

No. XVIII.

An Act for further improving the Administration
of Criminal Justice. [24th August, 1852.]

CRIMINAL JUSTICE
AMENDMENT.

BE it enacted by the Governor of New South Wales by and with the advice and consent of the Legislative Council thereof as follows :—

1. Whenever on the trial of any information for any felony or misdemeanor there shall appear to be any variance between the statement in such information and the evidence offered in proof thereof in the name of any place mentioned in any such information or in the name or description of any person therein stated or alleged to be the owner of any property real or personal which shall form the subject of any offence charged therein or in the name or description of any person therein stated or alleged to be injured or damaged or intended to be injured or damaged by the commission of such offence or in the Christian name or surname or both Christian name and surname or other description whatsoever of any person whomsoever therein named or described or in the name or description of any matter or thing whatsoever therein named or described or in the ownership of any property named or described therein or if it shall appear that any matter or words required by law to be inserted in any information have been omitted or that any matter or words which should have been omitted have been inserted in such information it shall and may be lawful for the Court before which the trial shall be had if it shall consider such variance omission or insertion not material to the merits of the case and that the defendant cannot be prejudiced thereby in his defence on such merits to order such information to be amended according to the proof by some officer of the Court or other person both in that part of the information where such variance omission or insertion occurs and in every other part of the information which it may become necessary to amend on such terms as to postponing the trial to be had before the same or another jury as such Court shall think reasonable and after any such amendment the trial shall proceed whenever the same shall be proceeded with in the same manner in all respects and with the same consequences both with respect to the liability of witnesses to be indicted for perjury and otherwise as if no such variance omission or insertion had occurred and the order for the amendment shall be indorsed on the information. Provided that in all such cases where the trial shall be so postponed as aforesaid it shall be lawful for such Court to respite the recognizances of the prosecutor and witnesses and of the defendant and his surety or sureties if any accordingly in which case the prosecutor and witnesses shall be bound to attend to prosecute and give evidence respectively and the defendant shall be bound to attend to be tried at the time and place to which such trial shall be postponed without entering into any fresh recognizances for that purpose in such and the same manner as if they were originally bound by their recognizances to appear and prosecute or give evidence at the time and place to which such trial shall have been so postponed.

The Court may amend certain variances not material and by which the defendant cannot be prejudiced and may either proceed with or postpone the trial.

2. Every verdict and judgment which shall be given after the making of any amendment under the provisions of this Act shall be of the same force and effect in all respects as if the information had originally been in the same form in which it was after such amendment was made.

Verdicts and judgments valid after amendments.

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Records to be drawn up in amended form.

3. If it shall become necessary at any time for any purpose whatsoever to draw up a formal record in any case where any amendment shall have been made under the provisions of this Act such record shall be drawn up in the form in which the information was after such amendment was made without taking any notice of the fact of such amendment having been made.

The means by which the injury was inflicted need not be specified in informations for murder and manslaughter.

4. In any information for murder or manslaughter preferred after the coming of this Act into operation it shall not be necessary to set forth the manner in which or the means by which the death of the deceased was caused but it shall be sufficient in every information for murder to charge that the defendant did feloniously wilfully and of his malice aforethought kill and murder the deceased and it shall be sufficient in every information for manslaughter to charge that the defendant did feloniously kill and slay the deceased.

Description of written instruments in informations for forgery &c.

5. In any information for forging uttering stealing embezzling destroying or concealing or for obtaining by false pretences any instrument it shall be sufficient to describe such instrument by any name or designation by which the same may be usually known or by the purport thereof without setting out any copy or fac-simile thereof or otherwise describing the same or the value thereof.

Description of engraving plates &c. in informations.

6. In any information for engraving or making the whole or any part of any instrument matter or thing whatsoever or for using or having the unlawful possession of any plate or other material upon which the whole or any part of any instrument matter or thing whatsoever shall have been engraved or made or for having the unlawful possession of any paper upon which the whole or any part of any instrument matter or thing whatsoever shall have been made or printed it shall be sufficient to describe such instrument matter or thing by any name or designation by which the same may be usually known without setting out any copy or fac-simile of the whole or any part of such instrument matter or thing.

