

WESTERN AUSTRALIA

ANNO VICESIMO

VICTORIÆ REGINÆ

No. 5

An Ordinance for the more speedy Trial and Punishment
of Offences in certain cases of Larceny.

[Assented to 30th June, 1856.]

Preamble

WHEREAS in order to promote the more speedy trial of persons charged with the simple larceny of property under the value of five pounds sterling, and to avoid their long imprisonment previously to trial, also the expense of sending many witnesses to the Quarter Sessions, it is expedient to allow of such persons being proceeded against in a more summary manner than is now by law provided: 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:—

Power of Justices at Petty Sessions to punish summarily

1. That any person not being a convict under an unexpired or unremitted sentence of penal servitude or transportation who shall subsequently to the passing of this Ordinance be charged before any Justices of the Peace assembled at Petty Sessions as hereinafter provided with having committed or attempted to commit simple larceny, or with having aided, abetted, counselled or procured the commission of any offence which either now is or hereafter may be deemed or declared to be simple larceny, and if the value of the whole of the property so alleged to have been stolen or attempted to be stolen does not in the judgment and discretion of the said Justices exceed five pounds sterling, shall upon conviction thereof, upon his own confession or upon proof before any two or more Justices in Petty Sessions assembled, be committed to any gaol within the said Colony, there to be imprisoned with or without hard labour as the Bench shall deem fit for any term not exceeding six calendar months: Provided always that if such Justices shall deem the offence not proved they shall dismiss the charge, and may at their discretion make out and deliver to the person charged a certificate under their hands stating the fact of such dismissal; and every such conviction and certificate respectively may be in the Forms A and B in the Schedule hereunto annexed or to the like effect: Provided also that if the person charged as aforesaid do not consent to have the case heard and determined by such Justices, or if it appear to such Justices that the offence is one which is from the attendant circumstances fit to be made the subject of prosecution by indictment rather than to be disposed of summarily, such Justices shall, instead of summarily adjudicating thereon, deal with the case in all respects as if this Ordinance had not been passed: Provided further that if upon the hearing of the charge and the evidence such Justices shall be of opinion that there are circumstances in the case which render it inexpedient to inflict any punish-

Where they deem the value not to exceed 5l.

If Bench deem charge not proved they may dismiss and may give certificate, but are not obliged

If person charged do not consent, but demand jury, or if Bench in their discretion do not choose to give him the choice, then proceed as usual and commit to the Sessions

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ment, they shall have power to dismiss the person charged without proceeding to a conviction: Provided also that if in such last-mentioned cases the Justices shall be of opinion that there are circumstances of strong suspicion against the person charged, they shall have power at their full discretion to refuse the certificate according to Form B in the Schedule hereunto annexed, which in no case they shall be compelled or compellable to make out.

2. That after the information has been read and before any evidence is given in support thereof, one of the said Justices shall say to the person so charged as aforesaid as follows, or words to the like effect:—‘A.B., if you object to the present Bench deciding this your case summarily and at once, and if you demand to be tried by a jury at the Sessions, now is your time to say so, for after evidence given or commenced you will not be allowed any choice;’ such question and the answer thereto to be recorded in the minutes, and if the person so charged as aforesaid shall demand to be committed for trial at the Sessions, the said Justices if they do not see cause to dismiss the case shall proceed to deal with the same as if this Ordinance had not been passed; and if the person so charged as aforesaid shall consent to the charge being summarily tried and determined as aforesaid, then the Justices shall reduce the charge into writing and read the same to the person so charged, and shall ask him if he be guilty of such charge; and if the person shall say that he is guilty the Justices shall then proceed to pass such sentence upon him as may by law be passed, subject to the provisions of this Ordinance in respect to such offence, but if the person so charged shall say that he is not guilty the Justices shall then inquire of such person whether he has any defence, and if he shall state that he has a defence, then the Justices shall hear such defence and then proceed to dispose of the case summarily: Provided always that, notwithstanding such election as aforesaid by the person charged to be summarily tried by the Justices present, it shall be lawful for them or a majority of them at any time before the person charged be called upon for his defence to announce to him that the case will absolutely be sent to the Sessions for trial, if they deem it a fit and proper subject for prosecution by indictment or by information; in which case they shall proceed as usual, the same as if this Ordinance had not been passed.

