

ment, or Sum or Parts of Money under this Act, or any of the Provisions therein contained.

C A P LXXXIII.

An Act to provide for the Administration of Justice in *New South Wales* and *Van Diemen's Land*, and for the more effectual Government thereof, and for other Purposes relating thereto. [25th July 1828.]

WHEREAS an Act was passed in the Fourth Year of the Reign of His present Majesty, intituled *An Act to provide, until the First Day of July One thousand eight hundred and twenty-seven, and until the End of the next Session of Parliament, for the better Administration of Justice in New South Wales and Van Diemen's Land, and, for the more effectual Government thereof, and for other Purposes relating thereto*; which said Act was continued until the Thirty-first Day of December One thousand eight hundred and twenty-nine, by an Act passed in the Seventh and Eighth Year of His Majesty's Reign: And Whereas it is expedient to repeal the said Acts, and to make further Provision for the Administration of Justice in, and for the more effectual Government of His Majesty's Colonies and Settlements in *New South Wales* and *Van Diemen's Land* respectively: Be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That it shall be lawful for His Majesty, His Heirs and Successors, by Charters or Letters Patent under the Great Seal of the United Kingdom of Great Britain and Ireland, to erect and establish Courts of Judicature in *New South Wales* and *Van Diemen's Land* respectively, which shall be styled "The Supreme Court of *New South Wales*," and "The Supreme Court of *Van Diemen's Land*;" and that each of such Courts respectively shall be holden by One or more Judge or Judges, not exceeding Three, and shall have such ministerial or other Officers as shall be necessary for the Administration of Justice in the said Courts respectively, and for the Execution of the Judgments, Decrees, Orders, and Process thereof; and the said Judges shall from time to time be appointed by His Majesty, His Heirs and Successors; and the said ministerial and other Officers of the said Courts respectively shall from time to time be appointed to and removed from their respective Offices, in such Manner as His Majesty, His Heirs and Successors, shall by such Charters or Letters Patent as aforesaid direct; and the said Judges shall respectively be entitled to receive such reasonable Salaries as His Majesty, His Heirs and Successors, shall approve and direct, which Salaries shall be in lieu of all Fees or other Emoluments whatsoever; and it shall and may be lawful for His Majesty, His Heirs and Successors, from time to time as Occasion may require, to remove and displace any such Judge, and in his Place and Stead to appoint another fit and proper Person: Provided that in case of the Absence, Resignation, or Death of any or either of the Judges of the said Courts in *New South Wales* or *Van Diemen's Land* respectively, or in case of any such Disease

His Majesty may establish Courts of Judicature in New South Wales and Van Diemen's Land.

Judges to be appointed by His Majesty. Appointment and Removal of Officers of the Courts.

In case of Absence or Death of any of the Judges.

or Infirmary as shall render any such Judge incapable of discharging the Duties of his Office, it shall be lawful for the Governor to appoint a Successor *pro tempore*.

of any Judge so being absent, resigning, dying, or becoming incapable, until such Judge shall return to the Execution of his Office, or until a Successor shall be appointed by His Majesty, as the Case may require; and in the meantime, until such Judge shall return as aforesaid, or a Successor shall be appointed, the said Courts respectively, the Person so to be appointed in the said Governor as aforesaid shall to all Intents and Purposes be deemed and taken to be a Judge of the Court to which he may be so appointed.

II. Provided always, and be it further enacted, That until His Majesty shall cause such Charters or Letters Patent to be issued as aforesaid, the Supreme Courts of *New South Wales* and *Van Diemen's Land* respectively, instituted by His Majesty's Letters Patent under the Great Seal, bearing Date respectively the Thirtieth Day of October in the Fourth Year of His Majesty's Reign, shall retain and exercise the several Jurisdictions and Powers in such Courts vested by His Majesty's said last-mentioned Letters Patent, so far as the same may not be altered by this Act, as fully and effectually as if such Courts respectively had been instituted in virtue and in pursuance of this Act; and the said Letters Patent, and all Orders, Acts, Matters and Things made and done in pursuance of the Powers and Authorities vested in His Majesty in and by the said Act passed in the Fourth Year of the Reign of His present Majesty, shall be of the same Force and Effect as if the same had respectively been issued, made, done, and performed by virtue and in pursuance of this Act.

