



ANNO DUODECIMO

# GEORGII V REGIS.

A.D. 1921.

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## No. 1479.

An Act to consolidate and amend certain Statutes relating to Justices of the Peace.

[Assented to, December 7th, 1921.]

**B**E it Enacted by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

### PART I.

### PART I

#### INTRODUCTORY.

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|---|----------------------|
| 1. This Act may be cited as the "Justices Act, 1921."                       | Short title.         |
| 2. This Act shall come into operation on a day to be fixed by proclamation. | Commencement of Act. |
| 3. This Act is divided into Parts and Divisions as follows:—                | Division of Act.     |
| PART I.—Introductory (sections 1 to 9).                                     |                      |
| PART II.—Justices (sections 10 to 19).                                      |                      |
| PART III.—General Procedure (sections 20 to 41).                            |                      |
| PART IV.—Summary Jurisdiction—  |                      |
| DIVISION I.—Courts of Summary Jurisdiction (sections 42 to 48):             |                      |
| DIVISION II.—The Complaint and the Proceedings thereon (sections 49 to 60): |                      |
| DIVISION III.—The Hearing (sections 61 to 69):                              |                      |
| DIVISION IV.—The Judgment (sections 70 to 76):                              |                      |

DIVISION

## PART I.

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DIVISION V.—Costs (sections 77 to 79):

DIVISION VI.—Execution (sections 80 to 98):

DIVISION VII.—Sureties to Keep the Peace (sections 99 and 100).

## PART V.—Indictable Offences—

DIVISION I.—Procedure to Committal (sections 101 to 119):

DIVISION II.—Minor Offences (sections 120 to 133):

DIVISION III.—Committal for Sentence (sections 134 to 142):

DIVISION IV.—Bail (sections 143 to 150):

DIVISION V.—Miscellaneous (sections 151 to 161).

PART VI.—Appeals from Courts of Summary Jurisdiction (sections 162 to 180).

PART VII.—Supplementary Provisions (sections 181 to 203).

## Interpretation.

## 4. In this Act, unless inconsistent with the context—

“Clerk” means clerk appointed by or under section 42:

“Complaint” includes a charge of a minor indictable offence, if, and when, a Court of Summary Jurisdiction proceeds to dispose of such charge summarily:

“Court of Summary Jurisdiction” or “Court” means Justices forming a Court for the purposes of hearing and adjudicating upon any case or matter which they have power to determine in a summary manner, and whether they are acting under this Act, or under any other Act incorporated herewith, or by virtue of their commissions, or under the common law:

“Defendant” means person charged with any offence or against whom relief is sought:

“Fine” includes any pecuniary penalty or pecuniary forfeiture or pecuniary compensation payable under a conviction:

“Gaol” includes any prison or other place in which imprisonment or detention is authorised by law according to the circumstances of the case:

“Guardian” in relation to a child includes any person who, in the opinion of the Justices having cognizance of any case in which a child is concerned, has, for the time being, the charge of, or control over, such child:

“Justice” means Justice of the Peace for the State of South Australia, and includes any Magistrate, by whatever name called, who is authorised to act as a Justice of the Peace in and for the said State:

“Justices”

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“Justices” includes a Special Magistrate or any other single Justice, where a Special Magistrate or one Justice (as the case may be) has jurisdiction or authority to act in relation to the matter in question :

“Keeper of a gaol” includes any superintendent, keeper, or other chief officer of a gaol :

“Minor indictable offence” means indictable offence which is capable of being, and is, in the opinion of the Justice before whom the case comes, fit to be, heard and determined in a summary way under the provisions of Division II. of Part V. of this Act :

“Simple offence” means offence or act for which a person is liable by law, upon a summary conviction for the same before a Justice or Justices, to be imprisoned or fined or both or to be otherwise punished ; but does not include an indictable offence which can only be heard and determined in a summary way as a minor indictable offence :

“Special Act” means statute, rule, regulation, or by-law authorising the making of the conviction or order, or the determination or adjudication in question, or otherwise specially applicable to the case :

“Sum adjudged to be paid by a conviction” and “Sum adjudged to be paid by an order” respectively include any costs adjudged to be paid by the conviction or order (as the case may be) of which the amount is ascertained by such conviction or order :

In Division IV. of Part V. “for trial” in relation to “committal for trial” includes “to appear for sentence.”

5. Every power in this Act expressed to be exercisable by a single Justice may be exercised by any two or more Justices acting together ; or in the case of Justices sitting as a Court, by any two or more Justices constituting a majority of such Court, and the provisions of this Act conferring powers upon a single Justice and referring thereto shall be read accordingly.

Interpretation with respect to powers conferred upon a single Justice.

6. The authority and jurisdiction by this Act vested in the Supreme Court may, subject to any rules or orders of such Court in relation thereto, be exercised by a Judge of such Court sitting in Court or in Chambers.

Powers of Supreme Court may be exercised by a Judge in Chambers.

7. Nothing in this Act shall be construed to diminish or take away any power or authority conferred upon any Justice by any other Act or otherwise existing at law, except in so far as the provisions of this Act are inconsistent with the existence or exercise of such power or authority.

Powers conferred by this Act to be in amplification of powers existing by law unless inconsistent with this Act.

8. (1) The Acts mentioned in the First Schedule hereto are, to the extent therein expressed, hereby repealed.

Repeal and saving clause.

