

T A S M A N I A.



1881.

ANNO QUADRAGESIMO-QUINTO
VICTORIÆ REGINÆ,
No. 14.

AN ACT to amend the Criminal Law in certain A.D. 1881.
particulars. [8 November, 1881.]

WHEREAS it is desirable that the Criminal Law should be amended in certain particulars : PREAMBLE.

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 :—

Short Title.

1 This Act may be cited as “The Criminal Law Procedure Act, Short title. 1881.”

2 In this Act, unless the context otherwise determines—

Interpretation.

“Indictable offence” means any offence for which an information may be filed against any person in any Court of Criminal Jurisdiction in *Tasmania* :

“Court of Criminal Jurisdiction” includes the Supreme Court of *Tasmania*, and every Court of General Sessions held before a Recorder :

“Attorney-General” includes any officer appointed to prosecute crimes, misdemeanors, and offences by virtue of the provisions contained in Section Five of the Act of the Imperial Parliament of the 9th *George* the 4th, chapter 83:

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“ Counsel for the prosecution ” includes the Attorney-General and Solicitor-General.

Bigamy.

Bigamy.

3 Section Fifty-five of the Act of Parliament of the 27th *Victoria*, No. 5, is hereby repealed, and the enactment hereinafter contained is substituted therefor :—

Whosoever being married shall marry any other person during the life of the former husband or wife shall be guilty of Felony, and upon being convicted thereof shall be liable to be imprisoned for Seven years :

Provided that nothing in this Section contained shall extend to—

Any person marrying a second time whose husband or wife shall have been continually absent from such person for the space of Seven years then last past, and shall not have been known by such person to be living within that time :

Any person who at the time of such second marriage shall have been divorced from the bond of the first marriage :

Any person whose former marriage shall have been declared void by the sentence of any Court of competent jurisdiction.

Copy of Information demandable by person charged therein.

Person charged entitled to copy of information Two days before trial.

4 Every person committed to take his trial upon any charge of treason, felony, or misdemeanor, shall be entitled, upon application by himself or by his Attorney or Counsel to the Attorney-General Four clear days at least before the day of trial, to have furnished to him or to his Attorney or Counsel, and upon payment for the same of a sum of Four pence for each folio of Seventy-two words, a copy of the information proposed to be filed against him, Two clear days at the least before the day of trial ; and the neglect or refusal to furnish a copy of such information as aforesaid within the time aforesaid shall entitle the person charged therein to a postponement of his trial, if the Court sees fit, until he shall have been furnished with a copy of such information in accordance with the provisions of this Section :

Provided, nothing herein contained shall apply in any case where the depositions taken against such person shall not have been received by the Attorney-General Five clear days at least before the day of trial.

Addresses to the Jury.

Summing up of evidence in cases of felony and misdemeanor.

5 If any prisoner or prisoners, defendant or defendants, shall be defended by Counsel, but not otherwise, it shall be the duty of the presiding Judge, at the close of the case for the prosecution, to ask the Counsel for each prisoner or defendant so defended by Counsel whether he or they intend to adduce evidence, and in the event of none of them thereupon announcing his intention to adduce evidence, the Counsel for the prosecution shall be allowed to address the jury a Second time in support of his case, for the purpose of summing up the evidence against such prisoner or prisoners, or defendant or defendants ; and upon every trial for felony or misdemeanor, whether the prisoners or defendants, or any of them, shall be defended by Counsel or not, each and every such prisoner or defendant, or his or their Counsel respectively, shall be allowed, if he or they shall think fit, to open his or their case or cases respectively ; and after the conclusion of such opening or of all such openings if more than one, such prisoner or prisoners, or

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defendant or defendants, or their Counsel, shall be entitled to examine such witnesses as he or they may think fit, and when all the evidence is concluded to sum up the evidence respectively; and the right of reply, and practice and course of proceedings, save as hereby altered, shall be as at present. A.D. 1881.

Right of Challenge.

6 From and after the passing of this Act every person put upon his trial on any charge of treason, felony, or misdemeanor, shall be entitled, if tried by a jury, to challenge peremptorily any number of jurymen not exceeding Six; and all the distinctions hitherto existing between felony and misdemeanor, in reference to the right of challenge exerciseable by persons charged therewith respectively, is hereby abolished anything contained in *The Jury Act* or any Act amending the same to the contrary notwithstanding. Prisoner entitled to challenge Six jurors peremptorily.

