

FUGITIVE OFFENDERS ACT 1881⁽¹⁾ (UNITED KINGDOM) IN ITS APPLICATION TO THE TERRITORY OF NEW GUINEA.

An Act to amend the Law with respect to Fugitive Offenders in Her Majesty's Dominions, and for other Purposes connected with the Trial of Offenders.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows; (that is to say):—

Short title.

1. This Act may be cited as the *Fugitive Offenders Act 1881*.⁽¹⁾

PART I.

RETURN OF FUGITIVES.

Liability of fugitive to be apprehended and returned.

2. Where a person accused of having committed an offence (to which this part of this Act applies) in one part of Her Majesty's dominions has left that part, such person (in this Act referred to as a fugitive from that part) if found in another part of Her Majesty's dominions, shall be liable to be apprehended and returned in manner provided by this Act to the part from which he is a fugitive.

A fugitive may be so apprehended under an endorsed warrant or a provisional warrant.

Endorsing of warrant for apprehension of fugitive.

3. Where a warrant has been issued in one part of Her Majesty's dominions for the apprehension of a fugitive from that part, any of the following authorities in another part of Her Majesty's dominions in or on the way to which the fugitive is or is suspected to be; (that is to say)—

(1) A judge of a superior court in such part; and

(1) The *Fugitive Offenders Act 1881* of the United Kingdom, in its application to the Territory of New Guinea, comprises the original *Fugitive Offenders Act 1881*, as amended by the other Act of the United Kingdom referred to in the following Table:—

ACTS OF THE UNITED KINGDOM.

Short title.	Order in Council by which applied to the Territory of New Guinea.	Date from which applied to the Territory of New Guinea.
<i>Fugitive Offenders Act 1881</i> (44 & 45 Vic. c. 69)	New Guinea and Nauru (Fugitive Offenders) Order in Council, 1925	1.11.1925 (Clause 2, New Guinea and Nauru (Fugitive Offenders) Order in Council, 1925)
<i>Statute Law Revision Act, 1894</i> (57 & 58 Vic. c. 56)	New Guinea and Nauru (Fugitive Offenders) Order in Council, 1925	1.11.1925 (Clause 2, New Guinea and Nauru (Fugitive Offenders) Order in Council, 1925)

Fugitive Offenders Act 1881 (United Kingdom).

(2) In the United Kingdom a Secretary of State and one of the magistrates of the metropolitan police court in Bow Street; and

(3) In a British possession the governor of that possession,

if satisfied that the warrant was issued by some person having lawful authority to issue the same, may endorse such warrant in manner provided by this Act, and the warrant so endorsed shall be a sufficient authority to apprehend the fugitive in the part of Her Majesty's dominions in which it is endorsed, and bring him before a magistrate.

4. A magistrate of any part of Her Majesty's dominions may issue a provisional warrant for the apprehension of a fugitive who is or is suspected of being in or on his way to that part on such information, and under such circumstances, as would in his opinion justify the issue of a warrant if the offence of which the fugitive is accused had been committed within his jurisdiction, and such warrant may be backed and executed accordingly.

Provisional
warrant for
apprehension of
fugitive.

A magistrate issuing a provisional warrant shall forthwith send a report of the issue, together with the information or a certified copy thereof, if he is in the United Kingdom, to a Secretary of State, and if he is in a British possession, to the governor of that possession, and the Secretary of State or governor may, if he think fit, discharge the person apprehended under such warrant.

5. A fugitive when apprehended shall be brought before a magistrate, who (subject to the provisions of this Act) shall hear the case in the same manner and have the same jurisdiction and powers, as near as may be (including the power to remand and admit to bail), as if the fugitive were charged with an offence committed within his jurisdiction.

Dealing with
fugitive when
apprehended.

If the endorsed warrant for the apprehension of the fugitive is duly authenticated, and such evidence is produced as (subject to the provisions of this Act) according to the law ordinarily administered by the magistrate, raises a strong or probable presumption that the fugitive committed the offence mentioned in the warrant, and that the offence is one to which this part of this Act applies, the magistrate shall commit the fugitive to prison to await his return, and shall forthwith send a certificate of the committal and such report of the case as he may think fit, if in the United Kingdom to a Secretary of State, and if in a British possession to the governor of that possession.

