CHAPTER 48.

An Act to amend the law of Scotland relating to criminal procedure and to the crime of incest, and to the duties of procurators fiscal in relation to fatal accident inquiries. [29th July 1938.]

A.D. 1938.

BE it 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, as follows :—

Payment of fines by instalments.

1.—(1) Where a court of summary jurisdiction imposes a fine on a person convicted of an offence, the court may, either at the same or at any subsequent time, order payment of the fine by instalments of such amounts, and at such times, as it may think fit, and where any instalment is not paid by the time so ordered, the accused shall be liable to imprisonment for such period as bears to the period appropriate to the total amount of the fine the same proportion, as nearly as may be, as the sum of the unpaid instalments bears to that amount. In this subsection the expression " period appropriate to the total amount of the fine " means the period specified by the court in default of payment of the fine, or, if no such period is specified, the maximum period applicable to a fine of that amount in pursuance of section forty-eight of the Summary Jurisdiction (Scotland) Act, 1908.

8 Edw. 7. c. 65.

(2) In the application of the Fine or Imprisonment (Scotland and Ireland) Act, 1899, to any person imprisoned in default of payment of any instalment of a

62 & 63 Vict. c. 11.

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fine, the sum of the unpaid instalments shall be deemed to be the sum adjudged to be paid.

Transfer of jurisdiction as to person fined.

2.—(1) Where a court of summary jurisdiction has imposed a fine on a person convicted of an offence and it appears to the court that he is resident in a place outside the jurisdiction of the court and within the jurisdiction of some other court of summary jurisdiction, the first-mentioned court may, if it appears in the circumstances expedient to do so, make with respect to such fine an order for the purposes of this section. An order made for the purposes of this section shall be termed a " transfer of fine order," shall specify the court within whose jurisdiction the accused is resident, and shall be in such form as may be prescribed by Act of Adjournal. No such order shall be made except on the application of the person on whom the fine was imposed, and any such application may be made either in open court by that person or by a solicitor or a person, not being a solicitor, who satisfies the court as to his authority to do so, or in writing addressed to the clerk of the court.

(2) As from the date on which a transfer of fine order is made with respect to any fine, all functions in relation thereto which, if the order had not been made, would have been exercisable under any enactment (including this Act) by the court which imposed the fine or by the clerk of such court shall be exercisable by the court specified in the order or by the clerk thereof, as the case may be, and not otherwise :

Provided that any payment received by virtue of a transfer of fine order by the clerk of the court specified therein shall be forthwith transmitted by him to the clerk of the court which imposed the fine.

(3) Where it appears to the court specified in a transfer of fine order that the person on whom the fine was imposed is residing in a place outside the jurisdiction of such court and within the jurisdiction of some other court of summary jurisdiction, the court so specified may make a further transfer of fine order with respect to such fine and shall cause a copy thereof to be sent to the clerk of the court which imposed the fine.

(4) The court to be specified in a transfer of fine order shall, in any case where the fine was imposed by the sheriff court, be a sheriff court.

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Amendment of 4 & 5 Geo. 5. c. 58, s. 42 (2).

3. Section forty-two of the Criminal Justice Administration Act, 1914, shall have effect as if the words "within its jurisdiction" in paragraph (*a*) of the provisions directed by paragraph (2) of the said section to be substituted for section one of the Act, were omitted.

Objections to relevancy plea of not guilty in absence of accused.

4.—(1) In any proceedings in a court of summary jurisdiction objections to the competency or relevancy of the complaint or proceedings may be stated, in the absence of the accused, by counsel or by a solicitor on his behalf, and, where such objections are so stated, the provisions of the Summary Jurisdiction (Scotland) Act, 1908, shall apply in like manner as if the accused had appeared and stated the objections.

(2) Where in any proceedings in a court of summary jurisdiction either—

(*a*) the prosecutor produces to the court written intimation that the accused pleads not guilty to the charge and the court is satisfied that such written intimation has been made or authorised by the accused, or

(*b*) a solicitor, or a person not being a solicitor who satisfies the court that he is authorised by the accused, appears on behalf of the accused and tenders a plea of not guilty,

the provisions of the Summary Jurisdiction (Scotland) Act, 1908 (except paragraph (1) of section thirty-two), shall apply in like manner as if the accused had appeared and tendered such plea.

(3) In the foregoing provisions of this section any reference to a plea of not guilty shall include a reference to a plea of guilty to part only of the charge which is not accepted by the prosecutor.

Amendment of 8 Edw. 7. c. 65, s. 33 (2).

