ANNO VICESIMO SECUNDO ET VICESIMO TERTIO

VICTORIÆ REGINÆ.

A.D. 1859.

No. 6.

An Act for consolidating the Statute Law in force in South Australia, relating to criminal procedure by indictment or information, by the Attorney-General, by virtue of the Act No. 10 of the year 1852, intituled "An Act to provide for the trial of offenders without the intervention of Grand Juries."

[Assented to, 1st September, 1859.]

Preamble.

WHEREAS it is expedient to consolidate the Statute Law in force in the Province of South Australia relating to Criminal Procedure by indictment or information, by the Attorney-General, by virtue of the Act No. 10 of the year 1852, intituled "An Act to provide for the trial of offenders without the intervention of Grand Juries:" Be it therefore Enacted, by the Governor-in-Chief of the Province of South Australia, with the advice and consent of the Legislative Council and House of Assembly of the said Province, in this present Parliament assembled, as follows—

Venue in the margin sufficient, except where local description is necessary. 14 & 15 Vict., c. 100 s. 23.

1. It shall not be necessary to state any venue in the body of any indictment, but "South Australia" named in the margin thereof shall be taken to be the venue for all the facts stated in the body of such indictment: Provided that, in cases where local description is or hereafter shall be required, such local description shall be given in the body of the indictment.

Provision for the trial of murder and manslaughter where the death or the cause of death only happens in South Australia. 9 G. 4, c. 31, s. 8.

2. Where any person, being feloniously stricken, poisoned, or otherwise hurt upon the sea, or at any place out of the said Province, shall die of such stroke, poisoning, or hurt, in the said Province, or being

being feloniously stricken, poisoned, or otherwise hurt at any place in the said Province, shall die of such stroke, poisoning, or hurt, upon the sea, or at any place out of the said Province, every offence committed in respect of any such case, whether the same shall amount to the offence of murder or of manslaughter, or of being accessory before the fact to murder, or after the fact to murder or manslaughter, may be dealt with, inquired of, tried, determined, and punished in the said Province in the same manner in all respects as if such offence had been wholly committed in that Province.

As to indictments and informations:

Court may cause records to be amended in certain cases.
9 G. 4, c. 15.
11 & 12 Vict., c. 46, s. 4.
12 & 13 Vict., c. 45, s. 10.
14 & 15 Vict., c. 100, s. 1.

3. It shall be lawful for any Judge or Court sitting on the trial of any indictable offence, if such Judge or Court shall see fit so to do, to cause the record whereon the trial is pending, when any variance shall appear between any matter in writing or in print produced in evidence and the recital or setting forth thereof upon such record, to be forthwith amended in such particular by some officer of the Court; and whenever on the trial for any felony or misdemeanor there shall appear to be any variance between the statement in the record and the evidence offered in proof thereof, in the name of any county, hundred, city, town corporate, district, township, or place mentioned or described in any such record, or in the name or description of any person therein stated or alleged to be the owner of any property, real or personal, which shall form the subject of any offence charged therein, or in the name or description of any person, therein stated or alleged to be injured or damaged, or intended to be injured or damaged by the commission of such offence, or in the Christian name or surname, or both Christian name and surname, or other description whatsoever, of any person whomsoever therein named or described, or in the name or description of any matter or thing whatsoever therein named or described, or in the ownership of any property therein named or described, or in any other particular not material to the merits of the case, it shall be lawful for the Court before which the trial shall be had, if it shall consider such variance not material to the merits of the case, and that the party accused cannot be prejudiced thereby in his defence on the merits, to order such record to be amended, according to the proof, by some officer of the Court or other person, both in that part of the record where such variance occurs and in every other part of the record which it may become necessary to amend, on such terms as to postponing the trial to be had before the same or another jury as such Court shall think reasonable; and after any such amendment as in this section mentioned the trial shall proceed, whenever the same shall be proceeded with, in the same manner in all respects, and with the same consequences, both with respect to the liability of witnesses to be indicted for perjury and otherwise, as if no such variance had occurred; and the order for the amendment shall either be endorsed on the indictment, or shall be engrossed on parchment, and filed, together with the indictment, among the records of the Court: Provided

vided that in all such cases where the trial shall be so postponed it shall be lawful for the Court to respite the recognizances of the prosecutor and witnesses, and of the party accused, and his surety or sureties, if any, accordingly, in which case the prosecutor and witnesses shall be bound to attend to prosecute and give evidence respectively, and the party accused shall be bound to attend to be tried, at the time and place to which such trial shall be postponed, without entering into any fresh recognizances for that purpose, in such and the same manner as if they were originally bound by their recognizances to appear and prosecute or give evidence at the time and place to which such trial shall have been so postponed: Provided also, that where any such trial shall be to be had before another jury the Crown and the party accused shall respectively be entitled to the same challenges as they were respectively entitled to before the first jury was sworn: Provided also, that the word "record" in this section shall include every pleading which may form part of the record.

Verdicts and judgments valid after amendments. 14&15Vict., c.100, s.2.

4. Every verdict and judgment which shall be given after the making of any amendment under the provisions of this Act shall be of the same force and effect in all respects as if the indictment had originally been in the same form in which it was after such amendment was made.

Records to be drawn up in amended form, without noticing the amendments. 14&15Vict., c.100, s.3.

5. If it shall become necessary at any time, for any purpose whatsoever, to draw up a formal record in any case where any amendment shall have been made under the provisions of this Act, such record shall be drawn up in the form in which the indictment was after such amendment was made, without taking any notice of the fact of such amendment having been made.

Indictment not to abate by dilatory plea of misnomer, &c. 7 G. 4, c. 64, s. 19.

6. No indictment shall be abated by reason of any dilatory plea of misnomer of the party offering such plea, if the Court shall be satisfied by affidavit or otherwise of the truth of such plea; but in such case the Court shall forthwith cause the indictment to be amended according to the truth, and shall call upon such party to plead thereto, and shall proceed as if no such dilatory plea had been pleaded.

What defects shall not vitiate an indictment. 14 & 15 Vict., c. 100, s. 24. 7 G. 4, c. 64, s. 20.

7. No indictment for any offence shall be held insufficient for want of the averment of any matter unnecessary to be proved, nor for the omission of the words "as appears by the record," or the words "with force and arms," or of the words "against the peace," nor for the insertion of the words "against the form of the Statute" instead of "against the form of the Statutes," or *vice versâ*, nor for that any person mentioned in the indictment is designated by a name of office or other descriptive appellation, instead of his proper name, nor for omitting to state the time at which the offence was committed in any case where time is not of the essence of the offence, nor for stating the time imperfectly, nor for stating the offence to have been committed on a day subsequent to the finding of the indictment, or on an impossible day, or on a day

day that never happened, nor for want of a proper or perfect venue, nor for want of a proper or formal conclusion, nor for want of or imperfection in the addition of any defendant, nor for want of the statement of the value or price of any matter or thing, or the amount of damage, injury, or spoil, in any case where the value or price, or the amount of damage, injury, or spoil, is not of the essence of the offence.

