ANNO NONO

GEORGII IV. REGIS.

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C A P. XXIX.

An Act to authorize additional Circuit Courts of Justiciary to be held, and to facilitate Criminal Trials, in *Scotland*. [19th *June* 1828.]

WHEREAS from the great Increase of Criminal Offences in *Scotland* it is expedient that Provision should be made for holding additional Circuit Courts of Justiciary, and that Means should be taken for facilitating Criminal Trials, in *Scotland*: Be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the passing of this Act it shall and may be lawful for the High Court of Justiciary at *Edinburgh*, and the said Court is hereby authorized and required, on or before the Twentieth Day of *November* in every Year, to fix, by Act of Adjournal, a Day for holding a Circuit Court of Justiciary at *Glasgow*, for trying Criminal Causes during the Recess of the Court of Session, in the End of *December* and Beginning of *January* yearly, and to name Two of the Judges of the said High Court to discharge the Duty of the said Circuit Court; and such Circuit Court shall be held at *Glasgow* accordingly, and shall be continued from Day to Day, until the whole Criminal Business to be brought before the Court at that Time is concluded, and no longer:

High Court of Justiciary at Edinburgh yearly to fix a Day for holding a Circuit Court of Justiciary at Glasgow, and name Two Judges to discharge the Duties thereof.

Powers vested in the Judges so named.

Provided always, that the Judges so named, and each of them, shall possess, as they are hereby vested with, all Powers which belong to and can be exercised by any Lord Commissioner of Justiciary in any other Circuit Court.

Other Judges may officiate.

II. And be it enacted, That it shall and may be lawful for any Judge or Judges of the Court of Justiciary to discharge the Duty of the Circuit Court hereby appointed, or of any other Circuit Court, notwithstanding such Judge or Judges may not have been specially named for that Duty.

His Majesty may direct additional Circuit Courts to be held;

III. And be it enacted, That it shall and may be lawful for His Majesty, His Heirs and Successors, by an Order to be made in His or Their Privy Council, from Time to Time, as Occasion may require, to direct that additional Circuit Courts shall be held in any Towns at which Circuit Courts are in use to be held, and at such Time or Times of the Year as to His Majesty may seem meet; and upon such Order being communicated to the High Court of Justiciary, the said Court shall, and they are hereby required and empowered, by Act of Adjournal, to give all necessary Directions for carrying such Order into Effect.

and may afterwards dispense with the same.

IV. Provided always, and be it enacted, That if, in consequence of the Diminution of Criminal Offences, such Circuit Courts, or any of them, shall be deemed unnecessary, it shall in like Manner be lawful for His Majesty, His Heirs and Successors, by an Order to be made in His or Their Privy Council, from Time to Time to dispense with the holding of the additional Circuit Court at *Glasgow* hereby directed to be held, and with any other Circuit Courts which His Majesty, His Heirs or Successors, by Order made in His or Their Privy Council, may have directed to be held in any Place in *Scotland*.

So much of 8 Anne, c. 16. as relates to Transmission of Presentments of Crimes to the Lord Justice Clerk, repealed.

V. And be it enacted, That so much of an Act passed in the Eighth Year of the Reign of Her late Majesty Queen *Anne*, intituled *An Act for discharging the Attendance of Noblemen, Barons, and Freeholders, upon the Lords of Justiciary in their Circuits in that Part of* Great Britain *called* Scotland, *and for abolishing the Method of exhibiting Criminal Informations by the Porteous Roll*, as relates to Presentments of Crimes to be tried in the Circuit Courts, and the Transmissions of the same, with Writs and Evidence, to the Lord Justice Clerk or his Deputies, shall be and the same is hereby repealed; and it is hereby provided, that hereafter all Crimes may be tried before any Circuit Court of Justiciary by Indictment, in the same Manner as before the High Court of Justiciary at *Edinburgh*.