(2) All

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(2) All proceedings initiated before the commencement of this Act shall be carried on as far as practicable according to the provisions of this Act and, subject thereto, according to the provisions of the said Acts.

(3) All persons lawfully in custody or bound by recognizances, at the time of the commencement of this Act, under the provisions of any Act hereby repealed, shall be deemed to be in lawful custody or to be so bound as aforesaid under the provisions of this Act, and may be dealt with accordingly.

(4) In all cases where, prior to the commencement of this Act, notice has been given of intention to appeal to a Local Court from any conviction, order, determination, adjudication, or refusal to make an order by a Justice or Justices, but such appeal has not been heard or determined, the same shall be heard and determined as though this Act had not been passed.

Incorporation with past and future Acts.

9. (1) Wherever any Act, past or future, or any rule, regulation, or by-law made under or by virtue of any such Act—

(a) constitutes any act or omission a simple offence; or

(b) provides that any sum may be recovered, by summary proceedings or summarily, before a Court of Summary Jurisdiction or before a Justice or Justices; or

(c) provides that any order may be made by a Court of Summary Jurisdiction, or by a Justice or Justices in a summary way,

such Act, rule, regulation, or by-law shall, unless the Act otherwise provides, be deemed to refer to this Act, and the provisions hereof shall for that purpose be incorporated with such other Act.

Meaning of expression "information" in other Acts.

(2) When any other Act uses the term "information" in relation to a simple offence that term shall, for the purposes of this Act, be deemed to refer to and to mean a complaint under this Act.

## PART II.

## PART II.

## JUSTICES.

*Oaths of Office and of Allegiance.*

Oaths of office, &c. 23 of 1859, s. 2.

10. (1) The oaths of office and of allegiance to be taken by any person assigned by His Majesty's Commission to act as a Justice may be taken in the Supreme Court.

(2) The said oaths may be taken either in open Court or before any Judge of the said Court in Chambers.

(3) In the case of a person residing more than twenty miles from the Supreme Court House in Adelaide, the said oaths may be taken before a commissioner for taking affidavits in the said Court.

(4) Every

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## PART II.

(4) Every oath so taken before a commissioner shall be subscribed by the person taking the same in the presence of, and attested by, the commissioner, and forthwith transmitted to the Master of the said Court, to be kept with the roll of Justices.

*Special Magistrates.*

11. It shall be lawful for His Majesty, or for the Governor in the name and on behalf of His Majesty, from time to time, by commission under the Public Seal of the State, to nominate and appoint, during His Majesty's pleasure, such and so many Justices as may be deemed fit and proper to be Special Magistrates, with or without salary.

Appointment of  
Special Magistrates.  
5 of 1850, s. 3.  
6 of 1865.

12. Every commission now or hereafter to be issued by which any Justice is or shall be appointed a Special Magistrate shall be valid and effectual for all purposes whatsoever, and shall be deemed to give to the person therein named all the jurisdiction, powers, and authorities conferred upon Special Magistrates by this Act.

Commission of  
Special Magistrates  
confirmed.  
6 of 1865, s. 1.

13. So long as his commission remains in force and unrevoked, every Special Magistrate shall have jurisdiction, power, and authority to do alone whatsoever any one, two, or more Justices may lawfully do under this Act, or under or by virtue of any other Act conferring jurisdiction, power, or authority upon Justices: Provided that nothing herein contained shall authorise any Special Magistrate to exercise any jurisdiction or to do any act which he is, by the express provisions of any statute, authorised to exercise or do only in conjunction with other Justices.

Powers of a Special  
Magistrate.  
Ibid., s. 2.

*General Provisions.*

14. (1) All summonses, warrants, convictions, and orders (not being by law authorised to be made by word of mouth only) shall be under the hands of the Justices issuing or making the same.

Authentication of  
acts of Justices.

(2) A Justice may receive any information or complaint and may grant or issue any warrant or summons on a Sunday as well as any other day.

Power to issue  
warrant on Sunday.  
Cf. 15 of 1849, s. 3.

15. The letters "J.P." appearing after any signature in or upon any instrument, certificate, or other document shall respectively have and be taken to have the same meaning and effect as though instead thereof, respectively, appeared the words "*one of His Majesty's Justices of the Peace in and for the State of South Australia,*" unless it appears from the said instrument, certificate, or other document that such signature was affixed out of the said State, or unless another meaning shall be indicated in or upon the said instrument, certificate, or other document.

Meaning of the  
letters "J.P."  
926 of 1907, s. 6

16. Whenever the decision of any Justice is called in question in the Supreme Court by any rule to show cause, or other process issued upon an *ex parte* application, it shall be lawful for such Justice to make and file in the said Court an affidavit setting forth the grounds of the decision so brought under review, and any facts which he may consider to have a material bearing upon the question at issue, without

Justices may file an  
explanatory  
affidavit in answer  
to *ex parte*  
application.  
298 of 1883-4, s. 44.

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without being required to pay any fee in respect of filing such affidavit, and such affidavit may be sworn before a Commissioner authorised to take affidavits in the Supreme Court, and may be forwarded by post to the Master thereof, for the purpose of being so filed.

Supreme Court to consider affidavit.  
Ibid., s. 45.

**17.** Whenever any such affidavit is filed as aforesaid, the Supreme Court shall, before making the rule absolute, or otherwise determining the matter so as to overrule or set aside the act or decision to which the application relates, take into consideration the matters set forth in such affidavit, notwithstanding that no counsel appears on behalf of the Justice.

