

No. 11.—1844.

AN ORDINANCE to introduce Trial by Jury, and to make other provisions for assimilating the Laws of this Colony relating to Criminal Offences to the Law of England in like cases.

(L. S.) H. MACLEOD.

Preamble.

WHEREAS on the twentieth day of June, one thousand eight hundred and thirty-one, a certain Order in Council was made by His Majesty King William the Fourth, for improving the administration of justice in the Colonies of British Guiana, Trinidad, and St. Lucia, and it was thereby amongst other things ordered, that on the trial of any person or persons in the said Island of Trinidad for any crime or offence, there should be associated with the Judges of the Court for the trial of criminal prosecutions three assessors, to be chosen and appointed from and out of the members of the Cabildo of the town of Port of Spain, in the said Island, which assessors should be entitled to deliberate and vote with such judges upon the final judgment to be pronounced in every criminal case, and no person should be convicted of any crime or offence, or adjudged to suffer any punishment by any judgment or sentence of the said Court, unless a majority of the total number of such judges and assessors should in open Court vote in favour of such judgment or sentence; and that in such Court the said three judges and assessors should in all criminal cases have, possess, exercise, and enjoy such and the same jurisdiction, powers, and authority in every respect as the judges of the said Court had theretofore lawfully possessed, exercised, or enjoyed; and that the decision of the majority of the total number of such judges and assessors should in all criminal cases at any time depending in the said Court be taken and adjudged to be, and should be recorded as the judgment of the whole Court. And whereas on the fifteenth day of August, one thousand eight hundred and thirty-two, a certain other order was made by His Majesty King William the Fourth, with the advice of his Privy

Council, amongst other things, for admitting to the discharge of the duties of such assessors in the said Court for the trial of criminal prosecutions, all the free adult male inhabitants of the said Colony possessing such qualifications as thereafter mentioned: And whereas by a certain other order of Her present Majesty the Queen, made by and with the advice of her Privy Council, reciting that by reason of a certain order in council made by His late Majesty King William the Fourth, with the advice of his Privy Council, for improving and regulating the administration of justice in the Supreme Courts of Civil and Criminal Jurisdiction in the Colonies of British Guiana, Trinidad, and St. Lucia, or by reason of some other Orders in Council made by Her present Majesty's Royal predecessors, the Governor and Legislative Council of Trinidad, as the Local Legislature of the said Colony, were debarred from making any Laws and Ordinances touching the administration of justice inconsistent with those Orders in Council, and that it was expedient that the said Governor and Legislative Council should have and exercise authority touching the matter aforesaid as fully as touching any other matter, it was thereby ordered by the Queen's Most Excellent Majesty, by and with the advice of Her Majesty's Privy Council, that any such Order or Orders in Council aforesaid in any wise notwithstanding, it should be lawful for the Governor and Legislative Council of Trinidad, and they were thereby authorized as the Local Legislature of the said Colony, from time to time, to make, ordain, and establish all such Laws, Statutes, and Ordinances as to them should seem meet for regulating the constitution of the Courts of Civil and Criminal Justice in the said Colony, or for regulating the form and manner of proceeding to be observed in those Courts or in any of them, and for regulating the fees, salaries, and emoluments to be received by the officers thereof or the practitioners of the law therein, and for regulating whatever relates to the power and jurisdiction of the said Courts, and the administration of civil and criminal justice within the said Colony; and it was thereby ordered, that for the various purposes aforesaid, or for any of them, the said Governor and Legislative Council of Trinidad should be and were

thereby authorized to abrogate and repeal or to suspend the operation of any such Order in Council as aforesaid, so far as the same might relate to the matters aforesaid or to any of them: Provided always, and it was thereby further ordered and declared, that all Laws and Ordinances so to be made for the purposes aforesaid, or any of them, by the said Governor and Legislative Council of Trinidad, should be of such and the same authority, and should be enacted, confirmed, disallowed, or amended in such and the same manner as any other Laws or Ordinances of the said Governor and Legislative Council: And whereas it is expedient to extend to the inhabitants of the Island of Trinidad the right of Trial by Jury in all criminal cases, and to make other provisions for assimilating the laws of the Island of Trinidad relating to criminal offences to the law of England: Now, therefore, be it enacted by His Excellency the Governor in and over the Island of Trinidad and its Dependencies, by and with the advice and consent of the Council of Government thereof, That from and after the commencement of this Ordinance, so much of the said Order of the twentieth day of June, one thousand eight hundred and thirty-one, as is hereinbefore recited, and the said Order of the fifteenth day of August, one thousand eight hundred and thirty-two, respectively, so far as the said last mentioned Order regards the Island of Trinidad, shall be and the same are hereby repealed.

