



ANNO VICESIMO SEXTO ET VICESIMO SEPTIMO

VICTORIÆ REGINÆ.

A.D. 1863.

No. 1.

An Act to make provision for the Punishment of Frauds committed by Trustees, Bankers, and other Persons intrusted with Property.

[Assented to, 12th November, 1863.]

WHEREAS it is expedient to make better provision for the punishment of frauds committed by trustees, bankers, and other persons intrusted with property—Be it therefore Enacted by the Governor-in-Chief of the Province of South Australia, with the advice and consent of the Legislative Council and House of Assembly of the said Province, in this present Parliament assembled, as follows:

1. If any person being a trustee of any property for the benefit, either wholly or partially, of some other person, or for any public or charitable purpose, shall, with intent to defraud, convert or appropriate the same, or any part thereof, to or for his own use or purposes, or shall, with intent aforesaid, otherwise dispose of or destroy such property, or any part thereof, he shall be guilty of a misdemeanor.

Fraudulent disposal of property by trustees.

2. If any person being a banker, merchant, broker, attorney, or agent, and being intrusted for safe custody with the property of any other person, shall, with intent to defraud, sell, negotiate, transfer, pledge, or in any manner convert or appropriate to or for his own use, such property, or any part thereof, he shall be guilty of a misdemeanor.

Fraudulent selling, &c., by bankers, &c.

3. If any person intrusted with any power of attorney for the sale or transfer of any property shall fraudulently sell, or transfer, or otherwise convert such property, or any part thereof to his own use or benefit, he shall be guilty of a misdemeanor.

And by persons under power of attorney, misdemeanors.

4. If

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Bailees fraudulently converting property, larceny.

4. If any person being a bailee of any property shall fraudulently take or convert the same to his own use, or the use of any person other than the owner thereof, although he shall not break bulk, or otherwise determine the bailment, he shall be guilty of larceny.

Directors, &c., fraudulently appropriating property.

5. If any person being a director, member, or public officer of any body corporate, or public company, shall fraudulently take or apply for his own use any of the money or other property of such body corporate or public company, he shall be guilty of a misdemeanor.

Or keeping fraudulent accounts.

6. If any person being a director, public officer, or manager, of any body corporate, or public company, shall as such receive or possess himself of any of the money or other property of such body corporate or public company, otherwise than in payment of a just debt or demand, and shall, with intent to defraud, omit to make, or to cause or to direct to be made, a full and true entry thereof in the books and accounts of such body corporate or public company, he shall be guilty of a misdemeanor.

Or wilfully destroying books, &c.

7. If any director, manager, public officer, or member of any body corporate or public company, shall, with intent to defraud, destroy, alter, mutilate, or falsify any of the books, papers, writings, or securities belonging to the body corporate or public company of which he is a director or manager, public officer, or member, or make or concur in the making of any false entry or any material omission in any book of account, or other document, he shall be guilty of a misdemeanor.

Or publishing fraudulent statements, guilty of misdemeanor.

8. If any director, manager, or public officer of any body corporate or public company shall make, circulate, or publish, or concur in making, circulating, or publishing, any written statement or account which he shall know to be false in any material particular, with intent to deceive or defraud any member, shareholder, or creditor of such body corporate or public company, or with intent to induce any person to become a shareholder or partner therein, or to intrust or advance any money or property to such body corporate or public company, or to enter into any security for the benefit thereof, he shall be guilty of a misdemeanor.

Receivers of property fraudulently disposed of, knowing, &c., guilty of misdemeanor.

9. If any person shall receive any chattel, money, or valuable security which shall have been so fraudulently disposed of as to render the party disposing thereof guilty of a misdemeanor under any of the provisions of this Act, knowing the same to have been so fraudulently disposed of, he shall be guilty of a misdemeanor, and may be indicted and convicted thereof, whether the party guilty of the principal misdemeanor shall or shall not have been previously convicted, or shall or shall not have been amenable to justice.

Punishment for a misdemeanor under his Act.

10. Any person found guilty of a misdemeanor under this Act shall be liable, at the discretion of the Court, to suffer such punishment

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ment by imprisonment for not more than seven years, with or without hard labor, as the Court shall award.

11. Nothing in this Act shall enable or entitle any person to refuse to make a full and complete discovery by answer to any bill in equity, or to answer any question or interrogatory in any civil proceeding in any Court of Law or Equity, or in the Court of Insolvency, but no answer to any such bill, question, or interrogatory, shall be admissible in evidence against such person in any proceeding under this Act.

No person exempt from giving evidence, &c.

12. Nothing in this Act, or any proceeding, conviction, or judgment, to be had or taken thereon against any person under this Act, shall prevent, lessen, or impeach any remedy at law or in equity which any person aggrieved by any offence against this Act might have had if this Act had not been passed; but no conviction of any such offender shall be received in evidence in any action at law or suit in equity against him; and nothing in this Act shall affect or prejudice any agreement entered into, or security given, by any trustee, having for its object the restoration or repayment of any trust property misappropriated.

No remedy at law or in equity shall be affected. Convictions not to be received in evidence in civil suits.

13. No proceeding or prosecution for any offence included in the first section, but not included in any other section of this Act, shall be commenced without the sanction of one of the Judges of the Supreme Court, or of the Attorney-General; provided that, where any civil proceeding shall have been taken against any person to whom the provisions of the said first section but not of any other section of this Act may apply, no person who shall have taken such civil proceeding shall commence any prosecution under this Act without the sanction of the Court or Judge before whom such civil proceeding shall have been had or shall be pending.

No prosecution shall be commenced without the sanction of some Judge, or the Attorney-General.

14. If, upon the trial of any person under this Act, it shall appear that the offence proved amounts to larceny, he shall not by reason thereof be entitled to be acquitted of a misdemeanor under this Act.

As to cases which amount to larceny.

15. No misdemeanor against this Act shall be prosecuted or tried at any Local Court.

Misdemeanor not triable at Local Court.

16. The word "Trustee" shall in this Act mean a trustee on some express trust created by some deed, will, or instrument in writing, and shall also include the heir and personal representative of any such trustee, and also all executors and administrators, receivers under any Act of the Parliament, or under any decree or order of the Supreme Court of the said Province, and all assignees in insolvency; the word "Property," shall include every description of real or personal property, goods, raw or other materials, money, debts, and legacies, and all deeds and instruments relating to or evidencing the title or right to any property, or giving a right to recover or receive

Interpretation of certain terms.

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receive any money or goods, and the word "Property" shall also denote and include not only such real and personal as may have been the original subject of a trust, but also any real or personal property into which the same may have been converted or exchanged, and the proceeds thereof respectively, and anything acquired by such proceeds.

Short title.

17. This Act may be cited as the "Frauds by Trustees Act, 1863."

In the name and on behalf of the Queen I hereby assent to
this Act.

D. DALY, Governor.