



Criminal Procedure (Scotland) Act 1887

1887 CHAPTER 35

1 Interpretation

In this Act the following words and expressions are used in the following senses, unless the context shows that a different sense is intended :

Every expression which refers to Her Majesty the Queen is intended to refer to Her Majesty and Her heirs and successors.—

" Lord Commissioner of Justiciary " shall include Lord Justice General and Lord Justice Clerk.

" High Court of Justiciary " shall include any Court held by the Lords Commissioners of Justiciary, or any, of them.

" Clerk of Justiciary " shall include Assistant Clerk of Justiciary, and shall extend and apply to any person duly authorised to execute the duties of Principal Clerk of Justiciary, or Assistant Clerk of Justiciary.

" Sheriff " shall include Sheriff Substitute.

" Sheriff Clerk " shall include Sheriff Clerk Depute, and shall extend and apply to any person duly authorised to execute the duties of Sheriff Clerk.

" Officer of police " shall include chief constable, deputy chief constable, constable, and criminal officer.

" Procurator Fiscal " shall mean Sheriff's Procurator Fiscal, and shall include the Procurator Fiscal of the county of the city of Edinburgh, and of the city and burgh of Aberdeen, and shall include Depute Procurator Fiscal, and shall extend and apply to any person duly authorised to execute the duties of such Procurator Fiscal.

" County " shall extend to the limits within which the sheriff has jurisdiction in criminal matters whether by statute or at common law.

" District " shall mean any part of a county in which a separate court is held, and for which a separate procurator fiscal is appointed, and shall include any county or combination of counties for which one sheriff court and one procurator fiscal are appointed.

" Crime " shall include high crime and offence, felony, crime and offence, offence and misdemeanor, and shall include attempt.

" Indictment " shall include any indictment whether in the Sheriff Court or the High Court of Justiciary framed according to the existing practice, or according to the form given in Schedule A. to this Act annexed.

" Extract conviction " or " extract of previous conviction " shall include certified copy conviction, certificate of conviction, and any other document under the hand of the proper officer in use to be issued from any Court of Justice of the United Kingdom as evidence of a conviction.

2 Indictment forms

All prosecutions for the public interest before the High Court of Justiciary and before the Sheriff Court where the sheriff is sitting with a jury, shall proceed on indictment in name of Her Majesty's Advocate, and in all cases in which by the existing law and practice such prosecutions proceed on criminal letters, indictment shall be used instead thereof, and such indictment may be in accordance with the forms contained in Schedule A. appended to this Act, or as nearly conform thereto as the circumstances permit, and shall be signed by Her Majesty's Advocate or one of his deputed, or by a Procurator Fiscal, and the words " By Authority of Her Majesty's Advocate " shall be prefixed to the signature of such Procurator Fiscal.

3 Procedure on resignation, death, or removal of Lord Advocate

The Lord Advocate and his Deputies shall not demit office on the resignation of the Lord Advocate, but shall continue in office until their successors respectively receive their appointments, and the Lord Advocate shall enter upon the duties of his office immediately on receiving his appointment, and may take the oaths of office before any Secretary of State or any Lord Commissioner of Justiciary ; and all indictments which have been raised by any Lord Advocate shall continue in force and effect notwithstanding such resignation, and may be taken up and proceeded with by his successor; and where any Lord Advocate shall die during his tenure of office, or otherwise be removed from office, it shall be lawful to indict persons accused in name of the Solicitor General then in office, until another Lord Advocate is appointed, and the Advocates Depute and Procurators Fiscal shall have power, notwithstanding such death or removal from office of the Lord Advocate, to take up and proceed with any indictments already raised in name of such Lord Advocate, and any indictments that may be raised in name of such Solicitor General.

4 INDICTMENTS. Naming of accused

A person accused may be named and designed in an indictment according to the existing practice, or he may be named by the name given by him and designed as of the place given by him as his residence when he is examined on declaration, and it shall not be necessary to set forth any other name or names by which he may be known, or any other address or designation.

5 Nomen juris unnecessary

It shall not be necessary in any indictment to specify by any *nomen juris* the crime which is charged, but it shall be sufficient that the indictment sets forth facts relevant and sufficient to constitute an indictable crime.

6 Case of two or more persons charged

When in any indictment two or more persons are charged together with committing a crime, it shall not be necessary to allege that " both and each or one or other," or that " all and each or one or more " of them committed the crime, or did or failed to do any particular act, but such alternatives shall be implied in all such indictments.

7 Guilty, actor or art and part, unnecessary

It shall not be necessary to state that a person accused is " guilty, actor or art and part," in any indictment according to the existing practice, but such charge shall be implied in all indictments.

8 Qualifying words to be implied

It shall not be necessary in any indictment to allege that any act of commission or omission therein charged was done or omitted to be done " wilfully " or " maliciously," or " wickedly and feloniously," or " falsely and fraudulently," or " knowingly," or " culpably and recklessly," or " negligently," or in " breach of duty," or to use such words as " knowing the same to be forged," or " having good reason to know," or " well, knowing the same to have been stolen," or to use any similar words or expressions qualifying any act charged, but such qualifying allegation shall be implied in every case in which according to the existing law and practice its insertion would be necessary in order to make the indictment relevant.

9 Quotation of statutes unnecessary

It shall not be necessary in an indictment for a crime punishable under any Act of Parliament to quote the Act of Parliament or any part of it, but it shall be sufficient to allege that the crime was committed contrary to such Act of Parliament, and to refer to the Act and any section of the Act founded on without setting forth the enactment in words at length.

10 Latitude as to time and place

The latitude now in use to be taken in stating time in indictments at the instance of Her Majesty's Advocate shall be implied in all statements of time where an exact time is not of the essence of the charge, and the latitude now in use to be taken in stating any place in such indictments by adding to the word " at, " or to the word " in," the words " or near," or the words " or in the near neighbourhood thereof," or similar words, shall be implied in all statements of place where the actual place is not of the essence of the charge, and where the circumstances of the offence charged make it necessary to take an exceptional latitude in regard to time or place it shall not be necessary to set forth such circumstances in the indictment, or to set forth that the particular time or the particular place is to the prosecutor unknown; provided always that where exceptional latitude is taken, the court shall, if satisfied -that such exceptional latitude was not reasonable in the circumstances of the case, give such remedy to the person accused by adjournment of the trial or otherwise as shall seem just.