3. That where any person is charged before any Justices at such Petty Sessions as aforesaid with simple larceny (the property alleged to have been stolen exceeding in value five pounds sterling), or stealing from the person, or larceny as a clerk or servant, and the evidence, when the case on the part of the prosecution shall have been completed, is in the opinion of such Justice sufficient to put the person so charged upon his trial for the offence with which he is charged, such Justices, if the case appear to them to be one which may properly be disposed of in a summary way, and may be adequately punished by virtue of the powers of this Ordinance, shall reduce the charge into writing, and shall read it to the said person, and shall then ask him whether he is guilty or not of the charge; and if such person shall say that he is guilty such Justices shall thereupon cause a plea of guilty to be entered upon the proceedings and shall convict him of

If Bench (at discretion) do not choose to punish they may dismiss
In such cases they give or withhold the Certificate B, as they think proper
In no case can they be compelled to give it
Bench shall ask accused if he consent or if he demand jury

The proper time is before evidence is gone into

If accused person plead guilty the Justice may sentence him

After prisoner has elected to be tried summarily Bench may at discretion send case to Sessions notwithstanding

But they must tell him so before his defence

Then proceed as usual

Persons charged with larceny, &c., above the value of £5 may plead guilty and be sentenced by Petty Bench

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But Bench must explain to him that he need not plead at all

And not forget the usual warning that his words may be used against him

It is a fixed rule that prisoners before a Justice are entitled to have the assistance of counsel, such being regular practitioners

Bench may order restitution after conviction

A man who can produce Certificate B can never be subject to renewed proceedings

Conviction not to be quashed for want of form

Justices may allow expenses

In cases of wilful or malicious injuries to property the parties aggrieved may and can receive compensation, even though examined as witnesses

such offence, and shall commit him to the common gaol, there to be imprisoned, with or without hard labour, for any term not exceeding six calendar months; and every such conviction may be in the Form C in the Schedule hereunto annexed, or to the like effect: Provided always that the said Justices, before they ask such person whether he be guilty or not, shall explain to him that he is not obliged to plead or to answer before them at all, and that if he do not plead or answer he will be committed for trial in the usual course, and shall in no case neglect the usual warning that he is not obliged to say anything, but that what he does say may be used in evidence against him.

4. That in every case of summary proceeding under this Ordinance the person accused shall be allowed to make his full answer or defence, and to have all witnesses examined or cross-examined by his counsel or attorney, such being regular and recognised practitioners of this Colony.

5. That it shall be lawful for the Justices by whom a person is convicted under this Ordinance to order restitution of the property stolen or taken after conviction that the same has been so stolen or taken.

6. That every conviction under this Ordinance shall have the same effect that a conviction by indictment would have had, save that no conviction under this Ordinance shall be attended with any forfeiture; and every person who shall obtain a certificate of dismissal, or who shall be convicted under this Ordinance, shall be released from all further or other criminal proceedings for the same cause.

7. That no conviction, sentence or proceeding under this Ordinance shall be quashed for want of form, and no warrant of commitment upon a conviction shall be held void by reason of any defect therein, if it be therein alleged that the offender has been convicted, and if there be a good and valid conviction to sustain the same.

8. That when any charge is summarily adjudicated upon under this Ordinance, or an offender is under this Ordinance convicted by Justices in Petty Sessions upon a plea of guilty, it shall be lawful for the Justices by whom such charge has been adjudicated upon or offender convicted, upon the request of any person who has preferred the charge or appeared to prosecute or to give evidence against the person charged, if such Justices think fit so to do, to grant a certificate to such person of the amount of the compensation which such Justices may deem reasonable for his expenses, trouble and loss of time therein; and such certificate shall be valid and entitle the party to receive the same, in like manner as if it were an order of a Superior Criminal Court.