Upon insolvency Justice incapable of acting.  
Ibid., s. 34.

**18.** If any person assigned by His Majesty's Commission to act as a Justice is adjudged insolvent, or makes any arrangement or composition with, or any assignment for the benefit of, his creditors, he shall be and remain incapable of acting as a Justice until he has been newly assigned by His Majesty in that behalf.

Warrant or summons not avoided by death, etc., of Justice.  
Ibid., s. 33.

**19.** No warrant or summons granted or issued by a Justice, whether under this Act or under any other Act past or future, or otherwise, shall be avoided by reason of the Justice who signed the same dying or ceasing to hold office.

## PART III.

## PART III.

## GENERAL PROCEDURE.

*Form of Warrant and Summons.*

Form of warrant.  
15 of 1849, s. 6.  
6 of 1850, s. 3.

**20.** (1) Every warrant for the apprehension of a defendant shall—

(a) state shortly the matter of the information or complaint upon which it is founded; and

(b) name or otherwise describe the defendant; and

(c) order the person or persons to whom it is directed to apprehend the defendant and bring him before the Justice issuing it, or before some other Justice, to answer the charge contained in the information or complaint, and to be further dealt with according to law.

Form of summons.  
15 of 1849, s. 6.  
6 of 1850, s. 1.

(2) The warrant may be directed specially to any constable or other person by name, or generally to all constables and peace officers of the State, or both specially and generally as aforesaid; and where the warrant is directed generally it shall be lawful for any constable or other peace officer to execute such warrant in like manner as if the same had been specially directed to him by name.

(3) It shall not be necessary to make the warrant returnable at any particular time, but the same shall remain in force until it is executed.

(4) Every warrant may be executed by apprehending the defendant at any place within the State.

**21.** (1) A

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**21.** (1) A Justice, on issuing a warrant for the arrest of any person, may, if he thinks fit, by indorsement upon the warrant, direct that the person named in the warrant be on arrest released upon his entering into a recognizance, with or without sureties, for his appearance as may be specified in the indorsement; and the indorsement shall fix the amounts in which the principal and sureties (if any) are to be bound.

Indorsement on warrant as to release on bail.

4 and 5 Geo. V., c. 58, s. 21.

(2) When such an indorsement is made, the recognizance in accordance with the indorsement may be taken as provided in section 33, and the defendant shall thereupon be discharged.

**22.** Every summons for the appearance of a defendant shall be in duplicate and—

Form of summons.

15 of 1849, s. 5.

6 of 1850, s. 1.

(a) be directed to the defendant charged by the information or complaint:

(b) state shortly the matter so charged:

(c) require the defendant to be and appear at a certain time and place therein mentioned, before such Justice as shall then be there, to answer to the charge contained in the information or complaint, and to be further dealt with according to law.

*Witnesses.*

**23.** If a Justice or the clerk is satisfied that any person is likely to give material evidence or to have in his possession or power any article (which term includes any document, writing, or thing) required for the purposes of evidence upon behalf of either party to any information or complaint, the Justice or clerk may issue a summons to such person requiring him to be and appear, at a time and place mentioned in the summons, before such Justices as shall then be there, to testify what he shall know concerning the matter of the information or complaint, or to produce such article, or to testify and produce as aforesaid (as the case may be).

Summons to witness.

Cf. 15 of 1849, s. 7.

6 of 1850, s. 6.

Cf. Eng., 4 & 5 Geo. V., c. 58, s. 29.

**24.** If any person summoned as aforesaid neglects or refuses to appear, and no just excuse is offered for such neglect or refusal, then any Justice before whom the person should have appeared may issue a warrant to bring and have such person, at a time and place therein mentioned, before such Justices as shall then be there: Provided that it shall be proved to the satisfaction of the Justice—

On refusal warrant to issue.

Ibid.

(a) that the summons was duly served; and

(b) (if the summons relates to a complaint) that a reasonable sum was paid or tendered for the costs and expenses of attendance.

**25.** If the Justice is satisfied, by evidence upon oath, that it is probable that any person will not attend to give evidence or to produce any article without being compelled to do so, then, instead of issuing a summons as provided by section 23, he may issue his warrant as aforesaid in the first instance.

Warrant in first instance.

Ibid.

**26.** Any

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Witness refusing to give evidence may be committed to gaol.

Cf. 6 of 1850, s. 6.

Cf. Eng., 4 & 5 Geo. V., c. 58, s. 29.

**26.** Any Justice before whom any person appears or is brought, upon summons or warrant, to give evidence or to produce any article may, if such person without offering any just excuse refuses—

- (a) to be examined upon oath concerning the premises; or
- (b) to take the oath; or
- (c) to answer after having taken an oath such questions concerning the premises as are then put to him; or
- (d) to bring or produce any such article,

by warrant commit him to the nearest gaol, there to remain and be imprisoned for any time not exceeding seven days, unless in the meantime he consents to be examined and to answer concerning the premises, or to produce such article (as the case may be): Provided that no person shall be bound to produce any article not specified or otherwise sufficiently described in the summons, or any document or writing which he would not be bound to produce upon a subpoena *duces tecum* in the Supreme Court.

Production of documents before Justices.

*Service.*

Service of summonses and notices under this Act.

