



ANNO DECIMO-NONO

VICTORIÆ REGINÆ,

No. 15.

*By His Excellency SIR HENRY EDWARD FOX YOUNG, Knight,
Captain-General and Governor-in-Chief of the Island of Van
Diemen's Land and its Dependencies, with the Advice and
Consent of the Legislative Council.*

AN ACT for the better Prevention and Punishment of certain Offences. [11th September, 1855.]

WHEREAS it is expedient to make further provision for the prevention and punishment of certain Offences: Be it enacted by His Excellency the Governor of Van Diemen's Land, by and with the advice and consent of the Legislative Council, as follows:—

PREAMBLE.

1 If any person shall be found by night armed with any dangerous or offensive weapon or instrument whatsoever with intent to break or enter into any dwelling-house or other building whatsoever and to commit any felony therein, or if any person shall be found by night having in his possession without lawful excuse (the proof of which excuse shall lie on such person) any picklock key, crow, jack, bit, or other implement of housebreaking, or if any person shall be found by night having his face blackened or otherwise disguised, with intent to commit any felony, or if any person shall be found by night in any dwelling-house or other building whatsoever with intent to commit any felony therein, or in any enclosed garden, yard, or space belonging to any dwelling-house or other building whatsoever with intent to commit any felony in such dwelling-house or other building, every such Offender shall be guilty of a Misdemeanor, and being convicted thereof shall be

Any person found by night armed, &c. with intent to commit felony, guilty of a Misdemeanor.

liable, at the discretion of the Court, to be kept in penal servitude, or to be imprisoned, with or without hard labour, for any term not exceeding Three Years.

Punishment of any person convicted of such Misdemeanor after a previous conviction of felony or such misdemeanor.
Form of information.

2 If any person shall be convicted of any such Misdemeanor as aforesaid committed after a previous conviction, either for felony or any such misdemeanor as aforesaid, such person shall on such subsequent conviction be liable, at the discretion of the Court, to be kept in penal servitude for any term not less than Four Years and not exceeding Six Years, or to be imprisoned, with or without hard labour, for any term not exceeding Three Years; and, in any information for such Misdemeanor committed after a previous conviction as aforesaid, it shall be sufficient to state that the offender was at a certain time and place convicted of felony or of a misdemeanor against "The Act for the better Prevention and Punishment of certain Offences, 1855," (as the case may be) without otherwise describing the previous felony or misdemeanor; and a Certificate containing the substance and effect only (omitting the formal part) of the information and conviction for the previous felony or misdemeanor, purporting to be signed by the Clerk of the Court or other officer having the custody of the Records of the Court where the offender was so convicted, or by the Deputy of such Clerk or officer, shall, upon proof of the identity of the person of the offender, be sufficient evidence of the previous conviction, without proof of the signature or official character of the person appearing to have signed the same.

Certificate of previous conviction.

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

3 If any person shall unlawfully apply or administer, or attempt to apply or administer, to any other person any chloroform, laudanum, or other stupifying or overpowering drug, matter, or thing, with intent thereby to enable such offender or any other person to commit, or with intent to assist such offender or other person in committing, any felony, every such offender shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for life or for any term not less than Four Years, or to be imprisoned, with or without hard labour, for any term not exceeding Three Years.

Persons inflicting grievous bodily harm, &c. guilty of a Misdemeanor.

4 If any person shall unlawfully and maliciously inflict upon any other person, either with or without any weapon or instrument, any grievous bodily harm, or unlawfully and maliciously shoot at any other person, or unlawfully or maliciously present any kind of firearms at any other person, or by drawing a trigger, or in any other manner attempt to discharge any kind of loaded arms at any other person, or cut, stab, or wound any other person, every such offender shall be guilty of a Misdemeanor, and being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned, with or without hard labour, for any term not exceeding Three Years, or to be kept in penal servitude for any period not exceeding Four Years.

On any trial for feloniously cutting, &c. the Jury may acquit of the felony, and convict of misdemeanor.

5 If upon the trial of any information for any felony, except murder or manslaughter, where the information shall allege that the Defendant did shoot at any person, or did by drawing a trigger, or in any other manner attempt to discharge any kind of loaded arms at any person, or did cut, stab, or wound any person, the Jury shall be satisfied that the Defendant is guilty of the shooting or attempting to discharge a loaded arm, or of the cutting, stabbing, or wounding charged in

such information, but are not satisfied that the Defendant is guilty of the felony charged in such information, then and in every such case the Jury may acquit the Defendant of such felony, and find him guilty of unlawfully and maliciously shooting at such person, or attempting to discharge a loaded arm at such person, or cutting, stabbing, or wounding such person, as the case may be, and thereupon such Defendant shall be liable to be punished in the same manner as if he had been convicted upon an information for the Misdemeanor of which he shall have been convicted.

