

WESTERN AUSTRALIA

ANNO TRIGESIMO SEPTIMO

VICTORIÆ REGINÆ

No. 4

An Act to remove some defects in the Administration
of the Criminal Law. (Imperial Act 30 & 31 Vic.,
c. 35.) [Assented to 8th July, 1873.]

Preamble

WHEREAS complaint is frequently made by persons charged with indictable offences upon their trial that they are unable by reason of poverty to call witnesses on their behalf, and that injustice is thereby occasioned to them, and it is expedient to remove as far as practicable all just ground for such complaint: Be it enacted by His Excellency the Governor of Western Australia and its Dependencies, by and with the advice and consent of the Legislative Council thereof, as follows:—

Accused person
to be asked by
Justice if he
desire to call
witnesses

1. In all cases where any person shall appear or be brought before any Justice or Justices of the Peace charged with any indictable offence, and whether such person appear voluntarily upon summons or has been apprehended, with or without warrant, or be in custody for the same or any other offence, such Justice or Justices, before he or they shall commit such accused person for trial or admit him to bail, shall immediately after obeying the directions of the 10th section of the Ordinance 14 Victoria, No. 4, demand and require of the accused person whether he desires to call any witness; and if the accused person shall, in answer to such demand, call or desire to call any witness or witnesses, such Justice or Justices shall, in the presence of such accused person, take the statement on oath, affirmation, or declaration, both examination and cross-examination of those who shall be so called as witnesses

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by such accused person and who shall know anything relating to the facts and circumstances of the case, or anything tending to prove the innocence of such accused person, and shall put the same into writing; and such depositions, affirmations, or declarations of such witnesses shall be read over to and signed respectively by the witnesses who shall have been so examined, and shall be signed also by the Justice or Justices taking the same, and transmitted in due course of law with the depositions; and such witnesses, not being witnesses merely to the character of the accused, as shall in the opinion of the Justice or Justices give evidence in any way material to the case or tending to prove the innocence of the accused person, shall be bound by recognizance to appear and give evidence at the said trial; and afterwards, upon the trial of such accused person, all the laws now in force relating to the depositions of witnesses for the prosecution shall extend and be applicable to the depositions, affirmations and declarations of witnesses hereby directed to be taken.

Their depositions, &c., to be taken and returned to Court of trial if accused person call any

2. All the provisions of the said Ordinance, 14 Victoria, No. 4, relating to the summoning and enforcing the attendance and committal of witnesses and binding them by recognizance and committal in default, and for giving the accused person copies of the examinations and giving jurisdiction to certain persons to act alone, shall be read and shall have operation as part of this Act.

Provisions of 14 Vic. No. 4, extended to the Act

3. The Court before which any accused person shall be prosecuted or tried, or for trial before which he may be committed or bailed to appear for any felony or misdemeanour, is hereby authorised and empowered in its discretion at the request of any person who shall appear before such Court on recognizance to give evidence on behalf of the person accused, to order payment unto such witness so appearing of such sum of money as to the Court shall seem reasonable and sufficient to compensate such witness for the expenses, trouble and loss of time he shall have incurred or sustained in attending before the examining Magistrate; and compensation for trouble and loss of time therein shall be ascertained by the certificate of such Magistrate granted before the attendance in Court; and the amount of all other expenses and compensation shall be ascertained by the proper officer of the Court, who shall make out and deliver to the person entitled thereto an order for such expenses and compensation upon such and the same treasurers and officers as would now by law be liable to payment of an order for the expenses of the witnesses against such accused person: Provided always that in no case shall any such allowance or compensation exceed the amount now by law permitted to be made to witnesses for the prosecution; and provided always that such allowances and compensations shall be allowed and paid as part of the expenses of the prosecution.

