

VICTORIA.



ANNO DECIMO SEXTO

VICTORIÆ REGINÆ.

By His Excellency CHARLES JOSEPH LA TROBE, ESQUIRE, Lieutenant Governor of the Colony of Victoria and its Dependencies, with the advice and consent of the Legislative Council.

No. VII.

An Act for improving the Administration of Criminal Justice. [Assented to 15th September, 1852.]

WHEREAS it is expedient to simplify the pleading in Criminal Cases, and to improve the administration of Criminal Justice: Be it therefore enacted, by His Excellency the Lieutenant Governor of the Colony of Victoria, by and with the advice and consent of the Legislative Council thereof, as follows:—

I. After the passing of this Act, the eleventh section of the Act passed in the first year of the reign of Her present Majesty Queen Victoria, intituled, "*An Act to amend the Laws relating to Offences against the Person,*" and so much of an Act of the Governor and Legislative Council of the Colony of New South Wales, passed in the second year of the reign of Her present Majesty Queen Victoria, intituled, "*An Act for the adopting certain Acts of Parliament passed in the first year of the Reign of her Majesty Queen Victoria, in the Administration of Justice in New South Wales, in like manner as other Laws of England are applied therein,*" as relates to the adoption of the said Section, and an Act of the said Governor and Council passed in the thirteenth year of the reign of Her present Majesty Queen Victoria, intituled, "*An Act to provide for the reservation and decision of Points of Law in Criminal Cases,*" shall be and the same are hereby repealed.

II. No person prosecuted in any Court of General Gaol Delivery, Oyer, and Terminer, or in any Circuit Court or Court of General or Quarter Sessions of the Peace in the said Colony, shall be entitled to traverse or postpone the trial of any information found or filed against him in any such Court: Provided always, that if the Court, upon the application of any person against whom an information may be so found or filed 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 or any subsequent Session or Sittings of such Court, and upon such terms, as to Bail or otherwise, as to such Court shall seem meet, and may respite the recognizances entered into by the witnesses accordingly, in which case the witnesses shall be bound to attend to prosecute and give evidence at such subsequent Session or Sittings without entering into any fresh recognizances for that purpose.

III. Every

Preamble.

Repeal of Acts 11th sec. of 1 Vic., cap. 85.

2 Vic. No. 10, and

13 Vic. No. 8.

No person entitled to traverse.

Court may postpone trial.

Form of information to be simple, not vitiated by certain omissions or imperfections.

III. Every information shall be in a simple and concise form, without any unnecessary verbiage; and no information shall be held invalid or insufficient by reason of the omission or of the averment of any matter not necessary to be proved, nor by reason of the imperfect or impossible description or statement of any matter.

Coin and Bank Notes may be described simply as money.

IV. In any information in which it shall be necessary to make any averment as to any money or any note of any 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 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 any other person, and such part shall have been returned accordingly.

Mode of describing instrument, matter, or thing, in information

V. In any information whatever in which it shall be necessary to describe or make any averment respecting any instrument, matter, or thing, whether any such instrument consists wholly or in part of writing, print or figures, it shall be sufficient to describe such instrument, matter, or thing by any name or designation by which the same may be usually known, or by the purport of any such instrument, without setting out any copy or *fac simile* of the whole, or any part of any such instrument, matter, or thing.

Venue in the margin sufficient, except where local description is necessary.

VI. It shall not be necessary to state any venue in the body of any information, but the colony, city, town, circuit district, or other jurisdiction named in the margin thereof shall be taken to be the venue for all the facts stated in the body of such information, provided that in cases where local description is or hereafter shall be required, such local description shall be given in the body of the information: and provided also that where an information for an offence committed in any one city, town, county, circuit district, or other jurisdiction, shall be preferred at the sittings of any Court, in any other city, town, county, circuit district, or other jurisdiction, the latter shall be deemed the proper venue.

Forms of information for murder and manslaughter.

VII. It shall be sufficient in every information for murder to charge that the defendant did feloniously, wilfully, and of his malice aforethought kill and murder the deceased; and it shall be sufficient in every information for manslaughter to charge that the defendant did feloniously kill and slay the deceased.

Form of information for perjury and like offences.

VIII. In any information for perjury, or for unlawfully, wilfully, falsely, fraudulently, deceitfully, maliciously, or corruptly taking, making, or subscribing any oath, affirmation, declaration, affidavit, deposition, bill, answer, note, certificate, or other writing, it shall be sufficient to set forth the substance, of the offence charged upon the defendant, and by what Court or before whom the oath, affirmation, declaration, affidavit, deposition, bill, answer, note, certificate, or other writing was taken, made, signed, or subscribed without setting forth the bill, answer, or affirmation, information, declaration, or any part of the pleadings or proceedings at law or in equity, or other jurisdiction before which the same were carried on, and without setting forth the commission or authority of the Court or person before whom such offence was committed.

