ANNO TRICESIMO PRIMO & TRICESIMO SECUNDO

VICTORIÆ REGINÆ.

****

CAP. XCV.

An Act to amend the Procedure in the Court of Justiciary and other Criminal Courts in *Scotland*.

[31st *July* 1868.]

WHEREAS it is expedient that the Procedure in the Court of Justiciary and also in the Criminal Courts of the Sheriffs in *Scotland* should be amended:

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, as follows:

Quorum at Trials in High Court of Justiciary.

1. The Lord Justice-General, Lord Justice Clerk, or any One Lord Commissioner of Justiciary may preside alone at the Trial of any Panel before the High Court of Justiciary, and when so presiding shall constitute a Quorum of said High Court: Provided that in any Trial of Difficulty or Importance it shall be competent for Two or more Judges of Justiciary to preside thereat.

Judges holding Circuit Courts may sit and act separately,

2. Wherever it is expedient for the greater Despatch of Business before any Circuit Court of Justiciary, it shall be lawful for the Two Judges holding the said Court to sit in separate Court-rooms, and to perform separately the Duties and despatch the Business of the said

and Proceedings to be held good.

Court, or such Part thereof as it may be desirable so to perform; and each of the said Judges so sitting apart shall possess all the Powers which would belong to the said Judges sitting and judging together; and all the Proceedings of the said Judges, whether sitting separately or together, shall be held as Proceedings in the said Circuit Court of Justiciary.

Case of protracted Sittings of Circuit Court.

3. Notwithstanding the Continuance of the Sitting of the Circuit Court of Justiciary at any Circuit Town, it shall be competent for One of the Lords Commissioners of Justiciary on such Circuit to proceed to the next Circuit Town, and there to open the Court and despatch the Business thereof.

Accused Persons may be cited to Two Diets of Compearance, and may be called on at First Diet to plead Guilty or Not Guilty.

4. In Criminal Trials proceeding on Indictment before the High Court of Justiciary it shall be competent for Her Majesty's Advocate, in any Case where he may consider it expedient, to cause the Person accused to be cited to Two Diets of Compearance according to the Form No. 1 in the Schedule (A.) hereto annexed; and it shall not be necessary to cite any Witnesses or Jurors for the Trial of such Person to the first of said Diets: And if at the first of such Diets (which shall not be sooner than Fifteen clear Days from the Service of the Libel) the Person accused shall plead Guilty, the Court may proceed to pass Sentence as heretofore; but in the event of the Person accused pleading Not Guilty, it shall be competent to the Court, on the Motion of Her Majesty's Advocate, or of his Depute, either to remit the Case to be tried before the next ensuing Circuit Court of Justiciary, which shall be competent to try the Accused, and shall be held not sooner than Ten clear Days after said First Diet (in which Case the Citation of the Accused to appear at the Second Diet at the High Court of Justiciary to which he had been cited shall be held to be discharged); or to ordain the Accused to appear in the said High Court at the Second Diet of Compearance, which Second Diet shall not be sooner than Ten clear Days after the First Diet: And at such Circuit Court, or at such Second Diet of the High Court, the Person accused shall again be called on to plead to the Libel; and if such Person shall, at such Circuit Court, or such Second Diet of the High Court, plead Guilty, the Sentence of the Court may be forthwith pronounced; and if such Person shall plead Not Guilty, the Trial may then be proceeded with, in Terms of Law, unless the Diet shall be adjourned or deserted, according to the existing Law and Practice: Provided always, that it shall not be necessary to serve any new Indictment upon such accused Person; but the Trial before the said Circuit Court, or at such Second Diet of the said High Court, or Adjournment thereof, may proceed upon the same Indictment, on which the Accused was called to plead at said First Diet.

5. Wherever

Pleading Diets at Circuit Towns.

5. Wherever it is considered expedient for the due Administration of Justice, it shall be competent for One of the Lords Commissioners of Justiciary to sit at any Time in the Criminal Court House in any Circuit Town in *Scotland*, and there to receive the Pleas of Persons indicted to the High Court of Justiciary as provided for in the Fourth Section hereof, and to pronounce Sentence upon such Persons as plead Guilty as accords of Law; and such Lord Commissioner of Justiciary so sitting and judging shall have for the Purposes aforesaid all the Powers of the High Court of Justiciary, and shall be deemed to be the High Court of Justiciary in Terms of the said Fourth Section hereof.

