



Offences Against the Person Act 1861

1861 CHAPTER 100

Other Matters

66 A Person loitering at Night, and suspected of any Felony against this Act, may be apprehended.

Any Constable or Peace Officer may take into Custody, without a 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 in this Act mentioned, and shall take such Person as soon as reasonably may be before a Justice of the Peace, to be dealt with according to Law.

67 Punishment of Principals in the Second Degree, and Accessories.

In the 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 Murder) shall be liable to be imprisoned for any Term not exceeding Two Years, with or without Hard Labour; and every Accessory after the Fact to Murder 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 whosoever shall counsel, aid, or abet the Commission of any indictable Misdemeanor punishable under this Act shall be liable to be proceeded against, indicted, and punished as a principal Offender.

68 Offences committed within the Jurisdiction of the Admiralty.

All indictable Offences mentioned in this Act which shall be committed within the Jurisdiction of the Admiralty of *England* or *Ireland* shall be deemed to be Offences of the same Nature and liable to the same Punishments as if they had been committed upon the Land in *England* or *Ireland*, and may be dealt with, inquired of, tried, and determined in any County or Place in *England* or *Ireland* in which the Offender shall be apprehended or be in Custody, in the same Manner in all respects as if they had

been actually committed in that County or Place; and in any Indictment for any such Offence, or for being an Accessory to such an Offence, the Venue in the Margin shall be the same as if the Offence had been committed in such County or Place, and the Offence shall be averred to have been committed " on the High Seas : " Provided that nothing herein contained shall alter or affect any of the Laws relating to the Government of Her Majesty's Land or Naval Forces.

69 Hard labour in Gaol or House of Correction.

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 the Common Gaol or House of Correction.

70 Solitary Confinement and Whipping

Whenever Solitary Confinement may be awarded for any Offence under this Act, the Court may direct the Offender to be kept in Solitary Confinement for any Portion or Portions of any Imprisonment, or of any Imprisonment with Hard Labour, which the Court may award, 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 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.

71 Fine, and Sureties for keeping the Peace; in what Cases.

Whenever any Person shall be convicted of any indictable Misdemeanor punishable under this Act, the Court may, if it shall think fit, in addition to or in lieu of any Punishment 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 otherwise than with Death 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 for not finding Sureties under this Clause for any Period exceeding One Year.

72 No Certiorari, &c.

No summary Conviction under this Act shall be quashed for Want of Form, or be removed by Certiorari into any of Her Majesty's Superior Courts of Record ; 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.

73 Guardians and Overseers may be required to prosecute in certain Cases of Offences against this Act. Costs of Prosecution. Clerk of Guardians may be bound over to prosecute.

Where any Complaint shall be made of any Offence against Section Twenty-six of this Act, or of any bodily Injury inflicted upon any Person under the Age of Sixteen Years,

for which the Party committing it is liable to be indicted, and the Circumstances of which Offence amount, in point of Law, to a Felony, or an Attempt to commit a Felony, or an Assault with Intent to commit a Felony, and Two Justices of the Peace before whom such Complaint is heard shall certify under their Hands that it is necessary for the Purposes of Public Justice that the Prosecution should be conducted by the Guardians of the Union or Place, or, where there are no Guardians, by the Overseers of the Poor of the Place, in which the Offence shall be charged to have been committed, such Guardians or Overseers, as the Case may be, upon personal Service of such Certificate or a Duplicate thereof upon the Clerk of such Guardians or upon any One of such Overseers, shall conduct the Prosecution, and shall pay the Costs reasonably and properly incurred by them therein (so far as the same shall not be allowed to them under any Order of any Court) out of the Common Fund of the Union, or out of the Funds in the Hands of the Guardians or Overseers, as the Case may be; and, where there is a Board of Guardians, the Clerk or Borne other Officer of the Union or Place, and, where there is no Board of Guardians, One of the Overseers of the Poor, may, if such Justices think it necessary for the Purposes of Public Justice, be bound over to prosecute.

74 On a Conviction for Assault the Court may order Payment of the Prosecutor's Costs by the Defendant.

Where any Person shall be convicted on any Indictment of any Assault, whether with or without Battery and Wounding, or either of them, such Person may, if the Court think fit, in addition to any Sentence which the Court may deem proper for the Offence, be adjudged to pay to the Prosecutor his actual and necessary Costs and Expenses of the Prosecution, and such moderate Allowance for the Loss of Time as the Court shall by Affidavit or other Inquiry and Examination ascertain to be reasonable; and, unless the Sum so awarded shall be sooner paid, the Offender shall be imprisoned for any Term the Court shall award, not exceeding Three Months, in addition to the Term of Imprisonment (if any) to which the Offender may be sentenced for the Offence.

75 Such Costs may be levied by Distress.

The Court may, by Warrant under Hand and Seal, order such Sum as shall be so awarded to be levied by Distress and Sale of the Goods and Chattels of the Offender, and paid to the Prosecutor, and that the Surplus, if any, arising from such Sale, shall be paid to the Owner; and in case such Sum shall be so levied the Imprisonment awarded until Payment of such Sum shall thereupon cease.

76 Summary Proceedings in England may be under the 11 & 12 Vict. c. 43., and in Ireland under the 14 & 15 Vict. c. 93. Except in London and the Metropolitan Police District.

Every Offence hereby made punishable on summary Conviction may be prosecuted in *England* in the Manner directed by the Act of the Session holden in the Eleventh and Twelfth Years of Queen Victoria, Chapter Forty-three, and may be prosecuted in *Ireland* before Two or more Justices of the Peace, or One Metropolitan or Stipendiary Magistrate, in the Manner directed by the Act of the Session holden in the Fourteenth and Fifteenth Years of Queen Victoria, Chapter Ninety-three, 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 Acts shall be applicable to such Prosecutions in the same Manner as if they were incorporated in this Act: Provided that nothing in this Act contained

shall in any Manner alter or affect any Enactment now in force relating to Procedure, in the Case of any Offence punishable on summary Conviction, within the City of *London* or the Metropolitan Police District, or the Recovery or Application of any Penalty or Forfeiture for any such Offence.

77 The Costs of the Prosecution of Misdemeanors against this Act may be allowed.

The Court before which any Misdemeanor indictable under the Provisions of this Act shall be prosecuted or tried may allow the Costs of the Prosecution in the same Manner as in Cases of Felony; and every Order for the Payment of such Costs shall be made out, and the Sum of Money mentioned therein paid and repaid, upon the same Terms and in the same Manner in all respects as in Cases of Felony.

78 Act not to extend to Scotland.

Nothing in this Act contained shall extend to *Scotland*, except as herein-before otherwise expressly provided.

79 Commencement of Act

This Act shall commence and take effect on the Day of November One thousand eight hundred and sixty-one.