Forms of information for subornation of perjury, and other like offences.

IX. In every information for subornation of perjury, or for corrupt bargaining or contracting with any person to commit wilful and corrupt perjury, or for inciting, causing, or procuring any person unlawfully, wilfully, falsely, fraudulently, deceitfully, maliciously, or corruptly to take, make, sign, or subscribe any oath, affirmation, declaration, affidavit, deposition, bill, answer, notice, certificate, or other writing, it shall be sufficient, wherever

wherever such perjury or other offence aforesaid shall have been actually committed to allege the offence of the person who actually committed such perjury or other offence in the manner hereinbefore mentioned, and then to allege that the defendant unlawfully, wilfully, and corruptly did cause and procure the said person the said offence in manner and form aforesaid to do and commit; and whenever such perjury or other offence as aforesaid shall not have been actually committed, it shall be sufficient to set forth the substance of the offence charged upon the defendant, without setting forth or averring any of the matters or things hereinbefore rendered unnecessary to be set forth or averred in the case of wilful and corrupt perjury.

X. In any information for forging, uttering, disposing of, or putting off any instrument whatsoever, or for obtaining, or attempting to obtain any property by false pretences, it shall be sufficient to allege that the defendant did the act with a fraudulent intent without alleging the intent of the defendant to be to defraud any particular person, and on the trial of any of the offences in this section mentioned it shall not be necessary to prove an intent on the part of the defendant to defraud any particular person, but it shall be sufficient to prove that the defendant did the act charged with a fraudulent intent.

XI. Every objection to any information for any defect apparent on the face thereof shall be taken by demurrer or motion to quash such information upon the prisoner or defendant being arraigned, and before the jury shall be sworn, and not afterwards; and every Court before which any such objection shall be taken for any such defect may, if it be thought necessary, cause the information 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, and no motion in arrest of judgment shall be allowed for any defect in any information which might have been taken advantage of before the jury was sworn.

XII. Whenever, on the trial of any information for any treason, felony, or misdemeanor there shall appear to be any variance between the statement in such information and the evidence offered in proof thereof, or if it shall appear that any matter or words required by law to be inserted in any information have been omitted, or that any matter or words which should have been omitted have been inserted in such information, it shall be lawful for the Court before which the trial shall be had, if such Court shall consider such variance, omission, or insertion, not material to the merits of the case, and that the prisoner or defendant cannot be prejudiced thereby in his defence on such merits, to cause such information to be amended according to the proof or otherwise in such part of the information and in such manner as such Court shall think fit 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 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 variance had occurred: Provided that in all such cases where the trial shall be so postponed as aforesaid it shall be lawful for such Court to discharge the Jury sworn from giving any verdict, and to cause to be endorsed on the Information the words "*Jury discharged from giving a verdict;*" and it shall also be lawful for such Court to remand the prisoner or defendant to gaol for safe custody to await his trial, or to admit him to bail to appear and take his trial at such future time as may be directed, and also to respite the recognizances of the witnesses and of the prisoner or defendant and his surety if previously out on bail accordingly, in which case the witnesses shall be bound to attend to give evidence respectively; and the prisoner or defendant shall be bound to attend to be tried at the time and place to which such trial shall be postponed without their respectively entering into any fresh recognizances for that purpose; and

no prisoner

Intent to defraud particular persons not to be alleged or proved in cases of forging, uttering, or false pretences.

Objections to informations shall be taken before Jury sworn. Court may amend defects.

No arrest of judgment for any defect which might have been so disposed of.

The Court may amend certain variances not material to the merits of the case, and by which the Defendant cannot be prejudiced in his defence, and may either proceed with or postpone the trial to be had before the same or another Jury.

no prisoner or defendant in whose case the Jury shall have been discharged as aforesaid shall be held to have been in jeopardy by such previous proceedings.

A person informed against for felony or misdemeanor may be found guilty of attempt to commit the same. No person so tried to be afterwards prosecuted for the same.

XIII. If on the trial of any person charged with 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 information for attempting to commit the particular felony or misdemeanour charged in the said information, and no person who has been tried for committing any felony or misdemeanor shall be afterwards prosecuted for an attempt to commit the same felony or misdemeanor.

A person indicted for robbery may be found guilty of an assault with intent to rob; no person so tried to be afterwards prosecuted for the same.

