



WESTERN AUSTRALIA.

ANNO VICESIMO QUARTO

VICTORIÆ REGINÆ.

NO. X.

AN ORDINANCE to make better Provision for the Punishment of Frauds committed by Trustees, Bankers, and other Persons entrusted with Property.

WHEREAS it is expedient to make better Provision for the Punishment of Frauds committed by Trustees, Bankers, and other Persons entrusted with Property; Be it therefore enacted by His Excellency The Governor of Western Australia and its Dependencies by and with the Advice and Consent of the Legislative Council thereof: Preamble.

I. THAT if any Person being a Trustee of any Property for the Benefit, either wholly or partially, of some other Person, or for any public or charitable Purpose, shall, with Intent to defraud, convert or appropriate the same, or any Part thereof, to or for his own Use or Purposes, or shall, with Intent aforesaid, otherwise dispose of, or destroy such Property, or any Part thereof, he shall be guilty of a Misdemeanour. Trustees fraudulently disposing of Property guilty of Misdemeanour.

Bankers fraudulently selling, &c., Property entrusted to their Care guilty of Misdemeanour.

II. THAT if any Person being a Banker, Merchant, Broker, Attorney or Agent, and being entrusted for safe Custody with the Property of any other Person shall, with Intent to defraud, sell, negotiate, transfer, pledge, or in any Manner convert, or appropriate to or for his own Use, such Property, or any Part thereof, he shall be guilty of a Misdemeanour.

Persons under Powers of Attorney fraudulently selling Property guilty of Misdemeanour.

III. THAT if any Person entrusted with a Power of Attorney for the Sale or Transfer of any Property, shall fraudulently sell or transfer or otherwise convert such Property, or any Part thereof to his own Use or Benefit, he shall be guilty of a Misdemeanour.

Bailees fraudulently converting Property to their own Use guilty of Larceny.

IV. THAT if any Person being a Bailee of any Property, shall fraudulently take, or convert such Property, or any Part thereof to his own Use, or to the Use of any Person other than the Owner thereof, although he shall not break Bulk or otherwise determine the Bailment, he shall be guilty of Larceny.

Directors &c., of any public Company fraudulently appropriating Property,

V. THAT if any Person being a Director, Member, or public Officer of any public Company shall fraudulently take or apply to his own Use, any of the Money or other Property of such public Company, he shall be guilty of a Misdemeanour.

or keeping fraudulent Accounts,

VI. THAT if any Person being a Director, public Officer, or Manager of any public Company shall, as such, receive, or possess himself of any of the Money or other Property of such public Company otherwise than in Payment of a just Debt or Demand, and shall, with Intent to defraud, omit to make or cause to direct to be made a full and true Entry thereof in the Books and Accounts of such public Company, he shall be guilty of a Misdemeanour.

or wilfully destroying Books,

VII. THAT if any Director, Manager, public Officer or Member of any public Company shall, with Intent to defraud, destroy, alter, mutilate or falsify any of the Books, Papers, Writings, or Securities belonging to the public Company of which he is a Director or Manager, public Officer, or Member, or make or concur in the making of any false Entry, or any material Omission in any Book of Account or other Document, he shall be guilty of a Misdemeanour.

or publishing fraudulent Statements, guilty of Misdemeanour.

VIII. THAT if any Director, Manager or public Officer of any public Company shall make, circulate, or publish, or concur in making, circulating, or publishing any written Statement or Account which he shall know to be false in any material Particular, with Intent to deceive or defraud any Member, Shareholder, or any Creditor of such public Company, or with Intent to induce any Person to become a Shareholder or Partner therein, or to entrust or advance any Money or Property to such public Company, or to enter into any Security for the Benefit thereof, he shall be guilty of a Misdemeanour.

Persons receiving Property fraudulently disposed of, knowing the same to have been so, guilty of a Misdemeanour.