Where the magistrate commits the fugitive to prison he shall inform⁽²⁾ the fugitive that he will not be surrendered until after

(2) See now Clause 4 of the *New Guinea and Nauru (Fugitive Offenders) Order in Council, 1925*, printed on p. 1730.

the expiration of fifteen days, and that he has a right to apply for a writ of habeas corpus, or other like process.

A fugitive apprehended on a provisional warrant may be from time to time remanded for such reasonable time not exceeding seven days at any one time as under the circumstances seems requisite for the production of an endorsed warrant.

Return of
fugitive by
warrant.

6. Upon the expiration of fifteen days⁽³⁾ after a fugitive has been committed to prison to await his return, or if a writ of habeas corpus or other like process is issued with reference to such fugitive by a superior court, after the final decision of the court in the case,

- (1) if the fugitive is so committed in the United Kingdom, a Secretary of State; and
- (2) if the fugitive is so committed in a British possession, the governor of that possession,

may, if he thinks it just, by warrant under his hand order that fugitive to be returned to the part of Her Majesty's dominions from which he is a fugitive, and for that purpose to be delivered into the custody of the persons to whom the warrant is addressed, or some one or more of them, and to be held in custody, and conveyed by sea or otherwise to the said part of Her Majesty's dominions, to be dealt with there in due course of law as if he had been there apprehended, and such warrant shall be forthwith executed according to the tenor thereof.

The governor or other chief officer of any prison, on request of any person having the custody of a fugitive under any such warrant, and on payment or tender of a reasonable amount for expenses shall receive such fugitive and detain him for such reasonable time as may be requested by the said person for the purpose of the proper execution of the warrant.

Discharge of
person
apprehended if
not returned
within one
month.

7. If a fugitive who, in pursuance of this part of this Act, has been committed to prison in any part of Her Majesty's dominions to await his return, is not conveyed out of that part within one month after such committal, a superior court, upon application by or on behalf of the fugitive, and upon proof that reasonable notice of the intention to make such application has been given, if the said part is the United Kingdom to a Secretary of State, and if the said part is a British possession to the governor of the possession, may, unless sufficient cause is shown to the contrary, order the fugitive to be discharged out of custody.

Sending back
of persons
apprehended
if not
prosecuted
within six
months or
acquitted.

8. Where a person accused of an offence and returned in pursuance of this part of this Act to any part of Her Majesty's dominions, either is not prosecuted for the said offence within six

(3) See now Clause 5 of the *New Guinea and Nauru (Fugitive Offenders) Order in Council*, 1925, printed on p. 1730.

Fugitive Offenders Act 1881 (United Kingdom).

months after his arrival in that part, or is acquitted of the said offence, then if that part is the United Kingdom a Secretary of State, and if that part is a British possession the governor of that possession, may, if he think fit, on the request of such person, cause him to be sent back free of cost and with as little delay as possible to the part of Her Majesty's dominions in or on his way to which he was apprehended.

9. This part of this Act shall apply to the following offences, namely, to treason and piracy, and to every offence, whether called felony, misdemeanour, crime, or by any other name, which is for the time being punishable in the part of Her Majesty's dominions in which it was committed, either on indictment or information, by imprisonment with hard labour for a term of twelve months or more, or by any greater punishment; and for the purposes of this section, rigorous imprisonment, and any confinement in a prison combined with labour, by whatever name it is called, shall be deemed to be imprisonment with hard labour.

Offences to which this part of this Act applies.

This part of this Act shall apply to an offence notwithstanding that by the law of the part of Her Majesty's dominions in or on his way to which the fugitive is or is suspected of being it is not an offence to which this part of this Act applies; and all the provisions of this part of this Act, including those relating to a provisional warrant and to a committal to prison, shall be construed as if the offence were in such last-mentioned part of Her Majesty's dominions an offence to which this part of this Act applies.

10. Where it is made to appear to a superior court that by reason of the trivial nature of the case, or by reason of the application for the return of a fugitive not being made in good faith in the interests of justice or otherwise, it would, having regard to the distance, to the facilities for communication, and to all the circumstances of the case, be unjust or oppressive or too severe a punishment to return the fugitive either at all or until the expiration of a certain period, such court may discharge the fugitive, either absolutely or on bail, or order that he shall not be returned until after the expiration of the period named in the order, or may make such other order in the premises as to the court seems just.