XIV. If upon the trial of any person upon any information for robbery it shall appear to the Jury upon the evidence that the defendant did not commit the crime of robbery, but that he did commit an assault with intent to rob, the defendant 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 guilty of an assault with intent to rob, and thereupon such defendant shall be liable to be punished in the same manner as if he had been convicted upon an information for feloniously assaulting with intent to rob; and no person so tried as before lastly mentioned shall be liable to be afterwards prosecuted for an assault with intent to commit the robbery for which he was so tried.

Person tried for misdemeanor not to be acquitted if the offence turn out to be felony, unless the Court so direct.

XV. 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.

Persons informed against for embezzling, as a clerk, &c., not to be acquitted if the offence turn out to be larceny, and vice versa.

XVI. If upon the trial of any person charged with embezzlement as a clerk, servant, or person employed for the purpose in the capacity of a clerk or servant, it shall be proved that he took the property in question in any such manner as to amount in law to larceny, he shall not by reason thereof be entitled to be acquitted, but the Jury shall be at liberty to return as their verdict that such person is not guilty of embezzlement, but is guilty of simple larceny or of larceny as a clerk, servant, or person employed for the purpose or in the capacity of a clerk or servant, as the case may be, and thereupon such person shall be liable to be punished in the same manner as if he had been convicted upon an information for such larceny; and if upon the trial of any person informed against for larceny, it shall be proved that he took the property in question in any such manner as to amount in law to embezzlement, he shall not by reason thereof be entitled to be acquitted, but the Jury shall be at liberty to return as their verdict that such person is not guilty of larceny, but is guilty of embezzlement, and thereupon such person shall be liable to be punished in the same manner as if he had been convicted upon an information for such embezzlement; and no person so tried for embezzlement or larceny as aforesaid shall be liable to be afterwards prosecuted for larceny or embezzlement upon the same facts.

Persons informed against for jointly receiving. Persons guilty of separately receiving may be convicted.

XVII. If upon the trial of two or more persons for jointly receiving or jointly stealing any property, it shall be proved that one or more of such persons separately received or stole any part of such property, it shall be

shall be lawful for the Jury to convict upon such information such of the said persons as shall be proved to have received or stolen any part of such property, and if necessary to acquit the other or others of them.

XVIII. Any number of accessories or receivers of stolen property may be charged with substantive felonies in the same information, notwithstanding the principal felon shall not be included in the same information, or shall not be in custody, or amenable to justice.

XIX. It shall be lawful to insert several counts in the same information against the same person for any number of distinct acts of stealing not exceeding three, which may have been committed by him against the same person within the space of six calendar months from the first to the last of such acts, and to proceed thereon for all or any of them.

XX. If upon the trial of any information for larceny it shall appear that the property alleged in such information to have been stolen at one time was taken at different times, the prosecutor shall not by reason thereof be required to elect upon which taking he will proceed, unless it shall appear that there were more than three takings, or that more than the space of six calendar months elapsed between the first and last of such takings, and in either of such last-mentioned cases the prosecutor shall be required to elect to proceed for such number of takings not exceeding three as appear to have occurred within the period of six calendar months from the first to the last of such takings.

XXI. In any information for a second or subsequent offence whether felony or misdemeanor against any person who shall have been previously convicted, it shall be sufficient to state that such person was at a certain time and place so previously convicted as aforesaid, without otherwise describing the offence of which such person was so convicted as aforesaid.

XXII. 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 information.

XXIII. 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 information had originally been in the same form in which it was after such amendment was made.

XXIV. 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 information was, after such amendment was made, without taking any notice of the fact of such amendment having been made.

XXV. Depositions taken in the preliminary or other investigation of any charge against any person may be read as evidence in the prosecution of the same or any other offence whatsoever, upon the like proof, and in the same manner in all respects, as they may according to the law now in force, be read in the prosecution of the offence with which such person was charged when such depositions were taken.

XXVI. It shall be lawful for any of the Judges of the Supreme Court of the said Colony of Victoria, or for any Justices of the Peace in and for the said Colony, or any City, Town, or district therein, or any Chairman or other Judge holding any Court of General or Quarter Sessions of the Peace, or for any Commissioner of Bankruptcy or Insolvency, or for any Judge of any Court of Record, or for any Justices of the Peace in Special or Petty Sessions, or for any Sheriff or his lawful Deputy or Commissioner before whom any writ of enquiry or writ of trial from the said Supreme Court shall be executed in case it shall appear to him or them that any person has been guilty of wilful and corrupt perjury in any evidence given, or in any affidavit, deposition, examination, answer, or other proceeding made or taken before him or them, to direct such person

Separate accessories and receivers may be included in the same information in the absence of the principal felon.

