



Western Australia.

ANNO QUADRAGESIMO SEPTIMO

VICTORIÆ REGINÆ.

No. VIII.

AN ACT to consolidate and amend the Laws providing for the summary trial and punishment of Aboriginal Native Offenders in certain cases.

[Assented to, 8th September, 1883.]

WHEREAS by several Ordinances and Acts of the Colony of Western Australia, provision is made for the Summary Trial and Punishment of Aboriginal Offenders; And whereas it is expedient to consolidate and amend the said Ordinances and Acts; Be it enacted by His Excellency the Governor of Western Australia and its Dependencies, by and with the advice and consent of the Legislative Council thereof, as follows:—

1. THIS Act may be cited for all purposes as “The Aboriginal Offenders Act, 1883.” Short Title.

2. FROM and after the commencement of this Act, the Ordinances and Acts mentioned in the schedule to this Act shall be and the same are hereby repealed; Provided always, that this repeal shall not affect the validity of any proceeding commenced, had, or taken under the provisions of the said Acts or of any of them. Repeal of Acts

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Interpretation of terms.

3. THE following words in this Act shall have the meanings hereby assigned to them, that is to say:—

The word “Magistrate” shall mean a Government Resident, or a Resident Magistrate, or a Police Magistrate, and shall not be taken to mean any other Justice of the Peace.

The words “Justice of the Peace” shall mean any Justice of the Peace not being a Magistrate as aforesaid.

The words “General Quarter Sessions” shall mean the Courts established under the provisions of the Act 9 Vic., No. 4.

The words “Aboriginal Native” shall mean any person of the whole or half-blood of the aboriginal native race.

A magistrate with justices may summarily try certain offences.

4. IT shall be lawful for a Magistrate, together with one or more Justices of the Peace not interested in the subject matter of the complaint, to inquire into and try in a summary manner any felony or misdemeanor committed within the district of the said Magistrate (except any of those offences mentioned in the fifth section of this Act) with which any aboriginal native shall be charged before them; and if the said native shall be proved to the satisfaction of the said Court to have committed the offence charged, or shall voluntarily confess the same, it shall be lawful for the said Court to sentence such native to be imprisoned, with or without hard labor, in any gaol or other place lawfully appointed for the confinement of such offenders, for any term not exceeding two years. Provided always, that if any aboriginal native shall be charged before such Court as aforesaid with having committed two or more offences, the sentence or sentences for both or all of such offences shall not exceed in the whole the term of two years. Provided further, that it shall not be lawful for a Magistrate alone to exercise the powers given by this section.

Offences not summarily triable.

5. NO aboriginal native shall be tried under the summary jurisdiction mentioned in this Act for any of the offences next hereinafter named, that is to say: wilful murder; administering or causing to be administered to or to be taken by any person any poison or other destructive thing, or wounding or causing any grievous bodily harm to any person with intent, in any of the cases aforesaid, to commit murder; rape; burglary in a dwelling accompanied by an assault with intent to murder any person being therein, or with a wounding, beating, or striking of any such person; but the Magistrate and Justices or Magistrate or Justices or Justice before whom any aboriginal native is charged, if he or they shall be of opinion that the evidence justifies the committal of such native for any of the offences mentioned in this section, shall commit such native for trial before the Supreme Court of Western Australia.

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6. IT shall be lawful for any Magistrate, or for any two or more Justices of the Peace not interested, in the subject matter of the complaint, to inquire into and try in a summary manner any felony or misdemeanor (except any of the offences mentioned in the fifth section of this Act) with which any aboriginal native shall be charged before them, and if the said native shall be proved to the satisfaction of such Magistrate or Justices to have committed such offence, or if he shall voluntarily confess the same, it shall be lawful for the said Magistrate or Justices to sentence such native to be imprisoned, with or without hard labor, in any gaol or other place lawfully appointed for the confinement of such offenders, for any term not exceeding one year. Provided always, that if such native shall be charged before such Magistrate or Justices with having committed two or more offences, the sentence or sentences for both or all of the said offences shall not exceed in the whole the term of one year.

A Magistrate or two or more justices may summarily try certain offences.

7. IF any one Justice of the Peace shall receive any complaint or charge touching any felony or misdemeanor (except any of those mentioned in the fifth section of this Act) alleged to have been committed by any aboriginal native, and it shall happen that no other Justice of the Peace is resident or can be found at the time within twenty miles from the residence of the Justice receiving such complaint or charge, then it shall be lawful for such one Justice to inquire into and try in a summary manner such felony or misdemeanor and to convict and sentence such native and to do all things incident to or in any way connected with such trial and sentence as fully and effectually to all intents and purposes as any two or more Justices are by this Act required or empowered to do.

One justice may under certain circumstances summarily try such offences.

8. NO lapse of time from and after the commission of any offence hereby made summarily triable shall be a bar to the exercise of the summary jurisdiction hereby created, further or otherwise than as such lapse of time would be a bar to the prosecution of such offence by information in the Supreme Court.

Lapse of time no bar to summary proceeding.