When List of Assize to be served on the Panel.

6. It shall not be necessary to lodge in Court, or to serve upon the Person accused a List of Assize or Jurors before the said First Diet; but where the accused Person shall be remitted for Trial to a Circuit Court, a Notice of Compearance before such Circuit Court, in the Form No. 5 in the said Schedule (A.), along with a Copy of the List of Assize or Jurors for such Circuit, shall be served on such accused Person not less than Six clear Days before the Day of Trial; and where the Person accused shall be ordained to appear at the Second Diet of the High Court as before mentioned, a List of the Assize for the Trial of all accused Persons at that Diet shall be served upon him in the Form No. 3 in the said Schedule (A.), not less than Six clear Days before such Diet.

Pleas in Bar and Objections to Relevancy competent only at First Diet.

7. After the Panel has pleaded at said First Diet, it shall not be competent to state any Plea in bar of Trial (except in respect of Circumstances which have occurred since the said First Diet, or unless such Plea or Objection has been reserved by the Judge), or to state any Objection to the Relevancy of the Libel: Provided always, that nothing herein contained shall affect the Right of the Court at any Stage of the Proceedings to inquire as to the Panel's Sanity, according to the present Law and Practice.

Reserving an accused Person's Rights under the Act 1701, c. 6.

8. If at the said First Diet the Panel shall plead Not Guilty, it shall be competent for the High Court to ordain him to be conveyed to such Prison as the said Court shall direct, therein to be detained in the meantime: Provided always, that nothing contained in this Act shall prejudice the Right of any accused Person to apply, according to the present Law and Practice, to be liberated on Bail; nor shall it prejudice his Right to apply for and follow forth Letters of Intimation or Liberation under the Act of the *Scottish* Parliament, passed in the Year One thousand seven hundred and one, Chapter Six, intituled *An Act for preventing wrongous Imprisonment, and against undue Delay in Trials;* both of which Rights shall continue the same after the said accused Party has pleaded

pleaded Not Guilty at said First Diet, as before such Plea was given or recorded.

Form of Proceedings for summoning Parties and Witnesses.

9. When it is necessary to summon Witnesses for the Trial of any Person who has been ordained to appear at a Second Diet of the High Court, or who has been remitted for Trial by the Circuit Court under the Authority of this Act, the Proceedings for summoning such Witnesses shall be, as nearly as may be, the same as those in use for summoning Witnesses to the High Court or Circuit Courts of Justiciary according to the present Law and Practice: Provided always, that the Letters of Diligence for citing Parties and Witnesses for such Trials, and for citing Parties to a First Diet of the High Court, shall be, as nearly as may be, in the Forms contained in Schedule (B.) to this Act annexed.

Jurors in Criminal Cases to be cited by registered Post Letter.

10. The present Mode of citing Jurors for the Trial of Criminal Cases before the High Court or Circuit Court of Justiciary or before any Sheriff in *Scotland* shall be discontinued; and in place thereof the Sheriff Clerk of the County of *Edinburgh* or his Depute, where the Trial is to take place before the High Court of Justiciary, or the Sheriff Clerk of the County in which any Juror is to be cited, or his Depute, where the Citation is for a Trial before a Circuit Court of Justiciary or before a Sheriff, shall fill up and sign a proper Citation addressed to each such Juror, and shall cause the same to be transmitted to him in a registered Post Letter, directed to him at his Place of Residence as stated in the Roll of Jurors; and a Certificate under the Hand of such Sheriff Clerk, or his Depute, of the Citation of any Jurors or Juror in manner herein provided, shall have the like Force and Effect as an Execution of Citation according to the present Law and Practice.

Letters of Diligence may be issued by the Clerk on Requisition by Lord Advocate, Crown Agent, &c.

11. In addition to the Provisions contained in the Second Section of the Act 11 & 12 *Vict.* Cap. 79. it shall be lawful for the Clerk of Justiciary to issue Letters of Diligence at the Instance of Her Majesty's Advocate, for the Citation of accused Persons and of Witnesses, either upon a Requisition containing the necessary Information, signed by Her Majesty's Advocate or any of his Deputes, or by the Crown Agent for the Time being, or the First or Second Clerk in the Office of the Crown Agent in *Edinburgh*.

