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CRIMINAL LAW (IRELAND) ACT 1828

CHAPTER LIV.

An Act for improving the Administration of Justice in Criminal Cases in Ireland. [15th July 1828.]

[Preamble.]

When persons charged with felony before two justices shall be committed. **[1.]** Where any person shall be taken on a charge of felony, or suspicion of felony, before one or more justice or justices of the peace, and the charge shall be supported by positive and credible evidence of the fact, or by such evidence as if not explained or contradicted shall, in the opinion of the justice or justices, raise a strong presumption of the guilt of the person charged, such person shall be committed to prison by such justice or justices in the manner herein-after mentioned; but if there shall be only one justice present, and the whole evidence given before him shall be such as neither to raise a strong presumption of guilt, nor to warrant the dismissal of the charge, such justice shall order the person charged to be detained in custody, and such person shall be taken before two justices at the least; . . .

[Part of s. 1 and ss. 2, 3, as to taking bail in cases of felony, and to taking examinations and informations against persons charged with felonies and misdemeanors, and binding persons by recognizance to prosecute or give evidence, rep. 12 & 13 Vict. c. 69. s. 34.]

Duty and power of coroner on inquests whereon parties are indicted for manslaughter or murder, or as an accessory to murder before the fact, shall whereon parties are put in writing the evidence given to the jury before him, or as much thereof as shall be indictable for manslaughter or murder, or as accessories to murder before the fact. **4.** Every coroner, upon any inquisition taken before him, whereby any person shall be indicted for manslaughter or murder, or as an accessory to murder before the fact, shall whereon parties are put in writing the evidence given to the jury before him, or as much thereof as shall be indictable for manslaughter or murder, or as accessories to murder before the fact, shall declare any thing material touching the said manslaughter or murder, or the said offence of being accessory to murder, to appear at the next court of oyer and terminer or gaol delivery, or other court at which the trial is to be, then and there to prosecute or give evidence against the party charged; and every such coroner shall certify and subscribe the same evidence, and all such recognizances, and also the inquisition before him taken, and shall deliver the same to the proper officer of the court in which the trial is to be, before or at the opening of the court.

Courts may fine
justices and
coroners for
neglect, &c.

5. If any justice or coroner shall neglect or offend in any thing contrary to the true intent and meaning of any of the provisions of this Act, it shall be lawful for the court to whose officer any such examination, information, evidence, bailment, recognizance, or inquisition ought to have been delivered, and such court is hereby authorized and required, upon examination and proof of the offence, in a summary manner to set such fine upon every such justice or coroner as the court shall think meet.

Provisions to apply
to all justices and
coroners.

6. The provisions of this Act relating to justices and coroners shall apply to the justices and coroners not only of counties at large, but also of all other jurisdictions.

Plea of not guilty,
without more, shall
put the prisoner on
his trial by jury.

7. Whenever any person, not having privilege of peerage, being arraigned upon any indictment for treason, felony, or piracy, shall plead thereto a plea of not guilty, such person shall, by such plea, without any further form, be deemed to have put himself or herself upon the country for trial, and the court shall, in the usual manner, order a jury for the trial of such person accordingly.

If prisoner refuse to
plead, court may
order plea of not
guilty to be entered.

8. If any person, being arraigned upon or charged with any indictment or information for treason, felony, piracy, or misdemeanor shall stand mute of malice, or will not answer directly to the indictment or information, in every such case it shall be lawful for the court, if it shall so think fit, to order the proper officer to enter a plea of not guilty on behalf of such person; and the plea so entered shall have the same force and effect as if such person had actually pleaded the same.

The King shall only
challenge for cause
certain.

Court may bid a
juror stand by.

Prisoner allowed
twenty peremptory
challenges only in
felony.

9. In all inquests to be taken before any of the courts in Ireland, wherein the King is a party, howsoever it be, notwithstanding it be alleged by them that sue for the King that the jurors of those inquests, or some of them, be not indifferent for the King, yet such inquests shall not remain untaken for that cause; but if they that sue for the King will challenge any of those jurors, they shall assign of their challenge a cause certain, and the truth of the same challenge shall be inquired of according to the custom of the court; and it shall be proceeded to the taking of the same inquisitions, as it shall be found, if the challenges be true or not, after the discretion of the court: Provided always, that nothing herein contained shall affect or be construed to affect the power of any court in Ireland to order any juror to stand by until the panel shall be gone through, at the prayer of them that prosecute for the King, as has been heretofore accustomed; and that no person arraigned for treason, or murder, or for other felony, shall be admitted to any peremptory challenge above the number of twenty; and if any person so arraigned for treason, or murder, or for other felony, shall peremptorily challenge more than twenty, such excessive challenge shall be rejected, and the jurors so challenged beyond the number of twenty shall be sworn on the inquest, and the trial shall proceed as if such excessive challenge had not been made or taken.

