

T A S M A N I A.



1857-8.

ANNO VICESIMO-PRIMO

VICTORIÆ REGINÆ,

No. 41.

AN ACT to make better provision for the Punishment of Frauds committed by Trustees, Bankers, and other Persons entrusted with Property. [25 February, 1858.]

WHEREAS it is expedient to make better provision for the Punishment of Frauds committed by Trustees, Bankers, and other persons entrusted with Property: Be it therefore enacted by His Excellency the Governor of *Tasmania*, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

PREAMBLE.

1 If any person, being a Trustee of any property for the benefit, either wholly or partially, of some other person, or for any public or charitable purpose, shall, with intent to defraud, convert or appropriate the same, or any part thereof, to or for his own use or purposes, or shall, with intent aforesaid, otherwise dispose of or destroy such property, or any part thereof, he shall be guilty of a misdemeanor.

Trustees fraudulently disposing of property guilty of misdemeanor.

Bankers, &c.
fraudulently sell-
ing, &c. property
entrusted to their
care guilty of
misdemeanor.

2 If any person, being a Banker, Merchant, Broker, Attorney, or Agent, and being entrusted, in that capacity or for safe custody, with the property of any other person, shall, with intent to defraud, sell, negotiate, transfer, pledge, or in any manner convert or appropriate to or for his own use such property, or any part thereof, he shall be guilty of a misdemeanor.

Persons under
Powers of
Attorney fraudu-
lently selling
property guilty of
misdemeanor.

3 If any person entrusted with any Power of Attorney for the sale or transfer of any property shall fraudulently sell, or transfer, or otherwise convert such property, or any part thereof, to his own use or benefit, he shall be guilty of a misdemeanor.

Bailees fraudu-
lently converting
property to their
own use guilty of
larceny.

4 If any person, being a Bailee of any property, shall fraudulently take or convert the same to his own use, or the use of any person other than the owner thereof, although he shall not break bulk, or otherwise determine the Bailment, he shall be guilty of larceny.

Directors, &c. of
any Municipal or
Corporate Body,
or Public Com-
pany, fraudulently
appropriating pro-
perty.

5 If any person, being a Director, Member, or Public Officer of any Municipal Body, or of any Body Corporate, or Public Company, shall fraudulently take or apply for his own use any of the money or other property of such Municipal Body, or Body Corporate, or Public Company, he shall be guilty of a misdemeanor.

Or keeping fraud-
ulent accounts.

6 If any person, being a Director, Public Officer, or Manager of any Municipal Body, or of any Body Corporate, or Public Company, shall, as such, receive or possess himself of any of the money or other property of such Municipal Body, Body Corporate, or Public Company otherwise than in payment of a just debt or demand, and shall, with intent to defraud, omit to make, or to cause or direct to be made, a full and true entry thereof in the books and accounts of such Municipal Body, Body Corporate, or Public Company, he shall be guilty of a misdemeanor.

Or wilfully
destroying books,
&c.

7 If any Director, Manager, Public Officer, or Member of any Municipal Body, or of any Body Corporate, or Public Company shall, with intent to defraud, destroy, alter, mutilate, or falsify any of the books, papers, writings, or securities belonging to the Municipal or Corporate Body, or Public Company of which he is a Director or Manager, Public Officer or Member, or make or concur in the making of any false entry, or any material omission, in any book of account or other document, he shall be guilty of a misdemeanor.

Or publishing
fraudulent state-
ments, guilty of
misdemeanor.

8 If any Director, Manager, or Public Officer of any Municipal Body, or of any Body Corporate or Public Company, shall make, circulate, or publish, or concur in making, circulating, or publishing, any written statement or account which he shall know to be false in any material particular, with intent to deceive or defraud any Member, Shareholder, or Creditor of such Municipal or Corporate Body or Public Company, or with intent to induce any person to become a Shareholder or Partner therein, or to entrust or advance any money or property to such Municipal Body, Body Corporate, or Public Company, or to enter into any security for the benefit thereof, he shall be guilty of a misdemeanor.

Persons receiving
property fraudu-
lently disposed of,
knowing the same

9 If any person shall receive any chattel, money, or valuable security which shall have been so fraudulently disposed of as to render the party disposing thereof guilty of a misdemeanor under

any of the provisions of this Act, knowing the same to have been so fraudulently disposed of, he shall be guilty of a misdemeanor, and may be indicted and convicted thereof, whether the party guilty of the principal misdemeanor shall or shall not have been previously convicted, or shall or shall not be amenable to justice.

to have been so, guilty of misdemeanor.

10 Every person found guilty of a misdemeanor under this Act shall be liable, at the discretion of the Court, to be kept in penal servitude for the term of Three years, or to suffer such other punishment by imprisonment for not more than Two years, with or without hard labour, or by fine, as the Court shall award.

Punishment for a misdemeanor under this Act.

11 Nothing in this Act contained shall enable or entitle any person to refuse to make a full and complete discovery by answer to any bill in equity, or to answer any question or interrogatory in any civil proceeding in any Court of Law or Equity, or under any insolvency; but no answer to any such bill, question, or interrogatory shall be admissible in evidence against such person in any proceeding under this Act.

No person exempt from answering questions in any Court.
Evidence not admissible in prosecutions under this Act.

12 Nothing in this Act contained, nor any proceeding, conviction, or judgment to be had or taken thereon against any person under this Act, shall prevent, lessen, or impeach any remedy at Law or in Equity which any party aggrieved by any offence against this Act might have had if this Act had not been passed; but no conviction of any such offender shall be received in evidence in any action at law or suit in equity against him; and nothing in this Act contained shall affect or prejudice any agreement entered into, or security given by, any Trustee, having for its object the restoration or repayment of any trust property misappropriated.

No remedy at Law or in Equity shall be affected.

Convictions shall not be received in evidence in Civil Suits.

13 No proceeding or prosecution for any offence included in the 1st Section, but not included in any other Section of this Act, shall be commenced without the sanction of Her Majesty's Attorney-General in this Colony, or in case that office be vacant, of Her Majesty's Solicitor-General in this Colony: Provided, that where any civil proceeding shall have been taken against any person to whom the provisions of the said 1st Section, but not of any other Section of this Act, may apply, no person who shall have taken such civil proceedings shall commence any prosecution under this Act without the sanction of the Court or Judge before whom such civil proceeding shall have been had or shall be pending.

No proceeding shall be commenced without the sanction of the Attorney-General.

14 If upon the trial of any person under this Act it shall appear that the offence proved amounts to larceny, he shall not by reason thereof be entitled to be acquitted of a misdemeanor under this Act.

If offence amounts to larceny, person not to be acquitted of a misdemeanor.

15 No misdemeanor against this Act shall be prosecuted or tried at any Court of General Sessions of the Peace.

Misdemeanors not triable at Sessions.

16 The word "Trustee" shall in this Act mean a Trustee on some express trust created by some deed, will, or instrument in writing, or Act of Council, or Act of the Imperial Parliament, or of the Parliament of *Tasmania*; and shall also include the heir and personal representative of any such Trustee, and also all Executors and Administrators, and all Assignees in insolvency.

Interpretation of terms.

Definition of
"Property."

17 The word "Property" shall include every description of real and personal property, goods, raw or other materials, money, debts, and legacies, and all deeds and instruments relating to or evidencing the title or right to any property, or giving a right to recover or receive any money or goods; and such word "Property" shall also denote and include not only such real and personal property as may have been the original subject of a trust, but also any real or personal property into which the same may have been converted or exchanged, and the proceeds thereof respectively, and anything acquired by such proceeds.