Previous Conviction for Theft may be libelled and proved as Aggravation of Crime

12. It shall be competent in any Criminal Letters or in any Indictment before the High Court or Circuit Court of Justiciary charging any Person with the Crime of Robbery, to libel, and in the course of the Trial proceeding on such Criminal Letters or Indictment as aforesaid to prove a previous Conviction of the Person

Person accused for the Crime of Theft as an Aggravation of the said Crime of Robbery; and in like Manner it shall be competent to libel and prove a previous Conviction for the Crime of Robbery as an Aggravation of the Crime of Theft. of Robbery, and vice versâ.

13. It shall be competent for the Governor or Keeper of any Prison in *Scotland*, or for any of the Warders therein, to execute any Warrant issued forth of the Court of Justiciary in *Scotland* for transmitting any Prisoner or Prisoners in such Prison to any other Prison in *Scotland*, in order to Trial before the High Court or any Circuit Court of Justiciary competent to try such Prisoner or Prisoners: Provided also, that it shall be competent for the Managers of the General Prison at *Perth* appointed by or under the Authority of the "Prisons (*Scotland*) Administration Act, 1860," and they are hereby required, to make Regulations as to the Mode in which and the Officers by whom such Warrants shall be executed: Provided also, that nothing herein contained shall make it incompetent to execute such Warrants according to the present Law and Practice. Execution of Warrant for transmitting Prisoners.

14. All Interlocutors and Sentences pronounced by the High Court or by any Circuit Court of Justiciary under the Authority of this Act shall be final and conclusive, and not subject to Review by any Court whatsoever, and it shall be incompetent to stay or suspend any Execution or Diligence issuing forth of the Court of Justiciary under the Authority of the same. Interlocutor and Sentences to be final.

15. Except where inconsistent with the Provisions of this Act, all the Proceedings at Criminal Trials conducted under the Authority hereof, or with a view to such Trials, and all Execution to follow thereon, shall be the same, as nearly as may be, as those now in use in the High Court and Circuit Courts of Justiciary in Criminal Prosecutions proceeding on Indictment carried on according to the present Law and Practice. Proceedings under this Act to be as nearly as possible the same as those now in use.

16. It shall be lawful for the said Court of Justiciary and the said Court is hereby required from Time to Time to make all such Rules and Regulations, by Act or Acts of Adjournal, as may be necessary for carrying out the Purposes and accomplishing the Objects of this Act: Provided always, that Copies of all such Acts of Adjournal shall, within Fourteen Days after the making thereof, be laid before both Houses of Parliament, if Parliament shall be then sitting, and if not, within Fourteen Days after the Commencement of the then next Session of Parliament. Court may make Acts of Adjournal.

17. Nothing

Act not to affect Trials upon Criminal Letters or where First Diet is at Circuit Court.

17. Nothing herein contained shall affect the Proceedings at or with a view to any Criminal Trial before the High Court or any Circuit Court of Justiciary proceeding upon Criminal Letters, or the Proceedings at or with a view to any Criminal Trial before any Circuit Court of Justiciary proceeding upon Indictment, where the Diet of Compearance contained in the Indictment shall be at such Circuit Court, all which Proceedings shall continue in all respects the same as before the passing hereof, except as provided in the First, Second, Third, Tenth, Eleventh, Twelfth, and Thirteenth Sections hereof.

Citation of Persons liberated on Bail.

18. All Bail Bonds whatsoever received in order to the Liberation of accused Persons from Custody shall specify the Domicile at which such Persons may thereafter be cited for Trial before the Court of Justiciary or any other Criminal Court in *Scotland;* and it shall not be necessary to cite any Person liberated under such Bail Bond edictally at the Market Cross of the Head Burgh of the Shire.

Amendment of 31 Vict. c. 24. s. 13.

19. The Thirteenth Section of the Act Thirty-first *Victoria*, Chapter Twenty-four, shall be read and construed as if the Words "in lieu of the Provisions contained in the Fifth Section hereof" were substituted for the Words "in lieu of the Provisions contained in the Sixth Section hereof" therein contained.

Repeal of Acts.

20. All Laws, Statutes, Regulations, and Usages inconsistent or at variance with the Provisions of this Act shall be and the same are hereby repealed: Provided always, that the same shall continue in force in all other respects whatsoever.