**27.** Subject to the provisions of this or any other enactment specially applicable to the particular case, any summons or notice required or authorised by this Act to be served upon any person, may be served upon such person by—

- (a) delivering the same to him personally; or
- (b) leaving the same with some person for him at his last or most usual place of abode or of business with some other person, apparently an inmate thereof or employed thereat, and apparently not less than sixteen years of age:

Provided that any Court or Justice before whom the matter comes may refuse to act upon any non-personal service as aforesaid, and may require the summons or notice to be re-served, if it or he is of opinion that there is a reasonable probability—

- I. that the summons or notice has not come to the knowledge of the person so served; and
- II. that such person would have complied with or acted upon such summons or notice if it had come to his knowledge.

*Proof of Service, Etc.*

Proof by affidavit of service of process, handwriting, &c.

**28.** (1) In any proceeding within the jurisdiction of Justices, without prejudice to any other mode of proof—

- (a) the service on any person of any summons, notice, process, or document required or authorised to be served;
- (b) the handwriting of any Justice or other officer or person on any warrant, summons, notice, process, or document; or
- (c) the payment or tender, to any person summoned to attend as a witness, of any sum in respect of the costs or expenses of such attendance,

may



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may be proved by an affidavit taken before a Justice or before a commissioner for taking affidavits in the Supreme Court: Provided that the Justices may require the person making such affidavit to be called as a witness, or require further evidence of the facts.

(2) Any document purporting to be such an affidavit shall (subject to the proviso to subsection (1) hereof) be received in evidence in any Court or legal proceeding as sufficient proof of the statements contained therein, without proof of the signature or of the official character of the person or persons taking or signing the same.

(3) If any affidavit made under this section is untrue in any material particular, the person wilfully making such false affidavit shall be guilty of wilful and corrupt perjury, and shall be punishable accordingly.

*Assistance of Counsel.*

**29.** Every party to any proceeding before Justices shall be at liberty to conduct his case or to make his application or his full answer to the charge or complaint (as the case may be), and to have the witnesses examined and cross-examined, by his counsel or solicitor: Provided that nothing herein contained shall be deemed—

Parties to have assistance of counsel.  
Cf. 15 of 1849, s. 8.  
6 of 1850, s. 11.

- (a) to dispense with the personal attendance before the Justice of any defendant who is charged with an indictable offence; or
- (b) to authorise Justices to proceed to hear or to hear and determine any charge of an indictable offence in the absence of the defendant.

*Recognizances.*

**30.** Where any person is remanded or discharged upon recognizance, the recognizance may be conditioned for his appearance at every time and place to which, during the course of the proceedings, the hearing may be from time to time adjourned, without prejudice, however, to the power of the Court or a Justice to vary the order at any subsequent hearing.

Continuous bail.  
Cf. Eng., 4 & 5 Geo.  
V., c. 58, s. 19.

**31.** Every recognizance shall be for such amount and with such surety or sureties as the Justice taking the same thinks fit to ensure the due fulfilment of the conditions thereof: Provided that, in the case of a recognizance taken under section 33 it shall be for such amount, and with such surety or sureties, as the Justice authorising the taking thereof thinks fit for the purpose aforesaid.

Discretion of Justice as to amount and sureties.

**32.** Where a Justice is authorised to take a recognizance, or when any recognizance is required to be entered into before a Justice, such Justice may fix the amount or amounts in which the principal and sureties are to be bound, and the recognizances may then be entered into as provided in the next section.

Justice may fix amount of recognizance and sureties.

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Recognizances taken out of Court. Eng., 42 & 43 Vic., c. 49, s. 43.

**33.** (1) When a Justice has fixed the amount in which the principal and the sureties are to be bound, the recognizance need not be entered into before such Justice, but may be entered into before any other Justice, or before any clerk or before an inspector of police or other officer of police of equal or superior rank or in charge of any police station, or where any of the parties is in gaol before the keeper of such gaol: Provided that no clerk, officer of police, or keeper of a gaol shall be required to take the recognizance of any person proposed as a surety unless the person so proposed produces a certificate in writing from a Justice that he has satisfied the Justice of his ability to pay the amount for which he is to be bound in the event of the recognizance becoming forfeited.

Recognizances taken separately. 4 & 5 Geo. V., c. 58, s. 24.

(2) Where, as a condition of the release of any person, he is required to enter into a recognizance with sureties, the recognizance of the sureties may be taken separately, and either before or after the recognizance of the defendant; and, if so taken, the recognizances of the principal and sureties shall be as binding as if they had been taken together and at the same time.

*Security.*

Security under this Act to be given by deposit with or acknowledgment to Clerk of the Court. Cf. Eng. S. J. Act, 1879, s. 23.

**34.** Any security required or permitted to be given under the provisions of this Act shall be given, whether by principal or surety, either—

(a) by the deposit of money with a clerk; or

(b) by a written acknowledgment given to a clerk of the undertaking or condition by which, and of the sum for which, the principal or surety is bound:

Provided that the security shall be given in such of the modes aforesaid as the Court or person authorising the taking of the security may order or direct.

Entry of security and evidence thereof. Cf. *ibid.*

**35.** (1) Every clerk shall keep a security book, and shall enter therein, with respect to each security given in relation to any proceeding before the Court, the name and address of each person bound, showing whether he is bound as principal or as surety, the sum in which each person is bound, the undertaking or condition by which he is bound, the date of the security, and the person before whom it is taken.

(2) The security book, and also any extract therefrom certified by the clerk, shall be *prima facie* evidence of the several matters hereby required to be entered therein.

