



ANNO QUARTO

GEORGII V REGIS.

A.D. 1913.

No. 1133.

An Act to further amend the Law as to the Procedure with respect to Indictable Offences, and for other purposes, including certain amendments of the Ordinance No. 15 of 1849.

[Assented to, December 18th, 1913.]

BE it Enacted by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. This Act may be cited as "The Justices Procedure (Indictable Offences) Amendment Act, 1913." Short title.

2. This Act is incorporated with the Ordinance No. 15 of 1849, the "Minor Offences Procedure Act, 1869," and Part I. of "The Justices Procedure Amendment Act, 1883-4," and any Acts amending those Acts or any of them. Incorporation with other enactments.

3. In this Act the term "Justice" means Justice of the Peace in and for the State of South Australia, and includes a Special Magistrate, and also includes two or more Justices. Interpretation.

4. (1) Notwithstanding anything contained in any Act, in any case where a person appears before any Justice charged with an indictable offence (other than a capital offence or manslaughter), and the charge is not dealt with summarily under the "Minor Offences Procedure Act, 1869," it shall be lawful for such Justice, after the examination of all the witnesses on the part of the prosecution has been completed, and before putting the question required by section 3 of "The Justices Procedure Amendment Act, 1883-4" to ask the person so charged whether he wishes to plead to the charge. Justice may commit for sentence only, if accused pleads guilty.

No. 298 of 1883-4.

The Justices Procedure (Indictable Offences) Amendment Act.—1913.

(2) If such person thereupon signifies a desire to plead to the charge, the Justice shall read the charge to him, and shall say to him "Are you guilty or not guilty of the offence with which you are charged?"

Cf. 15 of 1849, s. 15.
No. 298 of 1883-4.

(3) If such person thereupon pleads guilty, such Justice shall not put the said question required by section 3 of "The Justices Procedure Amendment Act, 1883-4," but

(a) shall, by his warrant, commit such person to the gaol specified by such Justice to appear for sentence before the next Court of oyer and terminer, or general gaol delivery, to be held at the place specified in that behalf by such Justice, or at such other place as may thereafter be ordered by a Judge of the Supreme Court, and in the meantime to be imprisoned and safely kept in such gaol, or

(b) may, in manner provided by the said Ordinance No. 15 of 1849, *mutatis mutandis*, admit such person to bail to appear for sentence as aforesaid.

(4) If such person when asked, as provided by subsection (1) hereof, whether he wishes to plead to the charge, does not signify a wish so to do or pleads not guilty, the Justice shall put the said question required by section 3 of "The Justices Procedure Amendment Act, 1883-4," and the proceedings shall continue as if this Act had not been passed.

(5) When any person is committed or admitted to bail under this section by a Justice sitting within any Circuit District within the meaning of the Act No. 6 of 1868-9, he shall be committed or bailed to appear at the first Court of oyer and terminer, or general gaol delivery, to be held within the said District.

(6) Sections 10 and 12 of the last-mentioned Act, *mutatis mutandis*, shall apply with respect to any person committed or admitted to bail under this section to the same extent as if such person were committed for trial.

(7) When any person has been committed under this section, he may be admitted to bail to appear for sentence as aforesaid, in the same manners and subject to the same conditions, *mutatis mutandis*, as if he had been committed for trial.

Particulars to be forwarded to Court.

Cf. 15 of 1849, s. 11.

5. When a person charged pleads guilty, as mentioned in section 4 of this Act, the Justice shall cause a record of such plea, and of the committal or admission to bail consequent thereon, to be put into writing, and shall deliver such writing, or cause the same to be delivered, with the written information (if any) and the depositions, to the proper officer of the Court referred to in the said section 4, before or at the opening of the said Court, on the first sitting thereof, or at such other time as the Judge who is to preside in such Court may order.

Witness to character may be called by person pleading guilty before Justice.

6. (1) When any person is committed or admitted to bail under section 4 of this Act, such person may, if he so desires, call any witnesses as to his character.

(2) If

The Justices Procedure (Indictable Offences) Amendment Act.—1913.

(2) If any such witnesses are called, the Justice shall, in the presence of such person, take their depositions, on oath or affirmation, on examination, cross-examination, and re-examination, and shall put the same into writing; and their said depositions shall be read over to, and be signed by, such witnesses respectively, and shall also be signed by the Justice.

(3) The Justice shall deliver such depositions, or cause them to be delivered, as mentioned in section 5 of this Act, with the depositions and writing mentioned in that section.

(4) Nothing in this section shall be deemed to take away or in any way limit, the power of the Judge before whom such person appears for sentence to hear witnesses as to the character of such person or to hear any statement by or on behalf of such person.