Other cases.

7. In all other cases wherever it shall be necessary to make any averment in any information as to any instrument whether the same consists wholly or in part of writing print or figures it shall be sufficient to describe such instrument by any name or designation by which the same may be usually known or by the purport thereof without setting out any copy or fac-simile of the whole or any part thereof.

Intent to defraud particular persons need not be alleged or proved in cases of forgery uttering or false pretences.

8. From and after the coming of this Act into operation it shall be sufficient in any information for forging uttering offering disposing of or putting off any instrument whatsoever or for obtaining or attempting to obtain any property by false pretences to allege that the defendant did the act with intent to defraud without alleging the intent of the defendant to be to defraud any particular person and on the trial of any of the offences in this section mentioned it shall not be necessary to prove an intent on the part of the defendant to defraud any particular person but it shall be sufficient to prove that the defendant did the act charged with an intent to defraud.

A party charged with felony or misdemeanor may be found guilty of and sentenced for an attempt to commit the same.

9. And whereas offenders often escape conviction by reason that such person ought to have been charged with attempting to commit offences and not with the actual commission thereof For remedy thereof be it enacted That if on the trial of any person charged with any felony or misdemeanor it shall appear to the jury upon the evidence that the defendant did not complete the offence charged but that he was guilty only of an attempt to commit the same such person shall not by reason thereof be entitled to be acquitted but the jury shall be at liberty to return as their verdict that the defendant is not guilty of the felony or misdemeanor charged but is guilty of an attempt to commit the same and thereupon such person shall be liable to be punished

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punished in the same manner as if he had been convicted upon an information for attempting to commit the particular felony or misdemeanor charged in the said indictment and no person so tried as herein lastly mentioned shall be liable to be afterwards prosecuted for an attempt to commit the felony or misdemeanor for which he was so tried.

No person so tried to be afterwards prosecuted for the same.

10. And whereas it is enacted by a certain Act of Parliament passed in the first year of the reign of Her present Majesty Queen Victoria intituled "*An Act to amend the Laws relating to Offences against the Person*" and adopted by an Act of Council passed in the second year of the same reign and numbered ten that "on the trial of any person for any of the offences therein-before mentioned or for any felony whatever where the crime charged shall include an assault against the person it shall be lawful for the jury to acquit of the felony and to find a verdict of guilty of assault against the person indicted if the evidence shall warrant such finding" And whereas great difficulties have arisen in the construction of such enactment For remedy thereof be it enacted That the said enactment shall be and the same is hereby repealed.

Repeal of the 11th section of 1 Vic. c. 85.

11. If upon the trial of any person upon any information for robbery it shall appear to the jury upon the evidence that the defendant did not commit the crime of robbery but that he did commit an assault with intent to rob the defendant shall not by reason thereof be entitled to be acquitted but the jury shall be at liberty to return as their verdict that the defendant is guilty of an assault with intent to rob and thereupon such defendant shall be liable to be punished in the same manner as if he had been convicted upon an information for feloniously assaulting with intent to rob and no person so tried as is herein lastly mentioned shall be liable to be afterwards prosecuted for an assault with intent to commit the robbery for which he was so tried.

On a trial for robbery the jury may convict of an assault with intent to rob.

No person so tried to be afterwards prosecuted for the same.

12. If upon the trial of any person for any misdemeanor it shall appear that the facts given in evidence amount in law to a felony such person shall not by reason thereof be entitled to be acquitted of such misdemeanor and no person tried for such misdemeanor shall be liable to be afterwards prosecuted for felony on the same facts unless the Court before which such trial may be had shall think fit in its discretion to discharge the jury from giving any verdict upon such trial and to direct such person to be charged with felony in which case such person may be dealt with in all respects as if he had not been put upon his trial for such misdemeanor.