Crimes may be tried before any Circuit Court

Instead of a short Copy of Citation being left with the Party, a Notice in the Form of

VI. And be it enacted, That from and after the Twenty-seventh Day of *June* One thousand eight hundred and twenty-eight, instead of a short Copy of Citation being left with a Person accused, every Copy of a Criminal Libel served on such Person shall have marked upon it a Notice, to be subscribed by the Officer of the Law who serves the same, and by One Person who shall witness such Service, in the Form contained

contained in the Schedule annexed to this Act, and therein designated by the Letter A., which Form of Notice shall be observed in the Service of all Criminal Libels in *Scotland*; and it shall not be necessary for such Officer to subscribe any other Part of such Copy of a Libel. Schedule A. shall be served.

VII. And be it enacted, That it shall be no Objection to such Service, or to the Citation of any Juror or Witness, that the Officer who discharged the Duty was not at the Time possessed of the Warrant of Citation; and it is hereby provided that the Execution of Citation of all Criminal Libels shall be in the Form contained in the Schedule annexed to this Act, and designated by the Letter B., which Execution it shall not be necessary to produce, unless Sentence of Fugitation or of Forfeiture of a Bond of Caution, granted for Appearance to stand Trial, shall be moved for, but without Prejudice to such Execution being exhibited to disprove Objections to Service when stated to the Court; and it shall be no Objection to the Admissibility of the Officer or Witness who served such Libel, to give Evidence respecting such Service, that their Names are not included in the List of Witnesses served on the Accused. Service of Notice or Citation of Criminal Matters.

VIII. And be it enacted, That Copies of Criminal Libels served on Persons accused, and all Notices of Compearance or Attendance, whether left with Parties accused, or Jurors or Witnesses, and all Executions of Citation, may be either printed or in Writing, or partly both. Libels and Notices may be printed or in Writing.

IX. And be it enacted, That when the Charge of Art and Part is set forth in the Outset of a Criminal Libel, it shall not be necessary to repeat that Charge in the latter Part thereof, according to the Form usually observed in the Clause commencing with the Words "at least," and that it shall be competent altogether to omit the said Clause; any Law or Practice to the contrary notwithstanding. Provision in the Case of a Charge of Art and Part.

X. And whereas frivolous Objections and Exceptions are raised to the Form and Mode of citing Witnesses and Jurors, and of setting forth the Executions of such Citations; be it enacted, That it shall not be competent in any Criminal Cause or Prosecution whatsoever for any Prosecutor or Person accused to state any Objection to any Juror or to any Witness, on the Ground of such Juror or Witness appearing without Citation, or without having been duly cited to attend. Witnesses or Persons appearing without Citation not to be objected to.

XI. And be it enacted, That if owing to any Error in the Name or Designation of a Witness, as given in the List served along with the Criminal Libel, a Person accused can make it appear that he has been unable to find out such Witness, or that he has been misled or deceived in his Inquiries concerning such Witness, the same shall be stated to the Court before the Jury is sworn, and the Court shall thereupon give such Remedy as may be just, and no Objection of that Description shall be afterwards received. Objections on account of Error shall be stated to the Court before Jury sworn.

XII. And

If Person pleads Not guilty, the Libel need not be read over.

XII. And be it enacted, That when a Person accused, on being brought to the Bar, shall say that he means to plead Not guilty, and does not desire that the Criminal Libel exhibited against him should be read over, it shall not be necessary to read over such Libel before proceeding to the Trial of such Person.

Affirmation of Quakers to be admitted.

XIII. And be it enacted, That every Quaker who shall be required to give Evidence in any Criminal Cause or Prosecution shall, instead of taking the Oath in the usual Form, be permitted to make his or her solemn Affirmation or Declaration, in the Words following; *videlicet*, 'I do solemnly, sincerely, and truly declare and affirm;' which Affirmation or Declaration shall be of the same Force and Effect, in all Courts of Justice, as if such Quaker had taken an Oath in the usual Form; and if any Quaker making such Affirmation or Declaration shall be convicted of having affirmed and declared any Matter or Thing in such a Way as if the same had been sworn to in the usual Form it would have amounted to Perjury, every such Offender shall be subject to the same Punishment to which Persons convicted of Perjury are liable; and if any Quaker shall refuse to make such Affirmation and Declaration, or having made the same shall refuse to give Evidence, or shall wilfully conceal the Truth, or be guilty of wilful Prevarication, such Quaker shall be liable to the same Pains of Law which apply to such Offences respectively when an Oath is administered.

