



1849.

No. 3.

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

For the further Amendment of the Administration of the Criminal Law.

[25th July, 1849.]

WHEREAS it is expedient to provide a better mode than that now in use of deciding any difficult Question of Law that may arise in Criminal Trials, and to make further amendments in the administration of the Criminal Law :

Preamble.

Be it therefore Enacted by the Governor of South Australia, with the advice and consent of the Legislative Council thereof, That when any person shall have been convicted of any treason, felony, or misdemeanor, before any Sessions of Oyer and Terminer or Gaol Delivery, or Court of Criminal Jurisdiction, the Judge, or Commissioners, or Justices of the Peace, before whom the case shall have been tried, may, in his or their discretion, reserve any question of law which shall have arisen on the trial, for the consideration of the Supreme Court of this Province, and thereupon shall have authority to respite execution of the judgment on such conviction, or postpone the judgment until such question shall have been considered and decided, as he or they may think fit; and in either case, the Court before whom the case shall have been tried, in its discretion, shall commit the person convicted to prison, or shall take a recognizance of bail, with one or two sufficient sureties, and in such sum as such Court shall think fit, conditioned to appear at such time or times

as

Questions of law may be reserved for consideration of Judges.

as the Court shall direct, and receive judgment, or to render himself in execution, as the case may be.

Questions reserved to be certified to the Supreme Court.

II. And be it Enacted That the Judge, or Commissioner, or Court of Criminal Jurisdiction shall, thereupon, state, in a case signed in the manner now usual, the question or questions of law which shall have been so reserved, with the special circumstances upon which the same shall have arisen ; and such case shall be transmitted or delivered to the proper officer of the said Supreme Court, and the said Supreme Court shall thereupon have full power and authority to hear and finally determine the said question or questions, and thereupon to reverse, affirm, or amend any judgment which shall have been given on the indictment or inquisition on the trial whereof such question or questions have arisen, or to avoid such judgment, and to order an entry to be made on the record, that in the judgment of the said Supreme Court the party convicted ought not to have been convicted, or to arrest the judgment, or order judgment to be given thereon at some other Session of Oyer and Terminer or Gaol Delivery, or other Sessions of the Court before whom the case shall have been tried, if no judgment shall have been before that time given, as they shall be advised, or to make such other order as justice may require ; and such judgment and order, if any, of the said Supreme Court shall be certified under the hand of the presiding Judge to the proper officer of the Court before whom the case shall have been tried, as the case may be, who shall enter the same on the original record in proper form ; and a certificate of such entry, under the hand of such officer, in the form as near as may be, or to the effect mentioned in the Schedule annexed to this Ordinance, with the necessary alterations to adapt it to the circumstances of the case, shall be delivered or transmitted by him to the Sheriff or Gaoler in whose custody the person convicted shall be ; and the said certificate shall be a sufficient warrant to such Sheriff or Gaoler, and all other persons for the execution of the judgment, as the same shall be so certified to have been affirmed or amended, and execution shall be thereupon executed on such judgment, and for the discharge of the person convicted from further imprisonment, if the judgment shall be reversed, avoided, or arrested, and in that case such Sheriff or Gaoler shall forthwith discharge him, and also the Court before whom the case shall have been tried, shall vacate the recognizance of bail, if any ; and if such Court shall be directed to give judgment, the said Court shall proceed to give judgment at the next Sessions, or time of holding thereof.

Judgments to be delivered in open Court, and subject to general rules and orders of Court.

III. And be it Enacted That the jurisdiction and authorities by this Ordinance given to the said Supreme Court, shall and may be exercised by the said Supreme Court ; and the judgment or judgments

ments of the said Supreme Court shall be delivered in open Court after hearing counsel or the parties, in case the prosecutor or the person convicted shall think it fit that the case shall be argued ; subject always to such general rules and orders as shall be made by the said Supreme Court, and confirmed by the Governor of South Australia, with the advice and consent of the Legislative Council thereof, in manner prescribed by law.

IV. And be it Enacted That the said Supreme Court, when a case has been reserved for their opinion, shall have power if they think fit, to cause the case or certificate to be sent back for amendment, and thereupon the same shall be amended accordingly, and judgment shall be delivered after it shall have been amended.

Case or certificate may be sent back for amendment.

V. And be it Enacted That whenever any writ of error shall be brought upon any judgment on any indictment, information, presentment, or inquisition, in any criminal case, and the court of error shall reverse the judgment, it shall be competent for such court of error either to pronounce the proper judgment, or to remit the record to the court below, in order that such court may pronounce the proper judgment upon such indictment, information, presentment, or inquisition.

When judgment is reversed on writ of error, record may be remitted to Court below for judgment.

VI. And be it Enacted That every person who shall forge or alter, or shall offer, utter, dispose of, or put off knowing the same to be forged or altered, any certificate of, or copy certified by any Judge, or officer of Court, as the case may be, with intent to cause any person to be discharged from custody, or otherwise prevent the due course of justice, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be transported beyond the seas for any term not exceeding ten years, or be imprisoned for any term not exceeding three years, with or without hard labour and solitary confinement, both or either, at the discretion of the Court before which he shall be tried.

Penalty for forgery.

VII. And be it Enacted That this Ordinance shall commence from and after the passing thereof.

Commencement.

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.

Schedule

SCHEDULE.

WHEREAS at the Session of

for the
held on

before

A. B., late of _____ labourer, having
been found guilty of _____, and judgment
thereupon given, that [*state the substance*] the Court before whom
he was tried reserved a certain question of law for the consideration
of the Supreme Court, and execution was thereupon respited in the
meantime :

This is to certify, that the said Supreme Court having met in
the _____ on the

day of

it was considered by the said Supreme Court that the judgment
aforesaid should be annulled, and an entry made on the record that
the said *A. B.* ought not, in the judgment of the said Supreme Court,
to have been convicted of the _____ aforesaid ;
and you are therefore hereby required forthwith to discharge the
said *A. B.* from your custody.

To the Sheriff of South Australia, the Gaoler of
and all others whom it may concern.

(Signed)

E. F.

Clerk of the

[Or

as the case may be.]