Formal objections to indictments when to be taken.

Court may amend formal defects.
14 & 15 Vict., c. 100, s. 25.

8. Every objection to any indictment for any formal defect apparent on the face thereof shall be taken, by demurrer, or motion to quash such indictment, before the jury shall be sworn, and not afterwards; and every Court before which any such objection shall be taken for any formal defect may, if it be thought necessary, cause the indictment to be forthwith amended in such particular by some officer of the Court or other person, and thereupon the trial shall proceed as if no such defect had appeared.

Description in indictment of offence created, &c., by statute.
7 G. 4, c. 64, s. 21.

9. Where the offence charged in any indictment for any felony or misdemeanor has been created by any statute, or subjected to a greater degree of punishment by any statute, the indictment shall, after verdict, be held sufficient to warrant the punishment prescribed by the statute if it describe the offence in the words of the statute.

Unnecessary to state that jurors have affirmed.
6 & 7 Vict., c. 85, s. 2.

10. Wherever, in any legal proceedings whatever, legal proceedings may be set out, it shall not be necessary to specify that any particular persons who acted as jurors had made affirmation instead of oath, but it may be stated that they served as jurymen, in the same manner as if no Act had passed for enabling persons to serve as jurymen without oath.

In indictments for offences committed on the property of partners, it may be laid in any one partner by name, and others.
7 G. 4, c. 64, s. 14.

11. In any indictment for any felony or misdemeanor, wherein it shall be requisite to state the ownership of any property whatsoever, whether real or personal, which shall belong to or be in the possession of more than one person, whether such persons be partners in trade, joint tenants, parceners, or tenants in common, it shall be sufficient to name one of such persons, and to state such property to belong to the person so named, and another or others, as the case may be; and whenever, in any indictment for any felony or misdemeanor, it shall be necessary to mention, for any purpose whatsoever, any partners, joint tenants, parceners, or tenants in common, it shall be sufficient to describe them in the manner in this section beforementioned; and this provision shall be construed to extend to all joint stock companies and trustees.

Upon an indictment for jointly receiving, persons guilty of separately receiving may be convicted.
14 & 15 Vict. c. 100. s. 14.

12. If upon the trial of 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 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 of such property.

13. If

13. If upon the trial of any person charged with any felony or misdemeanor it shall appear to the Jury upon the evidence that the defendant did not complete the offence charged, but that he was guilty only of an attempt to commit the same, such person 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 not guilty of the felony or misdemeanor charged, but is guilty of an attempt to commit the same; and thereupon such person shall be liable to be punished in the same manner as if he had been convicted upon an indictment for attempting to commit the particular felony or misdemeanor charged in the said indictment; and no person so tried as herein lastly mentioned shall be liable to be afterwards prosecuted for an attempt to commit the felony or misdemeanor for which he was so tried.

A party indicted for felony or misdemeanor may be found guilty of an attempt to commit the same, and punished accordingly. 14 & 15 Vict. c. 100, s. 9.

14 If upon the trial of any person for any misdemeanor it shall appear that the facts given in evidence amount in law to a felony, such person shall not by reason thereof be entitled to be acquitted of such misdemeanor; and no person tried for such misdemeanor shall be liable to be afterwards prosecuted for felony on the same facts, unless the Court before which such trial may be had shall think fit, in its discretion, to discharge the Jury from giving any verdict upon such trial, and to direct such person to be indicted for felony, in which case such person may be dealt with in all respects as if he had not been put upon his trial for such misdemeanor.

Person tried for misdemeanor not to be acquitted if the offence turn out to be felony, unless the Court so direct. 14 & 15 Vict., c. 100, s. 12.

15. Wherever it shall be necessary in any indictment to mention or make any averment as to any instrument, whether the same consists wholly or in part of writing, print, or figures, it shall be sufficient to describe such instrument by any name or designation by which the same may be usually known, or by the purport thereof, without setting out any copy or fac-simile of the whole or any part thereof, or otherwise describing the same or the value thereof.

Description of instruments in indictments. 14 & 15 Vict., c. 100, s. 7.

16. In any indictment for engraving or making the whole or any part of any instrument, matter, or thing whatsoever, or for using or having the unlawful possession of any plate, or other material upon which the whole or any part of any instrument, matter, or thing whatsoever shall have been engraved or made, or for having the unlawful possession of any paper upon which the whole or any part of any instrument, matter, or thing whatsoever shall have been made or printed, it shall be sufficient to describe such instrument, matter, or thing by any name or designation by which the same may be usually known, without setting out any copy or fac-simile of the whole or any part of such instrument, matter, or thing.

Forms of indictment for engraving plates, &c. 14 & 15 Vict., c. 100, s. 6.

17. In every indictment in which it shall be necessary to mention or make any averment as to any money or any note of the Bank of England or any other Bank it shall be sufficient to describe such money or bank-note simply as money, without specifying any particular coin or bank-note; and such allegation, so far as regards the description of the property, shall be sustained by proof of any amount

Coin and bank-notes may be described simply as money. 14 & 15 Vict., c. 100, s. 18.

amount of coin or of any bank-note, although the particular species of coin of which such amount was composed, or the particular nature of the bank-note, shall not be proved, and in cases of embezzlement and obtaining money or bank-notes by false pretences, by proof that the offender embezzled or obtained any piece of coin or any bank-note, or any portion of the value thereof, although such piece of coin or bank-note 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.

As to Removal of Indictments by *certiorari*:

Motion by party indicted for *certiorari* in term time to be made in open Court.
5 & 6 W. & M. c. 11. s. 2.

18. No writ of *certiorari* whatsoever, at the prosecution of any party indicted, shall be hereafter granted, awarded, or directed in term time out of the Supreme Court, to remove any indictment for any misdemeanor before trial had, from before the Court of Oyer and Terminer, or any other Court, unless such *certiorari* shall be granted or awarded upon motion of counsel, and by rule of Court made for the granting thereof, before the Judge or Judges of the said Court sitting in open Court.

Writs of *certiorari* granted in vacation.
5 & 6 W. & M. c. 11. s. 4.
1 & 2 Vict., c. 45.

19. In vacation, writs of *certiorari* may be granted by any Judge of the Supreme Court; and the name of such Judge, and also the name of such person at whose instance the same is granted, shall be endorsed on the said writ.

Motion by prosecutor for *certiorari* in term time to be made in open Court.
& 6 W. 4. c. 33. s. 1.

20. No writ of *certiorari* shall issue from the Supreme Court for removing into that Court any indictment from any Court of Oyer and Terminer, or Gaol Delivery, or any other Court, at the instance of the prosecutor or any other person, except Her Majesty's Attorney-General, without motion first made in the Supreme Court, or before some Judge of the Supreme Court, and leave obtained to remove such indictment, in the same manner as where such application is made on the part of any defendant.

