaid or otherwise dispose of or destroy such property or any part thereof shall be guilty of a misdemeanour and being convicted thereof shall be liable at the discretion of the Court to any of the punishments which the Court may award as hereinbefore last mentioned Provided that no proceeding or prosecution for any offence included in this section shall be commenced without the sanction of Her Majesty's Attorney-General for New Zealand Provided also that where any civil proceeding shall have been taken against any person to whom the provisions of this section may apply no person who shall have taken such civil proceeding shall commence any prosecution under this section without the sanction of the Court or Judge before whom such civil proceeding shall have been had or shall be pending.

80 Directors &c. of any body corporate or public company fraudulently appropriating property. Ib. s. 81.

Whosoever being a director member or public officer of any body corporate or public company shall fraudulently take or apply for his own use or benefit or for any use or purposes other than the use or purposes of such body corporate or public company any of the property of such body corporate or public company shall be guilty of a misdemeanour and being convicted thereof shall be liable at the discretion of the Court to any of the punishments which the Court may award as hereinbefore last mentioned.

81 Or keeping fraudulent accounts. Ib. s. 82.

Whosoever being a director public officer or manager of any body corporate or public company shall as such receive or possess himself of any of the property of such body corporate or public company otherwise than in payment of a just debt or demand and shall with intent to defraud omit to make or to cause or direct to be made a full and true entry thereof in the books and accounts of such body corporate or public company shall be guilty of a misdemeanour and being convicted thereof shall be liable at the discretion of the Court to any of the punishments which the Court may award as hereinbefore last mentioned.

82 Or wilfully destroying books &c. 24 and 25 Vict. c. 96 s. 83.

Whosoever being a director manager public officer or member of any body corporate or public company shall with intent to defraud destroy alter mutilate or falsify any book paper writing or valuable security belonging to the body corporate or public company or make or concur in the making of any false entry or omit or concur in omitting any material particular in any book of account or other document shall be guilty of a misdemeanour and being convicted thereof shall be liable at the discretion of the Court to any of the punishments which the Court may award as hereinbefore last mentioned.

83 Or publishing fraudulent statements. Ib. s. 84.

Whosoever being a director manager or public officer of any body corporate or public company shall make circulate or publish or concur in making circulating or publishing any written statement or account which he shall know to be false in any material particular with intent to deceive or defraud any member shareholder or creditor of such body corporate or public company or with intent to induce any person to become a shareholder or partner therein or to intrust or advance any property to such body corporate or public company or to enter into any security for the benefit thereof shall be guilty of a misdemeanour and being convicted thereof shall be liable at the discretion of the Court to any of the punishments which the Court may award as hereinbefore last mentioned.

84 No person to be exempt from answering questions in any Court but no person making a disclosure in any compulsory proceeding to be liable to prosecution. Ib. s. 85.

Nothing in any of the last ten preceding sections of this Act contained shall enable or entitle any person to refuse to answer any question or interrogatory in any civil proceeding in any Court or upon the hearing of any matter in bankruptcy or insolvency and no person shall be liable to be convicted of any of the misdemeanours in any of the said sections mentioned by any evidence whatever in respect of any act done by him if he shall at any time previously to his being charged with such offence have first disclosed such act on oath in consequence of any compulsory process of any Court in any action suit or proceeding which shall have been *bona fide* instituted by any party aggrieved

or if he shall have first disclosed the same in any compulsory examination or deposition before any Court upon the hearing of any matter in bankruptcy or insolvency.

85 No remedy shall be affected. *Ib.* s. 86.

Nothing in any of the last eleven preceding sections of this Act contained nor any proceeding conviction or judgment to be had or taken thereon against any person under any of the said sections shall prevent lessen or impeach any remedy which any party aggrieved by any offence against any of the said sections might have had if this Act had not been passed but no conviction of any such offender shall be received in evidence in any action or suit against him and nothing in the said sections contained shall affect or prejudice any agreement entered into or security given by any trustee having for its object the restoration or repayment of any trust property misappropriated.

