



ANNO DECIMO-NONO

# VICTORIÆ REGINÆ,

No. 5.



*By His Excellency SIR HENRY EDWARD FOX YOUNG, Knight,  
Captain-General and Governor-in-Chief of the Island of Van  
Diemen's Land and its Dependencies, with the Advice and  
Consent of the Legislative Council.*

## *AN ACT for the more speedy Trial and Punishment of Persons charged with Petty Thefts.*

[21st August, 1855.]

**W**HEREAS, in order to diminish the Expense and Delay sustained PREAMBLE.  
in the Prosecution of Persons guilty of Petty Thefts, it is expedient to  
allow of such Offenders being proceeded against in a more summary  
Manner than is now by Law provided, and to give further Power to  
bail them: Be it enacted by His Excellency the Governor of Van  
Diemen's Land, by and with the Advice and Consent of the Legislative  
Council, as follows:—

**1** Every Person who shall, subsequently to the passing of this Act, Persons guilty of  
be charged with having committed, or having attempted to commit, or Larceny under  
with having been an Aider, Abettor, Counsellor, or Procurer in the £5 may be sum-  
Commission of the Offence of Simple Larceny of any Property of a marily convicted  
Value not exceeding Five Pounds, shall, upon Conviction thereof, upon by Two Justices.  
his own Confession or upon Proof before any Two or more Justices of  
the Peace in Petty Sessions assembled at the Police Office or other usual  
Place in any District, and in open Court, be committed to some Gaol or  
House of Correction, there to be imprisoned with hard Labour, for any  
Term not exceeding Six Months for the first Offence, and not exceeding  
Twelve Months for the second or any subsequent Offence: Provided, that If Offence not

proved, &c.,  
Justices may dis-  
miss Parties with  
or without  
Sureties.

If Charge  
thought fit for  
Indictment how  
Case to be dealt  
with.

Justice to ask  
whether the  
Accused wishes  
Charge to be tried  
by a Jury.

Power to Justices  
to hear and  
determine Cases  
under this Act.

Proceedings under  
this Act a Bar to  
further Pro-  
ceedings.

Mode of com-  
pelling the  
Appearance of  
Persons punish-  
able on summary  
Conviction.

Power to One  
Justice to remand  
for further  
Examination, and  
admit to Bail.

if such Justices, upon the hearing of any such Case, shall deem the Offence not to be proved, or that it is not expedient to inflict any Punishment, they shall dismiss the Party charged, on finding Surety or Sureties for his future good Behaviour, or without such Sureties, and then make out and deliver to the Party charged a Certificate under the Hands of such Justices, stating the Fact of such Dismissal, and such Certificate may be in the Form or to the Effect set forth in Schedule A. to this Act annexed: Provided also, that if such Justices shall be of opinion that the Charge is from any Circumstance a fit Subject for Prosecution by Information in the Name of the Attorney-General, such Justices shall, instead of summarily adjudicating thereupon, deal with the Case in all respects as if this Act had not been passed.

**2** One of the Justices before whom any Person shall be charged with any Offence made punishable under this Act shall, before investigating the Charge, inform the Person charged of the Nature thereof, and say to such Person these Words, or Words to the like Effect:—"We shall have to hear what you wish to say in answer to the Charge against you; but, if you wish the Charge to be tried by a Jury, you must object now to our deciding upon it at once;" and if such Person charged, or if a Parent of any such Person charged who shall be under the Age of Sixteen Years, shall then object, the Justices shall proceed with the Charge as if this Act had not been passed.

**3** Any Two or more Justices of the Peace in Petty Sessions assembled, at the Police Office, or other usual Place in any District, and in open Court, before whom any Person charged with any Offence made punishable under this Act shall be brought or appear, are hereby authorised to hear and determine the Case under the Provisions of this Act.

**4** Every Person who shall have obtained such Certificate of Dismissal as aforesaid, and every Person who shall have been convicted under the Authority of this Act, shall be released from all further or other Proceedings for the same Cause.