Indictments not to be removed by *certiorari*, except on affidavit that a fair trial cannot be had.
16 & 17 Vict., c. 30., s. 4.

21. No indictment, except against bodies corporate not authorized to appear by attorney in the Court in which indictment is preferred, shall be removed into the Supreme Court by writ of *certiorari*, either at the instance of the prosecutor or of the defendant (other than the Attorney-General acting on behalf of the Crown), unless it be made to appear to the Court from which the writ is to issue, by the party applying for the same, that a fair and impartial trial of the case cannot be had in the Court below, or that some question of law of more than usual difficulty and importance is likely to arise upon the trial, or that a view of the premises in respect whereof the indictment is preferred, or a Special Jury, may be required for the satisfactory trial of the same.

Recognizance to be entered into by persons indicated before the

22. Every person proceeded against in any Court of Oyer and Terminer, Gaol Delivery, or any other Court, who shall obtain a writ

writ of *certiorari* for removing any indictment whatever to the Supreme Court, not being in custody for want of bail to answer the indictment, shall, before the allowance of such writ, enter into a recognizance before some Judge of the Supreme Court, or before a Justice of the Peace of the said Province in such sum, and with such sureties, as the Supreme Court or any such Judge shall, by endorsement on the said writ, order and direct; and if any such person shall be in custody for want of bail to answer the charge contained in such indictment he shall be detained in custody until the like recognizances as are in this section directed to be entered into previous to the allowance of such writ of *certiorari* shall have been entered into, or until he be discharged by due course of law.

Allowance of the writ of *certiorari*.
5 & 6 W. & M., c. 11, s. 2.
8 & 9 W. 3, c. 33.
5 & 6 W. 4, c. 33, s. 2.
1 & 2 Vict., c. 45, s. 1.

23. The condition of the recognizance shall be, that the party proceeded against shall at the return of such writ appear and plead to the said indictment in the Supreme Court, and shall appear from day to day in the said Court, and not depart until he shall be discharged by the said Court, and that he shall, at his own costs and charges, cause or procure the issue that shall be joined upon the said indictment, or any plea relating thereunto, to be tried at the next Criminal Sitting of the said Court after the *certiorari* shall be returnable, if the said Court shall not appoint any other time for the trial thereof, and if any other time shall be appointed by the Court, then at such other time; and that he shall give due notice of such trial to the prosecutor or his attorney (except in cases where the writ of *certiorari* is awarded at the instance of Her Majesty's Attorney-General); and further, that he shall, in case he shall be convicted, pay to the prosecutor his costs incurred subsequent to the removal of such indictment.

Form of condition of such recognizance.
5 & 6 W. & M., c. 11, s. 2.
8 & 9 W. 3, c. 33, s. 2.
5 & 6 W. 4, c. 33, s. 2.
16 & 17 Vict., c. 30, s. 5.

24. Whenever any such writ of *certiorari* shall be awarded at the instance of the prosecutor (not being Her Majesty's Attorney-General), the prosecutor shall enter into a recognizance (to be acknowledged in the same manner as is required in cases of writs of *certiorari* awarded at the instance of a defendant) with the condition following; that is to say, that the prosecutor shall pay to the defendant, in case he shall be acquitted, his costs incurred subsequent to such removal.

Special condition in recognizance of prosecutor.
16 & 17 Vict., c. 30, s. 5.

25. The costs hereinbefore respectively mentioned shall be taxed according to the course of the Supreme Court; and for the recovery thereof the person entitled thereto shall, at the expiration of ten days after demand made of the person at whose instance the writ of *certiorari* was awarded, and on oath made of such demand and of refusal of payment, have a writ of attachment granted against such last mentioned person by the said Court for such contempt; and the said Court shall and may also order the said recognizance to be estreated.

How much costs shall be taxed and recovered.
16 & 17 Vict., c. 30, s. 6.

26. The recognizances, taken as aforesaid, shall be certified into the Supreme Court with the *certiorari* and indictment to be

If recognizances not entered into, Court be-

low may proceed to trial.
5 & 6 W. & M., c. 11, s. 2.
16 & 17 Vict., c. 30, s. 7.

be there filed; and the name of the prosecutor, if he be the party grieved or injured, or some public officer, shall be endorsed on the back of the said indictment; and if the person at whose instance any writ of *certiorari* shall be awarded shall not, before the allowance thereof, enter into such recognizance as hereinbefore provided, the Court to which such writ may be directed shall and may proceed to the trial of the said indictment, as if such writ of *certiorari* had not been awarded.

Civil officers prosecuting shall have reasonable costs, if defendant convicted.
5 & 6 W. & M., c. 11, s. 3.

27. If the defendant prosecuting such writ of *certiorari* be convicted of the offence for which he was proceeded against, the Court shall give reasonable costs to the prosecutor, if he be the party grieved or injured, or be a Justice of the Peace, Mayor, Bailiff, Constable, or any other civil officer, who shall prosecute upon the account of any fact committed or done, that concerned him as officer to prosecute or present, which costs shall be taxed according to the course of the Court; and the prosecutor, for the recovery of such costs, shall, at the expiration of ten days after demand and on oath made of such demand, and of refusal of payment, have a writ of attachment granted against the defendant by the said Court for such his contempt; and the recognizance shall not be discharged till the costs so taxed shall be paid.

Certiorari may issue before indictment found.
60 G. 3, and 1 G. 4, c. 4, s. 4.

28. Where any person shall be prosecuted for any misdemeanor by indictment at any Local Court, or Session of Oyer and Terminer, or Session of Gaol Delivery, a writ of *certiorari* may be applied for and issued before such indictment has been found or filed, in the like cases, in the same manner, and upon the same terms and conditions as if such writ of *certiorari* had been applied for after such indictment had been found or filed.

When a *certiorari* is delivered to any Court to remove any indictment, such Court shall bind the prosecutor and witnesses to appear on the trial.
I. G. 4, c. 4, s. 8.

29. Whenever any writ of *certiorari* shall be delivered to any Court for the purpose of removing any indictment from such Court, such Court shall require any person who shall be attending such Court under any recognizance or subpœna to prosecute, or to prosecute and give evidence, or to give evidence, upon the trial of such indictment, to enter into a recognizance, in such sum of money as to such Court shall seem fit, to prosecute, or to prosecute and give evidence, or to give evidence, as the case may be, upon the trial of such indictment, whenever and wherever the same shall be tried.

Where a *certiorari* is delivered to any Court to remove any indictment, such Court may bail or commit any defendant who has appeared there under any recognizance.
I. G. 4, c. 4, s. 9.

30. Whenever any writ of *certiorari* shall be delivered to any Court for the purpose of removing any indictment from such Court, it shall be lawful for such Court either to require any person who shall be attending such Court under any recognizance to take his trial upon such indictment, to enter into such recognizance, with so many sureties, and in such sum or sums of money, and with such condition for his appearance and taking his trial upon such indictment, whenever and wherever the same shall be tried, as to such Court shall seem fit, or to commit such person

person to the common Gaol or House of Correction, there to remain until he shall be removed under the provisions of this Act or otherwise delivered by due course of law.