11 Latitude as to quantities, persons, things, or modes

The latitude in use to be taken in indictments in describing quantities by the words " or thereby," or the words " or part thereof" or the words " or some other quantity to the prosecutor unknown," or similar words, shall be implied in all statements of quantities, and the latitude in use to be taken in stating details connected with the perpetration of any act regarding persons, things, or modes by inserting general alternative statements followed by the words, " to the prosecutor unknown, " or similar words, shall be implied in all cases where such statements are in use to be made according to the existing practice.

12 Description of buildings, goods, money, or other property

Where in an indictment, whether raised on Act of Parliament or at common law, buildings, goods, money, or property of any other description are mentioned, it shall not be necessary to allege the property or possession thereof, to be in any person, official, corporation, or company, or that the same were not the property of the accused, and the allegation that the same were not the property of the accused shall be implied in all cases where it is essential to the criminality of the charge.

13 Description of persons, goods, &c

Where in an indictment or any list or inventory relative thereto any person is referred to, it shall be sufficient to describe him by his name and ordinary address, and it shall not be necessary to describe him as " now or lately " residing at such address, but such words shall be implied, and where goods, articles, or things require to be described, it shall be sufficient to describe them in general terms without specifying the materials of which they are made, or any particulars which distinguish them, from other goods, articles, or things of a similar kind except in cases in which such particulars are essential to the constitution of the crime charged.

14 "Money" to include coin, bank notes, and post office orders

The word money when used in an indictment shall include all current coin of the realm, post office orders and postal orders, and bank or banker's notes, and it shall not be necessary to specify in any statement in an indictment relating to a sum of money whether such sum consisted of gold, silver, or other coin, post office orders or postal orders, or bank or banker's notes, or any of them, but it shall be sufficient to state the sum as consisting of money.

15 Setting forth documents unnecessary

Where in an indictment any document requires to be referred to, it shall not be necessary to set forth the document or any part of it in such indictment, but it shall be sufficient to refer to such document by a general description and where it is to be produced by the number given to it in the list of productions for the prosecution.

16 Petitions for warrants

Petitions for warrant to arrest and commit persons suspected of or charged with crime may set forth the charge in accordance with the forms in Schedule A. to this Act annexed, or as nearly conform thereto as the circumstances permit, and the provisions

set forth in sections four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, and fifteen of this Act shall apply to such petitions.

17 Prisoners before examination to have access to law agent

Where any person has been arrested on any criminal charge, such person shall be entitled immediately Upon such arrest to have intimation sent to any properly qualified law agent that his professional assistance is required by such person, and informing him of the place to which such person is to be taken for examination; and such law agent shall be entitled to have a private interview with the person accused before he is examined on declaration, and to be present at such examination, which shall be conducted according to the existing practice : Provided always, that it shall be in the power of the sheriff or magistrate to delay such examination for a period not exceeding forty-eight hours from and after the time of Such person's arrest, in order to allow time for the attendance of such law agent.

18 Bail competent before committal

Any person accused of a crime which is by lawailable shall be entitled immediately after he has been brought before a magistrate for examination on declaration to apply to such magistrate or to the sheriff for liberation on his finding caution in common form to appear at any diet to which he may be cited for further examination, or in order to answer any indictment or complaint which may be served upon him: Provided always, that the prosecutor shall be entitled to be heard against any such application, and that the sheriff or other magistrate shall be entitled in his discretion to refuse such application before the person accused is committed until liberated in due course of law: Provided also, that where any accused person is admitted to bail without being committed until liberated, in due course of law, it shall not be necessary so to commit him, and it shall be lawful to serve him with an indictment or complaint without his having been previously so committed.

19 Declarations, convictions, &c, not averred

It shall not be necessary to set forth in an indictment the fact that the accused person emitted a declaration, nor to set forth any previous conviction, or productions that are to be used against him, but it shall be sufficient that they be entered in the list of productions to be used at the trial, every such conviction being therein described as a conviction applying to the person accused against whom it is to be used.

20 "All which or part" implied

The customary conclusion of indictments as now in use, commencing with the words "All which or part thereof," shall be implied in- all indictments though not set forth.

21 Indictments, &c. written or printed or partly so

The principal record and service copies of indictments and all notices of citation, lists of witnesses productions and jurors, and all other official documents required in criminal prosecutions, may be either written or printed, or partly written and partly printed, and any deletion or correction made before service on such principal record or service copy shall bs sufficiently authenticated by the initials of any person who has signed, or could by law have signed the same, and any deletion or correction

made on a service copy of an indictment, or on any notice of citation, postponement, adjournment, or other notice required to be served on a person accused or on any execution of citation or notice or other document requiring to be served shall be sufficiently authenticated by the initials of the person serving the same.

22 Procedure in case of crime in different counties

Where a crime has been committed partly in one county and partly, in another county, or where one crime following on, and connected with another crime has been committed in a different county from that in which the first was committed, or where several crimes which, if committed in one county could now be tried under one indictment, are alleged to have been committed by any person in different counties in succession, a person accused may be lawfully indicted to a court to be held in such one of such counties as shall be determined by the Lord Advocate, whether for trial in the High Court of Justiciary or in the Sheriff Court, and where any such case is tried in the Sheriff Court of any county the Procurator Fiscal of that county or of any one of the districts of such county as shall be determined by the Lord Advocate shall prosecute, and the sheriff of that county shall have power to try such case and to pronounce sentence on conviction, although the crime found proven may have been in whole or in part committed in a different county, and such sheriff and procurator fiscal shall have all the powers in regard to such case both before, at, and after the trial which they possess in relation to any case occurring within their own district.

23 Warrants for citation

When any sitting of the Sheriff Court or of the High Court of Justiciary has been appointed to be held for the trial of persons accused on indictment, the sheriff clerk of the district in which the second diet is to be called where such trials are to take place in the Sheriff Court, or the Clerk of Justiciary where such trials are to take place in the High Court of Justiciary, shall issue a warrant to officers of the law to cite persons accused, witnesses, and jurors, conform to Schedule B. to this Act annexed, and the execution of the citation against such accused persons shall be conform to Schedule C. to this Act annexed, and the execution of the citation of witnesses shall be conform to Schedule D. to this Act annexed, and the execution of citation to jurors shall be conform to Schedule E. to this Act annexed, and such warrant authenticated by the signature of such clerk, or a duly certified copy thereof, shall be a sufficient warrant to all officers competent.