Indemnity of surety by principal. Cf. *ibid.*

**36.** Any sum paid by a surety on behalf of his principal in respect of a security under this Act, together with all costs, charges, and expenses incurred by such surety in respect of that security, shall be deemed a debt due to him from the principal, and shall be recoverable either summarily under this Act, or in any civil Court of competent jurisdiction.

**37.** Where

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**37.** Where security is given under this Act for payment of a sum of money, the payment of such sum shall be enforced by means of such security, in substitution for any other means of enforcing such payment.

Security to be enforced in substitution of other remedies.

*Enforcement of Recognizances and Securities.*

**38.** Whenever the conditions, or any of the conditions, mentioned in any recognizance or security are not complied with, any Justice may certify in what respect the conditions have not been observed, and such certificate shall be *prima facie* evidence of such non-compliance, and of the recognizance or security having been forfeited.

Justices certificate of non-compliance with conditions, *prima facie* evidence of forfeiture.  
Cf. 6 of 1850, s. 8.  
298 of 1883-4, s. 52.

**39.** (1) Upon proof of any breach of the condition, or of any of the conditions, of any recognizance or security, or upon other proof of the forfeiture thereof, any two Justices may make an order adjudging the recognizance or security to be forfeited and for payment of any amount due thereunder.

Enforcement of recognizances.  
Cf. 10 of 1854, s. 14.  
6 of 1850, s. 44.

(2) No order shall be made under this section in the absence of any person sought to be bound thereby unless it is proved, to the satisfaction of the Court, that a summons was duly served upon such person at least seven clear days before the return thereof: Provided that, in the case of a recognizance or security conditioned for the appearance of any person before a Court of Summary Jurisdiction, such order may be made by such Court *ex parte* forthwith upon the non-appearance of such person.

(3) Every such order may be enforced by distress and imprisonment, as in other cases.

**40.** When application is made for an adjudication of the forfeiture of any recognizance or security to, or when a recognizance or security has been adjudged to be forfeited by, any Court of Summary Jurisdiction, such Court or any Special Magistrate may, at any time before sale under a warrant of distress, suspend, cancel, or mitigate such forfeiture, and suspend, annul, or vary the order for payment accordingly on the giving of security for future performance, or on such other conditions as may seem just.

Suspension or mitigation of forfeiture.  
Cf. Eng., S. J. Act, 1879, s. 9.

**41.** (1) The order for payment of any amount due under any recognizance or security shall direct such amount to be paid to the clerk, and the Court may further direct the same, or such portion thereof as may be just, to be paid by such clerk, upon receipt thereof, to any person in whose interest the recognizance or security was taken.

Application of moneys received on enforcement.

(2) Subject to any such direction the clerk of the Court shall apply any amount paid under any such order in the manner in which fines are applied of which no special appropriation is made.

## PART IV.

## PART IV.

## DIVISION I.

## SUMMARY JURISDICTION.

## DIVISION I.—COURTS OF SUMMARY JURISDICTION.

Clerks of Court.  
Cf. 298 of 1883-4,  
s. 17.

**42.** (1) The Clerk of every Local Court shall be, *ex officio*, clerk for Courts of Summary Jurisdiction sitting in the district for which the Local Court is established: Provided that the Governor may—

- (a) prescribe the district for which any clerk is appointed; and
- (b) appoint a clerk for any prescribed district or place.

(2) When a Court of Summary Jurisdiction sits in any place other than the court house for which a clerk is appointed, the Justices shall cause the record of the proceedings to be transmitted to the clerk for the Court to be recorded and kept by him.

Courts of Petty Sessions to be constituted by a S.M. if any available and if not by two or more Justices unless the Special Act otherwise requires or by consent of parties.

Cf. 6 of 1850, s. 11.  
298 of 1883-4, s. 16.

**43.** Every matter of complaint shall (unless the provisions of some Special Act otherwise require) be heard and determined by—

- (a) a Special Magistrate, if there is any Special Magistrate present who is competent and willing to act; or
- (b) if there is no such Special Magistrate present, then by two or more Justices:

Provided that a single Justice or any two or more Justices may (notwithstanding the provisions of any Special Act) hear and determine any matter of complaint if all the parties to the proceeding consent thereto in writing.

Powers of a single Justice.  
6 of 1850, s. 29.

**44.** In any case, whether the matter of complaint is or is not directed or required to be heard by two or more Justices, a single Justice may—

- (a) receive the complaint;
- (b) grant a summons or warrant thereon;
- (c) issue his summons or warrant to compel the attendance of any witness;
- (d) by consent of the parties expedite the date of hearing;
- (e) either upon the return of the summons, or at any other time before the completion of the hearing, adjourn the hearing as hereinafter provided;
- (f) do all other acts and matters preliminary to the hearing; and
- (g) issue any warrant of distress or commitment upon any conviction or order.

Interlocutory proceedings need not be before same Justice.  
6 of 1850, s. 29.

**45.** It shall not be necessary for any Justice who acts before or after the hearing to be the Justice, or one of the Justices, by whom

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whom the case is heard ; but wherever it is necessary for any matter of complaint to be heard and determined or for a conviction or order to be made by two or more Justices, such two or more Justices must be present and acting together during the whole of the hearing and determination of the case.