Where a *certiorari* is delivered to any Court, the Court shall not discharge any defendant then in prison. 1 G. 4, c. 4, s. 11.

31. Whenever any writ of *certiorari* shall be delivered to any Court for the purpose of removing any indictment from such Court, and any person charged with any offence by such indictment shall then be in prison, such person shall not be discharged by such Court out of prison, but shall remain therein until he shall be removed under the provisions of this Act or otherwise discharged by due course of law.

As to the jurisdiction of Local Courts:

Not to affect Local Courts.

32. This Act shall not affect any of the provisions of the Ordinance No. 5 of 1850, to establish Local Courts, or of any Act for amending the same, or of the Act No. 11 of 1853, "To make further provision for the administration of justice in respect of offences committed by the Aboriginal Natives of South Australia."

As to compelling attendance after Indictment found:

Warrant by Judge of Supreme Court, and proceedings thereon. 48 G. 3, c. 58, s. 1.

33. Whenever any person shall be charged with any offence for which he may be prosecuted in the Supreme Court, not being treason or felony, and the same shall be made appear to any Judge of the said Court by affidavit or certificate of the indictment against such person in the said Court for such offence, it shall be lawful for such Judge to issue his warrant under his hand and seal, and thereby to cause such person to be apprehended and brought before him or some other Judge, or before some one of Her Majesty's Justices of the Peace for the said Province, in order to his being bound to the Queen's Majesty, with two sufficient sureties, in such sum as in the said warrant shall be expressed, with condition to appear in the said Court at the time mentioned in such warrant, and to answer to all and singular indictments for any such offence; and in case any such person shall neglect or refuse to become bound as aforesaid, it shall be lawful for such Judge or Justice respectively to commit such person to the common Gaol of Adelaide, or of the district or place where the offence shall have been committed, or where he shall have been apprehended, there to remain until he shall become bound as aforesaid, or shall be discharged by order of the said Court in term time, or of one of such Judges in vacation; and the recognizance to be thereupon taken shall be returned and filed in the said Court, and shall continue in force until such person shall have been acquitted of such offence, or in case of conviction shall have received judgment for the same, unless sooner ordered by the same Court to be discharged; and where any person, either by virtue of such warrant of commitment as aforesaid, or by virtue of any writ of *capias ad respondendum* issued out of the said Court, is now detained or shall hereafter be committed to and detained in any Gaol for want of bail, it shall be lawful for the prosecutor of such indictment to cause a copy thereof to be delivered to such person, or to the Gaoler, Keeper, or

When prosecutor may enter plea of not guilty, and proceed to trial.

Turnkey of the Gaol wherein such person is or shall be so detained, with a notice thereon endorsed, that unless such person shall within eight days from the time of such delivery of a copy of the indictment as aforesaid, cause an appearance and also a plea or demurrer to be entered in the same Court to such indictment, an appearance and a plea of not guilty will be entered thereto in the name of such person; and in case he shall thereupon for the said space of eight days after such delivery of a copy of the indictment as aforesaid neglect to cause an appearance and also a plea or demurrer to be entered in the same Court to such indictment, it shall be lawful for the prosecutor of such indictment, upon an affidavit being made and filed in the said Court of the delivery of a copy of such indictment, with such notice endorsed thereon as aforesaid, to such person, or to such Gaoler, Keeper, or Turnkey, as the case may be, which affidavit may be made before any Judge or Commissioner of the Supreme Court authorized to take affidavits in such Courts, to cause an appearance and the plea of not guilty to be entered in the said Court to such indictment for such person, and such proceedings shall be had thereupon as if the defendant in such indictment had appeared and pleaded not guilty according to the usual course of the same Court; and if upon the trial of such indictment any defendant so committed and detained as aforesaid shall be acquitted of all the offences therein charged upon him, it shall be lawful for the Judge before whom such trial shall be had to order that such defendant shall be forthwith discharged out of custody as to his commitment as aforesaid, and such defendant shall be thereupon discharged accordingly.

As to estreating Recognizances:

Recognizances in certain cases not to be estreated without a Judge's order. 7 G. 4, c. 64, s. 31.

34. In every case where any person bound by recognizance for his appearance, or for whose appearance any other person shall be so bound, to prosecute or give evidence in any case of felony or misdemeanor, or to answer for any common assault, shall therein make default, the Officer of the Court by whom the estreats are made out shall and he is hereby required to prepare a list in writing, specifying the name of every person so making default, and the nature of the offence in respect of which every such person, or his surety, was so bound, together with the residence, trade, profession, or calling of every such person and surety, and shall in such list distinguish the principals from the sureties, and shall state the cause, if known, why each such person has not appeared, and whether by reason of the nonappearance of such person the ends of justice have been defeated or delayed; and every such officer shall and is hereby required, before any such recognizance shall be estreated, to lay such list, if at a Court of Oyer and Terminer or Gaol Delivery of the Supreme Court, before one of the Judges of that Court; if at any other Court, before the Judge or presiding Justice of such Court who are respectively authorized and required to examine such list, and to make such order touching the estreating or putting in process of any such recognizance, as shall appear to them respectively to be just; and it shall not be lawful for the officer of any Court to estreat or put in process any such recognizance without the written order of Judge or Justice, before whom respectively such list shall have been laid.

As

As to Juries *de medietate linguæ :*

35. Every alien charged with any felony or misdemeanor may be tried by a Jury *de medietate linguæ*, and, on the prayer of every alien so indicted, the Sheriff or other proper minister shall, by command of the Court, return for one-half of the Jury a competent number of aliens, if so many there be in the town or place where the trial is had, and if not then so many aliens as shall be found in the same town or place, if any ; and no such alien Juror shall be liable to be challenged for want of any qualification required by law ; but every such alien may be challenged for any other cause, in like manner as if he were duly qualified.

Right of aliens to be tried by *juries medietate linguæ.*

As to Arraignment and Pleading :

36. If any person being arraigned upon any indictment for treason or felony, shall plead thereto a plea of "Not guilty," he shall by such plea, without any further form, be deemed to have put himself upon the country for trial ; and the Court shall in the usual manner proceed to the trial of such person accordingly.

A plea of "Not Guilty," without more, shall put the prisoner on his trial by jury.
7 & 8 G. 4, c. 28, s. 1.

37. If any person, being arraigned upon or charged with any indictment for treason, felony, or misdemeanor, shall stand mute of malice, or will not answer directly to the indictment, in every such case it shall be lawful for the Court, if it shall so think fit, to order the proper officer to enter a plea of "Not guilty" on behalf of such person, and the plea so entered shall have the same force and effect as if such person had actually pleaded the same.

If he refuses to plead, Court may order a plea of "not guilty" to be entered.
7 & 8 G. 4, c. 28, s. 2.