Crown Cases Reserved.

7 If on the trial of any person convicted of any indictable offence in or before any Court of Criminal Jurisdiction any question of difficulty in point of law shall have arisen, 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, and in any such case to respite the execution of the judgment on such conviction, or postpone the judgment until such question of law shall have been considered and determined; and in either case the Court in its discretion shall commit the person convicted to gaol, or shall take a recognizance of bail, with one or more sufficient surety or sureties and in such sum as the Court shall think fit, conditioned to appear at such time or times and place as the Court shall direct, and receive judgment, or to render himself in execution, as the case may be. Questions of law may be reserved.

8 The Court by which such question of law may have been so reserved shall thereupon state a Case setting forth the question or questions of law which shall have been so reserved, with the special circumstances upon which the same shall have arisen; 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 Supreme Court; and the said Judges, whether the person so convicted be present or not, shall have power to hear and finally determine the said question or questions, and thereupon to affirm, amend, or reverse any judgment which shall have been given on the information on the trial whereof such question or questions have arisen, or to avoid such judgment, and to order an entry to be made on the record that in the judgment of the said Judges the party convicted ought not to have been convicted, or to give judgment thereon if the person so convicted be present, or to order judgment to be given thereon at some Session of Gaol Delivery or General Sessions of the Peace, as the case may be, if no judgment shall have been before then given, or to direct a *venire de novo* or new trial to be had, or to make such other order as justice may require. Questions reserved to be stated in a Case.

9 Such judgment or order (if any) of the said Judges shall be entered by the Clerk of the Supreme Court on the original record in proper form, if such question or questions have been reserved by a Judge of the Supreme Court; and such judgment or order (if any) shall, if such question or questions have been reserved by Judgment to be recorded,

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and certified to
Sheriff or Gaoler.

a Recorder, be certified under the hand of the Chief Justice of the Supreme Court to the Clerk of the Peace, who shall enter the same on the original record in proper form; and a certificate of such entry under the hand of the Clerk of the Supreme Court or the Clerk of the Peace, as the case may be, in the form as near as may be or to the effect in the Schedule, 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 such 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 have been so certified to have been affirmed or amended, and execution shall be thereupon executed upon such judgment, or for the discharge of the person convicted from further imprisonment if the judgment shall have been reversed or avoided, and in that case such sheriff or gaoler shall forthwith discharge him, and the next Session of Gaol Delivery or General Sessions of the Peace, as the case may be, shall vacate the recognizance of bail, if any; and if the Session of Gaol Delivery or General Sessions of the Peace shall be directed to give judgment, the said Court shall proceed to give judgment at the next session.

Case may be sent
back for amend-
ment.

10 The Judges of the Supreme Court, when a case has been reserved for their opinion, shall have power if they think fit to cause the case 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.

Argument and
judgment.

11 The judgment or judgments of the Judges of the Supreme Court shall be delivered in open Court after hearing Counsel or the parties, in case the prosecutor or person convicted shall think it fit that the case be argued, in like manner as other judgments of the Supreme Court are now delivered.

Forfeiture, &c. abolished."Convict" and
"Forfeiture"
defined.

12 In the provisions hereinafter contained—

"Convict" shall be deemed to mean any person against whom judgment of death or of any term of imprisonment exceeding Two years has been or shall hereafter be pronounced or recorded by any Court of Criminal Jurisdiction:

"Forfeiture" shall not include any fine or penalty imposed on any convict by virtue of his sentence.

Forfeiture, &c.
abolished.

13 No confession, verdict, inquest, conviction, or judgment of or for any treason or felony shall hereafter cause any attainder or corruption of blood, or any forfeiture or escheat: Provided that nothing in this Act shall affect the law of forfeiture consequent upon outlawry.

Conviction for
treason or felony
to be a dis-
qualification for
offices, &c.