III. And be it further enacted, That the said Courts respectively shall be Courts of Record, and shall have Cognizance of all Pleas, Civil, Criminal, or Mixed, and Jurisdiction in all Cases whatsoever, as fully and amply, to all Intents and Purposes, in *New South Wales* and *Van Diemen's Land* respectively, and all and every the Islands and Territories which now are or hereafter may be subject to or dependent upon the respective Governments thereof, as His Majesty's Courts of King's Bench, Common Pleas, and Exchequer, at Westminster, or either of them, lawfully have or hath in England; and the said Courts respectively shall also be at all Times Courts of Oyer and Terminer and Gaol Delivery in and for *New South Wales* and *Van Diemen's Land*, and the Dependencies thereof respectively; and the said Judges so appointed shall have and exercise such and the like Jurisdiction and Authority in *New South Wales* and *Van Diemen's Land*, and the Dependencies thereof respectively, as the Judges of the Courts of King's Bench, Common Pleas, and Exchequer, in England, or any of them, lawfully have and exercise, and as shall be necessary for carrying into Effect the several Jurisdictions, Powers, and Authorities committed to the said Courts respectively.

IV. And be it further enacted, That the said Supreme Courts in *New South Wales* and *Van Diemen's Land* respectively shall and may enquire of, hear, and determine all Treasons, Præfices,

Supreme Courts to be Courts of Record.

Jurisdiction of Supreme Courts.

by them in the Manner by Law established on the Trial of Persons indicted in any Court of Record in *England*: Provided nevertheless, that if at the Time of the Meeting of the Supreme Court of *Van Diemen's Land* there should not be Seven Commissioned Officers of His Majesty's Sea or Land Forces within the Distance of Ten Miles from the Place of holding such Court, or in case of the Sickness of any such Officers, the Governor of *Van Diemen's Land* shall nominate such Magistrates of the said Island, or of any District or County of the said Island, as to him shall seem meet, to act on the Trial of such Crimes, Misdemeanors, or Offences as aforesaid, together with such and so many Commissioned Officers as aforesaid as may then be within such Distance as aforesaid, and competent to act upon such Trial, so as that there may in every Case be Seven Officers or Magistrates, or Seven Officers and Magistrates, for the Trial of the said Crimes, Misdemeanors, and Offences; and the Magistrates so to be appointed by the Governor of *Van Diemen's Land* shall be liable to be challenged or objected to in such and the same Manner, and shall, if necessary, be succeeded by some other Magistrates, to be nominated by the said Governor of the said Island, and shall severally take and repeat such Oath as is hereinbefore directed with respect to the said Commissioned Officers of His Majesty's Sea and Land Forces.

VI. Provided always, and be it further enacted, That it shall and may be lawful for any Person or Persons, by Leave of the said Supreme Courts respectively first had and obtained, to exhibit a Criminal Information against any other Person or Persons in the Name of the said Attorney General, or of such other Officer as aforesaid, for any Crime or Misdemeanor not punishable by Death, by him or her or them committed, or alleged to have been committed; and in granting any Rule for exhibiting any such Criminal Information the said Courts shall not be bound to require from the Parties or Party applying for the same any exculpatory Affidavits, unless the Justice of the particular Case may to such Courts appear to require that such Affidavits should be first made; and any Information so exhibited as aforesaid by Leave of the Court shall be heard, tried, and determined in such and the same Manner in every respect as any other Informations are hereinbefore required to be heard, tried, and determined.

VII. And be it further enacted, That it shall be lawful for His Majesty, His Heirs and Successors, by a Warrant or Warrants under His or Their Royal Sign Manual, at any Time hereafter to authorize the Governor of *New South Wales* or of *Van Diemen's Land* respectively for the Time being to convene a Court or Courts as often as Occasion may require, for the Trial of all Crimes and Misdemeanors committed within any Place or Places in *New South Wales* or *Van Diemen's Land*, or the Dependencies thereof, which, by any Order in Council for that Purpose issued or to be issued as after mentioned hath been or shall be appointed for the Reception of transported Felons and other Offenders; which Court or Courts shall be of Record, and shall have and exercise all the Powers and Authorities incident and belonging to a Court of Record, and shall consist respectively of a Judge, to be appointed by His Majesty, His Heirs and Successors, and such

O o
9 GEO. IV.