Three larcenies from the same person within six months may be included in the same information.

Where a single taking is charged the prosecutor not required to elect unless it appear that there were more than three takings in more than six months between the first and last taking.

Proof of conviction for second or subsequent offence.

Form of Plea of *autrefois convict* or *autrefois acquit*.

Verdicts and judgments valid after amendment.

Records to be drawn up in amended form without noticing amendment.

Depositions taken on one charge may be read in prosecution of others.

Any Court or Judge may direct that a person guilty of perjury be prosecuted.

such person to be prosecuted for such perjury in case there shall appear to them or him reasonable cause for such prosecution, and to commit such person so directed to be prosecuted until the next Session of Oyer and Terminer or gaol delivery for the City, Town, or Circuit District in which such perjury was committed, or to permit such person to enter into a recognizance of Bail, with one or more sufficient surety or sureties conditioned for the appearance of such person at such next session of Oyer and Terminer or gaol delivery, and that he will then surrender and take his trial, and not depart the Court without leave, and to require any person he or they may think fit to enter into a recognizance conditioned to prosecute or give evidence against such person so directed to be prosecuted as aforesaid.

Verdict by Jurors at
Coroner's Inquests
to be deemed equi-
valent to ordinary
committals or hold-
ing to bail by
Justices.

XXVII. Every verdict returned by the Jury at a Coroner's Inquest and the warrant of committal or recognizances of bail thereupon issued or taken, shall, for the purposes of the prosecution or discharge (as the case may require) of the person committed or held to bail, be regarded as equivalent to an ordinary committal or holding to bail by any Justice of the Peace, and it shall be competent to the Attorney General or other officer for the time being empowered to prosecute crimes and misdemeanors in any Court of Criminal Jurisdiction, to dispose of or proceed in the case in all respects as if the charge had been primarily investigated before such Justice and he had committed the accused or held him to bail to take his trial.

Questions of law may
be reserved.

XXVIII. If during the trial of any person convicted of any Treason, Felony, or Misdemeanor in or before any Court of Criminal Jurisdiction within the said Colony any question of difficulty in point of law shall arise, it shall be lawful for such Court in its discretion to reserve such question of law for the consideration and determination of the Judges of the Supreme Court of the said Colony, and in any such case to respite the execution of the judgment passed on such person so convicted until such question of law shall have been considered and determined, and in its discretion to commit such person to prison for safe custody, or admit such person to bail, and take a recognizance of Bail in a sufficient sum, with one or more surety or sureties conditioned for the appearance of such person at such time and place as the Court shall direct to hear judgment and render himself in execution; and the Court by which such question of law may have been so reserved shall state a case briefly setting forth the circumstances and the question of law so reserved, and the Judge or other person presiding in such Court shall sign and transmit the same within a reasonable time to the Judges of the said Supreme Court, and the said Judges shall have power, if to them shall seem meet, to cause the case so sent to be remitted for the purpose of amendment, and to direct that such case be argued before them, and to hear and determine the question of law so reserved, and to affirm, amend, or reverse the judgment which shall have been passed on such person, or to direct a *venire de novo* or new trial to be had, or to make such other order as the justice of the case may require, and the determination of such Judges shall be entered of record in the said Supreme Court, and two copies thereof certified under the hand of the Prothonotary shall be by him forthwith transmitted, one to the associate Clerk of Assize or Clerk of the Peace as the case may be, who shall enter the same on the original record in proper form; and the other to the Sheriff or Jailer in whose custody the person convicted shall be; and any such certified copy shall be a sufficient warrant to all persons for the execution of the judgment if the same shall have been affirmed or amended, which execution shall be forthwith executed upon such judgment, and for the discharge of the person convicted from further imprisonment if the judgment shall have been reversed, avoided, or arrested; and if such person shall be in custody, he shall be forthwith discharged; and if on bail, the Court of Gaol delivery or Sessions of the Peace,

the Peace, as the case may be, shall at its sitting next after the receipt of such certified copy vacate the recognizance of such bail.

XXIX. In the construction of this Act the word "information" shall be understood to include indictment, inquisition, and presentment, and also any plea, replication, or other pleading, and any record, and the word "find" and the word "file" shall mean exhibit, 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.

XXX. This Act shall commence and take effect from and after the first day of October, in the year of Our Lord one thousand eight hundred and fifty-two.

Interpretation
terms. of

Commencement
Act. of