

[CONFIDENTIAL.]

(Rough Draft for Consideration Only.)

No. , 1926.

A BILL

To amend the criminal law, and for that purpose to amend the Crimes Act, 1900, and certain other Acts; and for purposes connected therewith.

BE it enacted by the King'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 "Crimes (Further Short title. Amendment) Act, 1926."

2. The Crimes Act, 1900, as subsequently amended, is in this Act referred to as the Principal Act. In amendments inserted by this Act in the Principal Act the expression "this Act" means the Principal Act as amended by this Act. In the amendment inserted by this Act in the Criminal Appeal Act, 1912, the expression "this Act" means the Criminal Appeal Act, 1912, as amended by this Act. Interpretation.

3. Section twenty-two of the Principal Act is amended by omitting the words "for the murder of a child," and by substituting therefor the words "for the murder or manslaughter of a child." Amendment of s. 22 of Principal Act.

4. Section one hundred and nineteen of the Principal Act is amended by omitting the proviso to the section and by substituting therefor the following new proviso :— Amendment of s. 119 of Principal Act.

Provided always that evidence shall not in any case be given of any taking which occurred more than six months in point of time from any other of such takings.

5. The Principal Act is further amended by inserting after subsection two of section three hundred and forty-one the following new subsection :— Amendment of s. 341 of Principal Act.

(3) Where by reason of the death, illness, termination of appointment, or absence, of any judge, chairman of quarter sessions, or magistrate, it is impossible to apply to such judge, chairman, or magistrate for leave to prosecute under subsection one of this section, in respect of any statement on oath as in the last preceding section mentioned, or it is for any other reason impracticable to do so, a prosecution in respect of any such statement on oath may be instituted with the leave of a judge of the Supreme Court.

6. The Principal Act is further amended by inserting after section three hundred and fifty-nine the following new section :— New section 359A.

359A. (1) Where a corporation is charged, whether alone or jointly with some other person, with an indictable offence, the justice or justices may, if of opinion that the evidence offered on the part Procedure on charge of offence against corporation. cf. 15 & 16 Geo. V, c. 86, s. 33.

part of the prosecution is sufficient to put the accused corporation upon trial, commit the accused corporation for trial :

Provided that—

- (a) where the offence is an offence which in the case of an adult may be dealt with summarily, and the corporation does not appear before the justice or justices by a representative, or, if it does so appear, consents that the case should be so dealt with, the justice or justices may deal with the offence summarily; and
- (b) if the corporation appears before the justice or justices by a representative, any answers to the questions to be put under subsection four of section forty-one of the Justices Act, 1902, may be made on behalf of the corporation by that representative, but if the corporation does not so appear, it shall not be necessary to put the questions, and the justice or justices may notwithstanding make an order under this subsection.

(2) Where any person is charged jointly with a corporation with any offence, and either that person or the corporation by its representative does not consent that the offence (being an indictable offence), should be dealt with summarily, or either that person or the corporation claims, if the offence is a summary offence, to be tried by a jury, the justice or justices shall not have power to deal with the offence in the case of the other offender.

(3) Where a true bill is found against a corporation in respect of any offence, the corporation may, on arraignment before a judge of the Supreme Court or a chairman of quarter sessions, as the case may be, and a jury, enter in writing by its representative a plea of guilty or not guilty, and if either the corporation does not appear by a representative or, though it does so appear, fails to enter as aforesaid any plea, the judge or chairman of quarter sessions, as the case may be, shall order

a plea of not guilty to be entered, and the trial shall proceed as though the corporation had duly entered a plea of not guilty.

(4) Provision may be made by rules under this Act with respect to the service upon any corporation charged with an indictable offence of any documents required to be served in connection with the proceedings.

(5) In this section the expression "representative" in relation to a corporation means a person duly appointed by the corporation to represent it for the purpose of doing any act or thing which the representative of a corporation is by this section authorised to do, but a person so appointed shall not, by virtue only of being so appointed, be qualified to act on behalf of the corporation before any court for any other purpose.

A representative for the purposes of this section need not be appointed under the seal of the corporation, and a statement in writing purporting to be signed by a managing director of the corporation, or by any person (by whatever name called), having or being one of the persons having the management of the affairs of the corporation, to the effect that the person named in the statement has been appointed as a representative of the corporation for the purposes of this section, shall be admissible without further proof as prima facie evidence that that person has been so appointed.

