

WESTERN AUSTRALIA

ANNO SEXTO DECIMO

VICTORIÆ REGINÆ

No. 11

An Ordinance to interpret and shorten the Language of Ordinances of the Governor and Legislative Council, and to render unnecessary repetitions therein.

[Assented to 13th April, 1853.]

WHEREAS it is expedient to shorten the language of Ordinances to be passed by the Governor and Legislative Council of the Colony of Western Australia, and to subject all such Ordinances to certain rules of interpretation: 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

1. That any Ordinance to be passed by the Governor and Legislative Council of Western Australia after the commencement of this Ordinance may be altered, amended, or repealed, in the same session of the Legislative Council, any law or usage to the contrary notwithstanding.

Ordinances may be amended or repealed in the same session

2. That all such Ordinances shall be divided into sections, if there be more enactments than one, which shall be deemed to be substantive enactments, without any introductory words.

Sections without introductory words

Shortening the Language of Acts

'Her Majesty,'
'month,' 'oath'
and affidavit'

3. That in all such Ordinances the words 'Her Majesty' shall be understood to mean 'Her Majesty, her heirs and successors,' and that the word 'month' shall be understood to mean 'calendar month,' unless words be added showing that a lunar month is intended. That the word 'oath' and 'affidavit' shall be understood to include affirmation and declaration; and the word 'swear,' affirming and declaring in the case of persons by law allowed to declare or affirm instead of swearing.

Repealed Ordinance not to be revived

4. That whenever any Ordinance repealing in whole or in part any former Ordinance is itself repealed, such last repeal shall not revive the Ordinance, or part thereof before repealed, unless there be words added reviving such Ordinance or any part thereof.

Repealed provisions to remain in force until substituted provisions come into operation

5. That whenever any Ordinance shall be made repealing in whole or in part, any former Ordinance and substituting some provision instead of the provision so repealed, such provision or provisions so repealed shall remain in force until the substituted provision or provisions shall come into operation by force of the last made Ordinance.

All Ordinances public Ordinances, unless the contrary be provided

6. That every Ordinance of the Governor and Legislative Council made after the passing of this Ordinance, shall be deemed and taken to be a Public Ordinance, and shall be judicially taken notice of as such, unless the contrary be expressly provided by such Ordinance; and a copy of every such Ordinance printed, or purporting to have been printed, by the authority of Government shall be admitted in evidence in all cases whatsoever, and it shall not be necessary in any case to prove that such copy was printed by such authority.

How Ordinances and sections of Ordinances may be referred to

7. That whenever in any Ordinance, conveyance, legal or other instrument, document, or proceeding, it may be necessary to refer to any Ordinance of the Legislative Council of this Colony, or to any section or sections of any such Ordinance, it shall not be necessary to set out the title of such Ordinance, but it shall be sufficient to refer to the number of the Ordinance, and the year of our Lord or the year of the reign in which such Ordinance may have been passed, and in case of reference to any section or sections, to refer to the same by the number or numbers of such section or sections according to the copies of the Ordinance printed or purporting to have been printed by the authority of Government.

Appropriation of duties, fees, fines, penalties, forfeitures, &c. &c.

8. That whenever, by any Ordinance of the Legislative Council to be passed, any duties, fees, fines, penalties, forfeitures, sum or sums of money, may be made payable, and unless the same shall, by any such Ordinance, be otherwise expressly applied or appropriated, all such duties, fees, fines, penalties, forfeitures, or the proceeds thereof upon sale, sum or sums of money, or so much thereof respectively as shall not be so otherwise expressly applied and appropriated as aforesaid, shall be paid into the hands of the Colonial Treasurer, and be appropriated to the use of Her Majesty, her heirs and successors, for the public uses of the said Colony, and the support of the Government thereof.

Sections A, B, C, D, E, F, G, H, I may be incorporated with

9. That whenever in any Ordinance to be passed, it may be deemed advisable to introduce any of the provisions contained in the sections set forth in the schedule hereunto annexed, and lettered respectively

Shortening the Language of Acts

A, B, C, D, E, F, G, H, I, it shall not be necessary to do so at full length; but it shall and may be lawful in such Ordinance to declare by reference to the letter or letters only that any one or more of the said sections of this Ordinance shall be incorporated with, and taken to form part of the said Ordinance to all intents and purposes, and in as full and ample a manner as if the said section or sections had been introduced and fully set forth in such Ordinance.

future Ordinances by reference only

10. That the Schedule hereunto annexed shall form and be part of this Ordinance.

Schedules to form part of Ordinance

11. That this Ordinance may be cited as 'The Shortening Ordinance, 1853.'

Short title

CHARLES FITZGERALD,
GOVERNOR AND COMMANDER-IN-CHIEF.

