

No. V.

An Act to amend the Criminal Law and certain laws for the administration of justice. [14th December, 1891.]

CRIMINAL
LAW AND EVIDENCE
AMENDMENT.

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 "Criminal Law and Evidence Amendment Act of 1891." Short title.

2. The Act herein referred to as the Principal Act is the "Criminal Law Amendment Act of 1883," forty-sixth Victoria number seventeen. Act referred to as Principal Act.

3. The following sections and parts of sections of the Principal Act, viz., sections eight, one hundred and fifty, one hundred and fifty-one, one hundred and fifty-two, one hundred and fifty-three, in section four hundred and thirty-eight the words "other than the one hundred and fiftieth section," and in clause (a) of section four hundred and forty-six the words "in company with any other person," and the whole Repeal of certain sections and clauses of the Principal Act and of the whole of the "Criminal Law Amendment Act of 1884."

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See 48 and 49 Vic.,
ch. 69, sec. 19.

whole of the "Criminal Law Amendment Act of 1884," are hereby repealed—except as to anything heretofore duly done thereunder, and except so far as may be necessary for the purpose of supporting and continuing any proceeding taken or of prosecuting or punishing any person for any offence committed before the passing of this Act.

Provision for
reducing terms of
sentences of penal
servitude and for
imposing sentence of
imprisonment.

4. Where by any section of the Principal Act an offender is made liable to penal servitude for life, or any other fixed term, the Judge may nevertheless pass a sentence of penal servitude or of imprisonment of less duration as follows—that is to say—instead of penal servitude for life, penal servitude for any term of years not less than seven—or imprisonment for any term not exceeding seven years—instead of penal servitude for fourteen years, penal servitude for any term of years not less than five, or imprisonment for any term not exceeding five years—instead of penal servitude for ten years, penal servitude for any term of years not less than four, or imprisonment for any term not exceeding three years—and instead of penal servitude for seven or five years, penal servitude for any term of years not less than three, or imprisonment for any term not exceeding two years: Provided that nothing in this section shall prevent the awarding of hard labour or solitary confinement, or whipping, where at present by law authorized, or directing the offender to enter into recognizances to keep the peace, and for good behaviour.

Times of whipping
need not be specified
in sentence.
26 and 27 Vic.
ch. 44.

5. In the case of any sentence to a whipping or whippings under sections four hundred and one or four hundred and two of the Principal Act, it shall not be necessary that the time or times of such whippings shall be specified by the Court in such sentence, and in case the Court shall not specify the time or times of such whipping, the same shall be fixed by the Comptroller General of Prisons, under and in accordance with regulations in that behalf to be made by the Governor. In no case shall any whipping take place after the expiration of six months from the passing of the sentence.

Accused and husband
or wife of accused
competent witnesses
under certain
sections.

See 48 and 49 Vic.,
ch. 69, sec. 20.

6. Every person charged with an indictable offence, and the husband or wife, as the case may be, of the person so charged, shall be competent, but not compellable, to give evidence in every Court on the hearing of such charge: Provided that the person so charged shall not be liable to be called as a witness on behalf of the prosecution nor to be questioned on cross-examination without the leave of the Judge as to his or her previous character or antecedents.

On hearing of a
charge for any offence
evidence not on oath
may be received in
case of children of
tender years, but such
evidence must be
corroborated.

See 48 & 49 Vic., ch
69, sec. 4.

7. Where upon the hearing of any charge under sections forty-one, forty-two, forty-three, forty-four, fifty-nine, or sixty of the Principal Act against any person, any child who is tendered as a witness, does not, in the opinion of the Court or Justices, understand the nature of an oath, the evidence of such child of tender years may be received, though not given upon oath, if, in the opinion of the Court or Justices, as the case may be, such child is possessed of sufficient intelligence to justify the reception of the evidence, and understands the duty of speaking the truth. No person shall be allowed to be convicted of the offence charged unless the testimony admitted by virtue of this section and given on behalf of the prosecution shall be corroborated by some other material evidence in support thereof implicating the accused. If any witness whose evidence has been admitted under this section shall give false evidence such witness shall be deemed guilty of a misdemeanour: Provided that no prosecution shall be instituted under or by virtue of this section without the leave first obtained of the Court or Justices before whom such evidence was given.

Certified copies of
registers, &c., to be
prima facie evidence
of particulars.