Person tried for misdemeanor not to be acquitted if the offence turn out to be a felony unless the Court so direct.

13. If upon the trial of any person charged with embezzlement as a clerk servant or person employed for the purpose or in the capacity of a clerk or servant it shall be proved that he took the property in question in any such manner as to amount in law to larceny he shall not by reason thereof be entitled to be acquitted but the jury shall be at liberty to return as their verdict that such person is not guilty of embezzlement but is guilty of simple larceny or of larceny as a clerk servant or person employed for the purpose or in the capacity of a clerk or servant as the case may be and thereupon such person shall be liable to be punished in the same manner as if he had been convicted upon an information for such larceny and if upon the trial of any person indicted for larceny it shall be proved that he took the property in question in any such manner as to amount in law to embezzlement he shall not by reason thereof be entitled to be acquitted but the jury shall be at liberty to return as their verdict that such person is not guilty of larceny but is guilty of embezzlement and thereupon such person shall be liable to be punished in the same manner as if he had been convicted upon an information for such

Person indicted for embezzlement as a clerk &c. not to be acquitted if the offence turn out to be larceny and *vice versa*.

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embezzlement and no person so tried for embezzlement or larceny as aforesaid shall be liable to be afterwards prosecuted for larceny or embezzlement upon the same facts.

Upon an information for jointly receiving persons guilty of separately receiving may be convicted.

14. If upon the trial of two or more persons charged with jointly receiving any property it shall be proved that one or more of such persons separately received any part of such property it shall be lawful for the jury to convict upon such information such of the said persons as shall be proved to have received any part of such property.

Separate accessories and receivers may be included in the same information in the absence of the principal felon.

15. And whereas it frequently happens that the principal in a felony is not in custody or amenable to justice although several accessories to such felony or receivers at different times of stolen property the subject of such felony may be in custody or amenable to justice For the prevention of several trials be it enacted That any number of such accessories or receivers may be charged with substantive felonies in the same information notwithstanding the principal felon shall not be included in the same information or shall not be in custody or amenable to justice.

Three larcenies from the same person within six months may be included in the same information.

16. It shall be lawful to insert several counts in the same information against the same person for any number of distinct acts of stealing not exceeding three which may have been committed by him against the same person within the space of six calendar months from the first to the last of such acts and to proceed thereon for all or any of them.

Where a single taking is charged the prosecutor not required to elect unless there were more than three takings or more than six months of interval.

17. If upon the trial of any information for larceny it shall appear that the property alleged in such information to have been stolen at one time was taken at different times the prosecutor shall not by reason thereof be required to elect upon which taking he will proceed unless it shall appear that there were more than three takings or that more than the space of six calendar months elapsed between the first and last of such takings and in either of such last-mentioned cases the prosecutor shall be required to elect to proceed for such number of takings not exceeding three as appear to have taken place within the period of six calendar months from the first to the last of such takings.

Coin and bank notes may be described simply as money.

18. In every information in which it shall be necessary to make any averment as to any money or any note of any bank it shall be sufficient to describe such money or bank note simply as money without specifying any particular coin or bank note and such allegation so far as regards the description of the property shall be sustained by proof of any amount of coin or of any bank note and in cases of embezzlement and obtaining money or bank notes by false pretences by proof that the offender embezzled or obtained any piece of coin or any bank note or any portion of the value thereof although such piece of coin or bank note may have been delivered to him in order that some part of the value thereof should be returned to the party delivering the same or to any other person and such part shall have been returned accordingly.

Certain provisions of 23 Geo. II. c. 11 extended.

