

WESTERN AUSTRALIA

ANNO QUINQUAGESIMO

VICTORIÆ REGINÆ

No. 15

An Act to amend the Criminal Law Procedure.

[Assented to 16th August, 1886.]

WHEREAS it is expedient to provide a better mode than that Preamble
now in use of deciding any difficult question of law which
may arise in Criminal Trials in any Court of Oyer and Terminer and
Gaol Delivery, and to make further amendments in the administration
of the Criminal Law: 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, as follows:—

1. That when any person shall have been convicted of any treason, Questions of law
may be reserved
at Courts of
Criminal Juri-
sdiction for con-
sideration of
Judges
felony, or misdemeanor, in or before any Court of Oyer and Terminer,
or Gaol Delivery, or Court of General Sessions of the Peace within the
Colony, the Judge, or Commissioner, or Justices of the Peace before
whom the case shall have been tried may in his or their discretion
reserve any question of law which shall have arisen on the trial for the
consideration and determination of the Judges of the Supreme Court;
and thereupon shall have authority to respite the execution of the
judgment on such conviction, or postpone the judgment until such
question of law shall have been considered and decided, as he or they
may think fit; and, in either case, the Court in its discretion shall
commit the person convicted to gaol, or shall take a recognizance of
bail, with one or more sufficient surety or sureties, and in such sum as

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the Court shall think fit, conditioned to appear at such time or times and places as the Court shall direct, and receive judgment, or to render himself in execution, as the case may be.

Questions reserved to be certified to Judges

2. The Judge or Commissioner or Court of General Sessions of the Peace by which such question of law may have been so reserved shall thereupon state a case setting forth the question or questions of law which shall have been so reserved, with the special circumstances upon which the same shall have arisen, and the Judge or Commissioner or Chairman presiding in such Court shall sign and transmit the same, within a reasonable time, to the Judges of the Supreme Court; and the said Judges, whether the person so convicted be present or not, shall have full power and authority to hear and finally determine the said question or questions, and thereupon to affirm, amend, or reserve any judgment which shall have been given on the information or inquisition on the trial whereof such question or questions have arisen, or to avoid such judgment and to order an entry to be made on the record that in the judgment of the said Judges, or a majority of them in case there shall be more than two Judges, the party convicted ought not to have been convicted, or to arrest the judgment or to give judgment thereon if the person so convicted be present, or to order judgment to be given thereon at some other Session of Oyer and Terminer or Gaol Delivery, or General Session of the Peace (as the case may be) if no judgment shall have been before that time given, or to direct a *venire de novo* or new trial to be had, or to make such other order as justice may require.

Judgment by Judges to be entered by Registrar

3. Such judgment or order (if any) of the said Judges shall be entered by the Registrar of the Supreme Court on the original record in proper form if such question or questions have been reserved by a Judge of the Supreme Court; and such judgment or order (if any) shall, if such question or questions have been reserved by a Commissioner or Judge acting as a Commissioner under section 12 of 'The Supreme Court Act, 1880,' or by a Court of General Sessions of the Peace, be certified under the hand of the Chief Justice, or Senior Judge in the case of his absence, to the Clerk of the Court or Judge's Associate (as the case may be), who shall enter the same on the original record in proper form; and a certificate of such entry under the hand of the Registrar of the Supreme Court or Clerk of the Court or Judge's Associate (as the case may be), in the form as near as may be or to the effect in the Schedule annexed to this Act, with the necessary alterations to adapt it to the circumstances of the case, shall be delivered or transmitted by him to the Sheriff or Gaoler in whose custody the person convicted shall be; and such certificate shall be a sufficient warrant to such Sheriff or Gaoler and all other persons for the execution of the judgment as the same shall be so certified to have been affirmed or amended, and execution shall thereupon be executed on such judgment, and for the discharge of the person convicted from further imprisonment if the judgment shall have been reversed, avoided, or arrested, and in that case such Sheriff or Gaoler shall forthwith discharge him; and the next Court of Oyer and Terminer and Gaol Delivery or General Sessions of the Peace (as the case may be) shall vacate the recognizance of bail (if any), and if the Court of Oyer and Terminer and Gaol Delivery or General Sessions of the Peace shall be

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directed to give judgment, the said Court shall proceed to give judgment at the next session.

4. The Judges of the Supreme Court, when a case has been reserved for their opinion, shall have power if they shall think fit to cause the case to be sent back for amendment, and thereupon the same shall be amended accordingly, and judgment shall be delivered after it shall have been amended.

Case may be sent back for amendment

5. The judgment or judgments of the Judges of the Supreme Court shall be delivered in open Court, after hearing counsel or the parties in case the Attorney General or other prosecutor or the person convicted shall think fit that the case be argued, in like manner as other judgments of the Supreme Court are now delivered.

Judgment delivered in open Court

F. NAPIER BROOME,
GOVERNOR.

SCHEDULE

To the Sheriff of Western Australia and the Gaoler of the Gaol at
and all others whom it may concern.

Whereas at the session of Oyer and Terminer and Gaol Delivery (of the Supreme Court of Western Australia) (or, at the Court of General Sessions of the Peace) held at

before (Judge or Commissioner) (or, before, among others one of Her Majesty's Justices, and Chairman of the said Court) on the day 188 A.B. having been found guilty of felony (and here state the substance of the judgment, if judgment has been given), the Court before whom he was tried reserved a certain question of law for the consideration of the Judges of the Supreme Court, and judgment was postponed, or, (if the case be so) execution was thereupon respited in the meantime.

This is certify that it has been considered by the said Judges that the judgment aforesaid be annulled (or otherwise, as the case may be), and you are therefore required forthwith to discharge the said A.B. from your custody.

C.D.

Registrar of Supreme Court (or Judge's Associate, or Clerk of the Court of General Sessions of the Peace at).