Powers of superior court to discharge fugitive when case frivolous or return unjust.

11. In Ireland the Lord Lieutenant may, as well as a Secretary of State, execute any portion of the powers by this part of this Act vested in a Secretary of State.

Power of Lord Lieutenant in Ireland.

Amended by Imp. 57 & 58 Vlc. c. 56, s. 1 and 1st Schedule.

CRIMINAL LAW—

PART II.

INTER-COLONIAL BACKING OF WARRANTS, AND OFFENCES.

Application of part of Act.

Application of part of Act to group of British possessions.

12. This part of this Act shall apply only to those groups of British possessions⁽⁴⁾ to which, by reason of their contiguity or otherwise, it may seem expedient to Her Majesty to apply the same.

It shall be lawful for Her Majesty from time to time by Order in Council⁽⁵⁾ to direct that this part of this Act shall apply to the group of British possessions mentioned in the Order, and by the same or any subsequent order to except certain offences from the application of this part of this Act, and to limit the application of this part of this Act by such conditions, exceptions, and qualifications as may be deemed expedient.

Backing of Warrants.

Backing in one British possession of warrant issued in another of same group.

13. Where in a British possession of a group to which this part of this Act applies a warrant has been issued for the apprehension of a person accused of an offence punishable by law in that possession, and such person is or is suspected of being in or on the way to another British possession of the same group, a magistrate in the last-mentioned possession, if satisfied that the warrant was issued by a person having lawful authority to issue the same, may endorse such warrant in manner provided by this Act, and the warrant so endorsed shall be a sufficient authority to apprehend, within the jurisdiction of the endorsing magistrate, the person named in the warrant, and bring him before the endorsing magistrate or some other magistrate in the same British possession.

Return of prisoner apprehended under backed warrant.

14. The magistrate before whom a person so apprehended is brought, if he is satisfied that the warrant is duly authenticated as directed by this Act and was issued by a person having lawful authority to issue the same, and is satisfied on oath that the prisoner is the person named or otherwise described in the warrant, may order such prisoner to be returned to the British possession in

(4) *Held*, by the High Court, in *Frost v Stevenson* (1937) 58 C.L.R. 528; 43 A.L.R. 533; 11 A.L.J. 205, (a) By the whole Court, that the two Orders in Council of 12.10.1925 under the *Fugitive Offenders Act 1881* (United Kingdom) are effectual to apply Part II of that Act for the purpose of the mutual surrender of fugitives between the Mandated Territory of New Guinea and the Commonwealth; and (b) By Latham C.J. and Evatt J. (Rich J. not deciding, and Dixon and McTiernan JJ. *contra*), that the relevant provisions of the Commonwealth *Service and Execution of Process Act 1901-1934* and the regulations thereunder, in their application to the surrender of fugitives between the Commonwealth and the Mandated Territory, are not repugnant to the relevant provisions of the *Fugitive Offenders Act 1881* (United Kingdom) or to the Orders in Council of 12.10.1925 applying the same as between the Commonwealth and the Mandated Territory. (Subsequent to this decision, the *Service and Execution of Process Ordinance 1921* was repealed by the *Service and Execution of Process Ordinance Repeal Ordinance 1938*.)

(5) A Table, containing particulars of Orders in Council made pursuant to Section 12 directing that Part II of the Act shall apply to groups of British possessions which include New Guinea, is printed on p. 1728, and the Orders in Council are printed immediately after the Table.

which the warrant was issued, and for that purpose to be delivered into the custody of the persons to whom the warrant is addressed, or any one or more of them, and to be held in custody and conveyed by sea or otherwise into the British possession in which the warrant was issued, there to be dealt with according to law as if he had been there apprehended. Such order for return may be made by warrant under the hand of the magistrate making it, and may be executed according to the tenor thereof.

A magistrate shall, so far as is requisite for the exercise of the powers of this section, have the same power, including the power of remand and admit to bail a prisoner, as he has in the case of a person apprehended under a warrant issued by him.