When Person indicted pleads Guilty, Jury to be dispensed with.

XIV. And be it enacted, That when, after an Interlocutor of Relevancy shall have been pronounced, a Person indicted before any Criminal Court shall plead Guilty to the Crime or Crimes of which such Person is accused, it shall no longer be necessary to name a Jury for the Purpose of deciding on the Guilt of such Person, but the Court before which such accused Person shall be tried shall, upon such Confession being made, have Power forthwith to pronounce the Sentence of the Law in the same Manner as if a Verdict of Guilty had been returned: Provided always, that such Plea of Guilty shall be made in open Court, and shall then and there be subscribed by the Pannel, or by the Pannel's Procurator, and shall be authenticated by the Signature of the Judge.

Verdict of Jury how to be received.

XV. And be it enacted, That Verdicts in Writing shall be discontinued in all Cases when the Verdict is returned before the Court adjourns; and when on a Trial before the High Court of Justiciary at *Edinburgh*, a Jury shall retire to consider of their Verdict, it shall be sufficient that One Judge shall remain in Court to receive the Verdict, which Judge shall have Power to see the Verdict duly recorded when delivered, and to dismiss the Jury, and to assoilzie the Pannel if not convicted by such Verdict; but if the Pannel shall be found guilty, or the Terms of the Verdict be such as may appear to require Consideration by the Court, such Judge shall continue the Diet, and commit the Pannel to Prison.

Jurisdiction of the Court.

XVI. And be it enacted, That the cumulative Jurisdiction of the High Court of Justiciary, with that of the High Court of Admiralty, shall

shall extend to all Crimes and Offences whatsoever now competent to be tried in the said Court of Admiralty.

Admiralty and Sheriffs' Courts to proceed to Trial without reducing the Evidence to Writing.

XVII. And be it enacted, That it shall and may be lawful for the High Court of Admiralty and for the Court of the Sheriff respectively, to proceed in, try, and determine all Causes and Prosecutions for Crimes before them, where the Trial is by Jury, by Verdict of such Jury, upon examining and hearing the Evidence of the Witness or Witnesses in any such Cause or Prosecution *vivâ voce*, without reducing into Writing the Testimony of any such Witness or Witnesses, in the same Manner and according to the same Rules as are observed in Trials before the Court of Justiciary; and it is hereby provided, that the Judge trying such Causes or Prosecutions shall preserve and duly authenticate the Notes of the Evidence taken by him in such Trial, and shall exhibit the same, or a certified Copy thereof, in case the same should be called for by the Court of Justiciary.

Judges to preserve and authenticate their Notes.

Certain Proceedings not to be taken down in Writing.

XVIII. And be it enacted, That in Trials of Crimes before the Sheriff or other inferior Court in *Scotland*, without a Jury, no Part of the Proceedings, which is not in use to be taken down in Writing in Trials by Jury, shall be so taken down, excepting only the Depositions of Witnesses.

Summary Form of Proceeding in certain Cases.

XIX. And be it enacted, That in the Prosecution of Criminal Offences before Sheriffs of Counties in *Scotland*, where the Prosecutor shall, in his Libel, conclude for a Fine not exceeding Ten Pounds, together with Expences, or for Imprisonment in Gaol or in Bridewell, not exceeding Sixty Days, accompanied, when necessary, with Caution for good Behaviour or to keep the Peace for a Period not exceeding Six Months, and under a Penalty not exceeding Twenty Pounds, it shall and may be lawful to proceed to try such Offences in the easiest and most expeditious Manner, without the Pleadings or Evidence being reduced into Writing: Provided always, that a Record shall be preserved of the Charge and of the Judgment, including the Names of the Witnesses examined on Oath, unless where the Accused pleads Guilty, which shall be made to appear; and the said Record shall also set forth, if the Prosecutor or accused Party desire it, any Offer of Proof made by either of those Parties, and refused to be admitted; and likewise, if so desired, any Objections to the Admissibility of Evidence sustained or repelled by the Court; which Record shall be in the Form contained in the Schedule annexed to this Act, and there designated by the Letter C.