86 Convictions shall not be received in evidence in civil suits. Certain misdemeanours not triable at sessions. *Ib.* s. 87.

No misdemeanour against any of the last twelve preceding sections of this Act shall be prosecuted or tried at any Court of General or Quarter Sessions of the Peace or any District Court.

AS TO OBTAINING MONEY ETC. BY FALSE PRETENCES

87 False pretences. *Ib.* s. 88.

No acquittal because the offence amounts to larceny. Form of indictment and evidence.

Whosoever shall by any false pretence obtain from any other person any chattel money or valuable security with intent to defraud shall be guilty of a misdemeanour and being convicted thereof shall be liable at the discretion of the Court to be kept in penal servitude for the term of three years or to be imprisoned for any term not exceeding two years with or without hard labour and with or without solitary confinement Provided that if upon the trial of any person indicted for such misdemeanour it shall be proved that he obtained the property in question in any such manner as to amount in law to larceny he shall not by reason thereof be entitled to be acquitted of such misdemeanour and no person tried for such misdemeanour shall be liable to be afterwards prosecuted for larceny upon the same facts Provided also that it shall be sufficient in any indictment for obtaining or attempting to obtain any such property by false pretences to allege that the party accused did the act with intent to defraud without alleging an attempt to defraud any particular person and without alleging any ownership of the chattel money or valuable security and on the trial of any such indictment it shall not be necessary to prove an intent to defraud any particular person but it shall be sufficient to prove that the party accused did the act charged with an intent to defraud.

88 Where any money or thing is caused to be paid or delivered to any person other than the person making a false pretence. 24 and 25 Vict. c. 96 s. 89.

Whosoever shall by any false pretence cause or procure any money to be paid or any chattel or valuable security to be delivered to any other person for the use or benefit or on account of the person making such false pretence or of any other person with intent to defraud shall be deemed to have obtained such money chattel or valuable security within the meaning of the last preceding section.

89 Inducing persons by fraud to execute deeds and other instruments. Ib. s. 90.

Whosoever with intent to defraud or injure any other person shall by any false pretence fraudulently cause or induce any other person to execute make accept endorse or destroy the whole or any part of any valuable security or to write impress or affix his name or the name of any other person or of any company firm or copartnership or the seal of any body corporate company or society upon any paper or parchment in order that the same may be afterwards made or converted into or used or dealt with as a valuable security shall be guilty of a misdemeanour and being convicted thereof shall be liable at the discretion of the Court to be kept in penal servitude for the term of three years or to be imprisoned for any term not exceeding two years with or without hard labour and with or without solitary confinement.

AS TO RECEIVING STOLEN GOODS

90 Receiving where the principal is guilty of felony. Ib. s. 91.

Whosoever shall receive any chattel money valuable security or other property whatsoever the stealing taking extorting obtaining embezzling or otherwise disposing whereof shall amount to a felony either at common law or by virtue of this Act knowing the same to have been feloniously stolen taken extorted obtained embezzled or disposed of shall be guilty of felony and may be indicted and convicted either as an accessory after the fact or for a substantive felony and in the latter case whether the principal felon shall or shall not have been previously convicted or shall or shall not be amenable to justice and every such receiver howsoever convicted shall be liable at the discretion of the Court to be kept in penal servitude for any term not exceeding fourteen years and not less than three years or to be imprisoned for any term not exceeding two years with or without hard labour and with or without solitary confinement and if a male under the age of sixteen years with or without whipping Provided that no person howsoever tried for receiving as aforesaid shall be liable to be prosecuted a second time for the same offence.

91 Indictment for stealing and receiving. *Ib.* s. 92.

In any indictment containing a charge of feloniously stealing any property it shall be lawful to add a count or several counts for feloniously receiving the same or any part or parts thereof knowing the same to have been stolen and in any indictment for feloniously receiving any property knowing it to have been stolen it shall be lawful to add a count for feloniously stealing the same and where any such indictment shall have been preferred and found against any person the prosecutor shall not be put to his election but it shall be lawful for the jury who shall try the same to find a verdict of guilty either of stealing the property or of receiving the same or any part or parts thereof knowing the same to have been stolen and if such indictment shall have been preferred and found against two or more persons it shall be lawful for the jury who shall try the same to find all or any of the said persons guilty either of stealing the property or of receiving the same or any part or parts thereof knowing the same to have been stolen or to find one or more of the said persons guilty of stealing the property and the other or others of them guilty of receiving the same or any part or parts thereof knowing the same to have been stolen.