38. In any plea of *autrefois* convict or *autrefois* acquit, it shall be sufficient for any defendant to state that he has been lawfully convicted or acquitted (as the case may be) of the said offence charged in the indictment.

Form of plea of *autrefois* convict or *autrefois* acquit.
14 & 15 Vict., c. 100, s. 28.

39. No plea setting forth any conviction or attainder shall be pleaded in bar of any indictment, unless the attainder or conviction be for the same offence as that charged in the indictment.

Attainder of another crime not pleadable.
7 & 8 G. 4, c. 28, s. 4.

40. No person prosecuted shall be entitled to traverse or postpone the trial of any indictment found against him at any Local Court, Session of Oyer and Terminer, or of Gaol Delivery : Provided, that if the Supreme Court, upon the application of the defendant or otherwise, shall be of opinion that he ought to be allowed a further time, either to prepare for his defence or otherwise, such Court may adjourn the trial of such person to the next subsequent Local Court or Session, upon such terms as to bail or otherwise as to the Supreme Court shall seem meet, and may respite the recognizances of the prosecutor and witnesses accordingly, in which case the prosecutor and witnesses shall be bound to attend to prosecute and give evidence at such subsequent Local Court or Session, without entering

Provision as to traversing indictments.
14 & 15 Vict., c. 100, s. 27.

entering into any fresh recognizance for that purpose: Provided, that nothing in this section contained shall extend to any prosecution by information in the nature of a *quo warranto.*

As to charging the Jury.

Jury shall not inquire of prisoners' lands, &c., nor whether he fled. 7 & 8 G. 4, c. 28, s. 5.

41. Where any person shall be indicted for treason or felony, the Jury impannelled to try such person shall not be charged to inquire concerning his lands, tenements, or goods, nor whether he fled for such treason or felony.

Upon trial of persons for subsequent offences, the previous conviction not to be stated to the jury, or given in evidence, until after a verdict of guilty of the subsequent offence. 14 & 15 Vict., c. 19, s. 9.

42. Where any person is proceeded against under any Act passed or to be passed for any offence committed after one or more previous conviction or convictions, it shall not be lawful, on the trial of such person for such subsequent offence, where a plea of not guilty shall have been entered on his behalf, 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 indictment any previous conviction shall be stated, the reading of such statement shall be deferred until after such finding: 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 have been returned, and the Jury shall inquire concerning such previous conviction or convictions at the same time that they shall inquire concerning such subsequent offence.

As to defence by Counsel:

Prisoners may make their defence by counsel. 6 & 7 W. 4, c. 114, s. 1.

43. All persons tried for felonies shall be admitted, after the close of the case for the prosecution, to make full answer and defence thereto, by Counsel learned in the law, or by Attorney practising as Counsel.

Copies of depositions to be allowed to prisoners. 6 & 7 W. 4, c. 114, s. 3.

44. All persons who, after the passing of this Act, shall be held to bail or committed to prison for any indictable offence, shall be entitled to require and have, on demand (from the person who shall have the lawful custody thereof, and who is hereby required to deliver the same), copies of the examinations of the witnesses respectively upon whose depositions they have been so held to bail or committed to prison, on payment of a reasonable sum for the same, not exceeding twopence for each folio of ninety words, or by the order of a Judge without the payment of any fee: Provided that if such demand shall not be made before the day appointed for the commencement of the Session at which the trial of the person on whose behalf such demand shall be made is to take place, such person shall not be entitled to have any copy of such examination of witnesses, unless the Judge or other person to preside at such trial shall be of opinion that such copy may be made and delivered without delay or inconvenience to such trial; but it shall nevertheless

less be competent for such Judge or other person presiding at such trial, if he shall think fit, to postpone such trial on account of such copy of the examination of witnesses not having been previously had by the party charged.

Prisoners entitled to inspect depositions on trial.
5 & 6 W. 4, c. 114, s. 4.

45. All persons under trial shall be entitled at the time of their trial to inspect, without fee or reward, all depositions (or copies thereof) which have been taken against them, and returned into the Court before which such trial shall be had.

As to Evidence:

On trials for perjury and subornation, a certificate of the trial of the indictment on which the perjury was committed sufficient evidence of such trial.
14 & 15 Vict., c. 100, s. 22.

46. A certificate containing the substance and effect only (omitting the formal part) of the indictment and trial for any 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 such indictment was tried, or by the deputy of such Clerk or other officer, shall upon the trial of any indictment for perjury or subornation of perjury be sufficient evidence of the trial of such indictment for felony or misdemeanor, without proof of the signature or official character of the person appearing to have signed the same.

As to persons indicted for a subsequent Felony:

Punishment on conviction for a subsequent felony.
7 & 8 G. 4, c. 28, s. 11.

47. Whosoever shall be convicted of any felony, not punishable with death, committed after a previous conviction for felony, shall on such subsequent conviction be liable, at the discretion of the Court, to be imprisoned for life or for any less term, with or without hard labor, and with or without solitary confinement, for any portion or portions of his imprisonment, or of his imprisonment with hard labor, not exceeding one month at any one time, and not exceeding three months in any one year, and also, if a male, under the age of fourteen years, to be once, twice, or thrice publicly or privately whipped, if the Court shall so think fit, in addition to any such imprisonment: Provided that no person shall be liable to be imprisoned for more than ten years, by reason only of a conviction for larceny after a previous conviction for felony.

Punishment for larceny after previous conviction for felony.
16 & 17 Vict., c. 99, s. 12.

Form of indictment for subsequent felony, and proof of conviction.
7& 8 G 4, c. 28, s. 11

48. In any indictment for any such felony as in the last preceding section mentioned, committed after a previous conviction for felony, it shall be sufficient to state that the offender was at a certain time and place convicted of felony, without otherwise describing the previous felony; and a certificate containing the substance and effect only (omitting the formal part) of the indictment and conviction for the previous felony, 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 first 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 first conviction, without proof of the signature or official character of the person appearing to have signed the same.

As to insane Persons tried for Offences:

When person charged with treason, felony, or misdemeanor, is acquitted on the ground of insanity, jury to find so specially, and the Court to order him to be kept in custody till the Governor's pleasure be known.
39 & 40 G. 3, c. 94, s. 1.
3 & 4 Vict., c. 54, s. 3.

49. In all cases where it shall be given in evidence upon the trial of any person charged with treason, felony, or misdemeanor, that such person was insane at the time of the commission of such offence, and such person shall be acquitted, the Jury shall be required to find specially whether such person was insane at the time of the commission of such offence, and to declare whether such person was acquitted by them on account of such insanity; and if they shall find that such person was insane at the time of the committing of such offence, the Court before whom such trial shall be had shall order such person to be kept in strict custody, in such place and in such manner as to the Court shall seem fit, until the Governor's pleasure shall be known; and it shall thereupon be lawful for the Governor to give such order for the safe custody of such person so found to be insane, during his pleasure, in such place and in such manner as to him shall seem fit.