**46.** (1) Any person who—

- (a) wilfully interrupts the proceedings of any Court :
- (b) conducts himself disrespectfully to the Justice or Justices during the sittings thereof ;
- (c) obstructs or assaults any person in attendance, or any officer thereof, in the execution of his duty, in view of the Court ; or
- (d) wilfully disobeys any order made by the Court under subsection (2) of section 61—

Contempt of Court.  
Cf. 298 of 1883-4,  
ss. 19 and 20.  
8 of 1869-70, s. 12,

shall be guilty of an offence.

Punishment : Imprisonment for one calendar month ; or,  
Penalty : Ten Pounds.

(2) Any person who in the opinion of the Justice or Justices wilfully prevaricates in giving evidence to any Court of Summary Jurisdiction shall be guilty of an offence.

Punishment : Imprisonment for one calendar month ; or,  
Penalty : Ten Pounds.

(3) The Justice or Justices constituting the Court in whose presence any offence under this section is committed may forthwith convict the person guilty of such offence, either on their own view, or on the oath of some credible witness, and may issue their warrant of commitment accordingly.

(4) Every such warrant of commitment shall be good and valid in law without any other order, summons, or adjudication whatsoever.

(5) If any person convicted of any offence under subsection (1) hereof makes to the convicting Justices, before the rising of the Court, such an apology for the interruption or misbehaviour as they in their uncontrolled discretion deem satisfactory the Justices may, if they think fit, remit the penalty or imprisonment either wholly or in part.

**47.** (1) Upon the hearing of any complaint or application before any Court the defendant may, before any evidence is given, object that there is a proper place at which a Court might be held more easy of access than the place where the Court is then sitting, not only from the place of abode of such defendant, but also from the place where the subject matter of such complaint or application arose.

Proceedings to be  
brought in most  
convenient Court.  
298 of 1883-4, s. 21.

(2) The Court may hear any evidence adduced and, if it appears to the Court that the objection is well founded, it may desist from further proceeding with the hearing.

**48.** Whenever

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Compensation may be awarded in vexatious cases. 298 of 1883-4, s. 22.

**48.** Whenever any objection under section 47 is established to the satisfaction of the Court, and the person making the objection complains at once to the Court that he has been brought to the place where the Court is held vexatiously and oppressively, the Court shall forthwith, and without any further summons or notice, proceed to hear and determine the matter of the objection in a summary way, and if the Court is of opinion that such is the fact it may order the complainant or the applicant to pay to the person making the objection, by way of compensation or amends, such sum not exceeding Five Pounds as it may think fit, and in default of payment the sum so awarded may be enforced by imprisonment for any period not exceeding seven days.

DIVISION II.

DIVISION II.—THE COMPLAINT AND THE PROCEEDINGS THEREON.

*The Complaint.*

Complaint. 6 of 1850, s. 1.

**49.** A complaint may be made to a Justice in any case where—

- (a) any person has committed, or is suspected to have committed, any simple offence; or
- (b) a Justice or Justices has, or have or shall have, authority by law to make any order for the payment of money or otherwise.

How laid. Cf. 6 of 1850, s. 2, s. 7.

**50.** (1) A complaint may be made by the complainant in person, or by his counsel or solicitor, or by any other person authorised in that behalf.

(2) No complaint need be in writing unless it is required to be so by some Special Act.

(3) A complaint may be made without any oath being made of the truth thereof, except in any case—

- (a) where some Special Act otherwise requires; or
- (b) where the Justice issues his warrant in the first instance.

Complaint to disclose only one matter. 6 of 1850, s. 9.

**51.** Every complaint shall be for one matter of complaint only, and not for two or more matters.

Limitation of time for laying information, &c. 6 of 1850, s. 10.

**52.** Where no time is specially limited for making the complaint by any statute or law relating to the particular case, the complaint shall be made within six months from the time when the matter of the complaint arose.

*Accessories.*

Punishment of aiders and abettors in the commission of offences. 6 of 1850, s. 5.

**53.** Every person who aids, abets, counsels, or procures the commission of any simple offence may be proceeded against and convicted for the same, either together with the principal offender, or before or after his conviction, and shall be liable upon conviction to any penalty and punishment to which the principal offender is or was liable, or would be liable if he were convicted.

*Allegations*

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DIVISION II.*Allegations and Descriptions in Complaints and Proceedings thereon.*

**54.** (1) Whenever in any complaint, or the proceedings thereon, it is necessary to state the ownership of any property belonging to, or in the possession of, partners, joint tenants, parceners, or tenants in common, it shall be sufficient to name one of such persons, and to state the property to belong to the person so named and another or others (as the case may be).

Allegations as to ownership.  
6 of 1850, s. 4.

(2) Whenever in any complaint or the proceedings thereon it is necessary to mention for any purpose whatsoever any partners, joint tenants, parceners, or tenants in common, it shall be sufficient to describe them in the same manner.

Parties.

(3) Whenever in any complaint or the proceedings thereon it is necessary to describe the ownership of any work or building made, maintained, or repaired at the expense of any public board of commissioners or trustees, or of any materials for the making, altering, or repairing of the same, it shall be sufficient to describe the same as the property of such commissioners or trustees without naming them.

Property in public works.

**55.** In any complaint\* and in any proceedings thereon the description of any offence in the words of the Special Act or other document creating the offence, or in similar words, shall be sufficient in law.

Description of offence.  
298 of 1883-4, s. 35

*Exceptions and Exemptions.*

**56.** (1) No exception, exemption, proviso, excuse, or qualification (whether it does or does not accompany in the same section the description of the offence in the Special Act or other document creating the offence) need be specified or negatived in the complaint.