14 Provided nevertheless, that if any person hereafter convicted of treason or felony, for which he shall be sentenced to death or any term of imprisonment exceeding Two years, shall at the time of such conviction hold any military or naval office, or any office in the Civil Service of *Tasmania* or other public employment, or be entitled to any pension or superannuation allowance payable out of any public fund of the Colony of *Tasmania*, such office or employment shall forthwith become vacant, and such pension or superannuation allowance shall

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forthwith determine and cease to be payable, unless such person shall receive a free pardon within Six months after such conviction, or before the filling up of such office or employment if given at a later period ; and such person shall become, and (until he shall have suffered the punishment to which he had been sentenced, or such other punishment as by competent authority may be substituted for the same, or shall receive a free pardon) shall continue thenceforth incapable of holding any military or naval office, or any office in the Civil Service or other public employment as aforesaid.

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15 It shall be lawful for the Court by which judgment shall be pronounced or recorded upon the conviction of any person for treason or felony, in addition to such sentence as may otherwise by law be passed, to condemn such person to the payment of the whole or any part of the costs or expenses incurred in and about the prosecution and conviction for the offence of which he shall be convicted, if to such Court it shall seem fit so to do ; and the payment of such costs and expenses or any part thereof may be ordered by the Court to be made out of any moneys taken from such person on his apprehension, or may be enforced at the instance of any person liable to pay, or who may have paid the same, in such and the same manner (subject to the provisions of this Act) as the payment of any costs ordered to be paid by the judgment or order of any Court of competent jurisdiction in any civil action or proceeding may for the time being be enforced.

Convicts may be
condemned in
costs.

16 It shall also be lawful for any such Court as aforesaid if it shall think fit, upon the application of any person aggrieved, and immediately after the conviction of any person for any felony, to award any sum of money not exceeding One hundred Pounds by way of satisfaction or compensation for any loss of property suffered by the applicant through or by means of the said felony, and the amount awarded for such satisfaction or compensation shall be deemed a judgment debt due to the person entitled to receive the same from the person so convicted ; and the order for payment of such amount may be enforced in such and the same manner as in the case of any costs ordered by the Court to be paid under the last preceding Section of this Act.

Compensation to
persons defrauded
or injured by
criminal offence.

17 When any convict shall die or be made bankrupt, or shall have suffered any punishment to which sentence of death if pronounced or recorded against him may have been commuted, or shall have served the full term of imprisonment for which judgment shall have been pronounced or recorded against him, or shall have received a free pardon for the treason or felony of which he may have been convicted, he shall thenceforth, so far as relates to the provisions hereinafter contained, cease to be subject to the operation of this Act.

When convict
shall cease to be
subject to the
operation of this
Act.

18 No action at law or suit in equity for the recovery of any property, debt, or damage whatsoever shall be brought by any convict against any person during the time while he shall be subject to the operation of this Act ; and every convict shall be incapable during such time as aforesaid of alienating or charging any property or of making any contract save as hereinafter provided.

Convict disabled
to sue for or to
alienate property,
&c.

19 It shall be lawful for the Supreme Court or, during vacation, for any Judge thereof, upon the application of any relative or other person interested in the care and management of the property of any convict,

The Supreme
Court may

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appoint an administrator of any convict's property.

to commit the custody and management thereof during the imprisonment of the convict to an administrator to be appointed by the said Court or a Judge thereof as aforesaid; and every such appointment made by a Judge of the Supreme Court may be revoked by such Judge or the Court; and upon any determination thereof, either by revocation or by the death of any such administrator, a new administrator may be appointed by the like authority from time to time; and every such new administrator shall upon his appointment be and be deemed to be the successor-in-law of the former administrator; and all property vested in and all powers given to such former administrator by virtue of this Act shall thereupon devolve to and become vested in such successor, who shall be bound by all acts lawfully done by such former administrator during the continuance of his office; and the provision hereinafter contained with reference to any administrator shall, in the case of the appointment of more than one person, apply to such administrators jointly.

Convict's property to vest in administrator on appointment.

20 Upon the appointment of any such administrator in manner aforesaid, all the real and personal property, including choses in actions, to which the convict named in such appointment was at the time of his conviction, or shall afterwards while he shall continue subject to the operation of this Act, become or be entitled, shall vest in such administrator for all the estate and interest of such convict therein.

Remuneration of administrators.

21 If in the instrument by which any such administrator is appointed provision shall be made for the remuneration of such administrator out of the property of the convict, the said administrator may receive and retain for his own benefit such remuneration accordingly.

Powers of administrator.