Where person indicted for any offence is found to be insane by a jury impannelled on arraignment, the Court to order him to be kept in custody till the Governor's pleasure be known.
39 & 40 G. 3, c. 94, s. 2.

50. If any person charged with any offence shall be insane, and shall upon arraignment be found so to be by a Jury lawfully impannelled for that purpose, so that such person cannot be tried upon the indictment, or if upon the trial of any person so charged such person shall appear to the Jury charged with the indictment to be insane, it shall be lawful for the Court before whom any such person shall be brought to be arraigned or tried as aforesaid to direct such finding to be recorded, and thereupon to order such person to be kept in strict custody until the Governor's pleasure shall be known; and if any person charged with any offence shall be brought before any Court to be discharged for want of prosecution, and such person shall appear to be insane, it shall be lawful for such Court to order a Jury to be impannelled to try the sanity of such person; and if the Jury so impannelled shall find such person to be insane, it shall be lawful for the Court to order such person to be kept in strict custody, in such place and in such manner as to such Court shall seem fit, until the Governor's pleasure shall be known; and in all cases of insanity so found it shall be lawful for the Governor to give such order for the safe custody of such person so found to be insane, during his pleasure, in such place and in such manner as to him shall seem fit.

As to arrest of Judgment:

What shall not be sufficient to stay or reverse judgment after verdict.
7 G. 4, c. 64, s. 21.

51. No judgment after verdict upon any indictment for any felony or misdemeanor shall be stayed or reversed for want of a similiter, nor by reason that the Jury process has been awarded to a wrong officer upon an insufficient suggestion, nor for any misnomer or misdescription of the officer returning such process or of any of the Jurors, nor because any person has served upon the Jury who has not been returned as a Juror by the Sheriff or other officer.

As to Judgment:

When prisoner reprieved without judgment of death given against him, such judgment may be given at any time thereafter by Justices of Gaol Delivery. 1 Edw. 6, c. 7, s. 5.

52. In case any person shall be found guilty of treason or felony, for which judgment of death may ensue, and shall be reprieved without judgment at that time given against him, the Supreme Court, or the Judge, or Judges who at any time thereafter shall be assigned by the Governor to deliver the Gaol where such person found guilty shall remain, shall have full power and authority to give judgment of death against such person so found guilty and reprieved as such Court or Judge, or Judges before whom such person was found guilty might have done if such person had been tried before him or them.

Court may abstain from pronouncing sentence of death on persons convicted of any felonies. 4 G. 4, c. 48, s. 1. 6 & 7 W. 4, c. 30, s. 2.

53. Whenever any person shall be convicted of any felony punishable by death, except murder, and the Court before which such offender shall be convicted shall be of opinion that under the particular circumstances of the case such offender is a fit and proper subject to be recommended for the Royal mercy, it shall be lawful for such Court, if it shall think fit so to do, to direct the proper officer then being present in Court to require and ask, whereupon such officer shall require and ask, if such offender has or knows anything to say why judgment of death should not be recorded against such offender; and in case such offender shall not allege any matter or thing sufficient in law to arrest or bar such judgment, the Court shall and may and is hereby authorized to abstain from pronouncing judgment of death upon such offender, and instead of pronouncing such judgment to order the same to be entered of record, and thereupon such proper officer shall and may and is hereby authorized to enter judgment of death on record against such offender in the usual and accustomed form, and in such and the same manner as is now used, and as if judgment of death had actually been pronounced in open Court against such offender, by the Court before which such offender shall have been convicted.

Record of judgment to have the same effect as if pronounced. 4 G. 4, c. 48, s. 2.

54. A record of every such judgment so entered as in the last preceding section mentioned shall have the like effect, to all intents and purposes, and be followed by the same consequences, as if such judgment had actually been pronounced in open Court, and the offender had been reprieved by the Court.

Justices of the Peace, under a new Commission, shall have the same powers as the Justices under a former Commission. 11 H. 6, c. 6.

55. No plea or process which shall have been made upon any indictment under any Commission of the Peace shall be discontinued by any new Commission of the Peace, but every such plea and process shall stand in force, and the Justices of the Peace assigned by such new Commission of the Peace, after that they shall have the same indictments, informations, pleas, and processes before them, shall have full power and authority to continue the said pleas and processes, and the same pleas and processes, and all that depends upon them, to hear and finally determine, in the same manner as the other Justices might and ought to have done if no new Commission had been made.

56. Wherever

Sentence upon person already imprisoned under another sentence.
7 & 8 G. 4, c. 28, s. 10.

56. Wherever sentence shall be passed for felony on a person already imprisoned under sentence for another offence, it shall be lawful for the Court to award imprisonment for the subsequent offence, to commence at the expiration of the imprisonment to which such person shall have been previously sentenced.

Punishment of hard labor for certain offences.
14 & 15 Vict., c. 100, s. 29.
3 G. 4, c. 114.

57. Whenever any person shall be convicted of any one of the offences following, that is to say—any attempt to commit a felony; any riot; keeping a common gaming-house, a common bawdy-house, or a common ill-governed and disorderly house; any cheat or fraud punishable at common law; any conspiracy to cheat or defraud, or to extort money or goods, or falsely to accuse of any crime, or to obstruct, prevent, pervert, or defeat the course of public justice; any escape or rescue from lawful custody on a criminal charge; any public and indecent exposure of the person; any public selling, or exposing for public sale or to public view, of any obscene book, print, picture, or other indecent exhibition; it shall be lawful for the Court to sentence the offender to be imprisoned in the common Gaol or House of Correction for any term now warranted by the law relating to each particular offence, and also to be kept to hard labor during the whole or any part of such term of imprisonment.

As to Costs, Expenses, and Compensations:

Governor, with the advice of the Executive Council, may make regulations as to costs, expenses, and compensations, and as to certificates to be granted by examining Magistrate.
14 & 15 Vict., c. 55, s. 5.

58. It shall be lawful for the Governor, with the advice and consent of the Executive Council, by a proclamation to be published in the *Government Gazette*, to make regulations as to the rates and scales of payment of all or any costs, expenses, and compensations to be allowed or ordered to be paid under this Act or any other Act to prosecutors and witnesses, and to persons attending the Court in obedience to any recognizance or subpœna, in cases of criminal prosecutions, and (except as hereinafter mentioned) to persons who may have been active in or towards the apprehension of persons charged with offences, and also regulations as to the rates or scales of payment according to which certificates may be granted by the examining Magistrate in respect of the expenses of any prosecutor or witness for the prosecution, or other person, of attending before such Magistrate, and of any compensation for trouble and loss of time therein, in any case where any Court or Judge is empowered under this Act or any other Act to order payment of such expenses or compensation, and concerning the forms of such certificates, and the details or particulars to be inserted therein of the expenses, trouble, and loss of time to which such certificates relate; and from time to time to alter any such regulations, or to make new regulations in relation to any of the matters in this section before mentioned, and such regulations for the time being shall be binding on all Courts and persons whomsoever.