24 Service

Service of indictment, list of witnesses and list of productions appended thereto, and all notices or intimations to persons accused, and all citations of witnesses, whether for precognition or trial, may be made or given by any macer, messenger at arms, sheriff officer, or officer of police at any place, and where any person accused is in prison at the time of service on him, such service shall be made by any governor, deputy governor, or warder of the prison in which such person is confined.

25 Two diets

The notice to a person accused when served with an indictment to appear and answer thereto shall contain two diets of comparance in the form of Schedule F. to this Act annexed where the second diet is to be in the Sheriff Court, and in the form of Schedule

G. to this Act annexed when the second diet is to be in the High Court of Justiciary, and such first diet shall be not less than six clear days after the service of the indictment, and such second diet shall not be less than nine clear days after such first diet.

26 Notice for first diet

The notice for the first diet shall call on the person accused to appear in the Sheriff Court which is nearest to the prison in which such accused person is confined, whether such prison shall be within the jurisdiction of such Court or not, or if he has been liberated on bail in the Sheriff Court of the district in which his domicile for citation as set forth in any bail bond on which he is liberated is situated, or in any other case before any sheriff within whose jurisdiction the crime is alleged to have been committed in whole or in part, and where the person accused has absconded, the indictment may be served at his last known residence, and all citations at the Cross of Edinburgh, and the Pier and Shore of Leith, or at the head burgh of any shire, are hereby declared to be unnecessary, and any enactments requiring the same are hereby repealed.

27 Record copy indictment and list of witnesses

The record copy of the indictment and any extract convictions that are to be produced shall on or before the date of service of the indictment be lodged with the sheriff clerk of the district in which the Court of the first diet is situated, and a copy of the list of witnesses and a copy of the list of productions shall be lodged with the sheriff clerk of the district in which the Court of the second diet is situated, and where a person accused is indicted for fugitation, the lists shall be lodged in the Justiciary Office.

28 FIRST DIET—Sheriff Court case

At such first diet the Procurator Fiscal of the district in which such first diet is called, shall act as representing Her Majesty's advocate, unless an Advocate Depute or the Procurator Fiscal of the district of the second diet shall appear to prosecute, and where the case is one the second diet of which is to be in the Sheriff Court, the sheriff shall proceed according to the existing law and practice, except in so far as varied by this Act, and where the sheriff presiding is not the sheriff of the court of the second diet, he shall have all the powers now exercised under the existing law and practice by a sheriff at a first diet, and where a person accused pleads guilty in whole or in part the sheriff shall have power to adjourn the case to another sitting of his court with a view to considering what sentence should be pronounced, whether the case be one the second diet of which is to be called in his own or another court; and where the second diet is fixed for a different court any interlocutor disposing of any preliminary plea, any plea tendered, any interlocutor adjourning the case, or any sentence pronounced shall be written on the record copy of the indictment, and where a plea is one of guilty to the indictment or any part thereof, the accused person shall be required to sign the same if he be able to write, and in any case the sheriff shall append his signature to the plea recorded, and where the person accused pleads guilty to only a part of the charge, or to a minor offence included in the charge, and the prosecutor does not accept such plea, or where on a plea of guilty to the whole charge the sheriff shall consider it expedient in the circumstances, whether on the representation of the person accused or otherwise, that the sentence to be pronounced should be determined by the sheriff of the district in which the second diet is to be called, he shall sign an interlocutor on said record copy in the form of Schedule H. to this Act annexed, and the sheriff clerk shall record any interlocutors signed, plea tendered, or sentence pronounced, in the

books of court, or in a record to be kept for the purpose, and shall forthwith transmit said record copy indictment and extract convictions relative thereto to the sheriff clerk of the district of the Court of the second diet.

29 High Court case

At such first diet where the case is one in which the second diet is to be in the High Court of Justiciary, the sheriff shall hear any objection of a preliminary nature, whether to the citation or relevancy or otherwise, and if he shall be of opinion upon any objection made to discrepancy between the record copy of the indictment and the service copy, or to any error or deficiency in such service copy, or in the notice of citation, that such discrepancy, error, or deficiency could not mislead or prejudice the person accused, or if he shall be of opinion that any other preliminary objection made is frivolous, or if no preliminary objection be made, he shall call upon the accused person to plead guilty or not guilty, and shall endorse upon the record copy of the indictment a certificate of the plea tendered in the form of Schedule L to this Act annexed, and if the plea be one of guilty to the indictment or any part thereof the accused person shall be required to sign the same if he is able to write, and in every case the sheriff shall append his signature to the plea recorded, and where any objection is taken to such discrepancy, error, or deficiency as aforesaid which the sheriff shall hold to be a discrepancy, error, or deficiency which tended substantially to mislead and prejudice the accused person, or where any other preliminary objection shall be held by him not to be frivolous, he shall endorse upon the record copy of the indictment a certificate in the form of Schedule K. to this Act annexed, and the sheriff clerk shall record any certificate so written on such record copy in the books of court or in a record to be kept for the purpose, and shall forthwith transmit the record copy of the indictment and extract convictions relative thereto to the Clerk of Justiciary.

30 Procurator of place of second diet may defend at both diets

In all cases a procurator who is entitled to conduct proceedings in the courts of the district of the second diet, shall be entitled to appear at the first diet, and to conduct the defence, although he may not be entitled to conduct other law business in the locality of the first diet.