5. Paragraph (2) of section thirty-three of the Summary Jurisdiction (Scotland) Act, 1908 (which empowers a court in certain circumstances to hear and dispose of a case in the absence of the accused), shall have effect as if for the words "involving the imposition of a pecuniary penalty only" there were substituted the words "for which a sentence of imprisonment cannot be imposed."

Modification of sentences.

6. The power conferred on a court of summary jurisdiction by section fifty-four of the Summary Jurisdiction (Scotland) Act, 1908, to alter or modify a sentence

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shall be exercisable without requiring the attendance of the accused, and, without prejudice to the generality of the said power, shall include power in the case where payment of a fine by instalments has been ordered, to reduce the amount, or allow further time for the payment, of any instalment (whether the time for payment thereof has or has not expired), or to order payment of the fine, so far as unpaid, by instalments of smaller amounts, or at longer intervals than originally ordered.

S. 37 of 24 & 25 Geo. 5. c. 50 to apply to breaches of regulations. 20 & 21 Geo. 5. c. 43.

7. For removal of doubts it is hereby declared that section thirty-seven of the Road Traffic Act, 1934, applies to a contravention of or failure to comply with any regulation made under the Road Traffic Act, 1930, or the Road Traffic Act, 1934, in like manner as the said section applies to a contravention of any provision of either of those Acts which is directed to be prosecuted under the Summary Jurisdiction Acts.

Amendment of s. 1 of 8 Edw. 7. c. 59. 4 & 5 Geo. 5. c. 58.

8. For the purpose of section one of the Prevention of Crime Act, 1908, as amended by paragraph (8) of section forty-two of the Criminal Justice Administration Act, 1914, a person under the age of seventeen years shall be deemed to be convicted of an offence for which he is liable to be sentenced to imprisonment, if he is convicted of an offence for which he could competently have been sentenced to imprisonment had he been over seventeen years of age.

Amendment of 58 & 59 Vict. c. 36, s. 5.

9. Subsection (1) of section five of the Fatal Accident Inquiry (Scotland) Act, 1895, in so far as it requires, in order to enable a depute procurator fiscal to discharge the duties imposed by the said subsection on the procurator fiscal, that the cause of the procurator fiscal's absence shall be stated in open court and held by the sheriff to be sufficient, shall cease to have effect.

Statutory offences punishable by penal servitude may be tried in the sheriff court.

10.—(1) Proceedings for a statutory offence, in the case of which it is enacted by any Act, whether passed before or after this Act, that a person shall be liable on conviction of such offence to penal servitude or to penal servitude or imprisonment, may be brought either in the High Court of Justiciary, or in a sheriff court.

(2) Proceedings in a sheriff court in pursuance of this section may be on indictment or summary, and in any such proceedings the court shall have power to

award imprisonment for any period not exceeding, on conviction on indictment, two years, and on summary conviction, six months.

(3) This section shall, in relation to any Act passed before this Act, be deemed to have had effect as from the commencement of that Act.

(4) In this section "statutory offence" means any offence against or contravention of any Act.

S. 4 (1) of 61 & 62 Vict. c. 36 to apply to certain offences. 1 Edw. 8. & 1 Geo. 6. c. 37.

11.—(1) Subsection (1) of section four of the Criminal Evidence Act, 1898, shall apply as regards any offence mentioned in the First Schedule to the Children and Young Persons (Scotland) Act, 1937, in like manner as the said subsection applies as regards the offences therein referred to.

(2) Section twenty-six of the Children and Young Persons (Scotland) Act, 1937, is hereby repealed.

Amendment of 23 & 24 Geo. 5. c. 41, s. 20.

12. After subsection (2) of section twenty of the Administration of Justice (Scotland) Act, 1933 (which section relates to admissions by parties in trials on indictment) the following subsection shall be added:—

"(3) Any reference in this section to proof or admission of a document shall include a reference to proof or admission as to the person by whom a document was written, executed, or received, and as to the time and place of such writing, execution, or receipt."

Amendment of the law as to incest.

13. For removal of doubts it is hereby declared that carnal connection between a man and a woman whose marriage to each other is authorised by the Marriage (Prohibited Degrees of Relationship) Acts, 1907 to 1931, or would be so authorised on the death of any person, is not incest.

Extent and citation.

14.—(1) This Act shall extend to Scotland only, and may be cited as the Criminal Procedure (Scotland) Act, 1938.

(2) In this Act the expression "fine" includes any pecuniary penalty or forfeiture imposed or ordered by a court in respect of a conviction.

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FOR
SIR WILLIAM RICHARD CODLING, C.B., C.V.O., C.B.E., the King's Printer of Acts of Parliament