

T A S M A N I A.

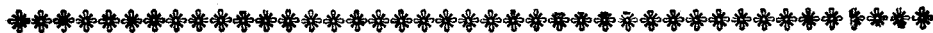


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ANNO TRICESIMO-QUARTO

VICTORIÆ REGINÆ

No. 3.



AN ACT to remove some Defects in the Administration of the Criminal Law.

[18 October, 1870.]

**W**HEREAS it is expedient to remove certain defects in the present administration of the Criminal Law in *Tasmania*: 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** In this Act the word "offence" shall mean any treason, felony, or misdemeanor cognizable in the Supreme Court of *Tasmania*; "Court" shall mean any Judge of the Supreme Court, Recorder of the Colony of *Tasmania*, or any two Justices of the Peace having jurisdiction to hear and determine any case.

Interpretation.

**2** Whereas complaint is frequently made by persons charged with offences upon their Trial that they are unable by reason of poverty to compel the attendance of 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: Therefore, in all cases where any person is brought before any Justice or Justices of the Peace charged with any offence, and such person desires to have

Accused person to be asked by Justice if he desires to call Witnesses.

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any Witnesses examined on his behalf, and such Witnesses are in attendance, such Justice or Justices shall take the statement on oath or affirmation of such Witnesses in the manner prescribed by *The Magistrates Criminal Procedure Act*; 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 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 of Witnesses examined for the accused.

Provisions of 19 Vict. No. 9, extended to this Act.

**3** All the provisions of *The Magistrates Criminal Procedure Act* relating to the summoning and enforcing the attendance and committal of Witnesses, and binding them by Recognizance and committal in default, shall be read and shall have operation as part of this Act.

If Witnesses for accused bound by Recognizance appear at the Trial, Court may allow expenses.

**4** The Court before which any accused person is tried for any offence is hereby authorised and empowered, in its discretion, to order payment unto any Witness examined for the defence (if such Witness has been bound by Recognizance to appear and give evidence for such accused person,) of such sum of money as to the Court seems reasonable and sufficient to compensate such Witness for the expenses, trouble, and loss of time he has incurred or sustained in attending before the examining Magistrate, and at or before such Court; and the amount of such expenses of 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 provisions of the Acts of Council 4th *William* 4th, No. 16, and 8th *Victoria*, No. 10, shall extend and be applied to any sums ordered to be paid to Witnesses for the accused under the provisions of this Act.

Power to take deposition of person dangerously ill and not likely to recover, and to make same evidence in certain events.

**5** And whereas by the Eleventh Section of *The Magistrates Criminal Procedure Act* it is permitted under certain circumstances to read in evidence on the Trial of an accused person the Deposition, taken in accordance with the provisions of the said Act, of a Witness who is dead, or so ill as to be unable to travel, or has left the Colony: 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 any offence, or to a person accused thereof, and it may not be practicable or permissible to take, in accordance with the provisions of the said Act, the Examination or Deposition of the person so being ill, so as to make the same available as evidence in the events hereinafter named, 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: Therefore, whenever it is made to appear to the satisfaction of any Justice of the Peace that any person dangerously ill, and in the opinion of some legally qualified Medical Practitioner not likely to recover from such illness, is able and willing to give material information relating to any 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 Act of the person so being ill, it shall be lawful for the said Justice to take in writing the statement on oath or affirmation of such person so being ill; and such Justice shall thereupon subscribe the same, and shall add thereto by way of caption a statement

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of his reason for taking the same, and of the day and place when and where the same was taken, and of the names of the persons (if any) present at the taking thereof, and, if the same relates to any 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 Attorney-General or other Officer duly appointed to prosecute crimes, misdemeanors, and offences cognizable in the Supreme Court; and if afterwards, upon the Trial of any offender or offence to which the same may relate, the person who made the same statement is proved to be dead, or if it is proved to the satisfaction of the Court 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 (in cases where the accused was actually in custody at the time of taking the statement) it be proved to the satisfaction of the Court that reasonable notice of the intention to take such statement has been served upon the accused, and that he 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.

**6** Whenever a Prisoner in actual custody has received notice of an intention to take such statement as hereinbefore mentioned, the Judge or Justice of the Peace by whom the Prisoner was committed may, by an order in writing, direct the Sheriff to convey such Prisoner to the place mentioned in the said notice for the purpose of being present at the taking of the statement, and the Sheriff shall convey the Prisoner accordingly.

Provision for the Prisoner being present at taking of statement.

**7** And whereas it is expedient to extend relief to persons required to serve as Jurors who may object to take an oath, or who may be objected to as incompetent to take an oath: Therefore, if any person summoned or required to serve as a Juror in any Criminal proceeding shall object to be sworn, or shall be objected to as incompetent to take an oath, such Juror shall, if the Judge or other presiding Officer is satisfied that the taking an oath would have no binding effect upon the conscience of such Juror, permit such Juror, instead of being sworn, to make the following promise and declaration:—

Jurors may in certain cases make a declaration instead of taking an oath.

“I solemnly promise and declare that I will well and truly  
“try, &c.”

which promise and declaration shall be of the same force and effect, and if untrue shall entail all the same consequences, as if such Juror had taken an oath in the usual form; and whenever in any legal proceedings it shall be necessary or usual to state or allege that Jurors have been sworn, it shall not be necessary to specify that any particular Juror has made a promise and declaration instead of an oath, but it shall be sufficient to state or allege that the Jurors have been “sworn.”

**8** Where any Prisoner is convicted, either summarily or otherwise, of Larceny or other offence which includes the stealing of any property, and it appears 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

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

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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.

Sheriff to bring up the body of a Prisoner without writ of *Habeas Corpus* under order of Court.

**9** Whenever any Information for any offence is filed by the Attorney-General or other officer duly appointed for the purpose in the Supreme Court or in any Court of General Sessions of the Peace against any person, and such person shall then be in any gaol 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 to bring up the body of such person, in order that he may be arraigned upon such Information, without writ of *Habeas Corpus*, and the Sheriff shall thereupon obey such order.

Penalty for working or using another person's cattle.

**10** Whosoever shall take and use, or in any manner work any cattle the property of any other person without the consent of the owner or other person in lawful possession thereof, shall be guilty of a misdemeanour, and being convicted thereof, either before the Supreme Court or before any Court of General Sessions of the Peace, or before two Justices in Petty Sessions assembled in a summary way in the mode prescribed by *The Magistrates Summary Procedure Act*, shall be liable at the discretion of the Court or Justices to be imprisoned for any term not exceeding One year, or to pay a fine not exceeding Twenty Pounds in respect of every head of cattle so taken, used, or worked.

For the purposes of this Section the word "Cattle" shall mean and include horses, mares, geldings, colts or fillies, bulls, cows, oxen, heifers, calves, and rams.

Commencement of Act.

**11** This Act shall come into operation on the First day of *November* One thousand eight hundred and seventy.