Commencement of Act.

21. Excepting in so far as regards the Provisions contained in the Second, Third, and Sixteenth Sections hereof (which shall take effect from and after the passing hereof), this Act shall take effect on and after the Fifteenth Day of *October* One thousand eight hundred and sixty-eight: Provided always, that nothing herein contained shall affect the Proceedings in any Criminal Case begun before the Commencement hereof, and such Proceedings shall be continued and completed according to the existing Law and Practice.

SCHEDULE (A.)

No. 1.

Form of Citation to the High Court of Justiciary.

A.B., take notice that you will have to compear before the High Court of Justiciary within the Criminal Court House at Edinburgh [*or*, at the Criminal Court House at (*here specify the Circuit Town*)], to answer to the Criminal Libel to which this Notice is attached, on the Day of at o'Clock, for the First Diet; and also, if required, upon the Day of at o'Clock at the Criminal Court House at Edinburgh for the Second Diet.

This Notice served by me on the Day of in the Year

C.D., Macer (*or* Messenger-at-Arms *or* Sheriff Officer).

E.F., Witness.

No. 2.

Execution of Citation.

A Copy of a Criminal Libel containing a Charge of Theft (*or whatever the Crime may be, as described in the Diligence,*) consisting of Pages, and having annnexed to it a List of Witnesses was on the Day of served by me upon *A.B.* 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 at o'Clock for the First Diet, and also, if required, upon the Day of at o'Clock for the Second Diet.

C.D., Macer (*or* Messenger-at-Arms *or* Sheriff Officer).

No. 3.

Form of Service of the List of Assize on an accused Person ordained to appear at a Second Diet.

A.B., take notice that the foregoing is a Copy of the List of Assize for the Trial of all accused Persons ordained to appear before the High Court of Justiciary on the Day of being the Second Diet to which you have been cited, to answer to the

the Libel raised at the Instance of Her Majesty's Advocate for Her Majesty's Interest against you.

This Notice served by me on the Day of in the Year

C.D., Macer (*or* Messenger-at-Arms *or* Sheriff Officer).

E.F., Witness.

No. 4.

Execution of Service of List of Assize.

A Copy of the List of Assize for the Trial of all accused Persons before the High Court of Justiciary on the Day of being the Second Diet to which *A.B.* had been cited to appear before the said High Court to answer to the Libel raised at the Instance of Her Majesty's Advocate for Her Majesty's Interest against him, was on the Day of served by me upon the said *A.B.*, by delivering the same to him personally (*or as the Case may be*).

C.D., Macer (*or* Messenger-at-Arms *or* Sheriff Officer).

No. 5.

Form of Notice where the Accused has been remitted to the Circuit.

A.B., take notice that you will have to compear before the Circuit Court of Justiciary to be holden within the Criminal Court House of on the Day of at o'Clock, to answer to the Criminal Libel raised against you at the Instance of Her Majesty's Advocate for Her Majesty's Interest before the High Court of Justiciary, which was on the Day of remitted for Trial to the said Circuit Court, and that the foregoing is a Copy of the List of Assize for the said Circuit Court of Justiciary.

This Notice served by me on the Day of in the Year

C.D., Macer (*or* Messenger-at-Arms *or* Sheriff Officer).

E.F., Witness.

No. 6.

Execution of Citation and Service.

A Copy of the List of Assize for the ensuing Circuit Court of Justiciary to be holden at was on the Day of served by me on *A.B.*, on which Copy was marked

marked a Notice of Compearance before the said Circuit Court within the Criminal Court House of upon the Day of at o'Clock noon, to answer to the Criminal Libel raised against him at the Instance of Her Majesty's Advocate for Her Majesty's Interest before the High Court of Justiciary, which was on the Day of remitted for Trial to the said Circuit Court.

C.D., Macer (*or* Messenger-at-Arms, *or* Sheriff Officer.)

SCHEDULE (B.)

No. 1.

Letters of Diligence for citing accused Parties to a First and Second Diet, and Witnesses to a Second Diet of the High Court.