8. Certified copies of registers, or entries of registers, made or given by the Registrar-General or any District Registrar, and purporting to be signed by such officers respectively, shall be received

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as *prima facie* evidence in any Court of Justice within this Colony of the particulars therein contained respecting the birth, death, or marriage to which the same relate.

9. In any Court of Justice within the said Colony in which it shall be necessary to prove the age, marriage, or death of any person born or married or who shall have died in any part of the British dominions other than this Colony, a certificate of the birth, marriage, or death of such person, purporting to be issued by the officer authorized by the law in that behalf of the part of the said dominions in which such person shall have been born or married, or shall have died, as the case may be, shall be received as *prima facie* evidence of the matters stated in such certificate, without proof of the seal or stamp or signature, or of the official character of the person appearing to have signed the same. And whosoever forges or utters or tenders in evidence, or causes to be tendered in evidence, any such certificate, knowing the same to be forged, shall be liable to penal servitude for any term of years not less than five or to imprisonment with or without hard labour for any term not exceeding five years.

Evidence of birth or marriage in other parts of the British Dominions.

10. In any Court of Justice within the said Colony in which it may be necessary to prove the incorporation or registration of any trading society or company, whether foreign or otherwise, it shall be sufficient *prima facie* evidence of such incorporation or registration to prove that such society or company carried on business within the said Colony, or elsewhere outside the said Colony, as the case may be, under a certain name or style, without further proof as to the incorporation or registration of such society or company.

Evidence of incorporation, &c. of companies.

11. Printed copies in volumes of Statutes, codes, or other written law enacted by the Imperial or any foreign Government, or by any British Colony or dependency other than this Colony, purporting to have been published by the authority thereof, or proved, to the satisfaction of the Court or Judge, to be commonly admitted as evidence in the Courts and judicial tribunals of such Government, Colony, or dependency may be admitted in all Courts of Justice in this Colony on all occasions as *prima facie* evidence of such laws. The books of reports of cases adjudged in the Courts of any part of the British dominions or of any foreign Government, purporting or proved, to the satisfaction of the Court or Judge, to be authorized reports, may also be admitted as *prima facie* evidence of the unwritten or common law of that part of the said dominions or of the foreign Government to which the same relate.

Evidence of foreign law, &c.
See Voorlie's Code of Procedure of State of New York, 7th ed., p. 565.

12. In any prosecution under section one hundred and twenty-one or one hundred and twenty-two of the Principal Act, where the charge is in respect of money, it shall not be necessary to prove the larceny or embezzlement by the accused of any specific sum of money, if there is proof of a general deficiency on the examination of the books of account, or entries, kept or made by him, or otherwise, and the jury are satisfied that the accused stole or fraudulently embezzled the deficient money or any part thereof.

Larceny or embezzlement by persons in the Public Service. Proof of general deficiency in accounts.

13. On the trial of any person for obtaining money or property by any false pretence, the accused shall not be entitled to an acquittal if it should appear that the money or property was obtained partly by a false pretence and partly by a wilfully false promise, but may be convicted notwithstanding, and shall be liable to be punished as provided in section one hundred and forty-one of the Principal Act.

Accused may be convicted on a charge of false pretences though property obtained partly by a false promise.

14. Any person convicted upon any indictment of an offence under section one hundred and fifty-five of the Principal Act shall be liable to imprisonment for a term not exceeding three years.

Punishment on conviction for offence under section 155.

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Extension of section
369 of Principal Act.
Reg. v. Buzzart,
5 N.S.W.L.R., p. 419.

15. Where, on the trial of a person for carnally knowing a girl under the age of ten years, the jury are satisfied that she was of or above that age, but under fourteen years, and that the accused had not carnal knowledge of such girl, but was guilty of an attempt to have or of an assault with intent to have such carnal knowledge, the jury may specially find those facts, and he shall be liable to punishment accordingly.

Hard labour may be
awarded in all cases
of common law
misdemeanour.

16. Whenever a person is convicted of any offence as a misdemeanour at common law, the Court may sentence him to be kept to hard labour during the whole or any part of the term of his imprisonment.

Extension of section
434.

17. The provisions in respect of proof by affidavit or otherwise of the service of a summons upon any person, contained in the four hundred and thirty-fourth section of the Principal Act, shall henceforth be alike applicable to all cases where any charge or complaint for an indictable offence is made before any Justice, as well as to cases where a person is charged before a Justice or Justices with an offence punishable on summary conviction, whether under the Principal Act, this Act, or any other Act either heretofore or hereafter passed.