SCHEDULE ABOVE REFERRED TO

A

That all informations and proceedings in respect of offences against this Ordinance hereby made summarily punishable upon conviction before a Justice or Justices of the Peace in Petty Sessions shall be heard and determined, and the penalties and forfeitures in respect of the same be enforced and appropriated (if not hereinbefore otherwise appropriated) according to the provisions of an Ordinance, No. 5, passed in the fourteenth year of the reign of Her Majesty Queen Victoria.

Jurisdiction, recovery, and appropriation of penalties

B

That all informations and proceedings in respect of offences against this Ordinance shall be commenced within one calendar month after the offences thereby respectively charged shall have been committed.

Limitation of proceedings, one month

C

That all informations and proceedings in respect of offences against this Ordinance shall be commenced within three calendar months after the offences thereby respectively charged shall have been committed.

Three months

D

That all informations and proceedings in respect of offences against this Ordinance shall be commenced within six calendar months after the offences thereby respectively charged shall have been committed.

Six months

E

That all informations and proceedings in respect of offences against this Ordinance shall be commenced within twelve calendar months after the offences thereby respectively charged shall have been committed.

Twelve months

Shortening the Language of Acts

F

No judgment, &c., to be quashed for want of form, or to be removed by *certiorari*

That no order, judgment, warrant, or other proceeding made, or purporting to be made, under or concerning the conviction of any offender against this Ordinance shall be quashed or vacated for want of form only, or be removed or removable by *certiorari*, or by any writ or process whatsoever into any superior Court of this Colony.

G

Protection of persons acting under this Ordinance

And for the protection of persons acting in execution of this Ordinance, be it enacted that notice in writing of any action about to be commenced for anything done under this Ordinance shall be given to the defendant one calendar month at least before the commencement of the action, and in every such action the defendant may plead the general issue, and give this Ordinance and the special matter in evidence at any trial to be had thereupon, and no plaintiff shall recover in any such action if tender of sufficient amends shall have been made before such action brought, or if a sufficient sum of money shall have been paid into Court after such action brought, by or on behalf of the defendant, together with costs incurred up to that time; and if a verdict shall pass for the defendant, or the plaintiff become nonsuited or discontinued such action after issue joined, or if, upon demurrer or otherwise, judgment shall be given against the plaintiff, the defendant shall recover his full costs as between attorney and client, and have the like remedy for the same as any defendant hath by law in other cases; and though a verdict shall be given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant unless the Judge before whom the trial shall be shall certify his approbation of the action and of the verdict obtained thereon.

H

No action to lie against any Justice, &c., unless there be direct proof of corruption or malice

That no action shall lie against any Justice of the Peace, officer of police, policeman, constable, peace officer, or any other person in the employ of the Government authorised to carry the provisions of this Ordinance or any of them into effect, or any person acting for or under them, or any of them, on account of any act, matter, or thing whatsoever done, or to be done, or commanded by him, them, or any of them, in carrying the provisions of this Ordinance into effect against any party or parties offending or suspected to be offending against the same, unless there be direct proof of corruption or malice, and unless such action be commenced within three calendar months after the cause of action or complaint shall have arisen; and if any such person shall be sued for any act, matter, or thing which he shall have so done or shall so do in carrying the provisions of this Ordinance into effect, he may plead the general issue, and give the special matter in evidence; and in case of judgment after verdict, or on demurrer, being given for the defendant, or of the plaintiff discontinuing or becoming nonsuit in any such action, the defendant shall be entitled to and have treble costs.

I

Appeal, if sum adjudged by one Justice exceed £10—or by two Justices exceed £20—or if imprisonment exceed one month

That in all cases where, on any summary conviction under this Ordinance of any person not being a convict, the sum adjudged by one justice to be paid shall exceed £10, or by two or more Justices, shall exceed £20, or the imprisonment, whether adjudged by one or more Justice or Justices, shall exceed one calendar month, any person who shall think himself aggrieved by such conviction may appeal to the next Court of General or Quarter Sessions, which shall be holden not less than twenty days after the day of such conviction at Perth, in the said Colony, unless such conviction shall take place within one hundred miles of Albany, in the said Colony, in which case any appeal from such conviction shall be to the next Court of General or Quarter Sessions, holden not less than ten days after the day of such conviction at Albany aforesaid.