31 Procedure where accused desires to plead guilty

Where a person accused shall give written notice to the Crown Agent through his own procurator that he desires to have his case at once disposed of, and declares his intention to plead guilty, it shall be lawful to serve such person with an indictment and a notice conform to Schedule L. to appear at a diet not less than four clear days after such notice before the sheriff before whom under this Act he would be cited to a first diet, and it shall not be necessary to lodge or give notice of any list of witnesses or productions, other than productions to prove previous convictions, and at such diet the sheriff, if any plea of guilty is tendered which shall be accepted by the Procurator Fiscal, shall deal with the case in like manner as cases are required to be dealt with under this Act where a person accused pleads guilty at a first diet: Provided always, that if the case is one suitable for punishment in the Sheriff Court, he shall forthwith pronounce sentence, and if the case is such as can only be tried in the High Court of Justiciary, or is of such an aggravated nature that the sheriff shall hold that the question of punishment should be disposed of by that court, the sheriff shall by an interlocutor written on the record copy of the indictment conform to Schedule M. appended to this

Act, remit the accused to that court for sentence, and such remit shall be a sufficient warrant to bring the accused person, without any further notice, before the High Court of Justiciary for sentence at any sitting at anyplace that may be convenient, as the Lord Advocate may order, and the original warrant of commitment of such person till liberated in due course of law shall remain in force until he is brought before the High Court of Justiciary for sentence, and if the person accused when brought before the sheriff on such indictment shall plead not guilty to the charge or plead guilty to any part thereof only, and the Procurator Fiscal shall decline to accept such restricted plea, then the diet shall be deserted pro loco el tempore, and thereafter the procedure against the person accused maybe according to the other provisions of this Act.

32 Interlocutor of relevancy unnecessary

It shall not be necessary to enter upon the record an interlocutor finding the indictment relevant, and when objections are taken to the relevancy, it shall not be necessary to enter on the record copy of the indictment or in the record any other minute setting forth how such objections were disposed of, except that such objections were sustained or repelled, and such minute shall be signed by the clerk of court.

33 Certain objections only competent at first diet

No objection by a person accused to the validity of the citation against him, on the ground of any discrepancy between the record copy of the indictment and the copy served on him, or On account of any error or deficiency in such service copy or in the notice of citation shall be competent, unless the same be stated to the sheriff at the first diet before the accused person is called upon to plead, and no such discrepancy, error, or deficiency shall entitle such accused person to object to plead to such indictment unless the sheriff shall be satisfied that the same tended substantially to mislead and prejudice such accused person.

34 Where sentence delayed original warrant of commitment stands

In all cases where a person accused pleads guilty at the first diet and is not forthwith sentenced by the sheriff, he shall be detained in custody until he is sentenced, under the existing warrant of commitment, unless Her Majesty's Advocate shall consent to his being suffered to go at large, and where such consent is given, it shall be on such conditions as to bail as Her Majesty's Advocate shall fix, but no unreasonable delay shall be allowed to take place between the time of the accused pleading guilty and his being brought up for sentence.

35 Description of witnesses

The list of witnesses shall consist of the names of the witnesses, with their addresses added, and it shall not be necessary to insert the words " now or lately residing at, " or any similar words, and it shall not be an objection to the admissibility of any witness that he has ceased to reside at the address given before the date of the trial, provided that he resided at such address at some time, not being more than six months previous to the date of the trial, and it shall not be necessary to insert in the list of witnesses the names of any witnesses to the declaration of an accused person or the names of any witnesses to prove that an extract conviction applies to an accused person, but witnesses may be examined in regard to these matters without previous notice.

36 Written notice of special defence

It shall not be competent for the person accused to state any special defence unless a plea of special defence shall be tendered and recorded at the first diet, or unless cause be shown to the satisfaction of the court for a special defence not having been lodged till a later day, which must in any case not be less than two clear days before the second diet, and it shall not be competent for the person accused to examine any witnesses or to put in evidence any productions not included in the lists lodged by the prosecutor, unless written notice of the names and designations of such witnesses and of such productions shall have been given to the Procurator Fiscal of the district of the second diet when the case is to be tried in the Sheriff Court, or to the Crown Agent where the case is to be tried in the High Court of Justiciary, at least three clear days before the day on which the jury is sworn to try the case against him, or unless the accused person shall show before a jury is sworn to try the case against him that he was unable to give the full notice of three days in regard to any witnesses he may desire to examine or productions he may desire to make, and where this is shown the court shall give such remedy to the prosecutor by adjournment or postponement of the trial or otherwise as shall seem just, and a copy of every written notice hereby required shall be lodged by the person accused with the sheriff clerk of the district in which the second diet is to be held, or in any case the second diet of which is to be held in the High Court of Justiciary in Edinburgh with the Clerk of Justiciary, at or before the second diet, for the use of the court.

37 Accused entitled to see productions

A person accused shall be entitled to see the productions according to the existing law and practice in the office of the sheriff clerk of the district in which the Court of the second diet is situated, or where the second diet is to be in the High Court of Justiciary in Edinburgh in the Justiciary Office.

38 Notice of jury list

It shall not be necessary to serve any list of jurors upon a person accused, but on and after the date of the service of an indictment a list of jurors prepared under the directions of the Clerk of Justiciary where the second diet is to be held in the High Court of Justiciary and prepared by the sheriff clerk of the district in which the second diet for the trial of such person is to be held, where the second diet is to be held in the Sheriff Court, and consisting of special and common jurors in the proportion of one special to two common jurors, such list containing not less than thirty names, and headed

List of Assize for the Sitting of the
High Court of Justiciary," (or, the Sheriff Court of at
 " ,) on the of 188 , shall be
 kept in the office of the sheriff clerk of the district in which the court of the second diet is situated, and the person accused shall be entitled to have a copy supplied to him on application free of charge.

39 Sufficient jurors only to be summoned

It shall not be necessary to summon all the jurors contained in any list of jurors under this Act, but it shall be competent to summon such jurors only, commencing from the top of the lists of special and common jurors respectively as may be necessary to

ensure a sufficient number for the trial of the cases which shall remain for trial at the date of the citation of the jurors, and such number shall be fixed by the clerk of the court in which the second diet is to be called, or in any case in the High Court of Justiciary by the Clerk' of Justiciary, and where jurors are not summoned, from the whole jurors in any list not being required, such jurors shall be placed upon the next list issued, until they have attended to serve.

40 SECOND DIET—Transcript of proceedings at first diet

At the calling of the second diet of compearance where the court is within the same county as the court of the first diet, the procedure shall be according to the existing law and practice, except in so far as varied by the provisions of this Act, and when the second diet is in the Sheriff Court of a different county, or in the High Court of Justiciary, the clerk of court shall on the diet being called enter in the books of court or in a record to be kept for the purpose, a transcript of the procedure at the first diet as endorsed on the record copy of the indictment by the sheriff who presided thereat, and thereafter if in the Sheriff Court the case shall proceed as a case would proceed according to the existing law and practice after the plea of the person accused had been tendered and recorded, except in so far as varied by this Act.