15. Where a person required to give evidence on behalf of the prosecutor or defendant on a charge for an offence punishable by law in a British possession of a group to which this part of this Act applies, is or is suspected of being in or on his way to any other British possession of the same group, a judge, magistrate, or other officer who would have lawful authority to issue a summons, requiring the attendance of such witness, if the witness were within his jurisdiction, may issue a summons for the attendance of such witness, and a magistrate in any other British possession of the same group if satisfied that the summons was issued by some judge, magistrate, or officer having lawful authority as aforesaid, may endorse the summons with his name; and the witness, on service in that possession of the summons, so endorsed, and on payment or tender of a reasonable amount for his expenses, shall obey the summons, and in default shall be liable to be tried and punished either in the possession in which he is served or in the possession in which the summons was issued, and shall be liable to the punishment imposed by the law of the possession in which he is tried for the failure of a witness to obey such a summons. The expression "summons" in this section includes any subpoena or other process for requiring the attendance of a witness.

Backing in one British possession of summons, &c., of witness issued in another possession of same group.

16. A magistrate in a British possession of a group to which this part of this Act applies, before the endorsement in pursuance of this part of this Act of a warrant for the apprehension of any person, may issue a provisional warrant for the apprehension of that person, on such information and under such circumstances as would in his opinion justify the issue of a warrant if the offence of which such person is accused were an offence punishable by the law of the said possession, and had been committed within his jurisdiction, and such warrant may be backed and executed accordingly; provided that a person arrested under such provisional warrant shall be discharged unless the original warrant is produced and endorsed within such reasonable time as may under the circumstances seem requisite.

Provisional warrant in group of British possessions.

Discharge of prisoner not returned within one month to British possession of same group.

17. If a prisoner in a British possession whose return is authorised in pursuance of this part of this Act is not conveyed out of that possession within one month after the date of the warrant ordering his return, a magistrate or a superior court, upon application by or on behalf of the prisoner, and upon proof that reasonable notice of the intention to make such application has been given to the person holding the warrant and to the chief officer of the police of such possession or of the province or town where the prisoner is in custody, may, unless sufficient cause is shown to the contrary, order such prisoner to be discharged out of custody.

Any order or refusal to make an order of discharge by a magistrate under this section shall be subject to appeal to a superior court.

Sending back of prisoner not prosecuted or acquitted to British possession of same group.

18. Where a prisoner accused of an offence is returned in pursuance of this part of this Act to a British possession, and either is not prosecuted for the said offence within six months after his arrival in that possession or is acquitted of the said offence, the governor of that possession, if he thinks fit, may, on the requisition of such person, cause him to be sent back, free of cost, and with as little delay as possible, to the British possession in or on his way to which he was apprehended.

Refusal to return prisoner where offence too trivial.

19. Where the return of a prisoner is sought or ordered under this part of this Act, and it is made to appear to a magistrate or to a superior court that by reason of the trivial nature of the case, or by reason of the application for the return of such prisoner not being made in good faith in the interests of justice or otherwise, it would, having regard to the distance, to the facilities of communication, and to all the circumstances of the case, be unjust or oppressive, or too severe a punishment, to return the prisoner either at all or until the expiration of a certain period, the court or magistrate may discharge the prisoner either absolutely or on bail, or order that he shall not be returned until after the expiration of the period named in the order, or may make such other order in the premises as to the magistrate or court seems just.

Any order or refusal to make an order of discharge by a magistrate under this section shall be subject to an appeal to a superior court.

PART III.

TRIAL, &C., OF OFFENCES.

Offences committed on boundary of two adjoining British possessions.

20. Where two British possessions adjoin, a person accused of an offence committed on or within the distance of five hundred yards from the common boundary of such possessions may be apprehended, tried, and punished in either of such possessions.

21. Where an offence is committed on any person or in respect of any property in or upon any carriage, cart, or vehicle whatsoever employed in a journey, or on board any vessel whatsoever employed in a navigable river, lake, canal, or inland navigation, the person accused of such offence may be tried in any British possession through a part of which such carriage, cart, vehicle, or vessel passed in the course of the journey or voyage during which the offence was committed; and where the side, bank, centre, or other part of the road, river, lake, canal, or inland navigation along which the carriage, cart, vehicle, or vessel passed in the course of such journey or voyage is the boundary of any British possession, a person may be tried for such offence in any British possession of which it is the boundary:

Offences committed on journey between two British possessions.

Provided that nothing in this section shall authorise the trial for such offence of a person who is not a British subject, where it is not shown that the offence was committed in a British possession.