IX. THAT if any Person shall receive any Chattel, Money, or valuable Security which shall have been so fraudulently disposed of as

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to render the Party disposing thereof guilty of a Misdemeanour under any of the Provisions of this Ordinance, knowing the same to have been so fraudulently disposed of, he shall be guilty of a Misdemeanour, and may be indicted and convicted thereof, whether the Party guilty of the principal Misdemeanour shall or shall not have been previously convicted, or shall or shall not be amenable to Justice.

X. THAT every Person found guilty of a Misdemeanour under this Ordinance shall be liable, at the Discretion of the Court, to be kept in penal Servitude for the Term of Three Years, or to suffer such other Punishment by Imprisonment for not more than Two Years with or without hard Labour, or by Fine as the Court shall award.

Punishment for a Misdemeanour under this Ordinance.

XI. THAT nothing in this Ordinance contained shall enable or entitle any Person to refuse to make a full and complete Discovery by Answer to any Bill in Equity, or to answer any Question or Interrogatory in any civil Proceeding in any Court of Law or Equity, or in the Court of Insolvency, but no Answer to any such Bill, Question, or Interrogatory shall be admissible in Evidence against such Person in any Proceeding under this Ordinance.

No Remedy at Law or in Equity shall be affected.

XII. THAT Nothing in this Ordinance contained nor any Proceeding, Conviction, or Judgment to be had or taken thereon against any Person under this Ordinance shall prevent, lessen, or impeach any Remedy at Law or in Equity which any Party aggrieved by any Offence against this Ordinance might have had if this Ordinance had not been passed; but no Conviction of any such Offender shall be received in Evidence in any Action at Law, or Suit in Equity against him; and Nothing in this Ordinance contained shall affect or prejudice any Agreement entered into, or Security given by any Trustee having for its Object the Restoration or Repayment of any trust Property misappropriated.

Convictions not to be received in Evidence in civil Suits.

XIII. THAT no Proceeding or Prosecution for any Offence included in the first Section, but not included in any other Section of this Ordinance, shall be commenced without the Sanction of Her Majesty's Advocate General: Provided that where any civil Proceeding shall have been taken against any Person to whom the Provisions of the said first Section, but not of any other Section of this Ordinance, may apply, no Person who shall have taken such civil Proceeding shall commence any Prosecution under this Ordinance without the Sanction of the Court or Judge before whom such civil Proceeding shall have been had or shall be pending.

No Prosecution shall be commenced without the Sanction of the Judge or Advocate General.

XIV. THAT if upon the Trial of any Person under this Ordinance it shall appear that the Offence proved amounts to Larceny, he shall not by Reason thereof be entitled to be acquitted of a Misdemeanour under this Ordinance.

If Offence amounts to Larceny Person not to be acquitted of a Misdemeanour

Costs of Prosecutions.

XV. THAT in every Prosecution for any Misdemeanour against this Ordinance the Court before which any such Offence shall be prosecuted or tried may allow the Expenses of the Prosecution in all Respects as in Cases of Felony.

Interpretation of certain Terms.

XVI. THAT the Word "Trustee" shall in this Ordinance mean a Trustee on some express Trust created by some Deed, Will, or Instrument in Writing, and shall also include the Heir and personal Representative of any such Trustee, and also all Executors and Administrators, and all Assignees in Insolvency: the Word "Property" shall include every Description of real and personal Property, Goods, raw or other Materials, Money, Debts and Legacies, and all Deeds and Instruments relating to, or evidencing the Title or Right to any Property, or giving a Right to recover or receive any Money or Goods; and such Word "Property" shall also denote and include not only such real and personal Property as may have been the original Subject of Trust, but also any real or personal Property into which the same may have been converted or exchanged, the Proceeds thereof respectively, and any Thing acquired by such Proceeds.

A. E. KENNEDY,
GOVERNOR AND COMMANDER-IN-CHIEF.

*Passed the Legislative Council,
this 5th Day of December, 1860.*

HENRY WAKEFORD,
Clerk of the Council.

L. S.