

CAP. XXI.

An Act for the Removal of Defects in the administration of Criminal Justice.

[30th May, 1849.]

Preamble.

WHEREAS the technical strictness of Criminal Proceedings might in some instances be further relaxed, so as to insure the punishment of the guilty, without depriving the accused of any just means of defence; and whereas, according to the present practice of Courts of Criminal Jurisdiction it is not permitted in an Indictment for stealing property to add a Count for receiving the same property, knowing it to have been stolen, or in an Indictment for receiving stolen property, knowing it to have been stolen, to add a Count for stealing the same property, and justice is hereby often defeated: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, *An Act to re-unite the Provinces of Upper and Lower-Canada, and for the Government of Canada*; and it is hereby enacted by the authority of the same, That from and after the passing of this Act, in any Indictment for feloniously stealing property, it shall be lawful to add a Count for feloniously receiving the same property, knowing it to have been stolen; and in any Indictment for feloniously receiving property, knowing it to have been stolen, it shall be lawful to add a Count for feloniously stealing the same property: And where any such Indictment shall have been preferred and found against any person, the prosecutor shall not be put to his election, but it shall be lawful for the Jury who shall try the same to find a Verdict of Guilty, either of stealing the property or of receiving it knowing it to have been stolen: and if such Indictment shall have been preferred and found against two or more persons, it shall be lawful for the Jury who shall try the same, to find all or any of the said persons guilty, either of stealing the property or of receiving it, knowing it to have been stolen; or to find one or more persons guilty of stealing the property, and the other or others of them guilty of receiving it knowing it to have been stolen.

In an indictment for stealing a Count may be inserted for receiving; And *vice versa*. Prosecutor not to be put to his election; but the jury may find a verdict on either count. As to indictments against two or more persons.

Recital.

II. And whereas a failure of Justice frequently takes place in Criminal Trials, by reason of variances between writings produced in evidence, and the recital or setting forth thereof, in the Indictment or information, and the same cannot now be amended at the Trial, except in cases of misdemeanor: For remedy thereof—Be it enacted, That it shall and may be lawful for any Court of Queen's Bench, or other Superior Court of Criminal Jurisdiction in Lower-Canada, or of Oyer and Terminer, and General Gaol Delivery in any part of this Province, if such Court shall see fit so to do, to cause the Indictment or information for any offence whatever, when any variance or variances shall appear between any matter in writing or in print produced in evidence, and the recital or setting forth thereof, in the Indictment or information, whereon the trial is pending, to be forthwith amended in such particular or particulars by some Officer of the Court, and after such amendment the trial shall proceed in the same manner in all respects, both with regard to the liability of witnesses, to be indicted for perjury, and otherwise, as if no such variance or variances had appeared.

Indictment, &c. may be amended by order of the court in case of variance between a writing produced and that recited.

Effect of such amendment.