Exceptions or exemptions need not be specified or disproved by the complainant.  
298 of 1883-4, s. 35.

(2) Any such exception, exemption, proviso, excuse, or qualification as aforesaid may be proved by the defendant, but, whether it is or is not specified or negatived in the complaint, no proof in relation to it shall be required on the part of the complainant.

*Summons to Defendant.*

**57.** Whenever a complaint is made in manner aforesaid any Justice may issue his summons for the appearance of any person charged by the complaint or against whom the order is thereby sought to be made: Provided that nothing herein mentioned shall oblige any Justice to issue his summons in any case where the application for any order of Justices is by law to be made *ex parte*.

Upon complaint summons to issue.  
6 of 1850, s. 1.

*Warrant to Apprehend a Defendant.*

**58.** (1) No warrant to apprehend any defendant shall be issued unless the matter of the complaint is substantiated to the satisfaction of the Justice upon oath made before him.

Issue of warrant.  
6 of 1850, ss. 2 and 12.

(2) When the matter of any complaint—

(a) charging the defendant with the commission of a simple offence; or

(b) made

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- (b) made for the purpose of having the defendant bound over to keep the peace or be of good behaviour; or
- (c) under any Special Act which authorises the issue of a warrant in the first instance,

is substantiated as aforesaid a Justice may, instead of issuing his summons, issue his warrant in the first instance to apprehend the defendant.

(3) If any defendant fails to appear in obedience to a summons any Justice may issue his warrant for the apprehension of the defendant: Provided—

- (a) that the matter of the complaint is substantiated as aforesaid; and
- (b) that it is proved to the satisfaction of the Justice that the summons was duly served (what he deems) a reasonable time before the time appointed for the hearing.

*Return of Warrant and Remand.*

Defendant on apprehension to be brought before Justice.  
6 of 1850, s. 15.

**59.** When a defendant is apprehended under a warrant he shall be brought before a Justice, who shall thereupon commit him into custody or discharge him upon recognizance as hereinafter provided.

Remand or discharge on recognizance.

**60. (1)** When a defendant is apprehended under a warrant or is remanded upon any adjournment of the hearing, the Justice shall commit the defendant—

- (a) by warrant to the nearest prison or to some place of security; or
- (b) verbally to the custody of the constable or other person who has apprehended him; or
- (c) verbally to such other safe custody as the Justice deems fit,

and the Justice shall order the defendant to be brought up at some stated time and place before such Justice or Justices as shall then be there, of which order the complainant shall have due notice.

(2) In any such case the Justice may, instead of committing the defendant as aforesaid, discharge him upon his entering into a recognizance conditioned for his appearance at the time and place appointed for the hearing or further hearing (as the case may be).

## DIVISION III.

Sittings to be in open Court but witnesses and other persons may be ordered to leave the Court.

Cf. 6 of 1850, ss. 11, 14.

## DIVISION III.—THE HEARING.

**61. (1)** The room in which any Court sits shall be deemed an open and public Court, to which the public generally may have access so far as the same can conveniently contain them, and subject to the provisions hereinafter contained.

(2) The Court may, if it thinks fit, order that all witnesses (except the parties and any of their witnesses whom it sees fit to except) shall go and remain outside and beyond the hearing of the Court until required to give evidence.

(3) Nothing



(3) Nothing herein contained shall restrict the power of the Court under the Evidence Publication Act, 1917, or require any case to be heard in open court if it is, by any Special Act, required or authorised to be heard in camera.

Saving of the Evidence Publication Act, 1917, and of Special Acts for proceedings in camera.

**62.** If the defendant fails to appear in obedience to the summons the Court may—

On non-appearance of defendant Court may issue warrant or proceed *ex parte*.  
6 of 1850, s. 12.

(a) issue a warrant as provided by section 58, and adjourn the hearing until the defendant is apprehended; or

(b) upon proof that the summons was served a reasonable time before the time thereby appointed for his appearance, proceed *ex parte* to the hearing of the complaint and to adjudicate thereon as fully and effectually, to all intents and purposes, as if the defendant had personally appeared before it in obedience to the summons.

**63.** (1) If the defendant appears in obedience to the summons, or is brought before the Court by virtue of any warrant, then if the complainant, having had due notice, does not appear in person or by his counsel or solicitor, the Court shall dismiss the complaint, unless for some reason it thinks proper to adjourn the hearing.

If the complainant does not appear, Court to dismiss complaint, or at discretion adjourn hearing.  
Cf. 6 of 1850.

(2) In any such case any single Justice shall be competent to dismiss the complaint, or to adjourn the hearing.

**64.** If both parties appear before the Court, either in person or by their respective counsel or solicitors, then the Court shall proceed to hear and determine the matter of the complaint.

If both parties appear, Court to hear and determine the case.  
6 of 1850, s. 12.

**65.** (1) The hearing of any complaint may be adjourned from time to time, and at any time before it is completed, either—

Power to the Court or a Justice to adjourn the hearing.  
6 of 1850, s. 15.

(a) by any Court before which the complaint comes for hearing; or

(b) if no Court is then sitting to hear the complaint, then by any Justice.

(2) Every such adjournment shall be to a time and place appointed and stated by the Court or the Justice in the presence and hearing of the party or parties then present.

(3) The adjournment shall be allowed upon such (if any) terms as the Court or the Justice thinks fit, and in the meantime the Court or the Justice may suffer the defendant to go at large, or may remand him into custody, or discharge him upon recognizance, in the manner provided by section 60.

