

No. VII.

An Act for the removal of Defects in the Administration of Criminal Justice. [20th July, 1849.]

ADMINISTRATION OF
CRIMINAL JUSTICE.

WHETHERAS it is desirable to remove certain defects in the administration of Criminal Justice Be it therefore enacted by His Excellency the Governor of New South Wales with the advice and consent of the Legislative Council thereof That from and after the passing of this Act if any person shall become an accessory before the fact to any felony whether the same be a felony at Common Law or by virtue of any Statute or Statutes made or to be made such person may be indicted tried convicted and punished in all respects as if he were a principal felon.

Preamble.

Accessories before the fact to any felony may be punished in the same degree as the principal.

2. And whereas an accessory after the fact to felony can at present be tried only along with the principal felon or after the principal felon has been convicted and not otherwise which is sometimes productive of a failure of justice Be it therefore enacted That from and after the passing of this Act if any person shall become an accessory after the fact to any felony whether the same be a felony at Common Law or by virtue of any Statute or Statutes made or to be made he may be indicted and convicted either as an accessory after the fact to the principal felony together with the principal felon or after the conviction of the principal felon or may be indicted and convicted of a substantive felony whether the principal felon shall or shall not have been previously convicted or shall or shall not be amenable to justice and may thereupon be punished in like manner as any accessory after the fact to the same felony if convicted as an accessory may be punished and the offence of such person howsoever indicted may be inquired of tried determined and punished by any Court which shall have jurisdiction to try the principal felon in the same manner as if the act by reason of which such person shall have become an accessory had been committed at the same place as the principal felony Provided always that no person who shall be once duly tried for any such offence whether as an accessory after the fact or as for a substantive felony shall be liable to be again indicted and tried for the same offence.

Trial and conviction of accessories after the fact.

3. And whereas according to the present practice of Courts of Criminal Jurisdiction it is not permitted in an indictment for stealing property to add a count for receiving the same property knowing it to have been stolen or in an indictment for receiving stolen property knowing it to have been stolen to add a count for stealing the same property and justice is hereby often defeated Be it therefore enacted That from and after the passing of this Act in every indictment for feloniously stealing property it shall be lawful to add a count for feloniously receiving the same property knowing it to have been stolen and in

As to additions of counts in indictments for stealing and receiving stolen property.

any

Administration of Criminal Justice.

any indictment for feloniously receiving property knowing it to have been stolen it shall be lawful to add a count for feloniously stealing the same property and where any such indictment shall have been presented against any person the prosecutor shall not be put to his election but it shall be lawful for the jury who shall try the same to find a verdict of guilty either of stealing the property or of receiving it knowing it to have been stolen and if such indictment shall have been presented against two or more persons it shall be lawful for the jury who shall try the same to find all or any of the said persons guilty either of stealing the property or of receiving it knowing it to have been stolen or to find one or more of the said persons guilty of stealing the property and the other or others of them guilty of receiving it knowing it to have been stolen.

Court may cause information or indictment to be amended.

4. And be it enacted That on the trial of any information or indictment for misdemeanor or felony when any variance shall appear between the proof and the information or indictment in any particulars not material to the merits and by which the defendant or prisoner cannot have been prejudiced in the conduct of his or her defence it shall be lawful for any Court having Criminal Jurisdiction if such Court shall see fit so to do to cause the information or indictment to be amended in accordance with the proof and after such amendment the trial shall proceed as if no such variance had occurred.

As to meaning of terms.

5. And be it enacted That in this and every other Act or Statute the term "indictment" shall equally comprehend and be taken to mean an information and the like in all pleadings civil and criminal and also that in all pleadings and proceedings the term "Statute" shall equally comprehend and be taken to mean an Act of the Governor and Legislative Council.

No Court fees to be taken in Criminal cases.

6. And be it enacted That from and after the passing of this Act it shall not be lawful to take demand or receive any Court fees for the issuing of any process for or on behalf of any person charged with indicted or informed against for any felony or as an accessory thereto or with or for any misdemeanor in any Court of Criminal Jurisdiction or before any Justice or Justices of the Peace in New South Wales nor shall it be lawful to take demand or receive any fees from any such person for taking any recognizance of bail or issuing any writ of *habeas corpus* or recording any appearance or plea to any indictment or information or for discharging any recognizance taken from any such person or surety or sureties for them but that all such fees shall absolutely cease and the same are hereby abolished and determined accordingly.

Attorneys to be allowed to act as Counsel in Courts of Quarter Sessions.

7. And be it enacted That in all Courts of Quarter Sessions in the said Colony all Attorneys on the Roll of the Supreme Court of the said Colony shall be allowed to practise and act as Counsel and be heard in all matters before the said Courts of Quarter Sessions in the same manner as Barristers now are in the said Courts.