



WESTERN AUSTRALIA.

ANNO DECIMO SEXTO

VICTORIÆ REGINÆ.

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No. V.

**An Ordinance for the removal of defects in 11 & 12 Vic., cap. 46.  
the administration of Criminal Justice.**

**W**HEREAS the technical strictness of criminal proceedings might in some instances be further relaxed, so as to ensure the punishment of the guilty without depriving the accused of any just means of defence: and whereas it is expedient to make further provision for the more effectual prosecution of accessaries before and

Accessories before the fact to any felony, may be punished in the same degree as the principal.

after the fact to felony : and whereas it is also expedient that any accessory before the fact to felony, should be liable to be indicted, tried, convicted, and punished, in all respects like the principal, 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, that from and after the passing of this Ordinance, if any person shall become an accessory before the fact to any felony, whether the same be a felony at common law, or by virtue of any statute or statutes of the Imperial Parliament, or of any Colonial ordinance made or to be made, such person may be indicted, tried, convicted, and punished, in all respects as if he were a principal felon.

Trial and conviction of accessories after the fact.

II. AND whereas an accessory after the fact to felony can, at present be tried only along with the principal felon, or after the principal felon has been convicted, and not otherwise, which is sometimes productive of a failure of justice, Be it therefore enacted, that from and after the passing of this Ordinance, if any person shall become an accessory after the fact to any felony, whether the same be a felony at common law or by virtue of any statute or statutes of the Imperial Parliament or of any colonial ordinance made or to be made, he may be indicted and convicted either as an accessory after the fact to the principal felony, together with the principal felon, or after the conviction of the principal felon, or may be indicted and convicted of a substantive felony, whether the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to Justice, and may thereupon be punished in like manner as an accessory after the fact to the same felony, if convicted as an accessory may be punished, and the offence of such person, howsoever indicted, may be inquired of, tried, determined, and punished, by any Court which shall have jurisdiction to try the principal felon in the same manner as if the act by reason of which such person shall have become an accessory, had been committed at the same place as the principal felony ; provided always, that no person who shall have been once duly tried for any such offence, whether as an accessory after the fact, or as for a substantive felony, shall be liable to be again indicted or tried for the same offence.

As to addition of counts in indictments for stealing and receiving property.

III. AND whereas according to the present practice of Courts of Criminal Jurisdiction, it is not permitted in an indictment for stealing property, to add a count for receiving the same property knowing it to have been stolen, or in an indictment for receiving stolen

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property, knowing it to have been stolen, to add a count for stealing the same property, and justice is thereby often defeated, be it therefore enacted, that from and after the passing of this Ordinance, in every indictment for feloniously stealing property it shall be lawful to add account for feloniously receiving the same property knowing it to have been stolen, and in any indictment for feloniously receiving property knowing it to have been stolen, it shall be lawful to add a count for feloniously stealing the same property, and when any such indictment shall have been preferred and found against any person, the prosecutor shall not be put to his election, but it shall be lawful for the jury who shall try the same, to find a verdict either of guilty of stealing property, or of receiving it, knowing it to have been stolen; and if such indictment shall have been preferred and found against two or more persons it shall be lawful for the jury who shall try the same, to find all or any of the said persons guilty either of stealing the property, or of receiving it knowing it to have been stolen, or to find one or more of the said persons, guilty of stealing the property, and the other or others of them guilty of receiving it knowing it to have been stolen.

IV. AND whereas a failure of justice frequently takes place in criminal trials, by reason of variances between writings produced in evidence and the recital or setting forth thereof in the indictment or information, and the same cannot now be amended at the trial, except in case of misdemeanor for remedy thereof, be it enacted, that it shall and may be lawful for any Court of General or Quarter Sessions of the Peace, if such Court shall see fit so to do, to cause the indictment or information for any offence whatever, where any variance or variances shall appear between any matter in writing or in print produced in evidence, and the recital or setting forth thereof in the indictment or information whereon the trial is pending, to be forthwith amended in such particular or particulars, by some officer of the Court, and after such amendment, the trial shall proceed in the same manner in all respects, both with regard to the liability of witnesses to be indicted for perjury, and otherwise, as if no such variance or variances had appeared.

Courts may cause indictments to be amended in certain respects

CHARLES FITZGERALD,  
GOVERNOR AND COMMANDER-IN-CHIEF.

*Passed the Council the 20th }  
day of Dec., 1852. }*

A. O'GRADY LEFROY,  
Clerk of the Council.