

No. XVI.

An Act for the prevention of Frauds by Trustees Directors of Companies and others in certain cases. [2nd November, 1858.]

TRUST FRAUDS.

WHEREAS it is expedient to make better provision for the punishment of frauds committed by Trustees Directors of Public Companies and other persons intrusted with property in the cases hereinafter mentioned Be it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled and by the authority of the same as follows :—

Preamble.

1. If any trustee of property for the benefit either wholly or partially of some other person or for any public or charitable purpose shall in any manner with intent to defraud misappropriate or destroy such property or any part thereof he shall be guilty of a misdemeanor.

Trustees fraudulently disposing of trust property.

2. Provided that where any civil proceeding is pending in any Court respecting such misappropriation or destruction no prosecution shall be instituted or person be committed or held to bail for an offence against the preceding enactment without the leave of such Court or some Judge thereof.

No prosecution in certain cases without leave of a Judge.

3. For the purposes of this Act the word "trustee" shall mean a trustee (whether named or acting alone or jointly with any other or others) under some express trust created by deed will or other instrument in writing and shall include every person on whom such trust may devolve by operation of law or otherwise and shall extend to executors and administrators and assigns in Insolvency And the word "property" shall include every description of real and personal property money and securities for money debts and legacies and all deeds and instruments relating to any such property and not only the original subject of the trust or the property intrusted for safe custody or for sale or transfer but also any property into which the same may have been converted and the proceeds thereof respectively.

Interpretation of terms.

Trust Frauds.

Persons under written power fraudulently disposing of property intrusted for sale.

4. If any person intrusted by any written instrument with the sale or transfer of property shall in any manner with intent to defraud misappropriate or destroy such property or any part thereof he shall be guilty of a misdemeanor.

Directors &c. of public company fraudulently appropriating property

5. If any director public officer manager or member of any body corporate or public company shall in any manner with intent to defraud misappropriate or destroy any of the property of such body corporate or company (whether he be a member thereof or not) he shall be guilty of a misdemeanor.

Or keeping fraudulent accounts

6. If any director public officer or manager of any body corporate or public company shall as such receive or possess himself of any of the property of such body corporate or company otherwise than in payment of a just debt or demand and shall with intent to defraud omit to make a true entry thereof in the books or accounts of such body corporate or company or to direct such entry to be made he shall be guilty of a misdemeanor.

Or wilfully destroying books

7. If any director public officer manager or member of any body corporate or public company shall with intent to defraud destroy mutilate falsify or alter any book paper entry security or document belonging to such body corporate or company or make or concur in making any false entry or be guilty of or concur in any material omission in any such book paper security or document he shall be guilty of a misdemeanor.

Or publishing fraudulent statements.

8. If any director public officer or manager of any body corporate or public company shall make circulate or publish or concur in making circulating or publishing any written statement or account which he shall know to be false in any material particular with intent to deceive or defraud any person or with intent to induce any person to become a shareholder or partner in or to intrust or advance property to such body corporate or company or to enter into any security for the benefit thereof he shall be guilty of a misdemeanor.

Receiving property.

9. If any person shall receive any property fraudulently misappropriated within the meaning of this Act knowing the same to have been misappropriated he shall be guilty of a misdemeanor.

Punishment of offences.

10. Every person guilty of a misdemeanor under this Act shall be liable to such punishment by hard labor on the roads or other public works for not more than five years or by imprisonment for not more than three years with or without hard labor or by fine with or without imprisonment as the Court shall award.

Persons not exempt from answering questions.

11. Nothing in this Act shall enable any person to refuse to make a complete discovery by answer to any question or interrogatory in any civil proceeding but no such answer shall be admissible in evidence against such person in any criminal prosecution other than a prosecution for perjury.

No civil remedy affected.

12. No proceeding or conviction under this Act shall affect any remedy at law or in equity which any party aggrieved might have had if this Act had not been passed but no conviction of any offender under this Act shall be received in evidence in any civil proceeding against him.

Offences not triable at Sessions.

13. No prosecution under this Act shall be instituted in any Court of General or Quarter Sessions.

Form of indictment.

14. In prosecutions under this Act it shall be sufficient to allege an intent to deceive or defraud without specifying the persons or person or body corporate or company intended to be deceived or defrauded And in prosecutions under the eighth section to allege an intent to induce persons to become shareholders or partners or to intrust or advance property or to enter into security as mentioned in that section without specifying any particular persons or person or any particular property or security And in prosecutions under the first section it shall

Assessment on Runs.

shall be sufficient to state that the party charged was a trustee of the property misappropriated or destroyed without specifying in what manner he was trustee and to specify one of the persons or purposes if more than one for whom or which the party charged was such trustee.