7. The Principal Act is further amended by omitting sections three hundred and sixty-five and three hundred and sixty-six and substituting therefor the following new sections :—

365. (1) Where, before trial, or at any stage of a trial, it appears to the court that the indictment is defective, the court shall make such order for the amendment of the indictment as the court thinks necessary to meet the circumstances of the case, unless, having regard to the merits of the case, the required amendments cannot be made without injustice,

Amendment of ss. 365 & 366 of Principal Act.

Orders for amendment of indictment, separate trial, and postponement of trial. cf. 5 & 6 Geo. V, c. 90, s. 5.

injustice, and may make such order as to the payment of any costs incurred owing to the necessity for amendment as the court thinks fit.

(2) Where, before trial, or at any stage of a trial, the court is of opinion that a person accused may be prejudiced or embarrassed in his defence by reason of being charged with more than one offence in the same indictment, or that for any other reason it is desirable to direct that the person should be tried separately for any one or more offences charged in an indictment, the court may order a separate trial of any count or counts of such indictment.

(3) Where, before trial, or at any stage of a trial, the court is of opinion that the postponement of the trial of a person accused is expedient as a consequence of the exercise of any power of the court under this Act to amend an indictment or to order a separate trial of a count, the court shall make such order as to the postponement of the trial as appears necessary.

(4) Where an order of the court is made under this section for a separate trial, or for the postponement of a trial—

(a) if such an order is made during a trial, the court may order that the jury are to be discharged from giving a verdict on the count or counts the trial of which is postponed, or on the indictment as the case may be; and

(b) the procedure on the separate trial of a count and the procedure on the postponed trial shall be the same in all respects (if the jury has been discharged), as if the trial had not commenced; and

(c) the court may make such order as to costs and as to admitting the accused person to bail and as to the enlargement of recognizances and otherwise as the court thinks fit.

(5) Any power of the court under this section shall be in addition to and not in derogation of any other power of the court for the same or similar purposes.

366. Where any indictment is amended, a note of the order for amendment shall be endorsed on the indictment, and the indictment in its amended form shall be treated as the indictment for the purposes of the trial, and for the purposes of all proceedings in connection therewith or consequent thereon.

8. Section 419A of the Principal Act is amended by inserting after the words "and adjoining such dock, wharf, or quay" the words "or in the course of transit from any vessel, barge, or boat, or from any store or shed used in connection with and adjoining such wharf, dock, or quay." Amendment of s. 419A of Principal Act.

9. The Principal Act is further amended by inserting after section 523A the following new sub-heading and section :— New section 526B.

Person drunk while in charge of vehicle.

526B (1) Any person who is drunk while in charge, on any highway or other public place, of any motor car, motor lorry, motor omnibus, or motor bicycle shall, on conviction before two justices, be liable to imprisonment for a term not exceeding six months, or to pay a fine not exceeding fifty pounds, or to both such imprisonment and fine. Penalty for drunkenness while in charge of motor vehicle. cf. 15 and 16 Geo. V, c. 86, s. 40.

(2) The court before whom any person is convicted under the preceding subsection may, in addition to any punishment or penalty, direct that the person convicted shall be disqualified for holding a license for a period not exceeding twelve months from the date of the conviction, and any license held by him shall, so long as the disqualification continues, be of no effect.

The court before whom any person is so convicted shall cause particulars of any such conviction and of the disqualification (if any) to be endorsed upon any license held by the person convicted, and shall send notice of the conviction and disqualification (if any) to the licensing authorities by whom the license was granted.

(3)

(3) If a person who under this section is disqualified for holding a license applies for or obtains a license while he is so disqualified, he shall be guilty of an offence under the Motor Traffic Act, 1909, and any license so obtained shall be of no effect.

(4) In this section the expression "license" means a license granted under the Motor Traffic Act, 1909, and the expression "licensing authorities" means the persons authorised to grant such a license.

(5) Nothing in this section shall affect any liability of any person by virtue of any statute or at common law.

10. The Principal Act is amended by inserting after section five hundred and forty-seven the following new sub-heading and section :—

New sec. 547A.

(G) *False statements respecting births, deaths and marriages.*

547A. (1) Every person who wilfully gives to any district registrar, or assistant district registrar, appointed under any Act providing for the registration of births or deaths, any false information concerning any birth or death, or the cause of any death, or who wilfully makes any false declaration under or for the purpose of any Act relating to the registration of births or deaths, shall on conviction before two justices be liable to imprisonment for a term not exceeding *six* months, or to pay a fine not exceeding *fifty* pounds.