Attainder, except for the same offence, not pleadable in bar. **10.** No plea setting forth any attainder shall be pleaded in bar of any indictment, unless the attainder be for the same offence as that charged in the indictment.

Jury shall not enquire of prisoner's lands, &c., nor whether he fled. **11.** Where any person shall be indicted for treason or felony, the jury impanelled to try such person shall not be charged to enquire concerning his lands, tenements, or goods, nor whether he fled for such treason or felony.

Benefit of clergy abolished. **12.** Benefit of clergy, with respect to persons convicted of felony, shall be abolished; but nothing herein contained shall prevent the joinder in any indictment of any counts which might have been joined before the passing of this Act.

What felonies only shall be capital. **13.** No person convicted of felony shall suffer death, unless it be for some felony which was excluded from the benefit of clergy before or on the first day of the present session of Parliament,^[1] or which hath been or shall be made punishable with death by some Act passed after that day.

[S. 14 rep. 36 & 37 Vict. c. 91. (S.L.R.)]

Felonies, not capital, punishable under the Acts relating thereto, or under this Act, by transportation, &c. **15.** Every person convicted of any felony not punishable with death shall be punished in the manner prescribed by the statute or statutes specially relating to such felony; and every person convicted of any felony for which no punishment hath been or hereafter may be specially provided shall be deemed to be punishable under this Act, and shall be liable, at the discretion of the court, to be transported beyond the seas for the term of seven years, or to be imprisoned for any term not exceeding two years, . . .

Persons returning from transportation punishable as felons, may be tried where found, &c. **16.** If any person heretofore sentenced or ordered, or hereafter to be sentenced or ordered, to be transported, or who shall have agreed or shall agree to transport or banish himself or herself on certain conditions, either for life or for any number of years, shall be afterwards at large within any part of the United Kingdom, without some lawful cause, before the expiration of his or her term of transportation or banishment, every such offender shall be guilty of felony, and shall suffer death as a felon [Rep. 5 & 6 Vict. c. 28. s. 12]; and every such offender may be tried, either in the county or place where such offender shall be found at large, or in the county or place at which such sentence or order of transportation or banishment was passed or made.

Allegation of sentence, &c. of transportation sufficient, without reference to indictment, trial, &c.

17. In any indictment or information against any offender for being found at large contrary to the provisions of this Act, or of any other Act now in force or hereafter to be in force, whether such offender shall have been tried before any court or judge within or without the United Kingdom, or before any naval or military court martial, it shall be sufficient to allege the sentence or order of transportation or banishment of such offender, without alleging any indictment, information, trial, conviction, judgment, or other proceeding, or any pardon or intention of mercy, or signification thereof, of or against or in any manner relating to such offender.

Certificate of the sentence of transportation to be forwarded by the clerk of the court where the sentence was passed, and to be sufficient evidence, &c.

18. The clerk of the court or other officer having the custody of the records of the court where any such sentence or order of transportation or banishment shall have been passed beor made, or his deputy, shall, at the request of any person on behalf of his Majesty, make out and give a certificate in writing, signed by him, containing the effect and substance only (omitting the formal part) of any indictment, information, and conviction of such offender, and of the sentence or order for his or her transportation or banishment, (not taking for the same more than the sum of six shillings and eightpence,) which certificate shall be sufficient evidence of the conviction and sentence or order for the transportation or banishment of such offender; and every such certificate, if made by the clerk or officer of any court in Ireland or by his deputy, shall be received in evidence upon proof of the signature of the person signing the same; and every such certificate, if made by the clerk or officer of any court out of Ireland, shall be received in evidence, if verified by the seal of the court, or by the signature of the judge or of one of the judges of such court, without further proof.

The Court may order hard labour or solitary confinement as part of the sentence of imprisonment.

19. Where any person shall be convicted of any offence punishable under this Act, for which imprisonment may be awarded, it shall be lawful for the court to sentence the offender to be imprisoned, or to be imprisoned and kept to hard labour, in the common gaol or house of correction; and also to direct that the offender shall be kept in solitary confinement for the whole or any portion or portions of such imprisonment, or with such imprisonment with hard labour, as to the court in its discretion shall seem meet.

On conviction of felony of a person under sentence for a former crime, the court may pass a second sentence, to commence after the expiration of the first.