22. A person accused of the offence (under whatever name it is known) of swearing or making any false deposition, or of giving or fabricating any false evidence, for the purposes of this Act, may be tried either in the part of Her Majesty's dominions in which such deposition or evidence is used, or in the part in which the same was sworn, made, given, or fabricated, as the justice of the case may require.

Trial of offence of false swearing or giving false evidence.

23. Where any part of this Act provides for the place of trial of a person accused of an offence, that offence shall, for all purposes of and incidental to the apprehension, trial, and punishment of such person, and of and incidental to any proceedings and matters preliminary, incidental to, or consequential thereon, and of and incidental to the jurisdiction of any court, constable, or officer with reference to such offence, and to any person accused of such offence, be deemed to have been committed in any place in which the person accused of the offence can be tried for it; and such person may be punished in accordance with the *Courts (Colonial) Jurisdiction Act 1874*.⁽⁶⁾

Supplemental provision as to trial of person in any place.

37 & 38 Vict. c. 27.

24. Where a warrant for the apprehension of a person accused of an offence has been endorsed in pursuance of any part of this Act in any part of Her Majesty's dominions, or where any part of the Act provides for the place of trial of a person accused of an offence, every court and magistrate of the part in which the warrant is endorsed or the person accused of the offence can be tried shall have the same power of issuing a warrant to search for any property alleged to be stolen or to be otherwise unlawfully taken or obtained by such person, or otherwise to be the subject of such

Issue of search warrant.

(6) The *Courts (Colonial) Jurisdiction Act 1874* (United Kingdom) has not been printed in this Annotated Reprint.

offence, as that court or magistrate would have if the property had been stolen or otherwise unlawfully taken or obtained, or the offence had been committed wholly within the jurisdiction of such court or magistrate.

Removal of prisoner by sea from one place to another.

25. Where a person is in legal custody in a British possession either in pursuance of this Act or otherwise, and such person is required to be removed in custody to another place in or belonging to the same British possession, such person, if removed by sea in a vessel belonging to Her Majesty or any of Her Majesty's subjects, shall be deemed to continue in legal custody until he reaches the place to which he is required to be removed; and the provisions of this Act with respect to the retaking of a prisoner who has escaped, and with respect to the trial and punishment of a person guilty of the offence of escaping or attempting to escape, or aiding or attempting to aid a prisoner to escape, shall apply to the case of a prisoner escaping while being lawfully removed as aforesaid, in like manner as if he were being removed in pursuance of a warrant endorsed in pursuance of this Act.

PART IV.

SUPPLEMENTAL.

Warrants and Escape.

Endorsement of warrant.

26. An endorsement of a warrant in pursuance of this Act shall be signed by the authority endorsing the same, and shall authorise all or any of the persons named in the endorsement, and of the persons to whom the warrant was originally directed, and also every constable, to execute the warrant within the part of Her Majesty's dominions or place within which such endorsement is by this Act made a sufficient authority, by apprehending the person named in it, and bringing him before some magistrate in the said part or place, whether the magistrate named in the endorsement or some other.

For the purposes of this Act every warrant, summons, subpœna, and process, and every endorsement made in pursuance of this Act thereon, shall remain in force, notwithstanding that the person signing the warrant or such endorsement dies or ceases to hold office.

Conveyance of fugitives and witnesses.

27. Where a fugitive or prisoner is authorised to be returned to any part of Her Majesty's dominions in pursuance of Part One or Part Two of this Act, such fugitive or prisoner may be sent thither in any ship belonging to Her Majesty or to any of her subjects.

Fugitive Offenders Act 1881 (United Kingdom).

For the purpose aforesaid, the authority signing the warrant for the return may order the master of any ship belonging to any subject of Her Majesty bound to the said part of Her Majesty's dominions to receive and afford a passage and subsistence during the voyage to such fugitive or prisoner, and to the person having him in custody, and to the witnesses, so that such master be not required to receive more than one fugitive or prisoner for every hundred tons of his ship's registered tonnage, or more than one witness for every fifty tons of such tonnage.

The said authority shall endorse or cause to be endorsed upon the agreement of the ship such particulars with respect to any fugitive prisoner or witness sent in her as the Board of Trade from time to time require.

Every such master shall, on his ship's arrival in the said part of Her Majesty's dominions, cause such fugitive or prisoner, if he is not in the custody of any person, to be given into the custody of some constable, there to be dealt with according to law.