Record to be preserved.

Sheriff to preserve Notes of Evidence.

XX. And be it enacted, That the Sheriff so trying any such Offence shall preserve a Note of the Evidence taken by him on such Trial, and shall exhibit the same, or a certified Copy thereof, in case the same should be called for by the Court of Justiciary.

Warrants of Imprisonment to specify the Period of Discharge.

XXI. And be it enacted, That all Warrants of Imprisonment for Payment of Penalty, or for finding of Caution, shall specify a Period at the Expiry of which the Person sentenced shall be discharged,

discharged, notwithstanding such Penalty shall not have been paid, or Caution found.

Provisions as to the Qualification of Sheriff's Substitute.

XXII. And be it enacted, That the Provisions made by an Act passed in the Sixth Year of the Reign of His present Majesty, intituled *An Act for the better Regulation of the Sheriff and Stewart and Burgh Courts in* Scotland, relative to the Qualifications of Sheriff Substitutes, shall apply only to such Sheriff Substitutes as receive Salaries out of the Civil List of *Scotland*, and not to such as may act gratuitously; and it is further provided, that every Person who shall be once certified to be duly qualified in Terms of the said Act, and admitted accordingly, may be re-appointed to the Office of Sheriff Substitute without any additional Certificate being necessary; and it is likewise provided, that any Person who held a Commission as a Sheriff Substitute, on account of which he received a Salary at the Date of the passing of the said Act, may be re-appointed a Sheriff Substitute, and thereafter draw his Salary, without any Certificate of Qualification being necessary in his Behalf, such as the said Act requires; and it is hereby provided, that the Sheriff Depute may be addressed by the Title of Sheriff, without the Term Depute being added.

Fees.

XXIII. And be it enacted, That no Fees or Expences of any Description shall be exigible by the Clerks or other Officers of a Criminal Court, from any Person on whom a Criminal Libel shall have been served, unless the same shall form Part of the Sentence of the Court; but the Fees exigible from the Prosecutor by such Clerks and Officers shall not be affected by the Provisions of this Act; and on Trials before the Circuit Court of Justiciary by Indictment, where before the passing of this Act the same must have proceeded on Criminal Letters, the same Fees shall be payable by the Prosecutor on such Indictment as if Criminal Letters had been used as heretofore.

Before the closing of any Circuit Court, Returns to be made of Persons committed and remaining in Gaol.

XXIV. And be it enacted, That before any Circuit Court shall be declared ended, the Sheriffs of the Counties included therein shall respectively lay before the Court a Return, showing, to as late a Date as it can be made up, the Names of all such Persons as may stand committed to the several Gaols within their respective Counties on Warrants of Detention, until liberated in due Course of Law, and who have not been brought to Trial before the said Court, and are still remaining in Gaol; which Return shall specify the Crime or Crimes of which such Prisoners are accused, and the Date of such Warrants of Commitment respectively; and the said Court is hereby required to call for such Returns for their Inspection, and to cause the same to be presented in open Court, and thereafter to direct the Clerk of Court to lodge the same in the Justiciary Office at *Edinburgh*, for Preservation.

Records of Commitments and Liberations to be kept,

XXV. And be it enacted, That Records shall be kept in every Gaol in *Scotland*, respecting the Commitment and Liberation of Prisoners committed under Criminal Warrants, according to the Form contained

tained in the Schedule annexed to this Act, and therein designated by the Letter D., which Records the Magistrates of Burghs and Keepers of Gaols are hereby ordered and required accurately to keep; and the Keepers of Gaols in *Scotland* are hereby ordained and required at all Times to exhibit to the Sheriff of the County within which such Gaols may be respectively situated, without Fee or Reward, such Records, when so required.