Orders in Council of 20th June, 1831, and 15th August, 1832, in part repealed.

Issues of fact in criminal cases to be tried by Jury.

2. And be it further enacted, That in all criminal trials which shall after the commencement of this Ordinance be had before the said Court for the trial of criminal prosecutions, where any plea or issue of fact which, by the law and practice of England, would be triable by the country, shall be pleaded or tendered by or on the behalf of any person accused of or indicted for any offence before the said Court, such plea or issue shall on the order of the Court be inquired of by a jury of twelve jurors qualified as hereinafter mentioned.

Questions of law to be decided by Judges.

3. And be it further enacted, That all questions of law which shall arise upon any such criminal trial shall be decided, and the punishment of all persons convicted by the verdict of the jury, or on their own confession, shall be awarded by the Judges of the said Court, or the majority of them; and such decision or award shall be

taken and adjudged to be, and shall be recorded as, the judgment of the said Court.

4. And be it further enacted, That every man, ^{Qualification} except as hereinafter excepted, between the ages of ^{Jurors.} twenty-one years and sixty years, residing in the said Island of Trinidad, and born in the allegiance of Her Majesty, or who being born out of such allegiance shall have resided in the said Island for the space of five years, and who shall have or may be beneficially entitled to, for his own use and benefit, either in his own name or in trust for him within the said Island, ten pounds by the year above reprises in any immoveable property, or in rents or other annual profits or proceeds issuing out of such immoveable property, either in perpetuity or for the life of himself or some other person, or who shall have within the same Island, for his own use and benefit, either in his own name or in trust for him as aforesaid, twenty pounds sterling by the year above reprises in immoveable property held by lease or leases for the absolute term of twenty-one years, or some longer term, or for any term of years determinable on any life or lives, or who, being a householder, shall be rated or assessed to any direct tax or impost, or to any rate for the relief of the poor or other local object, on a value of not less than twenty pounds sterling per annum, or who shall occupy a house of the annual value of twenty pounds sterling, or who shall be in the receipt of any annual salary of not less than one hundred and fifty pounds sterling by the year, shall be qualified, and shall be liable to serve as a juror within the meaning and for the purposes of this Ordinance: Provided always, that all members of the Council of Government of the said Island of Trinidad, all judges of the Supreme Courts of Justice therein, all salaried magistrates and clerks of the peace, all clergymen in holy orders of the established Church of England and Ireland, all ministers of the Kirk of Scotland, and of the Lutheran and Reformed Churches, all priests of the Roman Catholic faith, all persons who shall teach or preach in any congregation of Protestant Dissenters, and who shall follow no secular occupation except that of school master, all doctors of law, advocates, counsel and barristers actually practising, all attornies at law,

solicitors and proctors actually practising, all officers of the said Courts actually exercising the duties of their respective offices, all jailors and persons actually employed by or under them in the custody of prisoners, all physicians, surgeons, and apothecaries actually practising by virtue of any diploma, license, or certificate granted by any competent authority, all officers in Her Majesty's navy or army on full pay, all pilots duly licensed by any competent authority, all officers of Customs, and all officers actually employed as deputies or assistants to the Marshal or other Executive Officers of the said Courts, shall be and are hereby absolutely freed and exempted from serving as such jurors as aforesaid: Provided also, that no man who hath been or shall be convicted of any treason or felony, or any crime that is infamous, unless he shall have obtained a free pardon, shall serve as such juror.

