ANNO TRICESIMO & TRICESIMO PRIMO

VICTORIÆ REGINÆ.

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C A P. XXXV.

An Act to remove some Defects in the Administration of the Criminal Law. [20th *June* 1867.]

WHEREAS it is found that Delay and Inconvenience are frequently caused by the Provisions contained in the First Section of the Act Twenty-second and Twenty-third *Victoria*, Chapter Seventeen, in Cases not within the Mischief for Remedy whereof the same Act was made and passed, and it is expedient to restrict the Operation thereof:

Be it enacted by the Queen'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:

Limitation of 22 & 23 Vict. c. 17.

1. That the said Provisions of the said First Section of the said Act shall not extend or be applicable to prevent the Presentment to or finding by a Grand Jury of any Bill of Indictment containing a Count or Counts for any of the Offences mentioned in the said Act, if such Count or Counts be such as may now be lawfully joined with the rest of such Bill of Indictment, and if the same Count or Counts be founded (in the Opinion of the Court in or before which the same Bill of Indictment be preferred) upon the

Facts

Facts or Evidence disclosed in any Examinations or Depositions taken before a Justice of the Peace, in the Presence of the Person accused or proposed to be accused by such Bill of Indictment, and transmitted or delivered to such Court in due Course of Law; and nothing in the said Act shall extend or be applicable to prevent the Presentment to or finding by a Grand Jury of any Bill of Indictment, if such Bill be presented to the Grand Jury with the Consent of the Court in or before which the same may be preferred.

On Acquittal, &c. of Person indicted, who has not been committed or held to Bail, Court may order Prosecutor to pay Costs to Accused if it think the Prosecution unreasonable.

2. Whenever any Bill of Indictment shall be preferred to any Grand Jury, under the Provisions of the Act Twenty-second and Twenty-third *Victoria*, Chapter Seventeen, against any Person who has not been committed to or detained in Custody, or bound by Recognizance to answer such Indictment, and the Person accused thereby shall be acquitted thereon, it shall be lawful for the Court before which such Indictment shall be tried, in its Discretion, to direct and order that the Prosecutor or other Person by or at whose Instance such Indictment shall have been preferred shall pay unto the accused Person the just and reasonable Costs, Charges, and Expenses of such accused Person and his Witnesses (if any) caused or occasioned by or consequent upon the preferring of such Bill of Indictment, to be taxed by the proper Officer of the Court; and upon Nonpayment of such Costs, Charges, and Expenses within One Calendar Month after the Date of such Direction and Order, it shall be lawful for any of the Superior Courts of Law at *Westminster*, or any Judge thereof, or for the Justices and Judges of the Central Criminal Court (if the Bill of Indictment has been preferred in that Court), to issue against the Person on whom such Order is made such and the like Writ or Writs, Process or Processes, as may now be lawfully issued by any of the said Superior Courts for enforcing Judgments thereof.

Accused Person to be asked by Justice if he desire to call Witnesses.

3. And whereas Complaint is frequently made by Persons charged with indictable Offences, upon their Trial, that they are unable by reason of Poverty to call Witnesses on their Behalf, and that Injustice is thereby occasioned to them; and it is expedient to remove, as far as practicable, all just Ground for such Complaint: Therefore, in all Cases where any Person shall appear or be brought before any Justice or Justices of the Peace, charged with any indictable Offence, whether committed within this Realm or upon the High Seas or upon Land beyond the Sea, and whether such Person appear voluntarily upon Summons, or has been apprehended with or without Warrant, or be in Custody for the same or any other

other Offence, such Justice or Justices, before he or they shall commit such accused Person for Trial or admit him to Bail, shall, immediately after obeying the Directions of the Eighteenth Section of the Act Eleventh and Twelfth *Victoria*, Chapter Forty-two, demand and require of the accused Person whether he desires to call any Witness; and if the accused Person shall, in answer to such Demand, call or desire to call any Witness or Witnesses, such Justice or Justices shall, in the Presence of such accused Person, take the Statement on Oath or Affirmation, both Examination and Cross-examination, of those who shall be so called as Witnesses by such accused Person, and who shall know anything relating to the Facts and Circumstances of the Case or anything tending to prove the Innocence of such accused Person, and shall put the same into Writing; and such Depositions of such Witnesses shall be read over to and signed respectively by the Witnesses who shall have been so examined, and shall be signed also by the Justice or Justices taking the same, and transmitted in due Course of Law with the Depositions, and such Witnesses, not being Witnesses merely to the Character of the Accused, as shall in the Opinion of the Justice or Justices give Evidence in any way material to the Case or tending to prove the Innocence of the accused Person, shall be bound by Recognizance to appear and give Evidence at the said Trial; and afterwards, upon the Trial of such accused Person, all the Laws now in force relating to the Depositions of Witnesses for the Prosecution shall extend and be applicable to the Depositions of Witnesses hereby directed to be taken.