Any Court Judge Justice &c. may direct a person guilty of perjury in any evidence &c. to be prosecuted

19. Whereas by an Act of Parliament passed in the twenty-third year of the reign of His late Majesty King George the Second chapter eleven certain provisions were made to prevent persons guilty of perjury and subornation of perjury from escaping punishment by reason of the difficulties attending such prosecutions And whereas it is expedient to amend and extend the same Be it enacted That it shall and may be lawful for the Judges or Judge of the Supreme Court or for any Justices of the Peace Recorder Chairman or other Judge holding any General or Quarter Sessions of the Peace or for any Commissioner of Insolvency or for any Judge of any Court of Record or for any Justices of the Peace in Special or Petty Sessions or for any Commissioner before whom any writ of inquiry or writ of trial from the

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the Supreme Court shall be executed in case it shall appear to him or them that any person has been guilty of wilful and corrupt perjury in any evidence given or in any affidavit deposition examination answer or other proceeding made or taken before him or them to direct such person to be prosecuted for such perjury in case there shall appear to him or them a reasonable cause for such prosecution and to commit such person so directed to be prosecuted until the next Criminal Session of the Supreme Court or for the next Circuit Court for the district within which such perjury was committed unless such person shall enter into a recognizance with one or more sufficient surety or sureties conditioned for the appearance of such person at such next Session or Circuit Court and that he will then surrender and take his trial and not depart the Court without leave and to require any person he or they may think fit to enter into a recognizance conditioned to prosecute or give evidence against such person so directed to be prosecuted as aforesaid Provided always that no such direction shall be given in evidence upon any trial to be had against any person upon a prosecution so directed as aforesaid.

and commit the party or take bail and bind persons to give evidence.

20. In every information for perjury or for unlawfully wilfully falsely fraudulently deceitfully maliciously or corruptly taking making signing or subscribing any oath affirmation declaration affidavit deposition bill answer notice certificate or other writing it shall be sufficient to set forth the substance of the offence charged upon the defendant and by what Court or before whom the oath affirmation declaration affidavit deposition bill answer notice certificate or other writing was taken made signed or subscribed without setting forth the bill answer information declaration or any part of any proceeding either in law or in equity and without setting forth the commission or authority of the Court or person before whom such offence was committed.

Extending the 23 Geo. II. c. 11 s. 1 to other offences and simplifying information for perjury &c.

21. In every information for subornation of perjury or for corrupt bargaining or contracting with any person to commit wilful and corrupt perjury or for inciting causing or procuring any person unlawfully wilfully falsely fraudulently deceitfully maliciously or corruptly to take make sign or subscribe any oath affirmation declaration affidavit deposition bill answer notice certificate or other writing it shall be sufficient wherever such perjury or other offence aforesaid shall have been actually committed to allege the offence of the person who actually committed such perjury or other offence in the manner hereinbefore mentioned and then to allege that the defendant unlawfully wilfully and corruptly did cause and procure the said person the said offence in manner and form aforesaid to do and commit and wherever such perjury or other offence aforesaid shall not have been actually committed it shall be sufficient to set forth the substance of the offence charged upon the defendant without setting forth or averring any of the matters or things hereinbefore rendered unnecessary to be set forth or averred in the case of wilful or corrupt perjury.

Extending the 23 Geo. II. c. 11 s. 2 as to form of informations for subornation of perjury &c.

22. A certificate containing the substance and effect only (omitting the formal part) of the information and trial for any felony or misdemeanor purporting to be signed by the Clerk of the Court or other officer having the custody of the records of the Court where such information was tried or by the deputy of such Clerk or other officer shall upon the trial of any information for perjury or subornation of perjury be sufficient evidence of the trial of such information for felony or misdemeanor without proof of the signature or official character of the person appearing to have signed the same.

On trials for perjury and subornation a certificate of the trial on which the perjury was committed sufficient evidence of such trial.

23. It shall not be necessary to state any venue in the body of any information but the district places or other jurisdiction named in the margin thereof shall be taken to be the venue for all the facts stated in the body of such information Provided that in cases where local

Venue in the margin sufficient except where local description is necessary.

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local description is or hereafter shall be required such local description shall be given in the body of the information.

What defects shall not vitiate an information.