20. Whenever sentence shall be passed for felony on a person already imprisoned under sentence for another crime, it shall be lawful for the court to award imprisonment for the subsequent offence, to commence at the expiration of the imprisonment to which such person shall have been previously sentenced; and where such person shall be already under sentence, either of imprisonment or of transportation, the court, if empowered to pass sentence of transportation, may award such sentence for the subsequent offence, to commence at the expiration of the imprisonment or transportation to which such person shall have been previously sentenced, although the aggregate term of imprisonment or transportation respectively may exceed the term for which either of those punishments could be otherwise awarded.

Punishment for felony (not capital) committed subsequent to a previous conviction for felony, transportation, &c. Form of indictment for the subsequent felony.

21. [*Recital.*] If any person shall be convicted of any felony not punishable with death, committed after a previous conviction for felony, such person shall on such subsequent conviction be liable, at the discretion of the court, to be transported beyond the seas for life, or for any term not less than seven years, or to be imprisoned for any term not exceeding four years, . . .; and in any indictment for any such felony committed after a previous conviction for felony it shall be sufficient to state that the offender was at a certain time and place convicted of felony, without otherwise describing the previous felony; and a certificate containing the substance and effect only (omitting the formal part) of the indictment and conviction for the previous felony, purporting to be signed by the clerk of the court or other officer having the custody of the records of the court where the offender was first convicted, or by the deputy of such clerk or officer, (for which certificate a fee of six shillings and eightpence, and no more, shall be demanded or taken,) shall, upon proof of the identity of the person of the offender, be sufficient evidence of the first conviction, without proof of the signature or official character of the person appearing to have signed the same; and if any clerk officer, or deputy shall utter any false certificate of any indictment and conviction for a previous felony or of any sentence or order of transportation or banishment, or if any person, other than such clerk, officer, or deputy, shall sign any such certificate as such clerk, officer, or deputy, or shall utter any such certificate with a false or counterfeit signature thereto, every such offender shall be guilty of felony, and being lawfully convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for the term of seven years, or to be imprisoned for any term not exceeding two years, . . .

Proof of the first conviction by certificate of clerk of the court.

Uttering a false certificate of conviction, felony, punishable by transportation.

Admiralty offences. **22.** All offences prosecuted in the High Court of Admiralty of Ireland shall upon every first and subsequent conviction be subject to the same punishment, whether of death or otherwise, as if such offences had been committed upon the land.

[*Ss. 23–25 rep. 24 & 25 Vict. c. 95. s. 1.*]

Offences committed on the boundaries of counties may be tried in either county.

26. Where any felony or misdemeanor shall be committed on the boundary or boundaries of two or more counties or within the distance of five hundred yards of any such boundary or boundaries, or shall be begun in one county and completed in another, every such felony or misdemeanor may be dealt with, inquired of, tried, determined, and punished in any of the said counties, in the same manner as if it had been actually and wholly committed therein.

Offences

27. Where any felony or misdemeanor shall be committed on any person, or on or in committed during a respect of any property, in or upon any coach, waggon, cart, or other carriage whatever, journey or on a employed in any journey, or shall be committed on any person, or on or in respect of any voyage upon a river, property, on board any vessel whatever employed in any voyage or journey upon any &c. may be tried in navigable river, canal, or inland navigation, such felony or misdemeanor may be dealt with, any county through inquired of, tried, determined, and punished in any county through any part whereof such which the coach, coach, waggon, cart, carriage, or vessel shall have passed in the course of the journey or &c. passed. voyage during which such felony or misdemeanor shall have been committed, in the same manner as if it had been actually committed in such county; and in all cases where the side, When sides, &c. of centre, or other part of any highway, or the side bank, centre, or other part of any such highways, &c., river, canal, or navigation, shall constitute the boundary of any two counties, such felony or constitute misdeemeanor may be dealt with, inquired of, tried, determined, and punished in either of boundaries, such counties through or adjoining to or by the boundary of any part whereof such coach, offenders may be cart, waggon, carriage, or vessel shall have passed in the course of the journey or voyage tried in either during which such felony or misdemeanor shall have been committed, in the same manner county. as if it had been actually committed in such county.

In indictments for

28. In any indictment or information for any felony or misdemeanor, wherein it shall be offences committed requisite to state the ownership of any property whatsoever, whether real or personal on the property of which shall belong to or be in the possession of more than one person, whether such partners, joint persons be partners in trade, joint tenants, parceners, or tenants in common, it shall be owners, &c. the sufficient to name one of such persons, and to state such property to belong to the person property may be so named, and another or others, as the case may be; and whenever in any indictment or laid in any one information for any felony or misdemeanor it shall be necessary to mention, for any partner, &c. by purpose whatsoever, any partners, joint tenants parceners, or tenants in common, it shall name, and others. be sufficient to describe them in the manner aforesaid; and this provision shall be construed to extend to all joint stock companies and trustees.

