

No. IX.

An Act to facilitate the taking or apprehending of Persons charged with certain felonies and the punishment of those by whom they are harboured. [4th March, 1879.]

FELONS
APPREHENSION.

WHEREAS for the better protection of the lives and property of Preamble. Her Majesty's subjects and for the purpose of preventing the spread of the crime commonly known as "Bushranging" as well as of deterring evil-minded persons from harbouring persons charged on oath with the commission of murder robbery with arms accompanied by wounding and other capital felonies it is expedient to re-enact and extend the provisions of the expired Act twenty-eighth Victoria number two Be it therefore 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:—

1. This Act may be cited as the "Felons Apprehension Act of Short title and operation of Act. 1879" and its provisions shall be applicable to all crimes committed evidence taken warrants issued and informations filed relating to such crimes as well before as after the passing of this Act.

2. After information on oath made before a Justice of the Peace and a warrant thereupon duly issued charging any person therein named or described with the commission of a felony punishable by law with death and after an information by the Attorney General for such felony filed in the Supreme Court any Judge of the Supreme Court upon being satisfied by affidavit of these facts and that the person charged is at large and will probably resist all attempts by the ordinary legal means to apprehend him may forthwith issue a Bench Warrant under the hand and seal of such Judge for the apprehension of the person so charged in order to his answering and taking his trial upon the said information and such Judge may thereupon either immediately or at any time afterwards before the apprehension or surrender or after any escape from custody of the person so charged order a summons to be inserted in the *Gazette* requiring such person to surrender himself on or before a day and at a place specified to abide his trial for the crime of which he so stands accused Provided that the Judge shall further direct the publication of such summons at such places and in such newspapers and generally in such manner and form as shall appear to him to be best calculated to bring such summons to the knowledge of the accused.

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Procedure in the case of an extra-territorial outlaw.

3. If upon an application by or on behalf of the Attorney General to any Judge of the Supreme Court it shall be proved to the satisfaction of such Judge by affidavit that any person has been duly adjudged an outlaw in accordance with the law in force for the time being in any Australian Colony other than New South Wales after the alleged commission by him in such first-mentioned Colony of any crime punishable by the law of that Colony with death it shall be lawful for such Judge if satisfied that such person has been or is then at large in this Colony and will probably resist all attempts by the ordinary legal means to apprehend him to issue a Bench Warrant under the hand and seal of such Judge for the apprehension of such person in order to his being remitted to the proper authority in the Colony where such person was so adjudged an outlaw to be there dealt with in due course of law and such Judge may thereupon either immediately or at any time afterwards before the apprehension or surrender or after any escape from custody of the person so charged order a summons to be inserted in the *Gazette* requiring such person to surrender himself on or before a day and at a place specified to be so remitted as aforesaid Provided that the Judge shall further direct the publication of such summons at such places and in such newspapers and generally in such manner and form as shall appear to him to be best calculated to bring such summons to the knowledge of the accused.

Effect of not surrendering where the accused remains at large.

4. If the person so charged shall not surrender himself for trial pursuant to such summons or shall not be apprehended or being apprehended or having surrendered shall escape so that he shall not be in custody on the day specified in such summons he shall upon proof thereof by affidavit to the satisfaction of any Judge of the Supreme Court and of the due publication of the summons be deemed outlawed and shall and may thereupon be adjudged and declared to be an outlaw accordingly by such Judge by a declaration to that effect under his hand filed in the said Court of Record And if after Proclamation by the Governor with the advice of the Executive Council of the fact of such adjudication shall have been published in the *Gazette* and in one or more Sydney and one or more country newspapers such outlaw shall afterwards be found at large armed or under circumstances which afford reasonable ground to believe that he is armed it shall be lawful for any of Her Majesty's subjects whether a constable or not and without being accountable for using of any deadly weapon in aid of such apprehension whether its use be preceded by a demand to surrender or not to apprehend or take such outlaw alive or dead.

Proclamation to be evidence of the outlaw.