Extension of
summary jurisdiction
of Justices in respect
of certain offences.

18. Where a person is charged before one or more Justices with attempting to commit suicide, or with the offence of stealing from the person of another, or of simple larceny, or with any offence within any of the sections of the Principal Act hereinafter enumerated, that is to say: Sections seventy-one, seventy-five, seventy-six, eighty-one, eighty-two, one hundred and fifteen, one hundred and seventeen, one hundred and eighteen, one hundred and twenty-one, one hundred and twenty-two, or one hundred and forty-one; or with an attempt to commit any such offence, and the evidence for the prosecution is in the opinion of such Justice or Justices sufficient to put the accused on his trial, but it appears to him or them that the case may properly be disposed of summarily, the said Justice or Justices shall have jurisdiction to hear and determine the charge in a summary manner, and pass sentence upon the person so charged. The jurisdiction conferred by this section shall not extend to any case in which the subject-matter of the charge or charges that may be made in respect of any of the offences mentioned, or the value of the property involved is of the amount of twenty pounds or upwards; and the jurisdiction hereby conferred shall not be exercised if the accused desire the case to be determined by a jury.

Accused to be
warned.

19. In the cases referred to in the last preceding section the Justice or Justices shall first reduce the charge into writing and read it to the accused and shall ask him whether he consents to its being disposed of summarily, and if he consents shall ask him whether he is guilty or not, and if the accused pleads guilty the Justice or Justices shall pass sentence upon him, but if he says that he is not guilty, and has a defence, such Justice or Justices shall proceed to hear the same: Provided also that upon the close of the case for the prosecution, and before asking the accused whether he is guilty, the Justice or Justices shall explain to him that he is not obliged then to plead, but is entitled to have the case disposed of in the ordinary course of law.

Punishment or dis-
missal in such cases

20. If in any such case the accused pleads guilty, or the Justice or Justices, after hearing the whole case, find the charge to be proved, such Justice or Justices shall convict him thereof, and upon such conviction the accused shall be liable to imprisonment for a term not exceeding six months or to pay a fine not exceeding twenty pounds, or where the offender's age is, in the opinion of such Justice or Justices, under sixteen years, then he shall be liable to imprisonment for a term not exceeding three months or to pay a fine not exceeding ten pounds; but if the Justice or Justices find the accused not guilty, such

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such Justice or Justices shall dismiss the case, and shall, if requested, make out and deliver to him a certificate under his or their hands, stating the fact of such dismissal.

21. Every such conviction shall have the same effect as a conviction upon an indictment for the offence would have had; and no person convicted as aforesaid, or who obtains a certificate of dismissal under the last section, shall be afterwards liable to prosecution for the same cause.

Summary conviction or dismissal a bar to indictment.

22. The provisions in section three hundred and seven of the Principal Act shall be alike applicable to all cases in which any person is remanded to prison, and in which the Attorney-General may in his discretion think fit not further to proceed. The certificate and warrant referred to in the said section shall in such cases, in lieu of the words "to file any information," contain respectively the words "to proceed further upon an indictment filed," and in lieu of the words "under the warrant of R.W., Esquire, Justice of the Peace," the words "under the order of His Honor _____, a Judge of the Supreme Court, or A.M., Esquire, Chairman of Quarter Sessions;"—and the warrant shall contain in lieu of the words "said warrant" the words "said order."

Discharge of persons not further proceeded against.

23. The provisions of the Acts fourth William the Fourth number seven, second Victoria number two, and seventeenth Victoria number twenty-five, in respect of the taking of bail by a constable in certain cases, shall henceforward apply to cases in which any person shall, for such offences as in the said Acts respectively are mentioned, be brought into the custody of any constable attending at any watch-house within the Colony during the daytime, and the accused cannot be immediately brought before a Justice of the Peace. The condition of the recognizance taken under the said Acts, or under this section, shall, so far as relates to the time for the appearance of the accused, be that the accused appear before a Justice of the Peace or at the next ensuing sitting of the Court of Petty Sessions for the District in which he shall have been apprehended, at a time and place to be mentioned in the said recognizance.

Watch-house bail.
4 Wm. IV. No. 7, s. 7.
2 Vic. No. 2, s. 7.
17 Vic. No. 25, s. 3.