Felonies, Robberies, Murders, Conspiracies, and other Offences of what Nature or Kind soever, committed or that shall be committed upon the Sea, or in any Haven, River, Creek, or Place where the Admiral hath Power, Authority, or Jurisdiction, or committed or that shall be committed in the Islands of *New Zealand*, *Otaheite*, or any other Island, Country, or Place situate in the *Indian or Pacific Oceans*, and not subject to His Majesty or to any *European State* or Power, by the Master or Crew of any *British Ship* or Vessel, or any of them, or by any *British* Subject sailing in or belonging to, or that shall have sailed in or belonged to, and have quitted any *British Ship* or Vessel, to live in any Part of the said Islands, Countries, or Places, or that shall be there living; and that all Persons convicted of any of the Offences so to be enquired of, heard, and determined in the said Courts respectively, shall be subject and liable to and shall suffer all such and the same Pains, Penalties, and Forfeitures as by any Law or Laws now in force Persons convicted of the same respectively would be subject and liable to in case the same had been committed and were respectively enquired of, tried, heard, determined, and adjudged in *England*; any Law, Statute, or Usage to the contrary notwithstanding.

His Majesty's Attorney General may proceed by Information until Juries are constituted.

V. And be it further enacted, That until further Provision be made as hereinafter directed for proceeding by Juries, all Crimes, Misdemeanors, and Offences, cognizable in the said Courts respectively, shall be prosecuted by Information, in the Name of His Majesty's Attorney General, or other Officer duly appointed for such Purpose by the Governor of *New South Wales* and *Van Diemen's Land* respectively; and all Issues of Fact joined on every such Information shall be tried by One or more of the respective Judges of the said Courts, and Seven Commissioned Officers of His Majesty's Sea or Land Forces, whether on Full or Half Pay; and such Officers shall from time to time be nominated for the Purpose aforesaid by the Governor of *New South Wales* or *Van Diemen's Land* respectively; and the said Officers shall severally be liable to be challenged or objected to upon the special Ground of direct Interest or Affection, to be specified in open Court at the Time of Challenge; and in case of such Challenge or Objection being allowed by the Judge or Judges of the said Courts respectively, the Officer or Officers so challenged or objected to shall be succeeded by another such Officer or other such Officers as aforesaid, who shall in like Manner be nominated by the Governor as aforesaid, and be liable in the same Manner to Challenge or Objection, until Seven Officers shall appear duly qualified for the Trial of any Offender in the said Courts respectively; and the said Officers shall thereupon severally take and repeat in open Court the same Oath as is taken by Petit Jurors impanelled for the Trial of any Crime or Misdemeanor in any Court of Record in *England*, and shall return their Verdict in open Court, by the Mouth of the Senior Officer serving on such Trial; and the Proceedings of the said Courts respectively shall be under the Control and Direction of the respective Judges thereof; and all Matters of Law arising in the Course of any such Trial shall be determined by such Judges respectively; and the Judgment of the said Courts respectively shall be pronounced by

Felonies, Robberies, Murders, Conspiracies, and other Offences of what Nature or Kind soever, committed or that shall be committed upon the Sea, or in any Haven, River, Creek, or Place where the Admiral hath Power, Authority, or Jurisdiction, or committed or that shall be committed in the Islands of *New Zealand, Otaheite*, or any other Island, Country, or Place situate in the *Indian or Pacific Oceans*, and not subject to His Majesty or to any *European State or Power*, by the Master or Crew of any *British Ship or Vessel*, or any of them, or by any *British Subject* sailing in or belonging to, or that shall have sailed in or belonged to, and have quitted any *British Ship or Vessel*, to live in any Part of the said Islands, Countries, or Places, or that shall be there living; and that all Persons convicted of any of the Offences so to be enquired of, heard, and determined in the said Courts respectively, shall be subject and liable to and shall suffer all such and the same Pains, Penalties, and Forfeitures as by any Law or Laws now in force Persons convicted of the same respectively would be subject and liable to in case the same had been committed and were respectively enquired of, tried, heard, determined, and adjudged in *England*; any Law, Statute, or Usage to the contrary notwithstanding.

His Majesty's Attorney General may proceed by Information until Juries are constituted.