6 Whenever any person shall be convicted of any indecent assault, or of any attempt to have carnal knowledge of a girl under twelve years of age, or of any attempt to commit buggery, it shall be lawful for the Court either to award such sentence as is now by Law authorised for such offence, or to sentence such offender to be kept in penal servitude for any term not exceeding Four Years.

Penal servitude may be awarded for indecent assault, &c.

7 When any person shall be charged before two Justices of the Peace with a common assault upon any female whatever, or upon any male child whose age shall not in the opinion of such Justices exceed fourteen years, either upon the complaint of the party aggrieved or otherwise, it shall be lawful for the said Justices, if the assault is of such an aggravated nature that it cannot in their opinion be sufficiently punished under the provisions of the Statute Ninth *George* the Fourth, Chapter Thirty-one, Section Twenty-seven, to proceed to hear and determine the charge in a summary way, and if they shall find the same to be proved to convict the person accused; and every offender so convicted shall be liable to be imprisoned in some Gaol or House of Correction, with or without hard labour, for a period not exceeding Six Months, or to pay a fine not exceeding (together with costs) the sum of Twenty Pounds, and in default of payment to be imprisoned as aforesaid, with or without hard labour, for a period not exceeding Six Months unless such fine and costs be sooner paid; and, if the Justice shall so think fit, shall be bound to keep the peace and be of good behaviour for any period not exceeding One Year from the expiration of such sentence; and such conviction shall be a bar to all future proceedings, civil or criminal, for or in respect of the same assault; and no person convicted under this Act shall be entitled to appeal against such conviction to any Court of General Sessions of the Peace, anything to the contrary in any law notwithstanding.

Aggravated assaults on females and male children under fourteen punishable by a fine of Twenty Pounds or Six Months' imprisonment.

No appeal against such conviction.

8 Where any recognizance to keep the peace or to be of good behaviour is entered into by any person, as principal or surety, before any Court of General Sessions of the Peace, or before any Justice or Justices of the Peace, it shall be lawful for any Court of General Sessions of the Peace, upon application made to such Court and upon production of such recognizance, to declare such recognizance to be forfeited, upon proof of a conviction of the party bound by such recognizance of any offence which is in law a breach of the condition of the same; and upon further proof that a notice in writing, signed by the person seeking to put such recognizance in force, has, seven clear days before the commencement of such Sessions, been personally served upon or left at the usual place of abode of the party or each of the parties (if more than one) who entered into such recognizance, that an application will be made to the said Sessions that the said recognizance shall be declared forfeited; and if such recognizance shall be declared

Court of General Sessions upon proof of conviction may declare a recognizance to keep the peace, &c. forfeited.

forfeited the same shall be enforced as a forfeited recognizance, in like manner as any recognizance ordered and adjudged to be forfeited by a Court of General or Quarter Sessions under the Act of Council passed in the Twelfth year of the reign of Her Majesty, No. 13, may be enforced.

Limiting imprisonment of persons for not entering into recognizance.

9 No person committed to prison under any Warrant or Order of one Justice of the Peace for or on account of not entering into a recognizance or finding a surety or sureties to keep the peace, or to be of good behaviour, shall be detained under such Warrant or Order for more than Twelve Months from the time of such commitment.

Mode in which a previous conviction is to be given in evidence upon the trial of persons for subsequent offences.

10 It shall not be lawful on the trial of any person for any subsequent offence, where a plea of Not Guilty shall have been entered, to charge the Jury to inquire concerning any previous conviction until they shall have inquired concerning such subsequent offence, and shall have found such person guilty of the same; and whenever in any information any previous conviction shall be stated, the reading of such statement shall be deferred until after such finding as aforesaid: Provided that, if upon the trial of any person for any such subsequent offence as aforesaid such person shall give evidence of his good character, it shall be lawful, in answer thereto, to give evidence of the conviction of such person for the previous offence or offences before such verdict of Guilty shall have been returned, and the Jury shall inquire concerning such previous conviction or convictions at the same time that they inquire concerning such subsequent offence.

Any person may apprehend offenders against this Act.

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

Assaulting a person entitled to apprehend, a Misdemeanor.

12 If any person liable to be apprehended under the provisions of this Act shall assault or offer any violence to any person by Law authorised to apprehend or detain him, or to any person acting in his aid and assistance, every such offender shall be guilty of a Misdemeanor, and being convicted thereof shall be liable to be kept in penal servitude, or to be imprisoned, with or without hard labour, for any term not exceeding Three Years.

Night to be as in burglary.

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

Nothing in this Act to affect 2 Vict., No. 22.

14 Nothing in this Act contained shall affect the Act of Council of the Second of Victoria, No. 22, but no person shall be liable to be punished for the same offence both under the said Act and under this Act.

MICHAEL FENTON, *Speaker.*

Passed the Legislative Council, this fourth day of September, one thousand eight hundred and fifty-five.

FR. HARTWELL HENSLOWE,
Clerk of the Council.

In the name and on the behalf of Her Majesty I assent to this Act.
Government House, Hobart Town,
11th September, 1855.

H. E. F. YOUNG,
Governor.