Every master who fails on payment or tender of a reasonable amount for expenses to comply with an order made in pursuance of this section, or to cause a fugitive or prisoner committed to his charge to be given into custody as required by this section, shall be liable on summary conviction to a fine not exceeding Fifty pounds, which may be recovered in any part of Her Majesty's dominions in like manner as a penalty of the same amount under the *Merchant Shipping Act 1854*⁽⁷⁾ and the Acts amending the same.

17 & 18 Vict.
c. 104.

28. If a prisoner escape, by breach of prison or otherwise, out of custody of a person acting under a warrant issued or endorsed in pursuance of this Act, he may be retaken in the same manner as a person accused of a crime against the law of that part of Her Majesty's dominions to which he escapes may be retaken upon an escape.

Escape of
prisoner from
custody.

A person guilty of the offence of escaping or of attempting to escape, or of aiding or attempting to aid a prisoner to escape, by breach of prison or otherwise, from custody under any warrant issued or endorsed in pursuance of this Act, may be tried in any of the following parts of Her Majesty's dominions, namely, the part to which and the part from which the prisoner is being removed, and the part in which the prisoner escapes and the part in which the offender is found.

Evidence.

29. A magistrate may take depositions for the purposes of this Act in the absence of a person accused of an offence in like manner as he might take the same if such person were present and accused of the offence before him.

Depositions to
be evidence, and
authentication
of depositions
and warrants.

(7) The *Merchant Shipping Acts* (United Kingdom) have not been printed in this Annotated Reprint.

Depositions (whether taken in the absence of the fugitive or otherwise) and copies thereof, and official certificates of or judicial documents stating facts, may, if duly authenticated, be received in evidence in proceedings under this Act.

Provided that nothing in this Act shall authorise the reception of any such depositions, copies, certificates, or documents in evidence against a person upon his trial for an offence.

Warrants and depositions, and copies thereof, and official certificates of or judicial documents stating facts, shall be deemed duly authenticated for the purpose of this Act if they are authenticated in manner provided for the time being by law, or if they purport to be signed by or authenticated by the signature of a judge, magistrate, or officer of the part of Her Majesty's dominions in which the same are issued, taken, or made, and are authenticated either by the oath of some witness, or by being sealed with the official seal of a Secretary of State, or with the public seal of a British possession, or with the official seal of a governor of a British possession, or of a colonial secretary, or of some secretary or minister administering a department of the government of a British possession.

And all courts and magistrates shall take judicial notice of every such seal as is in this section mentioned, and shall admit in evidence without further proof the documents authenticated by it.

Miscellaneous.

Provision as to
exercise of
jurisdiction by
magistrates.

30. The jurisdiction under Part One of this Act to hear a case and commit a fugitive to prison to await his return shall be exercised—

- (1) In England, by a chief magistrate of the metropolitan police courts or one of the other magistrates of the metropolitan police courts at Bow Street; and
- (2) In Scotland, by the sheriff or sheriff substitute of the county of Edinburgh; and
- (3) In Ireland, by one of the police magistrates of the Dublin metropolitan police district; and
- (4) In a British possession, by any judge, justice of the peace, or other officer having the like jurisdiction as one of the magistrates of the metropolitan police court in Bow Street, or by such other court, judge, or magistrate as may be from time to time provided by an Act or Ordinance passed by the legislature of that possession.

If a fugitive is apprehended and brought before a magistrate who has no power to exercise the jurisdiction under this Act in respect of that fugitive, that magistrate shall order the fugitive to be brought before some magistrate having that jurisdiction, and such order shall be obeyed.

Fugitive Offenders Act 1881 (United Kingdom).

31. It shall be lawful for Her Majesty in Council from time to time to make Orders for the purpose of this Act, and to revoke and vary any Order so made, and every Order so made shall while it is in force have the same effect as if it were enacted in this Act.

Power as to making and revocation of Orders in Council.

An Order in Council made for the purpose of this Act shall be laid before Parliament as soon as may be after it is made if Parliament is then in session, or if not, as soon as may be after the commencement of the then next session of Parliament.

32. If the legislature of a British possession pass any Act or Ordinance—

Power of legislature of British possession to pass laws for carrying into effect this Act.