41 Review at second diet in High Court

Where a person accused is cited to the High Court of Justiciary for the second diet the said court shall have power to review the proceedings at the first diet, and where the person accused has pleaded guilty to the whole or any part of the charge at the first diet, the court at such second diet if it shall be shown that such plea was taken to an irrelevant or incompetent charge, or has been taken under substantial error or misconception, or under circumstances which tended to prejudice the person accused, may allow such plea to be withdrawn or modified, and where such plea is so withdrawn or modified, the court shall, if the prosecutor shall so move, desert the diet *pro loco et tempore*, or postpone the trial to a later date, which shall be notified to the person accused in open court, and where such postponement makes it necessary that the jury for the trial of the case shall be taken from a different list from that of which notice was given to such accused person, such list shall be prepared, signed, and kept in the office of the proper sheriff clerk as aforesaid within three clear days of such postponement in manner herein-before provided.

42 Procedure where trial does not take place

Where at the second diet the diet has been deserted *pro loco et tempore*, for any of the causes set forth in the immediately preceding section, or where from any cause whether in the High Court of Justiciary or in the Sheriff Court an indictment is not brought to trial at such second diet, and no order has been given by the court postponing such trial or appointing it to be held at a subsequent date at some other sitting of the court, it shall be lawful at any time, within nine clear days after the date of such second diet, to give notice to such accused person in the form of Schedule N. to this Act annexed on another copy of the indictment to appear to answer such indictment at another diet, and it shall be lawful to give such notice either for a sitting of the High Court of Justiciary or for a sitting of the Sheriff Court when the charge is one that can be lawfully tried in that court, notwithstanding that the original citation to a second diet was to a different court: Provided always that such notice shall be given for a diet to be held not sooner than nine clear days subsequent to such notice, and that on or before the day on which

such notice is given a list of jurors be prepared, signed, and kept by the sheriff clerk of the district to which the new notice applies in manner herein-before provided.

43 Prevention of delay in trials

So much of the Act of William the Third passed in 1701, intituled " An Act for preventing Wrongous Imprisonment and against Undue Delay in Tryals " as relates to the prevention of undue delay in trials, other than trials for treason, is hereby repealed, and in lieu thereof it is hereby, enacted that from and after the passing of this Act, any prisoner who is in prison on a commitment until liberated in due course of law, and who shall not be served with an indictment within sixty days of such commitment, shall be entitled to give notice to the Lord Advocate through the Crown Agent in Edinburgh, that if he is not served with an indictment within fourteen days of such notice, the prosecutor will be called on to show cause before the High Court of Justiciary why such accused person should not be released from prison, and upon a note being presented to the said court setting forth that such notice has been given, and that no indictment has been served within such fourteen days, the court shall appoint the prosecutor forthwith to show cause, and where cause is not shown to the satisfaction of the court, the court shall grant warrant ordering such person to be released at the expiry of three days from the issuing of such order, unless within said three days an indictment be served upon him : Provided always that where any accused person is liberated as aforesaid, it shall be competent for the prosecutor to raise an indictment against him, and to obtain from a judge of the jurisdiction to which he is cited for the second diet, or a judge of the High Court of Justiciary, a warrant authorising his apprehension and recommitment to prison to await his trial on such indictment, and in the event of the trial on such indictment not taking place at the second diet thereof, or any other day to which it maybe adjourned or postponed by the court, the High Court of Justiciary shall, upon the application of such accused person, made by a note addressed to the court, and after hearing parties, consider the whole circumstances of the case, and may in its discretion order the immediate release of such prisoner, or may grant warrant ordering him to be released on a day named in the warrant, unless he shall on or "before such day be remitted to the knowledge of an assize on indictment, or may; decline to pronounce any order : Provided always, that where a person accused has been incarcerated for eighty days, and an indictment is served upon him, and he is detained in custody after expiry of such eighty days, then, unless he is brought to trial and the trial concluded within one hundred and ten days of the date of his being committed till liberated in due course of law, he shall be forthwith set at liberty, and declared for ever free from all .question or process for the crime with which he was charged: Provided also, that where any person accused has been liberated from prison after having been committed till liberated in due course of law, he shall not be detained in prison more than one hundred and ten days in all; but unless his trial is brought to a conclusion before the hundred and tenth day of confinement in prison subsequent to commitment till liberated in due course of law, has expired, he shall be forthwith set at liberty and declared for ever free from all question or process for the crime for which he was committed ; but it shall be competent for the High Court of Justiciary in any case brought before it under this section, upon its being shown to the satisfaction of the Court that the trial of a person accused ought to be suffered to proceed after the lapse of one hundred and ten days as aforesaid, when the delay in prosecuting to verdict is owing to the illness of the accused or the absence or illness of any necessary witness, or the illness of a judge or juror, or any other sufficient cause for which the prosecutor is not responsible, to order the person accused, notwithstanding the expiry of the said period of one hundred and ten days, to be kept in custody, with a view to trial, for such further period or periods as to the said Court may seem just.

44 High Court of Justiciary

From and after the time fixed for the commencement of this Act, all sittings of the Court of Justiciary in Scotland shall be sittings of the High Court of Justiciary, and every person who shall be appointed to the office of one of the senators of the College of Justice in Scotland shall, in virtue of such appointment, be a Lord Commissioner of Justiciary in Scotland, and all the senators of the College of Justice now in office, who are not Lords Commissioners of Justiciary, are hereby appointed to be Lords Commissioners of Justiciary, and every senator of the College of Justice, other than the Lord Justice General and Lord Justice Clerk, shall officiate in rotation as Lord Ordinary on the Bills in vacation : Provided always, that the five presently existing Lords Commissioners of Justiciary, other than the Lord Justice General and Lord Justice Clerk, shall not be required to officiate as Lord Ordinary on the Bills, and shall, in the High Court of Justiciary, take precedence of those senators of the College of Justice who are created Lords Commissioners of Justiciary by this Act: Provided also, that, if any of the said five presently existing Lords Commissioners of Justiciary shall not officiate as Lord Ordinary on the Bills in vacation, he may be required to officiate with greater frequency than other Lords Commissioners of Justiciary at sittings of the High Court of Justiciary in Edinburgh or elsewhere ; and if any difference shall arise as to the rotation of judges in the High Court of Justiciary, or in the Bill Chamber, the same shall be determined by the Lord Justice General.