Victoria, by the Grace of God, Queen of the United Kingdom of Great Britain and Ireland, Defender of the Faith, to Macers of Our Court of Justiciary, Messengers-at-Arms, Sheriff or Steward's Officers of the County or Stewartry within which these Our Letters shall be executed, Our Sheriffs in that Part, conjunctly and severally, specially constituted, greeting: Whereas it is humbly meant and shown to Us by Our Right Trusty Our Advocate for Our Interest, that he has raised an Indictment at his Instance against in manner mentioned in the said Indictment, the Diets whereof stand fixed before Our Lords Justice General, Justice Clerk, and Commissioners of Justiciary, Place and Dates after mentioned, and that it is necessary for the Complainer to have these Our Letters of Diligence at his Instance in manner underwritten as is alleged: Our Will is herefore, and We charge you, that on Sight hereof ye pass, and in Our Name and Authority lawfully summon, warn, and charge, the above-named Accused to compear before Our said Lords Justice General, Justice Clerk, and Commissioners of Justiciary in a Court of Justiciary to be holden within the Criminal Court House of Edinburgh [*or*, at the Criminal Court House at (*here specify the Circuit Town*),] upon the Day of in the Hour of Cause (Half-past Nine o'Clock Forenoon) for the First Diet, there to plead Guilty or Not Guilty and to underlie the Law, conform to the Conclusion of the said Indictment and the Laws of this Realm; and also, if required, upon the Day of at Half-past Nine o'Clock Forenoon for the Second Diet, again to plead Guilty or Not Guilty,

and to underlie the Law as aforesaid; as also, if required for the Second Diet, that ye summon such Witnesses as best know the Verity of the Premises, whose Names shall be given to you in a List subscribed by the said Complainer, personally or at their respective Dwelling Places, all to compear before Our said Lords, Time and Place of said Second Diet; the said Witnesses to bear leal and soothfast witnessing in so far as they know or shall be asked at them anent the said Accused's Guilt in the Premises, each Witness under the Pain of One hundred Merks Scots; according to Justice, as ye will answer to Us thereupon. The which to do, We commit to you full Power by these Our Letters, delivering them by you duly executed and indorsed again to the Bearer. Given at Edinburgh, the Day of in the Year of Our Reign, 186 .

No. 2.

Letters of Diligence for citing accused Parties, and Witnesses, to a Circuit Court to which such Parties have been remitted for Trial.

Victoria, by the Grace of God, Queen of the United Kingdom of Great Britain and Ireland, Defender of the Faith, to

Macers of Our Court of Justiciary, Messengers-at-Arms, Sheriff or Steward's Officers of the County or Stewartry within which these Our Letters shall be executed, Our Sheriffs in that Part, conjunctly and severally, specially constituted: Whereas it is humbly meant and shown to us by Our Right Trusty

Our Advocate for Our Interest, that he raised an Indictment at his Instance before the High Court of Justiciary against

accusing him of the Crime of in manner mentioned in the said Indictment, the Diet whereof stood fixed before the said High Court to the Day of , on which Day, the Libel having been found relevant, the Panel pleaded Not Guilty, and the Court remitted the Case to be tried before the next Circuit Court of Justiciary to be holden at ; in consequence whereof it is necessary for the Complainer to have these Our Letters of Diligence at his Instance in manner underwritten as is alleged: Our Will is herefore, and We charge you, that on Sight hereof ye pass, and in Our Name and Authority serve a Copy of the List of Assize for the said Circuit Court of Justiciary on the above-named

Accused,

Accused, and lawfully summon, warn, and charge him to compear before Our said Lords Justice General, Justice Clerk, and Commissioners of Justiciary in a Circuit Court of Justiciary to be holden by them, or by any One or more of their Number, within the Criminal Courthouse of upon the Day of , in the Hour of Cause ( ), there to underlie the Law, conform to the Conclusion of the said Indictment and Laws of this Realm; as also that ye summon such Witnesses as best know the Verity of the Premises, whose Names shall be given to you in a List subscribed by the said Complainer personally or at their respective Dwelling Places, all to compear before Our said Lords, Day, Place, and Hour above mentioned, to bear leal and soothfast witnessing in so far as they know or shall be asked at them anent the said Accused's Guilt in the Premises, each Witness under the Pain of One hundred Merks Scots. According to Justice, as ye will answer to Us thereupon. The which to do, We commit to you full Power by these Our Letters, delivering them by you duly executed and indorsed again to the Bearer. Given at Edinburgh the Day of in the Year of Our Reign, 18 .

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