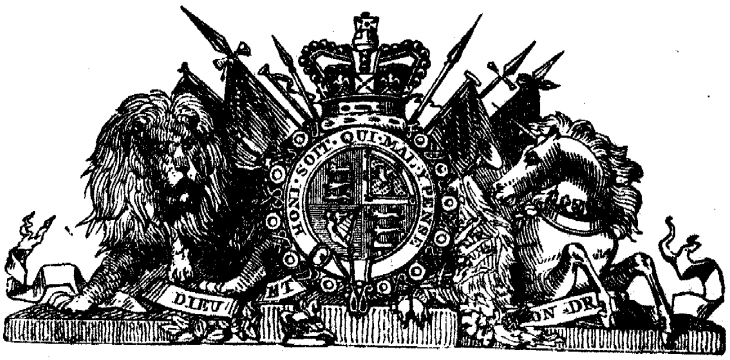

1849.

No. 2.

ORDINANCE Enacted by the Governor of South Australia, with the advice and consent of the Legislative Council thereof.

For the Removal of Defects in the Administration of Criminal Justice.

[25th July, 1849.]

WHEREAS the technical strictness of Criminal Proceedings might in some instances be further relaxed, so as to insure the punishment of the guilty, without depriving the accused of any just means of defence: And whereas it is expedient to make further provision for the more effectual prosecution of accessories before and after the fact to Felony: And whereas it is also expedient, that any Accessory before the fact to felony should be liable to be indicted, tried, convicted, and punished in all respects like the Principal, as is now the case in treason, and in all misdemeanors: Preamble.

Be it therefore Enacted by the Governor of South Australia, with the advice and consent of the Legislative Council thereof, that from and after the passing of this Ordinance, if any person shall become an accessory before the fact to any felony, whether the same be a felony at common law, or by virtue of any Statute or Ordinance made, or to be made, such person may be indicted, tried, convicted, and punished, in all respects as if he were a Principal Felon. Accessories before the fact to any felony may be punished in the same degree as the principal.

II. And whereas an accessory after the fact to felony, can at present be tried only along with the principal felon, or after the principal felon Trial and conviction of accessories after the fact.

felon has been convicted, and not otherwise, which is sometimes productive of a failure of justice : Be it Enacted, that from and after the passing of this Ordinance, if any person shall become an accessory after the fact to any felony, whether the same be a felony at common law, or by virtue of any Statute or Ordinance made, or to be made, he may be indicted and convicted either as an accessory after the fact to the principal felony together with the principal felon, or after the conviction of the principal felon, or may be indicted and convicted of a substantive felony, whether the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to justice, and may thereupon be punished in like manner as any accessory after the fact to the same felony, if convicted as an accessory, may be punished ; and the offence of such person, howsoever indicted, may be inquired of, tried, determined, and punished by any Court which shall have jurisdiction to try the principal felon, in the same manner as if the act, by reason of which such person shall have become an accessory, had been committed at the same place as the principal felony : Provided always, that no person who shall be once duly tried for any such offence, whether as an accessory after the fact, or as for a substantive felony, shall be liable to be again indicted or tried for the same offence.

As to additions of counts in indictments for stealing and receiving stolen property.

III. And whereas, according to the present practice of Courts of Criminal Jurisdiction, it is not permitted in an indictment for stealing property to add a count for receiving the same property knowing it to have been stolen, or in an indictment for receiving stolen property knowing it to have been stolen, to add a count for stealing the same property, and justice is hereby often defeated : Be it Enacted, that from and after the passing of this Ordinance, in every indictment for feloniously stealing property, it shall be lawful to add a count for feloniously receiving the same property knowing it to have been stolen, and in any indictment for feloniously receiving property knowing it to have been stolen, it shall be lawful to add a count for feloniously stealing the same property ; 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 it knowing it 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 it knowing it 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 it knowing it to have been stolen.

IV. And

IV. And whereas a failure of justice frequently takes place in Criminal trials by reason of variances and defects of mere form, For remedy thereof Be it Enacted, that it shall and may be lawful for any Court of Criminal Jurisdiction, if such Court shall see fit so to do, when any variance shall appear between the proof and the recital or setting forth in the indictment or information whereon the trial is pending, for any offence whatever, of any particular in the judgment of such Court, not material to the merits of the case, and by which the opposite party cannot have been prejudiced, and also whensoever any such indictment or information shall appear to such Court to be defective in any particular for mere want of form, not involving matter of substance, to cause such indictment or information to be forthwith amended in such particular or particulars by some officer of the Court, and after such amendment the trial shall proceed in the same manner in all respects, both with regard to the liability of witnesses to be indicted for perjury, and otherwise, as if no such variance or defect had appeared.

Court may cause indictments to be amended in certain cases.

H. E. F. YOUNG,
Lieutenant-Governor.

Passed the Legislative Council, this Twenty-fifth day of July, One Thousand Eight Hundred and Forty-nine.

W. L. O'HALLORAN,
Clerk of Council.

ADELAIDE: Printed by authority, by W. C. Cox, at the Government Printing Office, Victoria Square.