7. When any Justice has committed any person, or admitted any person to bail, under section 4 of this Act, it shall nevertheless be lawful for such Justice to bind, by recognizance, the prosecutor and all other witnesses to appear at the Court before which such person is to appear for sentence in the same manner as if such person had been committed for trial:

Attendance of witnesses dispensed with.

Cf. *ibid.* s. 11.

Provided that, unless such Justice, when binding the prosecutor or any witness as aforesaid otherwise directs, the prosecutor's or such witness's recognizance so to appear shall be void unless such person, within the time and in the manner prescribed by section 9 of this Act, withdraws his plea of guilty and substitutes therefor a plea of not guilty.

8. When a Justice issues a warrant under subsection (3) of section 4 of this Act, section 16 of the Ordinance No. 15 of 1849 shall thereupon apply as if the warrant were such a warrant as is referred to in that section.

Execution of warrant of commitment under this Act.

9. When a person has been committed or admitted to bail under section 4 of this Act, he may nevertheless by notice in writing delivered to the Attorney-General not later than seven clear days before the day of the first sitting of the Court referred to in the said section 4, withdraw his plea of guilty and substitute therefor a plea of not guilty: Provided that in such case any Judge presiding over such Court may adjourn or postpone the trial to such day as he thinks proper.

When a plea of guilty under section 4 may be withdrawn.

(2) Thereupon such person—

(a) if committed to appear for sentence shall be deemed to have been committed for trial, and the warrant of commitment shall be construed accordingly:

(b) if admitted to bail to appear for sentence, shall be deemed to have been admitted to bail to appear for trial, and any recognizance or other undertaking (whether in writing or otherwise) by whomsoever entered into, in connection with the admission to bail, shall be construed accordingly.

(3) Upon

The Justices Procedure (Indictable Offences) Amendment Act.—1913.

(3) Upon receipt of any notice under this section it shall be the duty of the Attorney-General to cause the same to be delivered to the proper officer mentioned in section 5 of this Act.

Cf. Imp. Act.
61, ib. 2, Vic. c. 36,
s. 1 (b).

(4) At the trial of any person who has under this section substituted a plea of not guilty the fact that he had pleaded guilty as mentioned in section 4 of this Act, to the charge on which he is being tried, shall not be put in evidence, nor be made the subject of any comment to the jury by the prosecution.

Court to sentence
accordingly.

10. Subject to the provisions of section 9 of this Act upon the appearance for sentence of a person committed or admitted to bail under section 4 of this Act, the Court may pass sentence on such person, or otherwise deal with him, as if he had been arraigned and had pleaded guilty in such Court, and all the same consequences shall ensue as if he had been so arraigned and had so pleaded guilty: Provided that if, for any reason, it appears to the presiding judge that the plea of guilty should be withdrawn, he may advise such person to withdraw such plea; and if such plea is thereupon withdrawn such person shall be deemed to be committed for trial, and may, forthwith or after adjournment, and notwithstanding that no information may have been filed in such Court, be arraigned, and the case shall proceed in the usual course.

Amendment of
Ordinance No. 15
of 1849, s. 7.

11. (1) Section 7 of the Ordinance No. 15 of 1849 is hereby amended as follows:—

Power to summon
witnesses for defence.

(a) In line 4, the words “or for the defence” are added after the word “prosecution”;

(b) In line 6, the words “against the accused” are struck out.

Consequent amend-
ment of forms.

(2) The forms in Schedules L1, L2, L3, and L4 to the said Ordinance are hereby amended by adding “(or defence)” after the word “prosecution” therein respectively.

Amendment of
informations and
complaints.

12. Notwithstanding anything contained in any Act, in any proceedings which are regulated by the Acts mentioned or referred to in section 2 of this Act and this Act, or by any one or more of such Acts (including in that expression, this Act)—

I. it shall be sufficient in any information if such information gives the accused a reasonably clear and intelligible statement of the offence with which he is charged;

II. the Court or the Justice before which or whom any information is heard, or before which or whom it comes on appeal or otherwise, shall amend such information if in its or his opinion it is defective or ought to be amended;

III. no conviction or warrant of commitment shall be held void or invalid, or be quashed, for any defect in substance or form;

IV. the

The Justices Procedure (Indictable Offences) Amendment Act.—1913.

17. the Court or Justice by which or whom any conviction or warrant of commitment is made or issued, or before which or whom it comes on appeal or otherwise, may amend such conviction or warrant at any time after the same has been signed and before it has been executed, upon such (if any) terms as to costs or otherwise as such Court or Justice may think fit.

In the name and on behalf of His Majesty, I hereby assent to this Bill.

DAY H. BOSANQUET, Governor.