

A BILL INTITULED

AN ACT to Remove some Defects in the Administration of the Law. Title.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled and by the authority of the same as follows—

1. The Short Title of this Act shall be “The Law Amendment Act 1868” and it shall come into operation on the first day of October Short Title.  
5 1868.

2. Whereas by the seventy-second section of the Act of the General Assembly the Short Title whereof is “The Justices of the Peace Act 1866” it is permitted under certain circumstances to read in evidence on the trial of an accused person the deposition taken in accordance with the provisions of the said Act of a witness who is dead or so ill as to be unable to travel. And whereas it may happen that a person dangerously ill and unable to travel may be able to give material and important information relating to an indictable offence or to a person accused thereof and it may not be practicable or permissible to take in accordance with the provisions of the said Act the examination or deposition of the person so being ill so as to make the same available as evidence in the event of his or her death before the trial of the accused person and it is desirable in the interests of truth and justice that means should be provided for perpetuating such testimony and for rendering the same available in the event of the death of the person giving the same or in the event of there being no reasonable probability at the time of the trial of the accused person that the person giving the same will ever be able to travel or to give evidence. Therefore whenever it shall be made to appear to the satisfaction of any justice of the peace that any person dangerously ill and in the opinion of some registered medical practitioner not likely to recover from such illness is able and willing to give material informa- Power to take deposition of person dangerously ill and not likely to recover and to make the same evidence in certain events after death of such person or in the event of there being no probability that such person will ever be able to travel or give evidence.  
30 and 31 Vict. c. 35 s. 6.

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tion relating to any indictable offence or relating to any person accused of any such offence and it shall not be practicable for any justice or justices of the peace to take an examination or deposition in accordance with the provisions of the said Act of the person so being ill it shall be lawful for the said justice to take in writing the statement on oath or affirmation of such person being so ill and such justice shall thereupon subscribe the same and shall add thereto by way of caption a statement of his reason for taking the same and of the day and place when and where the same was taken and of the names of the persons if any present at the taking thereof and if the same shall relate to any indictable offence for which any accused person is already committed or bailed to appear for trial shall transmit the same with the said addition to the proper officer of the Court for trial of which such accused person shall have been so committed or bailed and in all other cases shall transmit the same to the Registrar of the Supreme Court in the judicial district in which he shall have taken the same or if there be more than one Supreme Court office in such district then to the Registrar or Deputy-Registrar at the office of the Supreme Court nearest to the place where he shall have taken the same and such Registrar or Deputy-Registrar is hereby required to preserve the same and file it of record and produce the same at the trial of any offender or offence to which the same may relate and if afterwards upon the trial of any offender or offence to which the same may relate the person who made the same statement shall be proved to be dead or if it shall be proved that there is no reasonable probability that such person will ever be able to travel or to give evidence it shall be lawful to read such statement in evidence either for or against the accused without further proof thereof if the same purports to be signed by the justice by or before whom it purports to be taken and provided it be proved to the satisfaction of the court that reasonable notice of the intention to take such statement has been served upon the person (whether prosecutor or accused) against whom it is proposed to be read in evidence and that such person or his counsel or attorney had or might have had if he had chosen to be present full opportunity of cross-examining the person who made the same.

Provision for prisoner being present at taking of statement. 30 and 31 Vict. c. 35 s. 7.

3. Whenever a prisoner in actual custody shall have served or shall have received a notice of an intention to take such statement as hereinbefore mentioned the judge or justice of the peace by whom the prisoner was committed or the visiting justices of the prison in which he is confined may by an order in writing direct the gaoler having the custody of the prisoner to convey him to the place mentioned in the said notice for the purpose of being present at the taking of the statement and such gaoler shall convey the prisoner accordingly and the expenses of such conveyance shall be paid out of the funds applicable to the other expenses of the prison from which the prisoner shall have been conveyed.

Provisions of "The Law Amendment Act 1856" and "The Affirmations in lieu of Oaths in Criminal Proceedings Act 1866" as to witnesses who object to be sworn extended to jurors.

Ib. s. 8.

4. And whereas relief has been given by the Acts of the General Assembly the Short Titles whereof are respectively "The Law Amendment Act 1856" and "The Affirmations in lieu of Oaths in Criminal Proceedings Act 1866" to persons refusing from alleged conscientious motives to be sworn as witnesses and it is expedient to extend that relief to persons required to serve as jurors therefore if any person summoned or required to serve as a juror in any civil or criminal proceeding shall refuse or be unwilling from alleged conscientious motives to be sworn it shall be lawful for the court or judge or other presiding officer or person qualified to administer an oath to a juror upon being satisfied of the sincerity of such objection to permit such person instead of being sworn to make his or her solemn affirmation or declaration in the words following—

“ I A. B. do solemnly sincerely and truly affirm and declare that the taking of an oath is according to my religious belief unlawful and I do also solemnly sincerely and truly affirm and declare” &c.

5 Which solemn affirmation and declaration shall be of the same force and effect and if untrue shall entail all the same consequences as if such person had taken an oath in the usual form and whenever in any legal proceedings it is necessary or usual to state or allege that jurors have been sworn it shall not be necessary to specify that any particular juror has made affirmation or declaration instead of oath but it shall be sufficient to state or allege that the jurors have been “sworn or affirmed.”

5. Where any prisoner shall be convicted either summarily or otherwise of larceny or other offence which includes the stealing of any property and it shall appear to the court by the evidence that the prisoner has sold the stolen property to any person and that such person has had no knowledge that the same was stolen and that any moneys have been taken from the prisoner on his apprehension it shall be lawful for the court on the application of such purchaser and on the restitution of the stolen property to the prosecutor to order that out of such moneys a sum not exceeding the amount of the proceeds of the said sale be delivered to the said purchaser.

Money found on prisoner to be given to purchaser of property not known to be stolen on restitution of property.

30 and 31 Vict. c. 35 s. 9.

6. Where recognizances shall have been entered into for the appearance of any person to take his trial for any offence at any court of criminal jurisdiction and a bill of indictment shall be found or if at a District Court be signed and presented by the Attorney-General or Crown Prosecutor against him and such person shall be then in some public gaol under warrant of commitment or under sentence for some other offence it shall be lawful for the court by order in writing to direct the governor keeper or gaoler of the said prison to bring up the body of such person in order that he may be arraigned upon such indictment without writ of habeas corpus and the said governor keeper or gaoler shall thereupon obey such order.

Gaoler of prison to bring up the body of any person indicted without habeas corpus under order of Court.

Ib. s. 10.