

Act No. 26, 1899.

An Act to consolidate the Statutes relating to
the apprehension of Felons. [23rd November,
1899.]FELONS
APPREHENSION.
—

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:—

1. This Act may be cited as the "Felons Apprehension Act, short title. 1899."

2. The Acts mentioned in the Schedule hereto are hereby Repeal of Acts repealed.

3. The provisions of this Act shall be applicable to all crimes Application of this Act. committed, evidence taken, warrants issued, and informations filed, 42 Vic. No. 9, s. 1. relating to such crimes as well before as after the passing of this Act.

4. After information on oath made before a Justice and a warrant Judge may cause persons charged with capital felony to be summoned. therupon 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 Ibid. s. 2. 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 that he may answer and take his trial upon the said information.

5. (1) Upon application by, or on behalf of, the Attorney-General to any Judge of the Supreme Court, such Judge upon being satisfied 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, and that such person has been, or is then at large in New South Wales, and will probably resist all attempts by the ordinary legal means to apprehend him, may issue a bench warrant under the hand and seal of such Judge for the apprehension of such person in order that he may be 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.

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Proclamations in
Gazettes of outlawry
to be evidence.

42 Vic. No. 9, s. 11.

Judge may order
summons to be
inserted in Gazette,
&c.

Ibid. s. 2.
42 Vic. No. 13, s. 2.

Effect of not sur-
rendering where the
accused remains at
large to be outlawry.

Ibid.

Proclamation to be
evidence of the
outlaw.

42 Vic. No. 9, s. 5.

Harbouring or aiding
offenders after
summons.

Ibid. s. 6.

(2) 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.

6. After issuing a bench warrant under section four or section five the Judge may, either immediately, or at any time afterwards, before the apprehension or surrender, or after any escape from custody of the person mentioned in such warrant, 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 take his trial or 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 appears to him to be best calculated to bring such summons to the knowledge of the accused.

7. (1) If any person summoned under the last preceding section does not surrender himself pursuant to such summons, or is not apprehended, or being apprehended or having surrendered escapes, so that he is not 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 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.

(2) If after proclamation by the Governor with the advice of the Executive Council of the fact of such adjudication has been published in the Gazette, and in one or more Sydney and one or more country newspapers, such outlaw is afterwards found at large armed, or under circumstances which afford reasonable ground to believe that he is armed, any of Her Majesty's subjects, whether a constable or not, and without being accountable for the using of any deadly weapon in aid of such apprehension, whether its use be preceded by a demand to surrender or not, may apprehend or take such outlaw alive or dead.

8. 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.

9. (1) Whosoever after such proclamation voluntarily and knowingly harbours, conceals, or receives, or gives, any aid, shelter, or sustenance to such outlaw, or provides him with firearms or any other weapon, or with ammunition, or any horse, equipment, or other assistance, or,

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directly or indirectly gives, or causes to be given, to such outlaw 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,

withholds information, or gives false information concerning such outlaw, from or to any member of the police force in quest of such outlaw

shall be guilty of felony, and shall on conviction be liable to penal (46 Vic. No. 17, s. 416.) servitude for a term not exceeding fifteen years.

(2) No allegation or proof by the person so offending that he was at the time under compulsion shall be deemed a defence, unless he has as soon as possible afterwards gone before a Justice, or some member 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.

10. 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 of 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.

11. (1) Any Justice or member 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 has 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 member of the police force has reasonable ground for believing to have concealed, harboured, or otherwise succoured, or assisted, such outlaw, or accused person.

(2) All persons and arms so apprehended and seized shall be forthwith taken before a Justice to be further dealt with and disposed of according to law.

12. (1) After any such proclamation as aforesaid, any member of the police force in the pursuit of any such outlaw may, in the name of Her Majesty demand, and take, and use, any horses not being in actual employment on the road, or any arms, saddles, forage, sustenance, equipments, or ammunition required for the purposes of such pursuit.

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(2) If the owner of such property does 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:

Tender proved.

Provided that in all cases in which any such action is 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 thinks fit, and plead such payment in bar of the further maintenance of such action.

Conveyance of property after issue of warrant void.

42 Vic. No. 9, s. 10.

Saving rights of Supreme Court.
Ibid. s. 12.

And right to keep and deal with extra-territorial outlaws guilty of crime in New South Wales.
Ibid.

13. 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 be convicted, shall be of any effect whatever.

14. Nothing in this Act contained shall be deemed—

- (a) to abridge the jurisdiction now by law reposed in the Supreme or any Circuit Court; or
- (b) to compel the surrender of any extra-territorial outlaw to be dealt with in the Colony where he has been outlawed if such outlaw has committed in New South Wales any crime for which he might have been indicted and tried in New South Wales before the commencement of this Act.

See s. 2.

SCHEDULE.

Repeal of Acts.

Reference to Act.	Subject or short title.	Extent of repeal.
42 Vic. No. 9	... Felons Apprehension Act of 1879...	All hitherto unrepealed.
42 Vic. No. 13	... Act amending abovementioned Act and included in same title.	The whole.