45 Salaries of judges of High Court

From and after the time fixed for the commencement of this Act there shall be paid to the judges herein-after mentioned the following salaries ; that is to say,

To the Lord Justice General five thousand pounds a year;

To the Lord Justice Clerk four thousand eight hundred pounds a year;

To each of the Senators of the College of Justice three thousand six hundred pounds a year.

Such salaries to be instead of the salaries by law payable to such judges immediately before such commencement, provided always that from and after such commencement all allowances to such judges for circuit court expenses shall cease and determine; and such judges shall not be entitled to any allowance in addition to such salaries in respect of any court held by them as Lords Commissioners of Justiciary whether on circuit or otherwise.

46 Sittings of High Court

The Lords Commissioners of Justiciary shall hold such sittings for the trial of criminal causes as may be necessary, on the requisition of the Lord Advocate, subject to such orders as Her Majesty in Council may issue ordaining courts to be held, and every sitting of the Lords Commissioners, whether under the existing law and practice or under, this Act, or under such Order in Council, shall be a sitting of the High Court of Justiciary, and the ceremonies of fencing and closing courts by proclamation of a macer shall be discontinued, and it shall not be necessary for the Lords Commissioners of Justiciary to remain in any town for a longer time than is required for the disposal of the criminal and civil business falling to be disposed of at such sitting.

47 Area from which jury summoned

When the High Court of Justiciary shall exercise its power of holding a court in any town which may be most convenient for the trial of any crime in or near the locality in which such crime has been committed, and where such town is not one of the towns in which the Court of Justiciary has been in use to hold sittings the jury summoned to try such case shall be summoned from the general jury roll of the county in which such town is situated; but in all cases where the court shall hold sittings in towns which have hitherto been called circuit towns, the jury shall be summoned from the same counties as they are now summoned from under the existing practice.

48 Sitting dispensed with

It shall not be necessary for the High Court of Justiciary to proceed to any town for the purpose of holding any court in use to be held in such town, when there are no cases indicted for the sitting of the court at such town, or when so many of the persons indicted thereto have pleaded guilty before the sheriff at the first diet as to make the holding of a special court inexpedient, and in that event such cases as remain for trial may be ordered to be brought up at another court in manner herein-after provided, and any appeal which may have been taken to such court shall be heard by the High Court of Justiciary in Edinburgh, or may, when both parties consent, be heard at any sitting of the High Court of Justiciary at any place.

49 Adjournment of second diets

When any person accused who is cited to the High Court of Justiciary for the second diet has pleaded guilty at the first diet, it shall be lawful for any Lord Commissioner of Justiciary in chambers, and without the presence of the prosecutor or person accused, to adjourn the second diet to any other sitting of the High Court of Justiciary.

50 Sitting transferred where few cases

Where so many of the persons who have been indicted for any sitting of the High Court of Justiciary have pleaded guilty at the first diet as to make the holding of a separate court for the cases remaining unnecessary, it shall be lawful for any Lord Commissioner of Justiciary, on the petition of the Lord Advocate, presented within three days immediately succeeding the first diet, and in chambers, and without the presence of the prosecutor or person accused, to order the second diets of such cases to be postponed and to be held at any sitting of the High Court of Justiciary about to be held in any adjacent county or any county in the same district of the country or in Edinburgh, and upon such order for postponement being issued, a notice shall forthwith be served upon any person accused who may have already been cited, in the form of Schedule O. to this Act annexed.

51 Trials in adjacent county

Where any crime is committed in any county of an existing circuit in which no sitting of the High Court of Justiciary falls to be held in ordinary course for some months thereafter, it shall be competent to cite the person accused to compare before the High Court of Justiciary at any sitting which is to be held sooner by the said High Court in another county being in a circuit district adjacent thereto.

52 Postponement on old warrant where diet deserted

Where a diet is deserted *pro loco et tempore*, or where a diet is postponed or adjourned, or an order issued for the trial to take place at a different place from that first given notice of, it shall not be necessary that a new warrant should be granted for the incarceration of a person accused, but the warrant of commitment on which such person is at the time in custody till liberated in due course of law shall continue in force.

53 Objections to witnesses

Any objection in respect of misnomer or misdescription of any person named in the indictment, or of any witness in the list of witnesses, must be stated before a jury has been sworn to try the case against a person accused, and no such objection shall be admitted as ground for postponing any trial or for excluding any witness, unless the accused person shall, at least four clear days before the second diet, give notice to the Procurator Fiscal of the district of the second diet where notice of trial is given for the Sheriff Court, or to the Crown Agent where notice of trial is given for the High Court of Justiciary, of his inability to discover who such person named in the indictment is, or to find such witness, and shall show that notwithstanding such intimation to the prosecutor he has not been furnished with such additional information as might enable him to ascertain who such person is, or to find such witness in sufficient time to precognosce him before the trial, and where either of these things shall be shown the court shall give such remedy by postponement, adjournment, or otherwise, as shall seem just.

54 Clerk to state charge, and swear jury

When a jury has been balloted, the clerk of court shall inform the jury of the charge against the person accused as set forth in Schedule P. to this Act annexed, and shall thereafter administer the oath in ordinary form, and it shall not be necessary to lay before the jury copies of the indictment, list of witnesses, or list of productions.

55 Seclusion of jury

It shall not be necessary when for any cause a trial which is proceeding is adjourned from one day to another, that the jury shall be secluded during the adjournment, except in cases in which a sentence of capital punishment may follow on conviction, or in cases where the court shall see fit whether *ex propria motu*, or on the motion of the prosecutor or the person accused, to order that the jury be kept secluded, and every trial shall proceed from day to day till concluded, unless the court shall see cause to adjourn over a day or days.

56 Capital cases

A capital sentence shall no longer be competent except on conviction of murder or of offences against the Act 10 Geo. IV. c. 38, and it shall be lawful to indict in the Sheriff Court persons accused of the crime of uttering a forged document, or of the crime of robbery or of the crime of wilful fire-raising, or of any of the crimes under the Acts of Parliament for the prevention of persons going armed by night for the destruction of game, which under these Acts can at present be indicted in the Court of Justiciary only, but nothing in this clause contained shall renderailable any of the crimes above

set forth, which are not now bailable, or shall extend the powers of the sheriff in regard to punishment.