22 The administrator shall have absolute power to let, mortgage, sell, convey, and transfer any part of such property as to him shall seem fit.

Administrator to pay out of property, costs of prosecution and costs of executing this Act.

23 It shall be lawful for the administrator to pay or cause to be paid out of such property or the proceeds thereof, all costs and expenses which the convict may have been condemned to pay; and also all costs, charges, and expenses incurred by such convict in and about his defence; and also all such costs charges and expenses as the said administrator may incur or be put to in or about the execution of his office with reference to such property, or with reference to any claims which may be made thereon.

Administrator may pay out of property, debts or liabilities of convict.

24 The administrator may cause payment or satisfaction to be made out of such property of any debt or liability of such convict which may be established in due course of law, or may otherwise be proved to his satisfaction; and may also cause any property which may come to his hands to be delivered to any person claiming to be justly entitled thereto, upon the right of such person being established in due course of law, or otherwise to his satisfaction.

Administrator may make compensation out of property to persons defrauded by criminal acts of convict.

25 The administrator may cause to be paid or satisfied out of such property, such sum of money by way of satisfaction or compensation for any loss of property or other injury alleged to have been suffered by any person, through or by means of any alleged criminal or fraudulent act of such convict, as to the administrator shall seem just, although no proof of such alleged criminal or fraudulent act may have been made in

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any Court of law or equity ; and all claims to any such satisfaction or compensation may be investigated in such manner as the administrator shall think fit, and the decision of the administrator thereon shall be binding : Provided always, that nothing in this Act shall take away or prejudice any right, title, or remedy to which any person alleging himself to have suffered any such loss or injury would have been entitled by law if this Act had not been passed. A.D. 1881.

26 The administrator may cause such payments and allowances for the support or maintenance of any wife or child or reputed child of such convict, or of any other relative or reputed relative of such convict dependent upon him for support, as to such administrator shall seem fit, to be made from time to time out of such property, or the income thereof. Administrator may make allowances out of property, for support of family of convict.

27 The several powers hereinbefore given to the said administrator, or any of them, may be exercised by him in such order and course as to priority of payments or otherwise as he shall think fit ; and all contracts of letting or sale, mortgages, conveyances, or transfers of property, *bonâ fide* made by the said administrator under the powers of this Act, and all payments or deliveries over of property *bonâ fide* made by or under the authority of the said administrator for any of the purposes hereinbefore mentioned, shall be binding ; and the propriety thereof, and the sufficiency of the grounds on which the said administrator may have exercised his judgment or discretion in respect thereof, shall not be in any manner called in question by such convict, or by any person claiming an interest in such property by virtue of this Act. Exercise of administrator's power as to priority of payments ; payments by administrator for purposes of Act not to be called in question.

28 Subject to the powers and provisions hereinbefore contained, all such property and the income thereof shall be preserved and held in trust by the said administrator, and the income thereof may, if and when the said administrator shall think proper, be invested and accumulated in such securities as he shall from time to time think fit, for the use and benefit of the said convict and his legal personal representatives, or of such other persons as may be lawfully entitled thereto according to the nature thereof ; and the same and the possession, administration, and management thereof shall re-vest in and be restored to such convict upon his ceasing to be subject to the operation of this Act, or in and to his legal personal representatives, or such other persons as may be lawfully entitled thereto ; and all the powers and authorities by this Act given to the said administrator shall from thenceforth cease and determine, except so far as the continuance thereof may be necessary for the care and preservation of such property or any part thereof, until the same shall be claimed by some person lawfully entitled thereto, or for obtaining payment out of such property or of the proceeds thereof, of any liabilities, or any costs, charges, or expenses for which provision is made by this Act ; for which purposes such powers and authorities shall continue to be in force until possession of such property shall be delivered up by the said administrator to some person being or claiming to be lawfully entitled thereto. Property to be preserved for convict, and to revert to him or to his representatives on completion of sentence, pardon, or death.

29 The said administrator shall not be answerable to any person for any property which shall not actually have come to his hands by virtue of this Act, nor for any loss or damage which may happen through any mere omission or nonfeasance on his part to any property vested in him by virtue hereof. Administrators not to be liable except for what they receive.

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Administrator to receive costs of suits of property as between solicitor and client.