**5** Where any Person shall be charged with any Offence punishable upon summary Conviction by virtue of this Act, on the Oath of a credible Witness, before any Justice of the Peace, such Justice may issue his Summons or Warrant to summon or to apprehend the Person so charged to appear before any Two Justices of the Peace in Petty Sessions assembled as aforesaid, at a Time and Place to be named in such Summons or Warrant.

**6** Any Justice or Justices of the Peace, if he or they shall think fit, may remand for further Examination or for Trial, or suffer to go at large upon his becoming bound in a Recognizance with sufficient Surety or Sureties, any Person charged before him or them with any such Offence as aforesaid; and such Person and every such Surety shall be bound by Recognizance to be conditioned for the Appearance of such Person before the same or some other Justice or Justices of the Peace for further Examination, or for Trial before Two or more Justices of the Peace in Petty Sessions assembled as aforesaid, or for Trial at some Superior Court, as the Case may be; and every such Recognizance may be enlarged from Time to Time by any such Justice or Justices to such further Time as he or they shall appoint;

and every such Recognizance which shall not be enlarged shall be discharged without Fee or Reward, when the Party shall have appeared according to the Condition thereof.

**7** It shall be lawful for any Justice of the Peace, by Summons, to require the Attendance of any Person as a Witness upon the hearing of any Case before Two Justices under the Authority of this Act, at a Time and Place to be named in such Summons; and such Justice may require and bind by Recognizance all Persons whom he may consider necessary to be examined touching the Matter of such Charge to attend at the Time and Place to be appointed by him, and then and there to give Evidence upon the hearing of such Charge; and in case any Person so summoned or required or bound as aforesaid shall neglect or refuse to attend in pursuance of such Summons or Recognizance, then upon Proof being first given of such Person's having been duly summoned as hereinafter mentioned, or bound by Recognizance as aforesaid, it shall be lawful for the Justices before whom any such Person ought to have attended to issue their Warrant to compel his Appearance as a Witness.

As to the summoning and Attendance of Witnesses.

**8** If any Person so summoned as a Witness shall neglect or refuse to appear at the Time and Place appointed by the said Summons, and no just Excuse shall be offered for such Neglect or Refusal, every such Person shall for any such Offence forfeit and pay a Penalty not exceeding Twenty-five Pounds, to be recovered in a summary Way.

Penalty for Witnesses neglecting to attend upon Summons.

**9** Every Summons issued under the Authority of this Act may be served by delivering a Copy of the Summons to the Party, or to some Inmate at such Party's usual Place of Abode; and every Person so required by any Writing under the Hand or Hands of any Justice or Justices to appear before any two Justices, or to attend and give Evidence as aforesaid, shall be deemed to have been duly summoned.

As to Service of Summons.

**10** The Justices before whom any Person shall be summarily convicted of any such Offence as herein-before mentioned may cause the Conviction to be drawn up in the Form set forth in Schedule B. to this Act annexed, or in any other Form to the same Effect, which Conviction shall be good and effectual to all Intents and Purposes.

Form of Conviction.

**11** No such Conviction shall be quashed for Want of Form; and no Warrant of Commitment shall be held void by reason of any Defect therein, provided it be therein alleged that the Party has been convicted, and there be a good and valid Conviction to sustain the same.

No Conviction to be quashed for Want of Form.

**12** The Justices of the Peace before whom any Person shall be convicted under the Provisions of this Act shall forthwith thereafter transmit the Conviction and Recognizances to the Clerk or Deputy Clerk of the Peace for the District in or nearest to which the Conviction shall have taken place, there to be kept by him among the Records of the Court of General Sessions of the Peace; and the said Clerk or Deputy Clerk of the Peace shall transmit to the Colonial Secretary a monthly Return of the Names, Offences, and Punishments mentioned in the Convictions, with such other Particulars as may from Time to Time be required.

Convictions to be returned to the Quarter Sessions.

**13** A Copy of any such Conviction, purporting to be under the Hand Copy of

Conviction  
Evidence upon  
subsequent  
Charge.

of the Clerk or Deputy Clerk of the Peace having the Custody thereof, shall be received as *prima facie* Evidence of such previous Conviction under this Act, upon the investigation of any subsequent Charge under this Act, without Proof of the Signature authenticating the same, or of the official Character of the Person appearing to have signed the same.