9. And whereas it is expedient to amend the law as to witnesses in cases of wilful or malicious injuries to property: Be it further enacted that in all cases where any Justice or Justices of the Peace have, or shall hereafter have, power to order a sum of money to be forfeited and paid to the party aggrieved as amends or compensation for any injury to property, real or personal, the right of such party to receive the money so ordered to be paid shall not be affected by such

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party having been examined as a witness in proof of the offence, any law or statute to the contrary notwithstanding.

10. That in the interpretation of this Ordinance the word 'property' shall include everything included in the words, 'chattel, money, or valuable security,' as used in the Act of the Session holden in the seventh and eighth years of the reign of King George the Fourth, chapter twenty-nine: and in case of any 'valuable security,' the value of the share, interest, or deposit to which the security may relate, or of the money due thereon and secured thereby, and remaining unsatisfied, or of the goods or other valuable thing mentioned in the warrant or order, shall be deemed the value of such security.

Interpretation of terms

11. That this Ordinance may be cited as the 'Larceny Summary Conviction Ordinance, 1856.'

Short title

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

SCHEDULE A

FORM OF CONVICTION

Western Australia, }
To Wit. }

Be it remembered that on the _____ day of _____, in the year of our Lord _____, at _____, in the said Colony of Western Australia, A.B., being charged before us, the undersigned, _____ of Her Majesty's Justices of the Peace for the said Colony, and consenting to our deciding upon the charge summarily, is convicted before us, for that he the said A.B. (*here state the offence, including time and place, when, where, and how committed, kind of property, &c.*); and we adjudge the said A.B., for his said offence, to be imprisoned in the Common Gaol at _____, in the said Colony (*and to be kept to hard labour*), for the space of _____.

Given under our hands and seals, the day and year first above mentioned, at _____, in the Colony aforesaid.

C. D., J.P. (L.S.)
E. F., J.P. (L.S.)

B

FORM OF CERTIFICATE OF DISMISSAL

(Take Notice—this is always given voluntarily by the Bench, and can in no case be claimed as a right. It has the effect of barring all future criminal proceedings for the same charge: therefore the charge should be described with as much precision as possible.)

Western Australia, }
To Wit. }

We, _____ of Her Majesty's Justices of the Peace for the Colony of Western Australia, certify that on the _____ day of _____, in the year of our Lord _____, at _____, in the said Colony, A.B., being charged before us, and consenting to our deciding upon the charge summarily, for that he, the said A.B. (*here state clearly and precisely the offence charged, the time and place, when and where, alleged to be committed, and the name of complainant*), we did, having summarily adjudicated thereon, dismiss the said charge.

Given under our hands and seals, this _____ day of _____, at _____, in the Colony of Western Australia.

C. D., J.P. (L.S.)
E. F., J.P. (L.S.)

C

FORM OF CONVICTION UPON A PLEA OF GUILTY

Western Australia, }
To Wit. }

Be it remembered that on the _____ day of _____ in the year of
our Lord _____ at _____ in the said Colony, A.B., being charged
before us, the undersigned _____ of Her Majesty's Justices of the Peace for
the said Colony, for that he the said A.B. (*stating offence, time and place, &c.*), and
pleading guilty to such charge, he is thereupon convicted before us of the said
offence, and we adjudge the said A.B. for his said offence to be imprisoned in the
Common Gaol at _____ in the said Colony (*and to be kept to hard labour*)
for the space of _____

Given under our hands and seals the day and year first above mentioned, at
_____ in the Colony aforesaid.

C. D., J.P. (L.S.)
E. F., J.P. (L.S.)