- (1) For defining the offences committed in that possession to which this Act or any part thereof is to apply; or
- (2) For determining the court, judge, magistrate, officer, or person by whom and the manner in which any jurisdiction or power under this Act is to be exercised; or
- (3) For payment of the costs incurred in returning a fugitive or a prisoner, or in sending him back if not prosecuted or if acquitted, or otherwise in the execution of this Act; or
- (4) In any manner for the carrying of this Act or any part thereof into effect in that possession,

it shall be lawful for Her Majesty by Order in Council⁽⁸⁾ to direct, if it seems to Her Majesty in Council necessary or proper for carrying into effect the objects of this Act, that such Act or

(8) Pursuant to Section 32, His Majesty, by Orders in Council (particulars of which are set out in the Table below) has directed that the respective Acts or Ordinances specified therein be recognized as if they were part of the *Fugitive Offenders Act 1881*.

TABLE.

[N.B.—Column 4 of the Table gives a reference to either the Volume and page of the 1904 (Revised) edition of St.R. & O., or the page of the Annual Volume of St.R. & O. on which the Orders in Council are printed.]

Date on which Order in Council made.	Date on which published in <i>London Gaz.</i>	Acts or Ordinances specified therein.	Year, volume (if any) and page of St.R. & O. on which printed.
7.3.1904	8.3.1904	Chapter IV of the Indian <i>Extradition Act 1903</i>	1904, (Rev.), Vol. V, p. 255 ^(a)
22.10.1906	26.10.1906	"An Act to provide for the more convenient administration of the <i>Fugitive Offenders Act, 1881</i> , of the <i>Imperial Parliament</i> ," of Natal	1906, p. 289
29.1.1923	30.1.1923	<i>Fugitive Offenders Ordinance, 1922</i> , of the Straits Settlements	1923, p. 353
29.7.1937	6.8.1937	Chapter IV of the Burma <i>Extradition Act</i>	1937, p. 821

(a) Printed in Volume V of the 1904 (Revised) Edition of St.R. & O. under the Section Title of "Fugitive Criminal."

CRIMINAL LAW—

Ordinance, or any part thereof, shall with or without modification or alteration be recognized and given effect to throughout Her Majesty's dominions and on the high seas as if it were part of this Act.

Application of Act.

Application of Act to offences at sea or triable in several parts of Her Majesty's dominions.

33. Where a person accused of an offence can, by reason of the nature of the offence, or of the place in which it was committed, or otherwise, be, under this Act or otherwise, tried for or in respect of the offence in more than one part of Her Majesty's dominions, a warrant for the apprehension of such person may be issued in any part of Her Majesty's dominions in which he can, if he happens to be there, be tried; and each part of this Act shall apply as if the offence had been committed in the part of Her Majesty's dominions where such warrant is issued, and such person may be apprehended and returned in pursuance of this Act, notwithstanding that in the place in which he is apprehended a court has jurisdiction to try him:

Provided that if such person is apprehended in the United Kingdom a Secretary of State, and if he is apprehended in a British possession, the governor of such possession, may, if satisfied that, having regard to the place where the witnesses for the prosecution and for the defence are to be found, and to all the circumstances of the case, it would be conducive to the interests of justice so to do, order such person to be tried in the part of Her Majesty's dominions in which he is apprehended, and in such case any warrant previously issued for his return shall not be executed.

Application of Acts to convicts.

34. Where a person convicted by a court in any part of Her Majesty's dominions of an offence committed either in Her Majesty's dominions or elsewhere, is unlawfully at large before the expiration of his sentence, each part of this Act shall apply to such person, so far as is consistent with the tenor thereof, in like manner as it applies to a person accused of the like offence committed in the part of Her Majesty's dominions in which such person was convicted.

Application of Act to removal of person triable in more than one part of Her Majesty's dominions.

35. Where a person accused of an offence is in custody in some part of Her Majesty's dominions, and the offence is one for or in respect of which, by reason of the nature thereof or of the place in which it was committed or otherwise, a person may under this Act or otherwise be tried in some other part of Her Majesty's dominions, in such case a superior court, and also if such person is in the United Kingdom a Secretary of State, and if he is in a British possession the governor of that possession, if satisfied that, having regard to the place where the witnesses for the prosecution and for the defence are to be found, and to all the circumstances of the case, it would be conducive to the interests of justice so to do, may

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by warrant direct the removal of such offender to some other part of Her Majesty's dominions in which he can be tried, and the offender may be returned, and, if not prosecuted or acquitted, sent back free of cost in like manner as if he were a fugitive returned in pursuance of Part One of this Act, and the warrant were a warrant for the return of such fugitive, and the provisions of this Act shall apply accordingly.