9. IT shall be lawful for any Magistrate and Justice, or Magistrate alone, or Justices or Justice as aforesaid, receiving any complaint or charge against an aboriginal native of any offence hereby made summarily triable by him or them, or inquiring into the matter of such complaint or charge, if the circumstances of the case shall seem to them or him to require a more formal hearing, or a more exemplary punishment than can be given under this Act, to decline to exercise the summary jurisdiction aforesaid, and instead thereof to take the evidence of the witnesses and to send such case for trial, according to its nature or magnitude, either before the Supreme Court or the Court of General Quarter Sessions of the district in which the offence charged was committed, or, if the offence is not charged to have been committed within a General

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Quarter Sessions district, then before the Court of General Quarter Sessions which shall be nearest to the place where the said offence is charged to have been committed, and to take proper recognizances for the appearance of all parties and witnesses at the trial, and to return the same to the Supreme Court or Court of Quarter Sessions respectively.

Record and report
of conviction.

10. AS soon as possible after every conviction under this Act, the convicting Magistrate and Justices, or Magistrate or Justices or Justice as aforesaid shall transmit a record of such conviction, in the form in the Schedule hereto, to the Registrar of the Supreme Court, to be filed and kept by that officer amongst the records of his office, and he or they shall likewise transmit to the Colonial Secretary a report of such conviction, containing an abstract of the information or complaint and of the evidence for and against the convicted person.

Incorporation of cer-
tain Acts.

11. ALL the provisions of the Acts now in force in Western Australia regulating or defining the duties of Justices in criminal cases, so far as the said provisions are consistent with the provisions of this Act, shall be considered to be and the same are hereby incorporated into this Act, and every Magistrate and Justice of the Peace in exercising the duties imposed upon him or them by this Act shall follow the course of procedure in the said Acts provided for, so far as is practicable and as the circumstances of the case shall permit; but no summons, warrant, complaint, charge, conviction, recognizance, or other document or proceeding taken, made, or used under this Act shall be held to be bad for any defect of form, but in all cases and in all courts regard shall be had alone to the substantial merits and justice of the case, and no Magistrate or Justice of the Peace, nor any person acting under his or their authority or direction, shall be liable to answer at law, civilly or criminally, for any act done or professed to be done in pursuance of this Act, unless it be alleged and proved that such act was done from wilful and corrupt motives. And no trial of any aboriginal native before any Court of General Quarter Sessions shall be held to be bad or invalid, by reason of the said court being the court of a district other than that to which a Magistrate or Justice or Justices are by this or by any other Act directed to send such native for trial.

Burden of proof.

12. IN case any person shall be charged with the commission of any offence under this Act, the burden of proof that such person is not of the whole or half-blood of the aboriginal native race shall be on the person so charged, unless it be apparent to the Magistrate or Justice or Justices before whom such person is charged that such person is of less than the half-blood of the aboriginal native race.

A magistrate may be
ordered to act in any
district.

13. IT shall be lawful for the Governor or officer for the time being administering the Government of Western Australia, with the

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advice of the Executive Council of the said Colony, by writing under his hand, to be forthwith published in the *Government Gazette*, to appoint any person to act as a Magistrate in any district or part of the Colony, and thereupon such person shall have and exercise during the term of his appointment, in the district or part in which he shall be so appointed to act as aforesaid, every power, not only under this Act, but also in all matters and things both civil and criminal whatever within the jurisdiction of a Magistrate. Save as aforesaid, a Magistrate shall continue to act only within the district to which he shall have been appointed.

14. THIS Act shall come into force on the first day of January, 1884. Commencement of Act.

In the name and on behalf of the Queen I hereby assent to this Act.

F. NAPIER BROOME, Governor.

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THE SCHEDULE.

ORDINANCES AND ACTS REPEALED.

12th Vict., No. 18.—“ An Ordinance to provide for the Summary Trial and Punishment of Aboriginal Native Offenders in certain cases.”

23rd Vict., No. 10.—An Ordinance to amend the first mentioned Act.

38th Vict., No. 8.—An Act to amend the first mentioned Act.

Form of Record of Conviction.

Western Australia, }
to wit. }

BE it remembered, that on the day of , 18 ,
A B (*convict's name*), an aboriginal native of (*place or district*) in the said
Colony, was convicted before me (*or, us*) (*name of Magistrate or Justices*),
a Magistrate (*or, Justices*) of the said Colony, under the authority of “The
Aboriginal Offenders Act, 1883,” upon an information laid the day
of , 18 , by C D of (*name, residence, and rank or calling
of person laying the information*) for that the said A B (*convict's name*)
at (*place or district where the offence was committed*), in the said Colony,
on the day of , 18 , (*here state briefly the offence
sufficiently to show that it is an offence triable summarily under this Act*);
whereupon I (*or, we*) do, under the authority aforesaid, order and adjudge
that the said A B (*convict's name*) be for his said offence imprisoned (*and
kept to hard labor*) for the term of

Given under my (*or, our*) hand and seal the day of , 18 :