92 Separate receivers may be included in the same indictment in the absence of the principal. 24 and 25 Vict. c. 96 s. 93.

Whenever any property whatsoever shall have been stolen taken extorted obtained embezzled or otherwise disposed of in such a manner as to amount to a felony either at common law or by virtue of this Act any number of receivers at different times of such property or of any part or parts thereof may be charged with substantive felonies in the same indictment and may be tried together notwithstanding that the principal felon shall not be included in the same indictment or shall not be in custody or amenable to justice.

93 On an indictment for jointly receiving persons may be convicted of separately receiving. *Ib.* s. 94.

If upon the trial of any two or more persons indicted for jointly receiving any property it shall be proved that one or more of such persons separately received any part or parts of such property it shall be lawful for the jury to convict upon such indictment such of the said persons as shall be proved to have received any part or parts of such property.

94 Receiving where the principal has been guilty of a misdemeanour. *Ib.* s. 95.

Whosoever shall receive any chattel money valuable security or other property whatsoever the stealing taking obtaining converting or disposing whereof is made a misdemeanour by this Act knowing the same to have been unlawfully stolen taken obtained converted or disposed of shall be guilty of a misdemeanour and may be indicted and convicted thereof whether the person guilty of the principal misdemeanour shall or shall not have been previously convicted thereof or shall or shall not be amenable to justice and every such receiver

being convicted thereof shall be liable at the discretion of the Court to be kept in penal servitude for any term not exceeding seven years and not less than three years or to be imprisoned for any term not exceeding two years with or without hard labour and with or without solitary confinement and if a male under the age of sixteen years with or without whipping.

95 Receiver where triable. *Ib.* s. 96.

Whosoever shall receive any chattel money valuable security or other property whatsoever knowing the same to have been feloniously or unlawfully stolen taken obtained converted or disposed of may whether charged as an accessory after the fact to the felony or with a substantive felony or with a misdemeanour only be dealt with indicted tried and punished in any district jurisdiction or place in which he shall have or shall have had any such property in his possession or in any district jurisdiction or place in which the party guilty of the principal felony or misdemeanour may by law be tried in the same manner as such receiver may be dealt with indicted tried and punished in the district jurisdiction or place where he actually received such property.

96 Receivers of property where the original offence is punishable on summary conviction. 24 and 25 Vict. c. 96 s. 97.

Where the stealing or taking of any property whatsoever is by, this Act punishable on summary conviction either for every offence or for the first and second offence only or for the first offence only any person who shall receive any such property knowing the same to be unlawfully come by shall on conviction thereof before a Justice of the Peace be liable for every first second or subsequent offence of receiving to the same forfeiture and punishment to which a person guilty of a first second or subsequent offence of stealing or taking such property is by this Act made liable.

97 Principals in the second degree and accessories. *Ib.* s. 98.

Abettors in misdemeanors.

In case of every felony punishable under this Act every principal in the second degree and every accessory before the fact shall be punishable in the same manner as the principal in the first degree is by this Act punishable and every accessory after the fact to any felony punishable under this Act (except only a receiver of stolen property) shall on conviction be liable at the discretion of the Court to be imprisoned for any term not exceeding two years with or without hard labour and with or without solitary confinement and every person who shall aid abet counsel or procure the commission of any misdemeanour punishable under this Act shall be liable to be indicted and punished as a principal offender.

98 Abettors in offences punishable on summary conviction. Ib. s. 99.

Whosoever shall aid abet counsel or procure the commission of any offence which is by this Act punishable on summary conviction either for every time of its commission or for the first and second time only or for the first time only shall on conviction before a Justice of the Peace be liable for every first second or subsequent offence of aiding abetting counselling or procuring to the same forfeiture and punishment to which a person guilty of a first second or subsequent offence as a principal offender is by this Act made liable.