5. The proclamation as published in the *Gazette* shall be evidence of the person named or described therein being and having been duly adjudged an outlaw for the purposes of this Act and the Judge's summons as so published shall in like manner be evidence of the truth of the several matters stated therein.

Harbouring or aiding offenders after summons.

6. If after such proclamation any person shall voluntarily and knowingly harbour conceal or receive or give any aid shelter or sustenance to such outlaw or provide him with firearms or any other weapon or with ammunition or any horse equipment or other assistance or directly or indirectly give or cause to be given to him or any of his accomplices information tending or with intent to facilitate the commission by him of further crime or to enable him to escape from justice or shall withhold information or give false information concerning such outlaw from or to any officer of police or constable in quest of such outlaw—the person so offending shall be guilty of felony and being thereof convicted shall forfeit all his lands as well as goods and shall be liable to imprisonment with or without hard labour for such period not exceeding fifteen years as the Court shall determine and no allegation or proof by the party so offending that he was at the time under compulsion

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compulsion shall be deemed a defence unless he shall as soon as possible afterwards have gone before a Justice of the Peace or some officer of the Police Force and then to the best of his ability given full information respecting such outlaw and made a declaration on oath voluntarily and fully of the facts connected with such compulsion.

7. In any indictment under the last preceding section it shall be sufficient to describe the offence in the words of the said section and to allege that the person in respect of whom or whose accomplice such offence was committed was an outlaw within the meaning of this Act without alleging by what means or in what particular manner the person on trial harboured or aided or gave arms sustenance or information to the outlaw or what in particular was the aid sustenance shelter equipment information or other matter in question.

8. Any Justice or officer of the Police Force having reasonable cause to suspect that an outlaw or accused person summoned under the provisions of this Act is concealed or harboured in or on any dwelling-house or premises may alone or accompanied by any persons acting in his aid and either by day or by night demand admission into and if refused admission may break and enter such dwelling-house or premises and therein apprehend every person whom he shall have reasonable ground for believing to be such outlaw or accused person and may thereupon seize all arms found in or on such house or premises and also apprehend all persons found in or about the same whom such Justice or officer shall have reasonable ground for believing to have concealed harboured or otherwise succoured or assisted such outlaw or accused person. And all persons and arms so apprehended and seized shall be forthwith taken before some convenient Justice of the Peace to be further dealt with and disposed of according to law.

9. It shall be lawful after any such proclamation as aforesaid for any police officer or constable in the pursuit of any such outlaw in the name of Her Majesty to demand and take and use any horses not being in actual employment on the road arms saddles forage sustenance equipments or ammunition required for the purposes of such pursuit. And if the owner of such property shall not agree as to the amount of compensation to be made for the use of such property then the amount of such compensation shall be determined in the District Court or Supreme Court according to the amount claimed in an action to be brought by the claimant against the Colonial Treasurer or upon an issue agreed to by the claimant and the Colonial Treasurer. Provided that in all cases in which any such action shall be brought it shall be lawful for the Colonial Treasurer to plead in bar any tender previously made by him or to pay into Court such money as he shall think fit and plead such payment in bar of the further maintenance of such action.

10. No conveyance or transfer of land or goods by any such outlaw or accused person after the issue of a warrant for his apprehension and before his conviction if he shall be convicted shall be of any effect whatever.

11. The Proclamation of adjudication of Outlawry contained in the *Government Gazette* of any Colony shall be conclusive evidence for all purposes of the adjudication of outlawry of the person or persons therein named having been duly made and published in accordance with the law of such Colony.

12. Nothing in this Act contained shall be deemed to abridge the jurisdiction now by law reposed in the Supreme or any Circuit Court or to compel the surrender of any extra-territorial outlaw to be dealt with in the Colony where he shall have been outlawed if such outlaw shall have committed in this Colony any crime for which he might have been indicted and tried in this Colony before the passing of this Act.

Form of indictment
under previous
section.

Justice or officer of
Police may search
for suspected felons.

Police may take
horses &c.

Tender proved.

To prevent
fraudulent con-
veyance of property.

Proclamations in
Gazettes of out-
lawry to be
evidence.