If witnesses for accused bound by recognizance appear at the trial, Court may allow expenses

4. And whereas by the ninth section of the Ordinance 14 Victoria, No. 4, it is permitted under certain circumstances to read in evidence on the trial of an accused person the depositions taken in accordance with the provisions of the said Ordinance, of a witness who is dead or so ill as to be unable to travel; and whereas it may happen that a person dangerously ill and unable to travel may be able to give material and important information relating to an indictable offence or to a person accused thereof, and it may not be practicable or permissible to

Power to take depositions of persons dangerously ill, and not likely to recover, and to make same evidence in certain events after death of such person

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take in accordance with the provisions of the said Ordinance the examination or deposition of the person so being ill so as to make the same available as evidence in the event of his or her death before the trial of the accused person, and it is desirable in the interests of truth and justice that means should be provided for perpetuating such testimony, and for rendering the same available in the event of the death of the person giving the same : Therefore whenever it shall be made to appear to the satisfaction of any Justice of the Peace that any person dangerously ill, and in the opinion of some registered medical practitioner not likely to recover from such illness, is able and willing to give material information relating to any indictable offence or relating to any person accused of any such offence, and it shall not be practicable for any Justice or Justices of the Peace to take an examination or deposition in accordance with the provisions of the said Ordinance of the person so being ill, it shall be lawful for the said Justices to take in writing the statement on oath, affirmation or declaration of such person so being ill, and such Justice shall thereupon subscribe the same, and shall add thereto by way of caption a statement of his reason for taking the same, and of the day and place when and where the same was taken, and the names of the persons (if any) present at the taking thereof; and if the same shall relate to any indictable offence for which any accused person is already committed or bailed to appear for trial, shall transmit the same with the said addition to the proper officer of the Court for trial at which such accused person shall have been so committed or bailed; and in all other cases he shall transmit the same to the Resident Magistrate of the district in which he shall have taken the same, who is hereby required to preserve the same and file it of record; and if afterwards upon the trial of any offender or offence to which the same may relate, the person who made the same statement shall be proved to be dead, or if it shall be proved that there is no reasonable probability that such person will ever be able to travel or to give evidence, it shall be lawful to read such statement in evidence, either for or against the accused without further proof thereof, if the same purports to be signed by the Justice by or before whom it purports to be taken, and provided it be proved to the satisfaction of the Court that reasonable notice of the intention to take such statement has been served upon the person (whether prosecutor or accused) against whom it is proposed to be read in evidence, and that such person, or his counsel or attorney, had or might have had if he had chosen to be present full opportunity of cross-examining the deceased person who made the same.

Provision for the
prisoner being
present at taking
of statement

5. Whenever a prisoner in actual custody shall have served or shall have received notice of an intention to take such statement as herein-before mentioned, the Judge or Justice of the Peace by whom the prisoner was committed or the Visiting Justices of the prison in which he is confined may by an order in writing direct the Gaoler having the custody of the prisoner to convey him to the place mentioned in the said notice for the purpose of being present at the taking of the statement, and such Gaoler shall convey the prisoner accordingly, and the expenses of such conveyance shall be paid out of the funds applicable to the other expenses of the prison from which the prisoner shall have been conveyed.

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6. Where any prisoner shall be convicted either summarily or otherwise of larceny or other offence which includes the stealing of any property, and it shall appear to the Court by the evidence that the prisoner has sold the stolen property to any person and that such person has had no knowledge that the same was stolen, and that any moneys have been taken from the prisoner on his apprehension, it shall be lawful for the Court on the application of such purchaser and on the restitution of the stolen property to the prosecutor to order that out of such moneys a sum not exceeding the amount of the proceeds of the said sale be delivered to the said purchaser

Money found on prisoner to be given to purchaser of property not known to be stolen on restitution of property

7. Where recognizances shall have been entered into for the appearance of any person to take his trial for any offence at any Court of criminal jurisdiction and a bill of indictment shall be found against him or an information presented and filed against him, and such person shall be then in the prison belonging to the jurisdiction of such Court under warrant of commitment or under sentence for some other offence, it shall be lawful for the Court by order in writing to direct the Sheriff, Governor or Gaoler of the said prison to bring up the body of such person in order that he may be arraigned upon such indictment or information without writ of *habeas corpus*, and the said Sheriff, Governor or Gaoler shall thereupon obey such order.

Governor of prison to bring up the body of any person indicted without writ of *habeas corpus* under order of Court

FRED. A. WELD,
GOVERNOR.