No Forfeiture  
upon Convictions  
under this Act,  
but presiding  
Justices may order  
Restitution of Pro-  
perty.

**14** No Conviction under the Authority of this Act shall be attended with any Forfeiture, but whenever any Person shall be deemed guilty under the Provisions of this Act it shall be lawful for the presiding Justices to order Restitution of the Property in respect of which such Offence shall have been committed to the true Owner thereof or his Representative; and if such Property shall not then be forthcoming, the said Justices, whether they award Punishment or dismiss the Complaint, may inquire into and ascertain the Value thereof in Money, and, if they think proper, order Payment of such Sum of Money (to be recovered in a summary Way) to the true Owner of such Property, or his Representative, by the Person so deemed guilty, either at one Time or by Instalments at various Periods, as to the said Justices may seem reasonable.

Protection of  
Persons acting  
under this Act.

**15** All Actions and Prosecutions to be commenced against any Person for any thing done in pursuance of this Act shall be commenced within Three Months after the Fact committed, and not otherwise; and Notice in Writing of such Action or Prosecution, and of the Cause thereof, shall be given to the Defendant One Month at least before the Commencement of the Action or Prosecution; and in any such Action or Prosecution the Defendant may plead the general Issue, and give this Act and the special Matter in Evidence at any Trial to be had thereupon; and no Plaintiff shall recover in any such Action if Tender of sufficient Amends shall have been made before such Action brought, or if a sufficient Sum of Money shall have been paid into Court after such Action brought by or on behalf of the Defendant; and if a Verdict shall pass for the Defendant, or the Plaintiff shall become Non-suit, or discontinue any such Action or Prosecution, or if, upon Demurrer or otherwise, Judgment shall be given against the Plaintiff, the Defendant shall recover his full Costs as between Attorney and Client, and have the like Remedy for the same as any Defendant hath by Law in other Cases; and though a Verdict shall be given for the Plaintiff in such Action, the Plaintiff shall not have Costs against the Defendant, unless the Judge before whom the Trial shall be shall certify his Approbation of the Action, and of the Verdict obtained thereupon.

Act not to apply  
to transported  
Offenders.

**16** This Act shall not in any Manner apply to transported Offenders, or Offenders under Sentence of Penal Servitude.

**17** In referring to this Act it shall be sufficient to use the Expression "*The Petty Larceny Act.*"

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## SCHEDULE A.

*Form of Certificate of Dismissal.*

VAN DIEMEN'S LAND } WE of Her Majesty's Justices of the Peace for  
 TO WIT. } the Colony of Van Diemen's Land, do hereby certify, That  
 on the Day of 1855, at , M.N. was brought  
 before us the said Justices, charged with [*here state briefly the Particulars of the Charge,*] and that we the said Justices thereupon dismissed the said Charge.

Given under our Hands, this Day of

## SCHEDULE B.

*Form of Conviction.*

VAN DIEMEN'S LAND } BE it remembered, That on the Day of  
 TO WIT. } 1855, at , M.N. is convicted before us J.P.  
 and Q.R., Two of Her Majesty's Justices of the Peace for the Colony of Van  
 Diemen's Land, for that he the said M.N. did [*specify the Offence, without setting  
 forth the Evidence; e. gr. "on the First Day of December, 1855, steal One Pair of  
 Boots of the Value of Ten Shillings, the Property of S.T."*]: and [*in case of a second  
 or subsequent Conviction, this being the [second] Conviction of the said M.N. under  
 "The Petty Larceny Act"*], we the said J.P. and Q.R. adjudge the said M.N. for  
 his said Offence to be imprisoned in the [*House of Correction*] at and  
 there kept to hard Labour for the Term of

Given under our Hands the Day and Year first above mentioned.

MICHAEL FENTON, *Speaker.*

Passed the Legislative Council this fifteenth  
 day of August, one thousand eight  
 hundred and fifty-five.

FR. HARTWELL HENSLOWE,  
*Clerk of the Council.*

IN the name and on the behalf of Her Majesty I assent to this Act.

H. E. F. YOUNG,  
*Governor.*

*Government House, Hobart Town,  
 21st August, 1855.*