30 The costs as between solicitor and client of every action or suit which may be brought against the said administrator with reference to any such property as aforesaid, whether during the time while the same shall be and continue vested in him under this Act or after the same shall cease to be so vested, and all charges and expenses properly incurred by him with reference thereto, shall be a first charge upon and shall be paid out of such property, unless the Court before which such action is tried or such suit is heard shall think fit otherwise to order.

Execution of judgments against convict provided for.

31 All judgments or orders for the payment of money of any Court of law or equity against such convict, which shall have been duly recovered or made either before or after his conviction, may be executed against any property of such convict under the care and management of any such administrator as aforesaid, or in the hands of any person who may have taken upon himself the possession or management thereof without legal authority, in the same manner as if such property were in the possession or power of such convict; and all such judgments or orders may likewise be executed by writ of *scire facias* or otherwise, according to the practice of the Court, against any such property which may be vested in any administrator of the property of such convict under this Act.

Proceedings may be taken to make administrator accountable before property reverts to convict.

32 It shall be competent for Her Majesty's Attorney-General, or for any person who (if such convict were dead intestate) would be entitled to the property of such convict or any share thereof under the *Statutes of Distribution* or "The Deceased Persons Estates Act, 1874," or otherwise, to apply in a summary way to the Supreme Court to issue a writ of summons calling upon any such administrator or any person who, without legal authority, shall have possessed himself of any part of the property of such convict, to account for his receipts and payments in respect of the property of such convict in such manner as the said Court shall direct; and it shall be lawful for the said Court thereupon to issue such writ of summons and to enforce obedience thereto, and to all orders and proceedings of the said Court consequent thereon, in the same manner as in any other case of process lawfully issuing out of the said Court; and the said Court shall thereupon have full power, jurisdiction, and authority to take all such accounts and to make and give all such orders and directions as to it shall seem proper or necessary for the purpose of securing the due and proper care, administration, and management of the property of such convict, and the due and proper application of the same and of the income thereof, and the accumulation and investment of such balances, if any, as may from time to time remain in the hands of any such administrator or such other person as aforesaid in respect of such property; and so long as any such proceedings shall be pending in the said Court, every such administrator or other person shall act in the exercise of all powers vested in him under this Act or otherwise in all respects as the said Court shall direct.

Administrator to be accountable to convict when property reverts.

33 Subject to the provisions of this Act, every such administrator and other person as aforesaid shall, from and after the time when the convict shall cease to be subject to the operation of this Act, be accountable to such convict for all property of such convict which shall by him be possessed or received and not duly administered, in the same manner in which any guardian or trustee is now accountable to his ward or *cestui*

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que trust, but subject nevertheless and without prejudice to the administration and application of such property under and according to the powers of this Act. A.D. 1881. —

34 After the commencement of this Act, such portions of the Acts of the Thirtieth year of *George* the Third, chapter forty-eight, and the fifty-fourth year of *George* the Third, chapter one hundred and forty-six, as enacts that the judgment required by law to be awarded against persons adjudged guilty of High Treason shall include the drawing of the person on a hurdle to the place of execution, and, after execution, the severing the head from the body and the dividing of the body into four quarters, shall not be deemed to extend to this Colony or be of any force within the same. Judgment in cases of High Treason. 30 G. 3, c. 48. 54 G. 3, c. 146.

35 Nothing hereinbefore-contained shall be deemed to alter or in anywise affect the Law relating to Felony in this Colony, except as herein is expressly enacted. Saving of general law as to Felony.

SCHEDULE.

To the Sheriff of *Tasmania* and the Gaoler of the Gaol at
and all others whom it may concern.

WHEREAS at the Session of Oyer and Terminer and General Gaol Delivery of the Supreme Court of *Tasmania*, (or at the Court of General Sessions of the Peace) held at _____ on the _____ day of _____ A.D. 18
A.B. having been found guilty of felony and [*here state the substance of the judgment, if judgment has been given*] the Court before whom he was tried reserved a certain question of law for the consideration of the Judges of the Supreme Court, and judgment was postponed, [*or, if the case be so*] execution was thereupon respited in the meantime.

This is to certify that it has been considered by the said Judges that the judgment aforesaid be annulled [*or otherwise, as the case may be*] and you are therefore required forthwith to discharge the said *A.B.* from your custody.