57 Form of sentence

In all cases whether in the Sheriff Court or in the High Court of Justiciary, the sentence to be pronounced shall be announced by the Judge in open court, and all such sentences, except sentences of death, shall be entered in the record in the short form now in use in the Court of Justiciary, and it shall not be necessary to read the entry of the sentence from the record, and the form and mode in which any sentence of death shall be entered in the record shall be such as the High Court of Justiciary may appoint by Act of Adjournal.

58 Reset

Criminal resetting of property shall not be limited to the receiving of property taken by theft or robbery, but shall extend to the receiving of property appropriated by breach of trust and embezzlement and by falsehood, fraud, and wilful imposition, and under any indictment charging the resetting of property dishonestly appropriated by any of these means, it shall not be necessary to set forth any details of the crime by which the dishonest appropriation was accomplished, but it shall be sufficient to set forth that the person accused received such property it having been dishonestly appropriated by theft or robbery, or by breach of trust and embezzlement, or by falsehood, fraud, and wilful imposition, as the case may be.

59 Robbery, &c. to include reset and theft to include breach of trust, &c

Under an indictment for robbery or for theft, or for breach of trust and embezzlement, or for falsehood, fraud, and wilful imposition, a person accused may be convicted of reset ; under an indictment for robbery or for breach of trust and embezzlement, or for falsehood, fraud, and wilful imposition, a person accused may be convicted of theft; under an indictment for theft, a person accused may be convicted of breach of trust and embezzlement, or of falsehood, fraud, and wilful imposition, or may be convicted of theft, although the circumstances proved may in law amount to robbery.

60 Procedure where more than one crime charged

Where in an indictment two or more crimes or acts of crime are charged cumulatively, it shall be lawful to convict of any one or more of them, and any part of what is charged in an indictment, constituting in itself an indictable crime, shall be deemed separable to the effect of making it lawful to convict of such crime, and where any crime is charged as having been committed with a particular intent or with particular circumstances of aggravation, it shall be lawful to convict of the crime without such intent or aggravation.

61 Attempt at crime

Attempt to commit any indictable crime shall itself be an indictable crime, and under an indictment which charges a completed crime, the person accused may be lawfully convicted of an attempt to commit such crime; and under an indictment charging an attempt, the person accused may be convicted of such attempt although the evidence be sufficient to prove the completion of the crime said to have been attempted ; and

under an indictment which charges a crime which imports personal injury inflicted by the person accused, resulting in death or serious injury to the person, the person accused may be lawfully convicted of the assault or other injurious act, and may also be lawfully convicted of the aggravation that such assault or other injurious act was committed with intent to commit such crime.

62 Statutory offences which are offences at common law

Where any act set forth in an indictment as contrary to any Act of Parliament, is also criminal at common law, or where the facts proved under such an indictment do not amount to a contravention of the Statute, but do amount to a crime at common law, it shall be lawful to convict of the common law crime.

63 Previous convictions of dishonesty

Extracts of previous convictions obtained in any part of the United Kingdom of robbery, theft, stouthrief, reset, forgery and uttering forged documents, falsehood fraud and wilful imposition, housebreaking with intent to steal, assault with intent to rob, breach of trust and embezzlement, burglary, larceny, obtaining goods or money by false pretences, swindling, cardsharpping, and of attempts to commit any of these crimes, and of crimes contrary to the Acts of Parliament relating to the Queen's coinage, and of crimes relating to the Queen's coinage at common law, and of crimes inferring dishonest appropriation by post office officials, or of attempts to commit such crimes, whether such convictions be under the Post Office Acts or at common law, and of all other crimes inferring dishonest appropriation of property by a person not the owner thereof, or attempts to commit such crimes, whether in contravention of any Act of Parliament or at common law, may be lawfully put in evidence as aggravations against any person accused on indictment of any of the crimes, or attempts to commit crimes above set forth, and any aggravation of the crime or attempt which such extract conviction bears to have been found proven, may be lawfully used in evidence to the like effect.

64 Previous convictions of violence

Extracts of previous convictions of any crime inferring personal violence obtained in any part of the United Kingdom may be lawfully put in evidence as aggravations of any crime inferring personal violence, and any aggravation set forth in such extract convictions may be lawfully used in evidence to the like effect.

65 Previous convictions of lewd conduct, &c

Extracts of previous convictions obtained in any part of the United Kingdom of any crime inferring lewd, indecent, or libidinous conduct may be lawfully put in evidence as aggravations of any crime of a lewd, indecent, or libidinous character, and any aggravation set forth in such extract convictions may be lawfully used in evidence to the like effect.

66 Extract convictions to be received unless impugned

An extract conviction of any crime committed in any part of the United Kingdom, bearing to be under the hand of the officer in use to give out such extract conviction shall be received in evidence without being sworn to by witnesses, and such conviction

shall be held to apply to the person accused to whom notice is given in the list of productions that it is to be used against him, unless he shall give written notice to the Procurator Fiscal of the district to the court of which he is cited for the second diet, or to the Crown Agent where he is cited to the High Court of Justiciary for the second diet, at least five clear days before the date fixed for the second diet or any date to which such diet may be adjourned or postponed, or where the person accused proposes to plead guilty at the first diet, then not less than two clear days before the first diet, that such extract conviction is not under the hand of the proper officer, or that it does not apply to such accused person, or of any other objection to its validity or admissibility, and where such notice is given it shall be competent to prove by a witness or witnesses such previous conviction, or any facts relevant to the admissibility of the same, although the name of any such witness be not included in the list served on the person accused, and the person accused shall also be entitled to examine witnesses in regard thereto; and an official of any prison in which such person accused may have been confined on such conviction shall be a competent and sufficient witness to prove the application thereof to the person accused, although he may not have been present in court at the trial to which the extract produced of such conviction relates.