Their Depositions to be taken and returned to Court of Trial if accused Person call any.

4. All the Provisions of the said Act Eleventh and Twelfth *Victoria*, Chapter Forty-two, relating to the summoning and enforcing the Attendance and Committal of Witnesses, and binding them by Recognizance and Committal in Default, and for giving the accused Person Copies of the Examinations, and giving Jurisdiction to certain Persons to act alone, shall be read and shall have Operation as Part of this Act.

Provisions of 11 & 12 Vict. c. 42. extended to this Act.

5. The Court before which any accused Person shall be prosecuted or tried, or for Trial, before which he may be committed or bailed to appear for any Felony or Misdemeanor, is hereby authorized and empowered, in its Discretion, at the Request of any Person who shall appear before such Court on Recognizance to give Evidence on behalf of the Person accused, to order Payment unto such Witness so appearing such Sum of Money as to the Court shall seem reasonable and sufficient to compensate such Witness for the Expenses, Trouble, and Loss of Time he shall have incurred

If Witnesses for Accused, bound by Recognizance, appear at the Trial, Court may allow Expenses.

incurred or sustained in attending before the examining Magistrate, and at or before such Court; and the Amount of such Expenses of attending before the examining Magistrate, and Compensation for Trouble and Loss of Time therein, shall be ascertained by the Certificate of such Magistrate, granted before the Attendance in Court; and the Amount of all other Expenses and Compensation shall be ascertained by the proper Officer of the Court, who shall, upon Receipt of the Sum of Sixpence for each Witness, make out and deliver to the Person entitled thereto an Order for such Expenses and Compensation, together with the said Fee of Sixpence, upon such and the same Treasurers and Officers as would now by Law be liable to Payment of an Order for the Expenses of the Prosecutor or Witnesses against such accused Person; and if the Accusation be of such Kind that the Court shall have no Power to order the Expenses of the Prosecutor, then upon the Treasurer or other Officer in the Capacity of a Treasurer of the County, Riding, Division, City, Borough, or Place where the Offence of such accused Person may be alleged to have been committed, which Treasurer or other Officer is hereby required to pay the same Orders upon Sight thereof, and shall be allowed the same in his Accounts: Provided always, that in no Case shall any such Allowances or Compensation exceed the Amount now by Law permitted to be made to Prosecutors and Witnesses for the Prosecution; and provided always, that such Allowances and Compensation shall be allowed and paid as Part of the Expenses of the Prosecution.

Power to take Deposition of Person dangerously ill, and not likely to recover, and to make same Evidence in certain Events, after Death of such Person.

6. And whereas by the Seventeenth Section of the Act Eleventh and Twelfth *Victoria*, Chapter Forty-two, it is permitted under certain Circumstances to read in Evidence on the Trial of an accused Person the Deposition taken in accordance with the Provisions of the said Act of a Witness who is dead, or so ill as to be unable to travel: And whereas it may happen that a Person dangerously ill, and unable to travel, may be able to give material and important Information relating to an indictable Offence, or to a Person accused thereof, and it may not be practicable or permissible to take, in accordance with the Provisions of the said Act, the Examination or Deposition of the Person so being ill, so as to make the same available as Evidence in the event of his or her Death before the Trial of the accused Person, and it is desirable in the Interests of Truth and Justice that Means should be provided for perpetuating such Testimony, and for rendering the same available in the event of the Death of the Person giving the same: Therefore, whenever it shall be made to appear to the Satisfaction of any Justice of the Peace that any Person dangerously ill, and in the Opinion of some registered Medical Practitioner not likely to recover