V. And be it further enacted, That until further Provision be made as hereinafter directed for proceeding by Juries, all Crimes, Misdemeanors, and Offences, cognizable in the said Courts respectively, shall be prosecuted by Information, in the Name of His Majesty's Attorney General, or other Officer duly appointed for such Purpose by the Governor of *New South Wales* and *Van Diemen's Land* respectively; and all Issues of Fact joined on every such Information shall be tried by One or more of the respective Judges of the said Courts, and Seven Commissioned Officers of His Majesty's Sea or Land Forces, whether on Full or Half Pay; and such Officers shall from time to time be nominated for the Purpose aforesaid by the Governor of *New South Wales* or *Van Diemen's Land* respectively; and the said Officers shall severally be liable to be challenged or objected to upon the special Ground of direct Interest or Affection, to be specified in open Court at the Time of Challenge; and in case of such Challenge or Objection being allowed by the Judge or Judges of the said Courts respectively, the Officer or Officers so challenged or objected to shall be succeeded by another such Officer or other such Officers as aforesaid, who shall in like Manner be nominated by the Governor as aforesaid, and be liable in the same Manner to Challenge or Objection, until Seven Officers shall appear duly qualified for the Trial of any Offender in the said Courts respectively; and the said Officers shall thereupon severally take and repeat in open Court the same Oath as is taken by Petit Jurors impanelled for the Trial of any Crime or Misdemeanor in any Court of Record in *England*, and shall return their Verdict in open Court, by the Mouth of the Senior Officer serving on such Trial; and the Proceedings of the said Courts respectively shall be under the Control and Direction of the respective Judges thereof; and all Matters of Law arising in the Course of any such Trial shall be determined by such Judges respectively; and the Judgment of the said Courts respectively shall be pronounced

by

by them in the Manner by Law established on the Trial of Persons indicted in any Court of Record in *England*: Provided nevertheless, that if at the Time of the Meeting of the Supreme Court of *Van Diemen's Land* there should not be Seven Commissioned Officers of His Majesty's Sea or Land Forces within the Distance of Ten Miles from the Place of holding such Court, or in case of the Sickness of any such Officers, the Governor of *Van Diemen's Land* shall nominate such Magistrates of the said Island, or of any District or County of the said Island, as to him shall seem meet, to act on the Trial of such Crimes, Misdemeanors, or Offences as aforesaid, together with such and so many Commissioned Officers as aforesaid as may then be within such Distance as aforesaid, and competent to act upon such Trial, so as that there may in every Case be Seven Officers or Magistrates, or Seven Officers and Magistrates, for the Trial of the said Crimes, Misdemeanors, and Offences; and the Magistrates so to be appointed by the Governor of *Van Diemen's Land* shall be liable to be challenged or objected to in such and the same Manner, and shall, if necessary, be succeeded by some other Magistrates, to be nominated by the said Governor of the said Island, and shall severally take and repeat such Oath as is hereinbefore directed with respect to the said Commissioned Officers of His Majesty's Sea and Land Forces.

VI. Provided always, and be it further enacted, That it shall and may be lawful for any Person or Persons, by Leave of the said Supreme Courts respectively first had and obtained, to exhibit a Criminal Information against any other Person or Persons in the Name of the said Attorney General, or of such other Officer as aforesaid, for any Crime or Misdemeanor not punishable by Death, by him or her or them committed, or alleged to have been committed; and in granting any Rule for exhibiting any such Criminal Information the said Courts shall not be bound to require from the Parties or Party applying for the same any exculpatory Affidavits, unless the Justice of the particular Case may to such Courts appear to require that such Affidavits should be first made; and any Information so exhibited as aforesaid by Leave of the Court shall be heard, tried, and determined in such and the same Manner in every respect as any other Informations are hereinbefore required to be heard, tried, and determined.

VII. And be it further enacted, That it shall be lawful for His Majesty, His Heirs and Successors, by a Warrant or Warrants under His or Their Royal Sign Manual, at any Time hereafter to authorize the Governor of *New South Wales* or of *Van Diemen's Land* respectively for the Time being to convene a Court or Courts as often as Occasion may require, for the Trial of all Crimes and Misdemeanors committed within any Place or Places in *New South Wales* or *Van Diemen's Land*, or the Dependencies thereof, which, by any Order in Council for that Purpose issued or to be issued as after mentioned hath been or shall be appointed for the Reception of transported Felons and other Offenders; which Court or Courts shall be of Record, and shall have and exercise all the Powers and Authorities incident and belonging to a Court of Record, and shall consist respectively of a Judge, to be appointed by His Majesty, His Heirs and Successors, and

9 GEO. IV. O O

such

His Majesty may authorize Governors of New South Wales and Van Diemen's Land to convene Courts.