24. No information for any offence shall be held insufficient for want of the averment of any matter unnecessary to be proved nor for the omission of the words "as appears by the record" or of the words "with force and arms" or of the words "against the peace" nor for the insertion of the words "against the form of the Statute (or Act of Council)" instead of "against the form of the Statutes (or Acts of Council)" or *vice versa* or for the omission of any such last-mentioned words nor for that any person mentioned in the information is designated by a name of office or other descriptive appellation instead of his proper name nor for omitting to state the time at which the offence was committed in any case where time is not of the essence of the offence nor for stating the time imperfectly nor for stating the offence to have been committed on a day subsequent to the finding of the information or on an impossible day or on a day that never happened nor for want of a proper or perfect venue nor for want of a proper or formal conclusion nor for want of or imperfection in the addition of any defendant nor for want of the statement of the value or price of any matter or thing or the amount of damage injury or spoil in any case where the value or price or the amount of damage injury or spoil is not of the essence of the offence.

Formal objections to informations shall be taken before jury are sworn.

25. Every objection to any information for any formal defect apparent on the face thereof shall be taken by demurrer or motion to quash such information before the jury shall be sworn and not afterwards and every Court before which any such objection shall be taken for any formal defect may if it be thought necessary cause the information to be forthwith amended in such particular by some officer of the Court or other person and thereupon the trial shall proceed as if no such defect had appeared.

Court may amend.

Provision as to traversing information.

26. No person prosecuted shall be entitled to traverse or postpone the trial of any information found against him at any Session of the Peace Session of Gaol Delivery or Circuit Court Provided always that if the Court upon the application of the person so indicted or otherwise shall be of opinion that he ought to be allowed a further time either to prepare for his defence or otherwise such Court may adjourn the trial of such person to the next subsequent Session upon such terms as to bail or otherwise as to such Court shall seem meet and may respite the recognizances of the prosecutor and witnesses accordingly in which case the prosecutor and witnesses shall be bound to attend to prosecute and give evidence at such subsequent Session without entering into any fresh recognizances for that purpose.

Provision as to plea of autrefois convict or autrefois acquit.

27. In any plea of autrefois convict or autrefois acquit it shall be sufficient for any defendant to state that he has been lawfully convicted or acquitted (as the case may be) of the said offence charged in the information.

Punishment for certain misdemeanors.

28. Whenever any person shall be convicted of any one of the offences following as a misdemeanor that is to say any cheat or fraud punishable at Common Law any conspiracy to cheat or defraud or to extort money or goods or falsely to accuse of any crime or to obstruct prevent pervert or defeat the course of public justice any escape or rescue from lawful custody on a criminal charge any public and indecent exposure of the person any indecent assault or any assault occasioning actual bodily harm any attempt to have carnal knowledge of a girl under twelve years of age any public selling or exposing for public sale or to public view of any obscene book print picture or other indecent exhibition it shall be lawful for the Court to sentence the offender to be imprisoned for any term now warranted by law

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law and also to be kept to hard labor during the whole or any part of such term of imprisonment.

29. Every verdict of murder or manslaughter returned by the jury at a Coroner's Inquest and the warrant of committal or recognizances of bail thereupon issued or taken shall for the purposes of the prosecution or discharge (as the case may require) of the person committed or held to bail be regarded as equivalent to an ordinary committal or holding to bail by any Justice of the Peace and it shall be competent to the Attorney General or other officer for the time being empowered to prosecute crimes and misdemeanors in the Supreme Court to dispose of or proceed in the case in all respects as if the charge had been primarily investigated before such Justice and he had committed the accused or held him to bail to take his trial.

Verdicts of murder or manslaughter by juries at Coroners' Inquests to be deemed equivalent to ordinary committals or holding to bail by Justices.

30. In the construction of this Act the word "information" shall be understood to include "inquisition" and "presentment" and also any "plea" "replication" or other pleading and any record and the word "property" shall be understood to include goods chattels money valuable securities and every other matter or thing whether real or personal upon or with respect to which any offence may be committed.

Interpretation of terms.

31. This Act shall come into operation on the first day of September one thousand eight hundred and fifty-two.

Commencement of Act.