*AS TO RESTITUTION AND RECOVERY OF STOLEN PROPERTY***99 The owner of stolen property prosecuting thief or receiver to conviction shall have restitution of his property. Ib. s. 100.**

Provision as to valuable and negotiable securities. Not to apply to prosecutions of trustees bankers &c.

If any person is found guilty of any such felony or misdemeanour as is mentioned in this Act in stealing taking obtaining extorting embezzling converting or disposing of or in knowingly receiving any chattel money valuable security or other property whatsoever the property shall be restored to the owner or his representative and in every such case in this section aforesaid the Court before whom any person shall be tried for any such felony or misdemeanour shall have power to award from time to time writs of restitution for the said property or to order the restitution thereof in a summary manner Provided that if it shall appear before any award or order made that any valuable security shall have been *bona fide* paid or discharged by some person or body corporate liable to the payment thereof or being a negotiable instrument shall have been *bona fide* taken or received by transfer or delivery by some person or body corporate for a just and valuable consideration without any notice or without any reasonable cause to suspect that the same had by any felony or misdemeanour been stolen taken obtained extorted embezzled converted or disposed of in such case the Court shall not award or order the restitution of such security Provided also that nothing in this section contained shall apply to the case of any prosecution of any trustee banker merchant attorney factor broker or other agent intrusted with the possession of goods or documents of title to goods for any misdemeanour against this Act.

100 Taking a reward for helping to the recovery of stolen property without bringing the offender to trial. Ib. s. 101.

Whosoever shall corruptly take any money or reward directly or indirectly under pretence or upon account of helping any person to any chattel money valuable security or other property whatsoever which shall by any felony or misdemeanour have been stolen taken obtained extorted embezzled converted or disposed of as in this Act before mentioned shall (unless he shall have used all due diligence to cause the offender to be brought to trial for the same) be

guilty of felony and being convicted thereof shall be liable at the discretion of the Court to be kept in penal servitude for any term not exceeding seven years and not less than three years or to be imprisoned for any term not exceeding two years with or without hard labour and with or without solitary confinement and if a male under the age of eighteen years with or without whipping.

101 Advertising a reward for the return of stolen property &c. 24 and 25 Vict. c. 96 s. 102.

Whosoever shall publicly advertise a reward for the return of any property whatsoever which shall have been stolen or lost and shall in such advertisement use any words purporting that no questions will be asked or shall make use of any words in any public advertisement purporting that a reward will be given or paid for any property which shall have been stolen or lost without seizing or making any inquiry after the person producing such property or shall promise or offer in any such public advertisement to return to any pawnbroker or other person who may have bought or advanced money by way of loan upon any property stolen or lost the money so paid or advanced or any other sum of money or reward for the return of such property or shall print or publish any such advertisement shall forfeit the sum of fifty pounds for every such offence to any person who will sue for the same by action of debt to be recovered with full costs of suit.

AS TO APPREHENSION OF OFFENDERS AND OTHER PROCEEDINGS

102 A person in the act of committing any offence may be apprehended without a warrant. Ib. s. 103.

A Justice upon good grounds of suspicion proved on oath may grant a search warrant. A person to whom stolen property is offered may seize the party offering it.

Any person found committing any offence punishable either upon indictment or upon summary conviction by virtue of this Act except only the offence of angling in the daytime may be immediately apprehended without a warrant by any person and forthwith taken together with any property relating to such offence before some neighbouring Justice of the Peace to be dealt with according to law and if any credible witness shall prove upon oath before a Justice of the Peace a reasonable cause to suspect that any person has in his possession or on his premises any property whatsoever on or with respect to which any offence punishable either upon indictment or upon summary conviction by virtue of this Act shall have been committed the Justice may grant a warrant to search for such property as in the case of stolen goods and any person to whom any property shall be offered to be sold pawned or delivered if he shall have reasonable cause to suspect that any such offence has been committed on or with respect to such property is hereby authorized and if in his power is required to apprehend and forthwith to take before a Justice of the Peace the

party offering the same together with such property to be dealt with according to law.