Peremptory challenges to be allowed to prisoners in cases punishable with death or transportation

5. And be it further enacted, That no challenge to or in the nature of a challenge to the array or return of the jurors shall in any case be allowed, but that every person arraigned for treason, or any felony punishable with death or transportation, shall be allowed to challenge twelve of the jurors, by way of peremptory challenge, and without being obliged to assign any reason therefore, but every challenge beyond that number shall be entirely void; and if they that sue for the Crown will challenge any of the jurors, they shall assign for their challenge a cause certain, at such time and in such manner as is required by the law, and according to the custom of the Courts of England; and the truth of such challenges shall be inquired of by the Judges of the said Court, but no peremptory challenge shall be allowed on any trial for any felony not punishable with death or transportation, or for any misdemeanor.

Challenges for cause to be allowed both to the Crown and the prisoner without stint.

6. And be it further enacted, That challenges for cause shall be allowed without stint as well to those who prosecute for the Crown as to the party arraigned in all trials, whether for felony or misdemeanor; and it shall be a good cause of challenge to any person summoned to serve as a juror that he is not qualified according to the provisions of this Ordinance, or that he is an illiterate person and unable to read and write, or that he does not understand the English language; and any other cause,

except as hereinafter provided, which, according to the law of England, would be a good cause of challenge to any man summoned and returned to serve as a common juror on the trial of any issue joined between the Queen and the prisoner on any indictment for felony or misdemeanor, shall also be a good cause of challenge to any juror summoned to serve on the trial of any criminal prosecution in the said colony of Trinidad; and if any such cause of challenge shall be alleged either by the public prosecutor or counsel for the prosecution, or by any person or persons against whom any such prosecution may be brought, the Judges of the Court shall forthwith proceed to enquire of and consider the grounds of any such challenge, and shall either allow or over-rule the same as may be just: Provided always, that it shall not be allowed as a good ground of challenge against any person that he is an alien, if such person be duly qualified according to the foregoing provisions of this Ordinance.

7. And be it further enacted, That before proceeding to the trial of any such criminal prosecution, each juror shall in open Court take the oath appointed by the law of England to be taken by petit jurors empannelled for the trial of any issue joined between the Queen and any person or persons arraigned upon any indictment in Her Majesty's Court of Queen's Bench at Westminster.

Jurors to be sworn as in England.

8. And be it further enacted, That when the jury shall have been once sworn to try any issue between the Crown and the party arraigned, the jurors shall not be discharged, except in cases of evident necessity, nor allowed to separate or hold communication with other persons, until they shall have given in their verdict; and such verdict, whether on consultation in the jury-box or after the jury shall have retired and been enclosed, shall be returned by the mouth of the foreman of the jury in the presence of the other jurors: Provided always, that when any such jury shall not be immediately prepared to return their verdict the Court may direct them to retire and be enclosed, and thereupon such jury shall be enclosed or kept by the marshal or his assistants without meat and drink in such and the same manner as is practised in the like cases in England, until they shall return their verdict or be discharged: Provided that

Jury not to separate or to be discharged, except in cases of necessity.

where a juror shall be taken ill during any trial, or the prisoner shall by illness be rendered incapable of remaining at the bar, or in any other case of evident necessity, the Court may discharge the jury, and cause another jury to be sworn either immediately or at a future time, as the case may require.

Circumstantial evidence if satisfactory to Jury to be sufficient for conviction.

9. And be it further enacted, That it shall not be necessary for the conviction of any person charged with any treason, felony, or misdemeanor, that such treason, felony, or misdemeanor be proved by the direct or positive testimony of any witness, but that the evidence which shall have been given on the trial (although the same shall be circumstantial only) shall be left by the Court to the consideration of the jury, and the jury may bring in a verdict of guilty upon such evidence, if they shall be satisfied with the same as sufficient to establish the guilt of the person charged.

All questions respecting admissibility of evidence to be decided according to the law of England.

10. And be it further enacted, That all questions which shall arise upon any criminal trial touching the admissibility of any evidence which may be tendered to the Court, or touching the competency or obligation to give evidence of any person who may be called as a witness, or the admissibility of any question put to any witness, or of any document, paper, matter, or thing which may be tendered in evidence, shall be decided by the Court according to the law of England in the like cases.