67 Proving and recording previous convictions

Previous convictions against a person accused shall not be laid before the jury, nor shall reference be made thereto in presence of the jury before the verdict is returned ; but nothing herein contained shall prevent the public prosecutor from laying before the jury evidence of such previous convictions where, by the existing law, it is competent to lead evidence of such previous convictions as evidence in causa in support of the substantive charge, or where the person accused shall lead evidence to prove previous good character, and it shall no longer be necessary for the jury to return a verdict finding whether previous convictions against the person accused have been proved or not; but where any such conviction is admitted in evidence by the court, either after a plea of guilty ' or after a verdict of guilty to any charge to which such previous conviction constitutes an aggravation, the court shall have power to take such previous conviction into consideration in awarding punishment, and where any person is convicted of any crime, and also of any aggravation by previous conviction, the clerk of the court in which sentence is pronounced, shall enter in the record of the trial a statement of the contents of any extract conviction that is put in evidence, setting forth the date, the place of trial, the court, the nature of the crime, the aggravations accompanying it, if any, and the sentence pronounced; and where such person is again accused of any offence, in regard to which such conviction may be competently used as an aggravation, a duly certified extract of the conviction setting forth the particulars of previous conviction as above, shall be admissible and sufficient as evidence to prove against him all the previous convictions and aggravations therein set forth.

68 Superfluous particulars as to identity

When in the trial of any indictment the evidence led shall be sufficient to prove the identity of any person, corporation, or company, or of any place, or of any thing, it shall not be a valid objection to the sufficiency of such evidence that any particulars set forth in regard thereto in the indictment have not been proved.

69 Declarations

The declaration of the person accused, the formal parts of which may be written or printed, or partly written and partly printed, duly authenticated by the magistrate examiner as having been emitted before him according to the existing law and practice, shall be received in evidence without being sworn to by witnesses, and it shall not be necessary to insert the names of any witnesses to the declaration in any list of witnesses, either, for: the prosecution or for the person accused, but it shall be competent for the person, accused, before such declaration is read to the jury, to adduce as witnesses the persons who were; present when the declaration was emitted, and to examine them upon any matters regarding such declaration on which it would be competent to examine them according to the existing law and practice, and to move the court to refuse to allow the declaration to be read on grounds appearing on the face of the declaration itself, or on the ground of what is disclosed in such evidence or on both of these grounds, and where a person accused objects to the declaration, the prosecutor shall be entitled to examine any witnesses in regard thereto.; whom the person accused may be entitled to examine as aforesaid.

70 Variance between indictment and evidence

No trial shall fail or the ends of justice be allowed to be defeated by reason of any discrepancy or variance between the indictment and the evidence, but the indictment may, unless the court see just cause to the contrary, be amended at any time before the case for the prosecution is closed, so as to cure any such discrepancy or variance, and any amendment so allowed to be made shall be sufficiently authenticated by the initials of the Clerk of Court: Provided always, that such amendment shall not be allowed unless the court shall be satisfied that such discrepancy or variance is not material to the merits of the case, and that the person accused cannot be prejudiced thereby in his defence on the merits.

71 Certain sections to apply to summary complaints

Sections four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, fifty-eight, fifty-nine, sixty, sixty-one, sixty-two, sixty-three, sixty-four, sixty-five, sixty-six, sixty-seven, sixty-eight, sixty-nine, and seventy of this Act, and the relative schedules, except where there is anything in any section which specially applies to procedure in the High Court of Justiciary and the Sheriff Court where the sheriff is sitting with a jury, shall apply to all summary complaints in inferior courts, whether under any Act of Parliament or at common law, the words " summary complaint" being substituted for the word " indictment, " and the words " crime or offence punishable on summary complaint" being in that case substituted for the word " crime, " and the words " punishable on summary complaint" being substituted for the word " indictable, " and the word "court " being substituted for the word " jury, " and the mode of setting forth the charge given in Schedule A. may be followed in such summary complaints, the third person being substituted for the second: Provided always that nothing herein contained shall make it competent to try summarily a person accused of any crime or attempt at crime, where trial on summary complaint for such crime is not competent by the existing law and practice.

72 High Court proceedings final

All interlocutors and sentences pronounced by the High Court of Justiciary under the authority of this Act shall be final and conclusive, and not subject to review by any

court whatsoever, and it shall be incompetent to stay or suspend any execution or diligence issuing forth of the High Court of Justiciary under the authority of the same.

73 Circuit clerks of Justiciary

When the existing circuit clerks of justiciary shall respectively die, resign, or otherwise vacate office, the vacancies thus occasioned shall not be filled up, and the duties of clerk of the High Court of Justiciary when sitting elsewhere than in Edinburgh shall be performed by the first assistant clerk of justiciary and the depute clerks of session, in such rotation as the principal clerk of justiciary in consultation with the senior depute clerk of session shall, with the sanction of the Lord Justice General, appoint, having regard to the convenient adjustment of business in the High Court of Justiciary and the Court of Session, and these duties shall be performed on such terms as shall be fixed with the consent of the Treasury.

74 Repeal

All statutes, laws, regulations, and usages inconsistent or at variance with the provisions of this Act shall be, and the same are hereby repealed: Provided always, that the same shall continue in force in all other respects whatsoever.

75 Act not to apply to treason

Nothing in this Act contained shall apply to the crimes of treason or rebellion against the Sovereign, or shall affect the procedure in any prosecution or trial for treason, or for rebellion against the Sovereign, but all procedure in the prosecution and trial of such crimes shall be conducted according to the existing law and practice.

76 Power to High Court to pass Acts of Adjournal

From and after the passing of this Act it shall be lawful for the Lords Commissioners of the High Court of Justiciary, and the said Court is hereby required from time to time to make all such rules and regulations, by Act of Adjournal, as may be necessary for carrying out the purposes and accomplishing the objects of this Act: Provided always, that copies of all such Acts of Adjournal shall, within fourteen days after the making thereof, be laid before both Houses of Parliament, if Parliament shall be then sitting, and if not, within fourteen days after the commencement of the then next Session of Parliament.

77 Commencement of Act

Excepting in so far as otherwise expressly provided, this Act shall take effect on and after the fifteenth day of October one thousand eight hundred and eighty-seven: Provided always, that nothing herein contained shall affect the proceedings under any criminal indictment or criminal letters served before the commencement hereof, and such proceedings shall be continued and completed according to the existing law and practice.

78 Short title

This Act may be cited as the Criminal Procedure (Scotland) Act, 1887.