

DRAFT OF

A BILL

To Establish a Code of Criminal Law.

WHEREAS it is desirable to Declare, Consolidate, and Amend the ^{Preamble.} Criminal Law: Be it enacted and declared by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as "*The Criminal Code Act, 189 .*" ^{Short title.}

2. On and from the first day of January, one thousand ^{Establishment of} nine ^{Code.} hundred, the provisions contained in the Code of Criminal Law set forth in the First Schedule to this Act, and hereinafter called "*the Code,*" shall be the law of Queensland with respect to the several matters therein dealt with.

The said Code may be cited as "*The Criminal Code.*"

3. On and from the coming into operation of the Code— ^{Repeal.}

- 15 (1) The several Statutes of the Realm mentioned in the Second Schedule to this Act shall be repealed so far as they are in force in Queensland to the extent in the said Schedule indicated;
- 20 (2) The several Statutes of New South Wales and Queensland mentioned in the Third Schedule to this Act shall be repealed to the extent in the said Schedule indicated;
- 25 (3) The several Statutes of New South Wales and Queensland mentioned in the Fourth Schedule to this Act shall be amended in the manner in the said Schedule indicated, and shall be read and construed as being so amended accordingly.

Provided as follows:—

- 30 (1) The repeal of any Statute or part of a Statute set forth in the said Schedules shall not affect the construction of any other Statute, or of any other part of the same Statute, whether as regards the past or the future:
- 35 (2) When any enactment not mentioned in the said Schedules has been repealed, confirmed, revived, or perpetuated, by any enactment hereby repealed, such repeal, confirmation, revivor, or perpetuation, shall not be affected by the repeal effected by this Act:
- 40 (3) This Act shall not affect the validity, invalidity, effect, or consequences, of anything already done or suffered, or any existing status or capacity, or any right, title, obligation, or liability, civil or criminal, already acquired, accrued, or incurred, or any remedy or proceeding in respect thereof, or any release or discharge of or from any debt, penalty, obligation, liability, claim, or demand, or any indemnity, or the proof of any past act or thing;
- 45 and any action, prosecution, or other proceeding, begun before the coming into operation of the Code, may, subject to the provisions of the Code, be continued as if

this Act had not been passed ; and any action, prosecution, or other proceeding, in respect of anything done or omitted to be done before the coming into operation of the Code, may, subject to the provisions of the Code, be brought, taken, and prosecuted, in the same manner as if this Act had not been passed :

- (4) This Act shall not, except as expressly therein declared, affect any principle or rule of law or equity, or established jurisdiction, or form or course of pleading, practice, or procedure, notwithstanding that the same respectively may have been in any manner affirmed, recognised, or derived, by, in, or from, any enactment hereby repealed :
- (5) This Act shall not revive or restore any jurisdiction, duty, liability, right, title, privilege, restriction, exemption, usage, practice, procedure, form of punishment, or other matter or thing, not now existing or in force.

Construction of Statutes, Statutory Rules, and other instruments.

4. From and after the coming into operation of the Code, the following rules shall, unless the context otherwise indicates, apply with respect to the construction of Statutes, Statutory Rules, By-laws, and other instruments, that is to say,—

- (1) When in any Statute, Statutory Rule, By-law, or other instrument, public or private, the term “felony” is used, or reference is made to an offence by the name of felony, it shall be taken that reference is intended to an offence which is a crime under the provisions of the Code :
- (2) When in any Statute, Statutory Rule, By-law, or other instrument, public or private, the term “murder” is used, it shall be taken that reference is intended to the crime of wilful murder or murder :
- (3) When in any Statute, Statutory Rule, By-law, or other instrument, public or private, the term “larceny” is used, it shall be taken that reference is intended to the crime of stealing :
- (4) When in any Statute, Statutory Rule, By-law, or other instrument, public or private, reference is made to any offence by any specific name, it shall be intended that reference is intended to the offence which, under the provisions of the Code, is constituted by the act or omission that would heretofore have constituted the offence referred to :
- (5) When in any Statute, Statutory Rule, By-law, or other instrument, public or private, reference is made to any of the statutory provisions hereby repealed, it shall be taken that reference is intended to the corresponding provisions or substituted provisions of the Code.

Provisions of Code exclusive.

5. From and after the coming into operation of the Code, no person shall be liable to be tried or punished in Queensland as for an indictable offence or simple offence except under the express provisions of the Code or some other Statute Law of Queensland, or under the express provisions of some Statute of the United Kingdom which is in force in Queensland, or which authorises the trial and punishment in Queensland of offenders who have at places not in Queensland committed offences against the laws of the United Kingdom.

Civil remedies.

6. When by the Code any act is declared to be lawful, no action can be brought in respect thereof.

Except as aforesaid, the provisions of this Act shall not affect ^{Saving.} any right of action which any person would have had against another if this Act had not been passed; nor shall the omission from the Code of any penal provision in respect of any act or omission which before ⁵ the time of the coming into operation of the Code constituted an actionable wrong affect any right of action in respect thereof.

7. When an offender is punishable under the provisions of the Code, and also under the provisions of some other Statute, he may be ^{Offender may be prosecuted under Code or other Statute.} prosecuted and convicted under the provisions either of the Code or ¹⁰ of such other Statute; so that he is not twice punished for the same offence.

8. Nothing in this Act or in the Code shall affect the authority ^{Contempt of Court.} of Courts of Record to punish a person summarily for the offence commonly known as "Contempt of Court"; but so that a person ¹⁵ cannot be so punished and also punished under the provisions of the Code for the same act or omission.

9. Whenever any amendment is made in the Code, all copies ^{Printing of amendments.} thereof printed by the Government Printer after the amendment shall be so printed as to set forth the actual provisions of the Code after ²⁰ omitting all repealed provisions or words, and embodying all newly enacted or substituted provisions or words.

THE FIRST SCHEDULE.

THE CRIMINAL CODE OF QUEENSLAND.

²⁵ [*Here print the Code (including Table of Contents, but without those words)*]. (a).

(a) The following words have been inadvertently omitted at the end of the third paragraph of s. 640:—"until he is dealt with under the laws relating to insane persons." (Compare s. 670.)

I propose that (in order to embody the effect of a decision of the Full Court given ³⁰ since the Code was prepared) the third paragraph of s. 627 be altered, so as to read as follows:—"If the Court is not so satisfied, or if, notwithstanding that the accused person pleads that he is guilty, it appears to the Court upon examination of the depositions of the witnesses that he has not in fact committed the offence charged in the indictment or any other offence of which he might be convicted upon the indictment, ³⁵ the plea of not guilty is to be entered," &c.