Court may order payment of expenses of prosecution in all cases of felony, and in

59. The Court before which any person shall be prosecuted or tried for any felony or such misdemeanor as in this section after-mentioned is hereby authorized and empowered, at the request of the prosecutor

certain cases of misdemeanor.
7 G. 4, c. 64, ss. 22, 23.
1 Vict., c. 44.
12 & 13 Vict., c. 76, s. 2.
14 & 15 Vict., c. 11, s. 2.
14 & 15 Vict., c. 19, s. 4.
14 & 15 Vict., c. 55, ss. 2, 3.

prosecutor or of any other person who shall appear on recognizance or subpœna to prosecute or give evidence against any person accused of any felony, or against any person indicted for any assault with intent to commit felony; or for any attempt to commit felony; or for any riot; or for any misdemeanor for receiving any stolen property, knowing the same to have been stolen; or for any assault upon a Peace Officer in the execution of his duty, or upon any person acting in aid of such officer, or lawfully authorized to apprehend any offender; or for any neglect or breach of duty as a Peace Officer; or for any assault committed in the pursuance of any conspiracy to raise the rate of wages; or for obtaining any property by false pretences; or for wilful and indecent exposure of the person; or for wilful and corrupt perjury or subornation of perjury; or for endeavoring to conceal the birth of a child; or for procuring by false pretences, false representations, or other fraudulent means, the defilement of any woman or child under the age of twenty-one years; or for unlawfully and carnally knowing and abusing any girl, being above the age of ten years and under the age of twelve years; or for unlawfully taking or causing to be taken any unmarried girl, being under the age of sixteen years, out of the possession and against the will of her father or mother, or of any other person having the lawful care or charge of her; or for conspiring to charge any person with any felony, or to indict any person for any felony; or for conspiring to commit any felony; or for being found at night armed with intent to break and enter a dwelling-house or other building, or with implements of housebreaking, or disguised, or in a dwelling-house or other building, with intent to commit a felony; or for maliciously inflicting grievous bodily harm, with or without a weapon; or for maliciously stabbing, cutting, or wounding; or for the wilful refusal or neglect to provide for or for maliciously assaulting any apprentice or servant; or for any assault brought before any Justices for summary decision, in which the Justices shall be of opinion that the same is a fit subject for prosecution by indictment, and shall bind the complainant and witnesses accordingly; to order payment unto the prosecutor of the costs and expenses which such prosecutor shall incur in preferring the indictment, and also payment to the prosecutor and witnesses for the prosecution of such sums of money as to the Court shall seem reasonable and sufficient to reimburse such prosecutor and witnesses for the expenses they shall have severally incurred in attending before the examining Magistrate, and in otherwise carrying on such prosecution, and also to compensate them for their trouble and loss of time therein; and although no information shall be established it shall be lawful for the Court, where any person shall, in the opinion of the Court, *bonâ fide* have attended the Court in obedience to any such recognizance or subpœna, to order payment unto such person of such sum of money as to the Court shall seem reasonable and sufficient to reimburse such person for the expenses which he shall have *bonâ fide* incurred by reason of attending before the examining Magistrate, and by reason of such recognizance or subpœna, and also to compensate such person for trouble and loss of time; and the amount of the expenses of attending before

the examining Magistrate, and the compensation for trouble and loss of time therein, shall be mentioned in the certificate of the Magistrate granted before the trial or attendance in Court, if such Magistrate shall think fit to grant the same.

Order for payment to be made out by proper officer of Court, and paid by Sheriff. 7 G. 4, c. 64, s. 24.

60. Every order for payment to any prosecutor or other person as in the last preceding section mentioned shall be forthwith made out and delivered by the proper officer of the Court unto such prosecutor or other person, and shall be made upon the Sheriff, who is hereby authorized and required, upon sight of every such order, forthwith to pay to the person named therein, or to any one duly authorized to receive the same on his behalf, the money in such order mentioned, and shall be allowed the same in his accounts.

Courts of Oyer and Terminer may order compensation to those who have been active in the apprehension of certain offenders. 7 G. 4, c. 64, s. 28.

61. Where any person shall appear to any Court of Oyer and Terminer or Gaol Delivery to have been active in or towards the apprehension of any person charged with murder, or with feloniously and maliciously shooting at or attempting to discharge any kind of loaded fire-arms at any other person, or with stabbing, cutting, wounding, or poisoning, or with administering anything to procure the miscarriage of any woman, or with rape, or with burglary, or felonious housebreaking, or with robbery, or with arson, or with horse-stealing, bullock-stealing, or sheep-stealing, or stealing of any other description of cattle or stock, or with being accessory before the fact to any of such offences, or with receiving any stolen property, knowing the same to have been stolen, every such Court is hereby authorized and empowered, in any such case, to order the Sheriff to pay to the person who shall appear to the Court to have been active in or towards the apprehension of any person charged with any such offence such sum of money as to the Court shall seem reasonable and sufficient to compensate such person for his expenses, exertions, and loss of time in or towards such apprehension: Provided that nothing herein contained shall prevent any of the said Courts from also allowing to any such persons, if prosecutors or witnesses, such costs, expenses, and compensation as Courts are by this Act empowered to allow to prosecutors and witnesses respectively.

Such orders to be paid by the Sheriff, who may obtain repayment on application to Treasury. 7 G. 4, c. 64, s. 29.

62. The order for payment to any person in respect of such apprehension as in the last preceding section is mentioned shall be forthwith made out and delivered by the proper officer of the Court unto such person, and the Sheriff for the time being is hereby authorized and required, upon sight of the order, forthwith to pay to such person, or to any one duly authorized on his behalf, the money in such order mentioned; and every such Sheriff may duly apply for repayment of the same to the Treasurer, who, upon inspecting such order, together with the acquittance of the person entitled to receive the money thereon, shall forthwith order repayment to the Sheriff of the money so by him paid, without any fee or reward whatever.