Affirmations to be admitted in place of oaths as in England.

11. And be it further enacted, That in all examinations touching any offence, and on all trials for any offence, the solemn affirmation or declaration of any person who, by the law of England, would be permitted to make such solemn affirmation or declaration instead of taking an oath in the usual form, shall be received in lieu of the oath of such person, and such solemn affirmation or declaration shall be of the same force and effect to all intents and purposes as if such person had taken an oath in the usual manner.

Persons affirming falsely, guilty of perjury.

12. And be it further enacted, That if any person making such solemn affirmation or declaration, shall wilfully, falsely, and corruptly affirm or declare any matter or thing which, if the same had been sworn in the usual form, would have amounted to wilful and

corrupt perjury, every such person so offending shall incur the same penalties and forfeitures as are or may be enacted or provided against persons convicted of wilful and corrupt perjury.

13. And be it further enacted, That after the commencement of this Ordinance all laws relating to criminal offences, or their punishment, which were in force in the Island of Trinidad before and at the time of the conquest thereof, in the year of our Lord one thousand seven hundred and ninety-seven, shall be and the same are hereby repealed, save and except so far as regards offences committed but not tried before the commencement of this Ordinance.

All Spanish laws relating to offences repealed.

14. And be it further enacted, That after the commencement of this Ordinance, all criminal offences committed at any time before the commencement thereof, shall be punished in the same manner as if this Ordinance had not been made, but shall be inquired of and tried according to the provisions of this Ordinance.

Offences committed before commencement of Ordinance to be punished under former laws.

15. And for the more effectually punishing offences not specially provided for by any Order in Council or Ordinance that now is or hereafter may be in force in the said Island, Be it further enacted, that every offence which if done or committed in England would amount to a felony or misdemeanor at common law, shall, if done or committed in the Island of Trinidad, be taken to be a felony or misdemeanor as the case may be, and shall be liable to be and shall be punished in the same manner as it would be in England, under or by virtue of any special or general statute providing for the punishment of such offence, or if there be no such statute, by the common law: Provided always, that nothing herein contained shall be construed as limiting or affecting the power of the Governor and Legislative Council in the said Island to make express provision, by Ordinance, for the punishment of any such felony or misdemeanor.

Offences which amount to felony or misdemeanor at common law in England to be felony or misdemeanor in Trinidad, and punished accordingly.

16. And be it further enacted, That the officer hitherto called or known by the style or title of "Escribano" of the Court for the trial of criminal prosecutions, shall from henceforth bear the style or title of "Registrar" of the said Court.

Escribano of Court for trial of criminal prosecutions to be called Registrar.

17. And be it further enacted, That all Laws, Orders

All laws, &c.,
contrary to
this Ordinance
repealed.

Ordinance to
commence
10th October.

in Council, or Ordinances which are in any manner contrary to or inconsistent with the provisions of this Ordinance, shall be and the same are hereby revoked and repealed in so far as the same or any part thereof respectively are contrary to or inconsistent with the provisions of this Ordinance, but not further or otherwise.

18. And be it further enacted, That this Ordinance shall take effect, and come into operation upon and from the tenth day of October, in the present year of our Lord one thousand eight hundred and forty-four.

Passed in Council this second day of September, in the year of our Lord one thousand eight hundred and forty-four.

JAMES PORTER,

Acting Clerk of Council.

No. 14.—1844.

AN ORDINANCE to vest in the Husband on Marriage the same interest in the real and personal Estate of the Wife as he would take according to the Law of England, to take away the right of Married Women to Ganancias, and to make other provisions for Widows in lieu thereof.

(L. S.) H. MACLEOD.

WHEREAS it is expedient that the Laws regarding the rights of Property between Husband and Wife should be amended, and that the same should be assimilated to the law of England; Be it enacted, by His Excellency the Governor in and over the Island of Trinidad and its Dependencies, by and with the advice and consent of the Council of Government thereof, that the words and expressions hereinafter mentioned, shall in this Ordinance be interpreted as follows, that is to say, the words "personal chattels," shall extend to all such moveables, goods, and personal effects, as in the law of

Interpre-
tation.