103 A person loitering at night and suspected of any felony against this Act may be apprehended. *Ib.* s. 104.

Any constable or peace officer may take into custody without warrant any person whom he shall find lying or loitering in any highway yard or other place during the night and whom he shall have good cause to suspect of having committed or being about to commit any felony against this Act and shall take such person as soon as reasonably may be before a Justice of the Peace to be dealt with according to law.

104 Mode of compelling the appearance of persons punishable on summary conviction. *Ib.* s. 105.

Where any person shall be charged on the oath of a credible witness before any Justice of the Peace with any offence punishable on summary conviction under this Act the Justice may summon the person charged to appear at the time and place to be named in such summons and if he shall not appear accordingly then (upon proof of the due service of the summons upon such person by delivering the same to him personally or by leaving the same at his usual place of abode) the Justice may either proceed to hear and determine the case *ex parte* or issue his warrant for apprehending such person and bringing him before himself or some other Justice of the Peace or the Justice before whom the charge shall be made may (if he shall so think fit) without any previous summons (unless where otherwise especially directed) issue such warrant and the Justice before whom the person charged shall appear or be brought shall proceed to hear and determine the case.

105 Application of forfeitures and penalties on summary convictions. 24 and 25 Vict. c. 96 s. 106.

Proviso where several persons join in commission of same offence.

Every sum of money which shall be forfeited on any summary conviction for the value of any property stolen or taken or for the amount of any injury done (such value or amount to be assessed in each case by the convicting Justice) shall be paid to the party aggrieved except where he is unknown and in that case such sum shall be applied in the same manner as a penalty and every sum which shall be imposed as a penalty by any Justice of the Peace whether in addition to such value or amount or otherwise shall be paid and applied in the same manner as other penalties recoverable before Justices of the Peace are to be paid and applied in cases where the Act imposing the same contains no direction for the payment thereof to any person Provided that where several persons shall join in the commission of the same offence and shall upon conviction thereof each be adjudged to forfeit a sum equivalent to the value of the property or to the amount of the injury in every such case no

further sum shall be paid to the party aggrieved than such value or amount and the remaining sum or sums forfeited shall be applied in the same manner as any penalty imposed by a Justice of the Peace is hereinbefore directed to be applied.

106 If a person summarily convicted shall not pay &c. the Justice may commit him. *Ib.* s. 107.

Scale of imprisonment.

In every case of a summary conviction under this Act where the sum which shall be forfeited for the value of the property stolen or taken or for the amount of the injury done or which shall be imposed as a penalty by the Justice shall not be paid either immediately after the conviction or within such period as the Justice shall at the time of the conviction appoint the convicting Justice (unless where otherwise specially directed) may commit the offender to any public gaol there to be imprisoned only or to be imprisoned and kept to hard labour according to the discretion of the Justice for any term not exceeding two months where the amount of the sum forfeited or of the penalty imposed or of both (as the case may be) together with the costs shall not exceed five pounds and for any term not exceeding four months where the amount with costs shall not exceed ten pounds and for any term not exceeding six months in any other case the commitment to be determinable in each of the cases aforesaid upon payment of the amount and costs.

107 Justice may discharge the offender in certain cases. *Ib.* s. 108.

Where any person shall be summarily convicted before a Justice of the Peace of any offence against this Act and it shall be a first conviction the Justice may if he shall so think fit discharge the offender from his conviction upon his making such satisfaction to the party aggrieved for damages and costs or either of them as shall be ascertained by the Justice.

108 A summary conviction shall be a bar to any other proceeding for the same cause. *Ib.* s. 109.

In case any person convicted of any offence punishable upon summary conviction by virtue of this Act shall have paid the sum adjudged to be paid together with costs under such conviction or shall have received a remission thereof from the Crown or from the Governor of the Colony or shall have suffered the imprisonment awarded for non-payment thereof or the imprisonment adjudged in the first instance or shall have been so discharged from his conviction by any Justice as aforesaid in every such case he shall be released from all further or other proceedings for the same cause.