36. It shall be lawful for Her Majesty from time to time by Order in Council⁽⁹⁾ to direct that this Act shall apply as if, subject to the conditions, exceptions, and qualifications (if any) contained in the Order, any place out of Her Majesty's dominions in which Her Majesty has jurisdiction, and which is named in the Order, were a British possession, and to provide for carrying into effect such application.

Application of Act to foreign jurisdiction.

37. This Act shall extend to the Channel Islands and Isle of Man as if they were part of England and of the United Kingdom, and the United Kingdom and those islands shall be deemed for the purpose of this Act to be one part of Her Majesty's dominions; and a warrant endorsed in pursuance of Part One of this Act may be executed in every place in the United Kingdom and the said islands accordingly.

Application of Act to, and execution of warrant in United Kingdom, Channel Islands, and Isle of Man.

38. This Act shall apply where an offence is committed before the commencement of this Act, or, in the case of Part Two of this Act, before the application of that part to a British possession or to the offence, in like manner as if such offence had been committed after such commencement or application.

Application of Act to past offences.

Definitions and Repeal.

39. In this Act, unless the context otherwise requires—

* * * * *

Definition of terms.
"Secretary of State."
Omitted by Imp. 57 & 58 Vic. c. 56, s. 1 and 1st Schedule.

The expression "British possession"⁽⁴⁾ means any part of Her Majesty's dominions, exclusive of the United Kingdom, the Channel Islands, and Isle of Man; all territories and places within Her Majesty's dominions which are under one legislature shall be deemed to be one British possession and one part of Her Majesty's dominions:

"British possession."

The expression "legislature," where there are local legislatures as well as a central legislature, means the central legislature only:

"Legislature."

(4) See footnote (4) printed on p. 1716.

(9) A Table, containing particulars of the Orders in Council directing that the *Fugitive Offenders Act 1881* shall apply to places out of His Majesty's dominions in which His Majesty has jurisdiction, is printed on p. 1732.

CRIMINAL LAW—

- “Governor.” The expression “governor” means any person or persons administering the government of a British possession, and includes the governor and lieutenant-governor of any part of India:
- “Constable.” The expression “constable” means, out of England, any policeman or officer having the like powers and duties as a constable in England:
- “Magistrate.” The expression “magistrate” means, except in Scotland, any justice of the peace, and in Scotland means a sheriff or sheriff substitute, and in the Channel Islands, Isle of Man, and a British possession means any person having authority to issue a warrant for the apprehension of persons accused of offences and to commit such persons for trial:
- “Offence punishable on indictment.” The expression “offence punishable on indictment” means, as regards India, an offence punishable on a charge or otherwise:
- “Oath.” The expression “oath” includes affirmation or declaration in the case of persons allowed by law to affirm or declare instead of swearing, and the expression “swear” and other words relating to an oath or swearing shall be construed accordingly:
- “Deposition.” The expression “deposition” includes any affidavit, affirmation, or statement made upon oath as above defined:
- “Superior court.” The expression “superior court” means—
- (1) In England, Her Majesty’s Court of Appeal and High Court of Justice; and
 - (2) In Scotland, the High Court of Justiciary; and
 - (3) In Ireland, Her Majesty’s Court of Appeal and Her Majesty’s Court of Justice at Dublin; and
 - (4) In a British possession, any court having in that possession the like criminal jurisdiction to that which is vested in the High Court of Justice in England, or such court or judge as may be determined by any Act or Ordinance of that possession.

Section 40
repealed by
Imp. 57 & 58
Vic. c. 56,
s. 1 and
1st Schedule.

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Fugitive Offenders Act 1881 (United Kingdom).

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**Section 41
repealed by
Imp. 57 & 58
Vic. c. 56,
s. 1 and
1st Schedule.**

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**Schedule
repealed by
Imp. 57 & 58
Vic. c. 56,
s. 1 and
1st Schedule.**