Provisions of 43 G. 3. c. 141. extended to all inferior Judges.

XXVI. And be it enacted, That the Provisions of an Act made in the Forty-third Year of the Reign of His late Majesty King *George* the Third, intituled *An Act to render Justices of the Peace more safe in the Execution of their Duty*, shall extend to all inferior Judges and Magistrates in *Scotland*, in regard to any Sentence pronounced or Proceeding had in any Criminal Trial.

Commencement of Act.

XXVII. And be it enacted, That this Act, and the Matters therein contained, shall commence and take effect from and after the passing of this Act, unless in so far as it is otherwise therein specially provided.

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SCHEDULES to which the Act refers.

A.

FORM of NOTICE.

A. B., Take notice, That you will have to compear before the High Court of Justiciary [*or other Court to be specified*], to answer to the Criminal Libel against you, to which this Notice is attached, on the Day of at of the Clock.

This Notice served on the Day of by me

C. D. Macer [*or* other Officer of the Law.]

E. F. Witness.

B.

EXECUTION of CITATION.

A Copy of a Criminal Libel, containing a Charge of Theft [*or whatever the Crime may be*], consisting of Pages, and having annexed to it a List of Witnesses and of Assize [*when the Trial is to be by Jury*], was, on the Day of served by me upon [*J. K.*] by delivering the same to him personally [*or as the Case may be*], on which Copy was marked a Notice of Compearance on the Day of .

A. B. Macer [*or* other Officer of the Law.]

E. F. Witness.

C.

1.—LIBEL.

UNTO the Sheriff of the County of the Complaint of the Procurator Fiscal of Court [*or other Party with his Concurrence*],

Humbly sheweth,

That [*J. K.*] has been guilty of the Crime of Theft [*or other Crime*] Actor, or Art and Part, in so far as on the Day of or about that Time, he did [*here state the Particulars of the Offence, specifying particularly the Place where the Crime was committed*]. May it therefore please your Lordship to grant Warrant to apprehend the said and bring him before you [*or to cite him to appear before you*] to answer to this Libel, and thereafter to [*here specify the Punishment concluded for*], according to Justice.

A. B.

2. — Deliverance on Libel.

At 18 .

The Sheriff, having considered this Libel, grants Warrant to Officers of Court to apprehend the above designed [*J. K.*], and to bring him [*or to cite him to appear*] to answer the same, and also to cite Witnesses for both Parties.

[*When stolen Goods, or the like, are to be searched for, this will be included in the Libel and Warrant.*]

C. D.

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3. — Procedure.

At 18 , compeared the said *J. K.*, and the Libel being read over to him, he answers that .

J. K.
C. D.

[*If the Accused pleads Not guilty, or the Case be not concluded at the first Diet*]

The Sheriff adjourns the Diet to at and in the meantime grants Warrant to incarcerate the said [*J. K.*] in the Tolbooth of to be detained 'till that Time, [*or until* he finds Caution to appear at all future Diets of Court, under a Penalty of .]

C. D.

At 18 , compeared the said [*J. K.*]

The Witnesses after named were examined, upon Oath, in support of the Libel, *videlicet*,

G. H.
L. M.

And the Witnesses after named were examined, on Oath, in Exculpation, *videlicet*,

N. O.
P. Q.

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4. — Sentence.

The Sheriff finds and therefore [*here add Terms of Sentence.*]

C. D.

D.

GAOL.

Name.	Committed, when and by whom.	Age.	Crime.	Committed, 'till liberated in due Course of Law, when and by whom.	Liberated on Bail, when and by whom.	Tried, when and by whom.	Convicted or Acquitted.	Sentence.	Liberated or removed after Conviction, when and by whom.	Liberated without Bail, when and by whom.	Remarks.

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