recover from such Illness, is able and willing to give material Information relating to any indictable Offence, or relating to any Person accused of any such Offence, and it shall not be practicable for any Justice or Justices of the Peace to take an Examination or Deposition in accordance with the Provisions of the said Act of the Person so being ill, it shall be lawful for the said Justice to take in Writing the Statement on Oath or Affirmation of such Person so being ill, and such Justice shall thereupon subscribe the same, and shall add thereto by way of Caption a Statement of his Reason for taking the same, and of the Day and Place when and where the same was taken, and of the Names of the Persons (if any) present at the taking thereof, and, if the same shall relate to any indictable Offence for which any accused Person is already committed or bailed to appear for Trial, shall transmit the same with the said Addition to the proper Officer of the Court for Trial at which such accused Person shall have been so committed or bailed; and in all other Cases he shall transmit the same to the Clerk of the Peace of the County, Division, City, or Borough in which he shall have taken the same, who is hereby required to preserve the same, and file it of Record; and if afterwards, upon the Trial of any Offender or Offence to which the same may relate, the Person who made the same Statement shall be proved to be dead, or if it shall be proved that there is no reasonable Probability that such Person will ever be able to travel or to give Evidence, it shall be lawful to read such Statement in Evidence, either for or against the Accused, without further Proof thereof, if the same purports to be signed by the Justice by or before whom it purports to be taken, and provided it be proved to the Satisfaction of the Court that reasonable Notice of the Intention to take such Statement has been served upon the Person (whether Prosecutor or Accused) against whom it is proposed to be read in Evidence, and that such Person, or his Counsel or Attorney, had or might have had, if he had chosen to be present, full Opportunity of cross-examining the deceased Person who made the same.

Provision for the Prisoner being present at taking of Statement.

7. Whenever a Prisoner in actual Custody shall have served or shall have received Notice of an Intention to take such Statement as herein-before mentioned, the Judge or Justice of the Peace by whom the Prisoner was committed, or the Visiting Justices of the Prison in which he is confined, may, by an Order in Writing, direct the Gaoler having the Custody of the Prisoner to convey him to the Place mentioned in the said Notice for the Purpose of being present at the taking of the Statement; and such Gaoler shall convey the Prisoner accordingly, and the Expenses of such Conveyance shall be paid out of the Funds applicable to the other

Expenses of the Prison from which the Prisoner shall have been conveyed.

Provisions of 24 & 25 Vict. c. 66. as to Witnesses who object to be sworn, extended to Jurors.

8. And whereas Relief has been given by the Statute Twenty-fourth and Twenty-fifth *Victoria*, Chapter Sixty-six, to Persons refusing, from alleged conscientious Motives, to be sworn as Witnesses in Criminal Proceedings, and it is expedient to extend that Relief to Persons required to serve as Jurors: Therefore if any Person summoned or required to serve as a Juror in any Civil or Criminal Proceeding shall refuse or be unwilling, from alleged conscientious Motives, to be sworn, it shall be lawful for the Court or Judge, or other presiding Officer or Person qualified to administer an Oath to a Juror, upon being satisfied of the Sincerity of such Objection, to permit such Person, instead of being sworn, to make his or her solemn Affirmation or Declaration in the Words following:

'I *A.B.* do solemnly, sincerely, and truly affirm and declare that the taking of any Oath is, according to my Religious Belief, unlawful; and I do also solemnly, sincerely, and truly affirm and declare,' *&c.*

Which solemn Affirmation and Declaration shall be of the same Force and Effect, and if untrue shall entail all the same Consequences, as if such Person had taken an Oath in the usual Form; and whenever in any legal Proceedings it is necessary or usual to state or allege that Jurors have been sworn, it shall not be necessary to specify that any particular Juror has made Affirmation or Declaration instead of Oath, but it shall be sufficient to state or allege that the Jurors have been "sworn or affirmed."

Money found on Prisoner to be given to Purchaser of Property not known to be stolen, on Restitution of Property.

9. Where any Prisoner shall be convicted, either summarily or otherwise, of Larceny or other Offence, which includes the stealing of any Property, and it shall appear to the Court by the Evidence that the Prisoner has sold the stolen Property to any Person, and that such Person has had no Knowledge that the same was stolen, and that any Monies have been taken from the Prisoner on his Apprehension, it shall be lawful for the Court, on the Application of such Purchaser, and on the Restitution of the stolen Property to the Prosecutor, to order that out of such Monies a Sum not exceeding the Amount of the Proceeds of the said Sale be delivered to the said Purchaser.

Governor of Prison to bring up the Body of any Person indicted,

10. Where Recognizances shall have been entered into for the Appearance of any Person to take his Trial for any Offence at any Court of Criminal Jurisdiction, and a Bill of Indictment shall be found against him, and such Person shall be then in the Prison belonging

belonging to the Jurisdiction of such Court, under Warrant of Commitment, or under Sentence for some other Offence, it shall be lawful for the Court, by Order in Writing, to direct the Governor of the said Prison to bring up the Body of such Person in order that he may be arraigned upon such Indictment without Writ of Habeas Corpus, and the said Governor shall thereupon obey such Order. without Writ of Habeas Corpus, under Order of Court.

11. This Act shall not extend to *Ireland*. Extent of Act.

12. This Act shall come into operation on the First Day of *October* One thousand eight hundred and sixty-seven. Commencement of Act.

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