Where man killed in attempting to arrest

63. If any man shall happen to be killed in endeavoring to apprehend

prehend any person who shall be charged with any offence in the fifty-second section of this Act mentioned, it shall be lawful for the Court before whom such person shall be tried to order the Sheriff to pay, from any funds which may have been provided for that purpose by Parliament, to the widow of the man so killed, in case he shall have been married, or to his child or children in case his wife shall be dead, or to his father or mother in case he shall have left neither wife nor child, such sum of money as to the Court in its discretion shall seem meet; and the order for payment of such money shall be made out and delivered by the proper officer of the Court unto the party entitled to receive the same, or unto some one on his behalf to be named in such order by the direction of the Court; and every such order shall be paid by and repaid to the Sheriff in the manner in the sixty-second section of this Act mentioned.

certain offenders, Court may order compensation to his family.
7 G. 4, c. 64, s. 30

64. Where any Court or Judge empowered under this Act or any other Act in this behalf shall order payment to any prosecutor or witness for the prosecution, or to any person attending the Court in obedience to any recognizance or subpœna, in the case of any prosecution for felony or misdemeanor, or of any costs or expenses incurred, or of any compensation for trouble or loss of time, or order payment to any person who may appear to have been active in or towards the apprehension of any person charged with any offence, of compensation for expenses, exertions, and loss of time, in or towards such apprehension, the amount of such costs, expenses, or compensation shall be ascertained by the proper officer of the Court according to the regulations made as in the fifty-eighth section of this Act mentioned; and where the expenses and compensation in respect of attending before any examining Magistrate are so ordered to be paid, such expenses and compensation shall also be ascertained by the proper officer of the Court according to such regulations, but the amount thereof as so ascertained shall not exceed the amount mentioned in the certificate of the examining Magistrate; and, save as aforesaid, the certificate of any examining Magistrate shall not be conclusive as to the amount to be allowed for expenses of attendance before him, or for compensation for trouble or loss of time therein: Provided that nothing in this Act, or in any regulations made under this Act, shall interfere with or affect the power of any Court to order payment to any person, who shall appear to such Court to have shown extraordinary courage, diligence, or exertion in or towards any such apprehension, as in the sixty-first section of this Act mentioned, of such sum as such Court shall think reasonable and adjudge to be paid in respect of such extraordinary courage, diligence, or exertion.

Expenses and compensation to be ascertained according to such regulations, and Magistrate's certificate not to be conclusive.
14 & 15 Vict., c. 55, ss. 6, 7.

Not to interfere with payments for extraordinary courage, &c.

As to restitution of stolen property:

65. If any person guilty of any felony or misdemeanor in stealing, taking, obtaining, or converting, or in knowingly receiving any property whatsoever, shall be indicted for any such offence, by or on behalf of the owner of the property, or his executor or administrator, and convicted thereof, in such case the property shall be restored to the

The owner of stolen property prosecuting thief or receiver to conviction shall have restitution of his property.
7 & 8 G. 4, c. 29, s. 57

the owner or his representative, and the Court before whom any such person shall be so convicted 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 a valuable security shall have been *bonâ fide* paid or discharged by some person liable to the payment thereof, or, being a negotiable instrument, shall have been *bonâ fide* taken or received, by transfer or delivery, by some person, for a just and valuable consideration, without any notice, or without any reasonable cause to suspect that the same had by any felony or misdemeanor been so stolen, taken, obtained, or converted, in such case the Court shall not award or order the restitution of such security.

As to the Court of Criminal Appeal:

Questions of law may be reserved for consideration of Judges. 11 & 12 Vict., c. 78, s. 1.

66. When any person shall have been convicted of any treason, felony, or midemeanor before any Judge of the Supreme Court, or Court of Oyer and Terminer or Gaol Delivery, or before any Local Court, the Judge or Court, Justice 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, 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, 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 the Court shall think fit, conditioned to appear at such time or times 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 Judges. 11 & 12 Vict., c. 78, s. 2.

67. The Judge or Court before which the question shall arise, shall thereupon state, in a case signed in the manner now usual, any question 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 to the Supreme Court; and such Court shall thereupon have full power and authority to hear and finally determine the said question, and thereupon to reverse, affirm, or amend any judgment which shall have been given on the indictment or information on the trial whereof such question shall have arisen, or to avoid such judgment, and to order an entry to be made on the record, that in the judgment of the 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 at some other sitting of the Local Court where the question arose, 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 Supreme Court, shall be certified under the hand of the presiding Chief Justice or senior puisne Judge, to the Clerk of Arraigns, or Associate, or his deputy, or to the Clerk of the Peace, or the Clerk of the Local Courts, as the case may be, who shall

shall enter the same on the original record in proper form; and a certificate of such entry, under the hand of the Clerk of Arraigns, or Associate, or his deputy, or the Clerk of the Peace or his deputy, as the case may be, in the form, as near as may be, or to the effect, mentioned in the next succeeding section of this Act, 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 next Court of Oyer and Terminer or Gaol Delivery, or the Justices at the next sitting of the Local Court shall vacate the recognizance of bail, if any; and if the Court of Oyer and Terminer, or Gaol Delivery, or Local Court shall be directed to give judgment, the said Court shall proceed to give judgment at the next Session.

Form of certificate. 11 & 12 Vict., c. 78. Sched.

68. The certificate mentioned in the last preceding Section shall be in the following form, or to the same effect:—

Whereas at (describe the Court) held on before , or at and A.B., late of laborer, having been found guilty of felony, 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 Judges of the said Supreme Court having met at the Supreme Court House, in the City of Adelaide, on the day of it was considered by the said Judges there 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 Judges, to have been convicted of the felony aforesaid; and you are therefore hereby required forthwith to discharge the said A.B. from your custody.

(Signed) W.H.
Clerk of Arraigns of the Supreme Court.

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

Quorum of Judges.

69. The jurisdiction and authorities to review by this Act given to the Judges of the Supreme Court shall and may be exercised by the said Judges or two of them (but if by two only, the Judge before whom the case in which the question of law arose shall not be one) and the judgment or judgments of the said Judges 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, in like manner as the judgments of the Supreme Court are now delivered.

Their judgment to be delivered in open Court. 11 & 12 Vict., c. 78, s. 3.

70. The

Case or certificate may be sent back for amendment. 11 & 12 Vict., c. 78, s. 4.

70. The Judges, 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.

As to other Matters:

Interpretation of terms.

71. In the construction of this Act, and of all Acts relating to the criminal law of the said Province, heretofore or hereafter to be passed, the word "indictable" shall be understood to mean liable to prosecution by indictment or information; the word "indictment" shall be understood to include "information," "inquisition," and "presentment," as well as indictment; the word "indictment" shall be understood to mean "charged by indictment or information; and the terms "finding of the indictment" shall be understood to include "the taking of an inquisition," "the exhibiting of an information," and "the making a presentment;" and the word "person" shall be understood to include bodies politic and corporate as well as individuals; and the word "property" shall be understood to include goods, chattels, money, valuable securities, and every other matter or thing, whether real or personal, upon or with respect to which any offence may be committed.

Special jurors not exempted.

72. From and after the passing of this Act, so much of the Ordinance No. 12 of 1843, "To Regulate Trials by Jury in South Australia," as provides "That no person in the Special Jurors' list thereinafter mentioned shall be liable to serve as Common Jurors at any Criminal Sittings of the Supreme Court or at the General Sessions of the Peace" shall be, and the same is hereby repealed.

Commencement of Act. Persons committing offences to be thenceforth proceeded against under this and other Criminal Law and Consolidation Acts.

73. This Act shall commence and take effect from the passing thereof: And thenceforth, if any person shall commit or be charged with any offence punishable under any of the Acts of this present Session of Parliament for consolidating the Statute Law in force in the said Province relating to indictable offences, such person shall be proceeded against and punished under such of the provisions of the said several Acts and of this Act as are applicable thereto, and not otherwise.

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