In indictments for

29. In any indictment or information for any felony or misdemeanor committed in, upon, felonies, &c. relating or with respect to any church, chapel, or place of religious worship, or to any bridge, court, to churches, court house, sessions house, gaol, house of correction, infirmary, asylum, or other public bridges, or public building, erected or maintained in whole or in part at the expence of any county, county of a buildings, property city, or county of a town, or on or with respect to any goods or chattels whatsoever, need not be stated provided for or at the expence of any county, county of a city, or county of a town, to be as being in any used for making, altering, or repairing any bridge or highway, or any court or other such person. building as aforesaid, or to be used in or with any such court or other building, it shall not be necessary to state such church, chapel, or place of religious worship, or such bridge, court, court house, sessions house, gaol, house of correction, infirmary, asylum, or other buildings, or any such goods or chattels, to be the property of any person.

Indictments shall not be abated by dilatory plea of misnomer or of want of addition, &c., but the indictment may be amended.

30. No indictment shall be abated by reason of any dilatory plea of misnomer, or of want of addition or of wrong addition, of any party offering such plea, if the court shall be satisfied, by affidavit or otherwise, of the truth of such plea; but in such case the court shall forthwith cause the indictment or information to be amended according to the truth, and shall call upon such party to plead thereto, and shall proceed as if no such dilatory plea had been pleaded.

[S. 31 *rep.* 36 & 37 *Vict. c.* 91. (S.L.R.)]

Certain formal defects shall not stay or reverse judgment after verdict.

32. No judgment after verdict upon any indictment or information for any felony or misdemeanor shall be stayed or reversed for want of a similiter, nor by reason that the jury process has been awarded to a wrong officer upon an insufficient suggestion, nor for any misnomer or misdescription of the officer returning such process, or of any of the jurors, nor because any person has served upon the jury who has not been returned as a juror by the sheriff or other officer; and where the offence charged shall be an offence theretofore created by any statute, or subjected to a greater degree of punishment, or excluded from the benefit of clergy, by any statute, the indictment or information shall after verdict be held sufficient, if it describe the offence in the words of the statute creating the offence, or prescribing the punishment, or excluding the offender from the benefit of clergy.

Effect of a free or conditional pardon to a convict. Proviso.

33. Where the royal mercy shall be extended to any offender convicted of any felony punishable with death or otherwise, and either a free pardon or a conditional pardon shall by warrant in due form be granted to such offender, the discharge of such offender out of custody in the case of a free pardon, and the performance of the condition in the case of a conditional pardon, shall have the effect of a pardon under the great seal for such offender as to the felony for which such pardon shall be so granted: Provided always, that no free pardon, nor any such discharge in consequence thereof, nor any conditional pardon, nor the performance of the condition thereof, in any of the cases aforesaid, shall prevent or mitigate the punishment to which the offender might otherwise be lawfully sentenced on a subsequent conviction for any felony committed after the granting of any such pardon.

Recognizance in certain cases not to be estreated without a judge's order. **34.** [*Recital.*] In every case where any person bound by recognizance for his or her appearance (or for whose appearance any other person shall be so bound) to prosecute or give evidence in any case of felony or misdemeanor, or to answer for any common assault, or to articles of the peace, shall therein make default, the officer of the court by whom the estreats are made out shall and such officer is hereby required to prepare a list in writing, specifying the name of every person so making default, and the nature of the offence in respect of which every such person, or his or her surety, was so bound, together with the residence, trade, profession, or calling of every such person and surety, and shall in such list distinguish the principals from the sureties, and shall state the cause, if known, why each such person has not appeared, and whether, by reason of the non appearance of such person the ends of justice have been defeated or delayed and every such officer shall, and such officer is hereby required, before any such recognizances shall be estreated, to lay such list, if at a court of oyer and terminer or gaol delivery in any county, before one of the justices of those courts respectively, and if at a court wherein a recorder or other corporate officer is the judge or one of the judges, before such recorder or other corporate officer, and if at a session of the peace, before the assistant barrister or two other justices of the peace who shall have attended such court, who are respectively authorized and required to examine such list, and to make such order touching the estreating or putting in process any such recognizance as shall appear to them respectively to be just; and it shall not be lawful for the officer of any court to estreat or put in process any such recognizance without the written order of the justice, recorder, corporate officer, assistant barrister, or justices of the peace, before whom respectively such list shall have been laid.

[*S. 35 rep. 52 & 53 Vict. c. 63.*]

Act to extend only to Ireland. **36.** This Act shall extend only to that part of the United Kingdom called Ireland.

[¹ 29th January 1828.]