False statements respecting births, deaths and marriages.

(2) Any person who wilfully makes any false statement before any minister of religion, or district registrar, authorised to celebrate marriages, or before any justice of the peace authorised to give his written consent to the marriage of any minor, for the purpose of procuring the celebration of any marriage, or any person who induces or endeavours to induce any person to celebrate a marriage between parties where such first-mentioned person knows that one of such parties is under age, and that

that the written consent required by law has not previously been obtained, shall upon conviction before two justices be liable to imprisonment for a term not exceeding *six* months, or to pay a fine not exceeding *fifty* pounds.

(3) Proceedings for an offence against this section may be commenced within twelve months after the date of the commission of the offence.

11. Subsection two of section five hundred and fifty-four of the Principal Act is amended—

Amendment of s. 554 of Principal Act.

(a) by omitting the words "or in substitution for any sentence of imprisonment" and by substituting therefor the words "or in substitution for any sentence imposing a fine or a term of imprisonment"; and

(b) by omitting the words "to be of good behaviour for a term not exceeding twelve months," and by substituting therefor the words "to be of good behaviour for a term which shall not be less than twelve months or more than three years."

12. The Principal Act is further amended by inserting after section five hundred and fifty-six the following new sub-heading and section :—

New section 556A.

Conditional release of offenders.

556A. (1) Where any person is charged before a court of summary jurisdiction with an offence punishable by such court, and the court thinks that the charge is proved, but is of opinion that, having regard to the character, antecedents, age, health, or mental condition of the person charged, or to the trivial nature of the offence, or to the extenuating circumstances under which the offence was committed, it is inexpedient to inflict any punishment, or any other than a nominal punishment, or that it is expedient to release the offender on probation, the court may, without proceeding to conviction, make an order either—

Power to permit conditional release of offenders. cf. 7 Edw. VII, c. 17, s. 1.

(a) dismissing the charge; or

(b)

(b) discharging the offender conditionally on his entering into a recognizance, with or without sureties, to be of good behaviour and to appear for conviction and sentence when called on at any time during such period, not exceeding three years, as may be specified in the order.

(2) Where an order is made under this section the order shall, for the purpose of revesting or restoring stolen property, and of enabling the court to make orders as to the restitution or delivery of property to the owner, and as to the payment of money upon or in connection with such restitution or delivery, and for the purpose of the exercise of any power conferred by subsection three of section five hundred and fifty-four, have the like effect as a conviction.

13. The Criminal Appeal Act, 1912, is amended by inserting after section 5D the following new section :— Amendment of Criminal Appeal Act, 1912.

5E. Any person who is declared by a judge of the Supreme Court or a court of quarter sessions to be an habitual criminal, may, by leave of the court, appeal against such declaration, and the provisions of this Act applicable to an appeal against a sentence passed on a conviction on indictment shall apply to such an appeal. Appeal by person declared an habitual criminal.

14. The Jury Act, 1912, is amended by inserting after section twenty-seven the following new section :— Amendment of Jury Act, 1912.

27A. Where in the course of a criminal trial any member of a jury dies or is discharged by the court as being through illness incapable of continuing to act, or for any other reason, the jury shall, nevertheless subject to assent being given in writing by or on behalf of both the Crown Prosecutor and the accused, and so long as the number of its members is not reduced below ten, be considered as remaining for all the purposes of that trial properly constituted, and the trial shall proceed and a verdict may be given accordingly. Provision for continuance of trial where juror dies or becomes incapable. cf. 15 & 16, Geo. V, c. 86; s. 15.

15. The Police Offences Act, 1901, is amended by omitting section thirty and by substituting therefor the following new section:—

Amendment of s. 30 of the Police Offences Act, 1901.

30. If any goods or money charged to be stolen or fraudulently obtained are in the custody of any constable in connection with any criminal charge, or of any offence punishable summarily, any police officer or stipendiary magistrate may, on application by an officer of police or by a claimant of the property, make an order for the delivery of such goods or money to the person who appears to be the rightful owner thereof, or if the owner cannot be ascertained, may make such order with respect to such goods or money as to such magistrate seems meet.

Order for delivery of goods in custody of constable. cf. 60 and 61, Vic., c. 30, s.1.

No such order shall be any bar to the right of any person to sue the person to whom such goods or money are delivered, and to recover such goods or money from him by an action commenced within six months next after the making of such order.