24. In all cases of summary conviction, where there is no Court of General or Quarter Sessions appointed to be holden in the district where the cause of complaint arose, the person so convicted may appeal to the next Court of General or Quarter Sessions nearest to such district: Provided that if the day of sitting of such last-mentioned Court is within ten days of such conviction, then to the next such Court but one after the said conviction.

Further provision as to appeal.

25. In all cases of adjudication by a Licensing Court or Court of Petty Sessions under the Acts forty-fifth Victoria number fourteen or forty-sixth Victoria number twenty-four, in which an appeal is, by the last-mentioned Act, allowed to a Court of Quarter Sessions, where there is no such Court holden in the Licensing District where the adjudication complained of was given, the person aggrieved by such adjudication may appeal to the next Court of Quarter Sessions nearest to such Licensing District unless the day of sitting of such last-mentioned Court shall be within fourteen days from the date of such adjudication, in which case the appeal shall be to the Quarter Sessions then next following.

Provisions as to appeal under the Licensing Acts where no Court of Quarter Sessions holden in the Licensing District where adjudication made.
See 46 Vic. No. 24, sec. 30.

26. The Court of General or Quarter Sessions may in the case of any appeal reduce or vary the sentence, order, or adjudication appealed against.

Courts of Quarter Sessions may reduce or vary sentence on appeal.

27. No judgment shall be reversed or avoided for any error in law in the sentence imposed, but it shall be competent for the Judges of the Supreme Court, in case of any such error, either to pronounce such

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such judgment and sentence as is authorized by law, or to remit the record to the Court whence it came, in order that such Court may pronounce such judgment and sentence as is authorized by law.

Amendment of the 265th section as to "baptism."

28. The two hundred and sixty-fifth section of the Principal Act shall henceforward be read and construed as if instead of the word "baptism" the word "birth" were used.

Amendment of the 300th section as to "Judge."

29. The word "Judge" being the last word of the three hundredth section of the Principal Act shall henceforward be taken to mean a Judge of the Supreme Court, or a Judge of a District Court, or Chairman of General or Quarter Sessions.

Amendment of 300th section.

30. After the passing of this Act the words "Registrar or District Registrar in Bankruptcy" shall be read in section three hundred of the Principal Act, in substitution of the words therein, "District Commissioner of Insolvent Estates."

For adjourning Quarter Sessions in certain cases.

31. If the chairman of any Court of General or Quarter Sessions shall not be present at the time appointed for holding such Court, any Magistrate may open and adjourn such Court from time to time, if necessary, until such time as, in his opinion, such chairman may reasonably be expected to be present and able to hold such Court.

Governor may fix places and times for holding Courts of Quarter Sessions already established or hereafter established. See 3 Wm. IV. No. 3, sec. 14.

32. The Governor may, from time to time, by Proclamation, appoint the places and times at which the several Courts of General or Quarter Sessions already established, or which may hereafter be established, shall respectively be held.

Police officer or constable may arrest for mi-demeanour where warrant has been issued.

33. Every police officer or constable may, in any case in which a warrant shall have been issued for the apprehension of any person for a misdemeanour, or for any offence punishable as a misdemeanour, apprehend such person and take him together with any property found upon him before a Justice of the Peace, to be dealt with according to law, although such warrant may not at the time of such apprehension be in the possession of such police officer or constable.

Amendment of the laws relating to jurors.

34. So much of section fourteen of the Act eleventh Victoria, number twenty, as exempts Justices of the Peace from being summoned or impanelled as jurors to serve at any General or Quarter Sessions of the Peace, and so much of section eight of the Act fifteenth Victoria number three, as provides that no person whose name is and appears on the Special Jury List for the Jurors' District of Sydney shall be liable or be compelled to attend as a juror in any Court of General or Quarter Sessions, unless summoned under a Special Jury Precept, is hereby repealed.

Meaning of words "cattle" and "animals."

35. The word "cattle" used in the Principal Act shall be held to include, in addition to the animals defined in the interpretation clause of such Act, camels and dromedaries; and the word "animal" mentioned in an Act passed in the fourteenth year of the reign of Her Majesty Queen Victoria, numbered forty, and intituled "*An Act for the more effectual prevention of Cruelty to Animals*," shall be held to include, in addition to the animals therein mentioned, camels and dromedaries, and all other animals dependent upon man for their care or sustenance, or in a state of captivity.

This Act to be read with the Principal Act.

36. This Act in so far as its provisions are not inconsistent with the Principal Act, shall be incorporated with and construed as part and parcel of that Act.