109 No *certiorari* &c. *Ib.* s. 111.

No summary conviction under this Act or adjudication made or appeal therefrom to any District Court or to the Supreme Court shall be quashed for want

of form nor shall any such conviction or any adjudication on appeal to any District Court be removed by *certiorari* into the Supreme Court and no warrant of commitment shall be held void by reason of any defect therein provided it be therein alleged that the party has been convicted and there be a good and valid conviction to sustain the same.

110 Convictions to be returned to the Supreme Court. 24 and 25 Vict. c. 96 s. 112.

Every Justice of the Peace before whom any person shall be convicted of any offence against this Act shall transmit the conviction to that office of the Supreme Court which is nearest to the place at which such person shall have been so convicted by such Justice there to be kept by the proper officer among the records of the Court and upon any information against any person for a subsequent offence a copy of such conviction certified by the proper officer of the Court or proved to be a true copy shall be sufficient evidence to prove a conviction for the former offence and the conviction shall be presumed to have been unappealed against until the contrary be shown.

111 Proceedings against persons acting under this Act. *Ib.* s. 113.

Notice of action. General issue &c.

All actions and prosecutions to be commenced against any person for anything done in pursuance of this Act shall be commenced within six months after the fact committed and not otherwise and notice in writing of such action and of the cause thereof shall be given to the defendant one month at least before the commencement of the action and in any such action the defendant may plead the general issue or denial and give this Act and the special matter in evidence at any trial to be had thereupon and no plaintiff shall recover in any such action if tender of sufficient amends shall have been made before such action brought or if a sufficient sum of money shall have been paid into Court after such action brought by or on behalf of the defendant and if a verdict shall pass for the defendant or the plaintiff shall become nonsuit or discontinue any such action after issue joined or if upon demurrer or otherwise judgment shall be given against the plaintiff the defendant shall recover his full costs as between solicitor and client and have the like remedy for the same as any defendant has by law in other cases and though a verdict shall be given for the plaintiff in any such action such plaintiff shall not have costs against the defendant unless the Judge before whom the trial shall be shall certify his approbation of the action.

*AS TO OTHER MATTERS***112 Stealers of property in one part of the Colony who have the same in any other part of the Colony may be tried and punished in that part of the Colony where they have the property. *Ib.* s. 114.**

If any person shall have in his possession in any one part of the Colony any chattel money valuable security or other property whatsoever which he shall have stolen or otherwise feloniously taken in any other part of the Colony he may be dealt with indicted tried and punished for larceny or theft in that part of the Colony where he shall so have such property in the same manner as if he had actually stolen or taken it in that part and if any person in any one part of the Colony shall receive or have any chattel money valuable security or other property whatsoever which shall have been stolen or otherwise feloniously taken in any other part of the Colony such person knowing such property to have been stolen or otherwise feloniously taken he may be dealt with indicted tried and punished for such offence in that part of the Colony where he shall so receive or have such property in the same manner as if it had been originally stolen or taken in that part.

113 Form of indictment for a subsequent offence. *Ib.* s. 116.

When the previous conviction is to be proved on the trial.

In any indictment for any offence punishable under this Act and committed after a previous conviction or convictions for any felony misdemeanour or offence or offences punishable upon summary conviction it shall be sufficient after charging the subsequent offence to state that the offender was at a certain time and place or at certain times and places convicted of felony or of an indictable misdemeanour or of an offence or offences punishable upon summary conviction (as the case may be) without otherwise describing the previous felony misdemeanour offence or offences and a certificate containing the substance and effect only (omitting the formal part) of the indictment and conviction for the previous felony or misdemeanour or a copy of any such summary conviction purporting to be signed by the registrar or clerk of the Court or other officer having the custody of the records of the Court where the offender was first convicted or to which such summary conviction shall have been returned or by the deputy of such registrar clerk or officer (for which certificate or copy no fee shall be demanded or taken) shall upon proof of the identity of the person of the offender 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 proceedings upon any indictment for committing any offence after a previous conviction or convictions shall be as follows (that is to say) the offender shall in the first instance be arraigned upon so much only of the indictment as charges the subsequent offence and if he plead not guilty or if the Court order a plea of not guilty to be entered on his behalf the jury shall be charged in the first instance to inquire concerning such subsequent

offence only and if they find him guilty or if on arraignment he plead guilty he shall then and not before be asked whether he had been previously convicted as alleged in the indictment and if he answer that he had been so previously convicted the Court may proceed to sentence him accordingly but if he deny that he had been so previously convicted or stand mute of malice or will not answer directly to such question the jury shall then be charged to inquire concerning such previous conviction or convictions and in such case it shall not be necessary to swear the jury again but the oath already taken by them shall for all purposes be deemed to extend to such last-mentioned inquiry Provided that if upon the trial of any person for any such subsequent offence such person shall give evidence of his good character it shall be lawful for the prosecutor in answer thereto to give evidence of the conviction of such person for the previous offence or offences before such verdict of guilty shall be returned and the jury shall inquire concerning such previous conviction or convictions at the same time that they inquire concerning such subsequent offence.

114 Fine and sureties for keeping the peace in what cases. 24 and 25 Vict. c. 96 s. 117.

Whenever any person shall be convicted of any indictable misdemeanour punishable under this Act the Court may if it shall think fit in addition to or in lieu of any of the punishments by this Act authorized fine the offender and require him to enter into his own recognizances and to find sureties both or either for keeping the peace and being of good behaviour and in case of any felony punishable under this Act the Court may if it shall think fit require the offender to enter into his own recognizances and to find sureties both or either for keeping the peace in addition to any punishment by this Act authorized Provided that no person shall be imprisoned under this clause for not finding sureties for any period exceeding one year.

115 Hard labour. Ib. s. 118.

Whenever imprisonment with or without hard labour may be awarded for any indictable offence under this Act the Court may sentence the offender to be imprisoned or to be imprisoned and kept to hard labour in any public gaol.

116 Solitary confinement and whipping. Ib. s. 119.

Whenever solitary confinement may be awarded for any indictable 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 labour not exceeding one month at any one time and not exceeding three months in any one year and whenever whipping may be awarded for any indictable offence under this Act the Court may sentence the offender to be once privately whipped and the number of strokes and the instrument with which they shall be inflicted shall be specified by the Court in the sentence.

117 Summary proceedings may be under “The Justices of the Peace Act 1866.” 24 and 25 Vict. c. 96 s, 120.

Every offence hereby made punishable on summary conviction may be prosecuted in the manner directed by “The Justices of the Peace Act 1866” so far as no provision is hereby made for any matter or thing which may be required to be done in the course of such prosecution or in such other manner as may be directed by any Act that may be passed for like purposes and all provisions contained in the said Act or such Act shall be applicable to such prosecutions in the same manner as if they were incorporated in this Act.

118 Whipping for adults in certain cases of violence. 26 and 27 Vict. c. 44 s. 1.

Where any person is convicted of a crime under the forty- second or forty-third sections of this Act the Court before whom he is convicted may in addition to the punishment awarded direct that the offender if a male whose age exceeds sixteen years be once twice or thrice privately whipped Provided that the number of strokes do not exceed fifty at each such whipping and that the Court in its sentence shall specify the number of strokes to be inflicted and the instrument to be used Provided also that in no case shall such whipping take place after the expiration of six months from the passing of the sentence Provided also that in all cases where the punishment of whipping shall be inflicted under the authority of this or any other provisions of this Act the surgeon or medical officer of the gaol in which the offender is confined shall be present when the said punishment is inflicted and such surgeon or medical officer if he be of opinion that the prisoner is not at any time able to bear the whole or any part of the said punishment so awarded may from time to time order the infliction of the whole or any part of the said punishment to be postponed and shall within seven days after the making of any such order send a report in writing stating his reasons for making such order to the Colonial Secretary.

119 Short Title.

The Short Title of this Act shall be “The Larceny Act 1867.”

120 Commencement of Act.

This Act shall commence and take effect on the first day of November one thousand eight hundred and sixty-seven.