**66.** (1) If no Justice is present at the time and place at which any summons is returnable, or to which the hearing is adjourned or postponed, the clerk shall, at the request of the complainant, postpone the hearing until the next day on which a Justice or Justices (as the case may require) will attend at such place.

Postponement of hearing where no competent Court available.  
Cf. 298 of 1883-4, s. 23.

(2) Such postponement shall be made by delivering to the complainant and to the defendant, or such of them as may be present,

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a memorandum in the prescribed form, and every defendant and witness to whom a copy of such memorandum is delivered shall be under the like obligation to attend at the time and place therein mentioned, and shall be subject to the same obligations and liabilities, as if such memorandum were a summons issued by a Justice.

When defendant pleads guilty, Court to convict or make an order.  
6 of 1850, s. 13.

**67.** (1) When the defendant is present at the hearing the substance of the complaint shall be stated to him, and he shall be asked if he has any cause to show why he should not be convicted or why an order should not be made against him (as the case may be).

(2) If the defendant admits the truth of the complaint, and shows no sufficient cause why he should not be convicted, or why an order should not be made against him, the Court shall convict him or make an order against him accordingly.

If defendant pleads not guilty Court to hear parties and their evidence.  
Cf. 6 of 1850, s. 13.

**68.** (1) If the defendant does not admit the truth of the complaint the Court shall proceed to hear—

- (a) the complainant and his witnesses and any other evidence which he adduces in support of his complaint ;
- (b) the defendant and his witnesses and any other evidence which he adduces in his defence ; and
- (c) any evidence which the complainant adduces in reply if the defendant adduces any evidence other than as to his, the defendant's, general character.

(2) Subject to the provisions of section 377 of the Criminal Law Consolidation Act, 1876, every witness shall be examined upon oath.

(3) The practice before a Court of Summary Jurisdiction upon the hearing of any complaint with respect to the examination and cross-examination of witnesses and the right of addressing the Court in reply, or otherwise, shall be in accordance, as nearly as may be, with the practice for the time being of the Supreme Court upon the trial of an action.

After hearing the parties Court to convict or dismiss.  
Cf. 6 of 1850, s. 13.

**69.** When the parties and their evidence have been heard, the Court shall consider the whole matter and determine the same, and shall convict or make an order against the defendant or dismiss the complaint, as the case may require : Provided that the Court may, at any time before the matter has been finally determined, without determining the same permit the complaint to be withdrawn, upon such terms (if any) as it thinks fit.

DIVISION IV.

DIVISION IV.—JUDGMENT.

*The Conviction or Order.*

Conviction to be minuted.  
6 of 1850, s. 13.

**70.** When the Court convicts or makes an order against the defendant a minute or memorandum of the conviction or order shall then be made.

No fee shall be paid for any such minute or memorandum.

**71.** (1) If

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**71.** (1) If the Court dismisses the complaint a minute or memorandum shall be made as aforesaid, and the Court may, on being required to do so and if it thinks fit, draw up an order of dismissal and give the defendant a certificate thereof.

Order and certificate of dismissal.  
6 of 1850, s. 13.

(2) A certificate of dismissal shall, upon production and without further proof, be a bar to any subsequent complaint for the same matter against the same party.

**72.** Every party interested in any conviction or order shall be entitled to demand and have copies of the complaint and depositions, and of the conviction or order (as the case may be), and the clerk shall furnish the same upon payment of the fees authorised in that behalf.

Person interested may obtain copies of the proceedings.  
298 of 1883-4, s. 36.

*Distribution of Penalties.*

**73.** In order to discourage corrupt practices by common informers the Court may, upon any conviction, and notwithstanding the provisions of any Special Act to the contrary, adjudge that no part, or such part only of the penalty as it thinks fit, be paid to the informer.

For discouraging corrupt practices by common informers.  
Cf. 6 of 1850, s. 48.

*Discretion of the Court with Relation to Penalties and Punishment.*

**74.** In any case where the Special Act authorises the imposition of a fine of uncertain amount—that is to say, a fine of not less than, or not exceeding, some certain amount or amounts in that behalf specified—the amount of every such fine, within the limits so prescribed, shall be in the discretion of the Court.

Penalties in discretion of Court.  
6 of 1850, s. 47.

**75.** (1) Upon the hearing of any complaint under this or any Act, whether past or future, and notwithstanding the provisions of any other enactment to the contrary, a Court of Summary Jurisdiction shall have the powers conferred by this section: Provided that nothing herein contained—

General power of Courts to refrain from or mitigate punishment.

Proviso against reduction of fine below amount provided by treaty, etc.  
298 of 1883-4, s. 38.

I. shall authorise any Court to reduce below the prescribed minimum the amount of any fine imposed under any Act passed for carrying into effect any treaty, convention, or agreement made with the Imperial Government of Great Britain, or with any British possession or with any foreign State, where such treaty, convention, or agreement stipulates for a fine of such minimum amount; or

II. shall affect the powers conferred upon the Court by the Offenders Probation Act, 1913.

(2) If the Court thinks that the charge is proved, but that the offence was in the particular case of so trifling a nature that it is inexpedient to inflict any punishment, or to inflict any other than a nominal punishment, the Court may—

Power of Court to discharge defendant without punishment in certain cases.  
298 of 1883-4, s. 32.

(a) without proceeding to conviction dismiss the complaint, and, if the Court thinks fit, order the defendant to pay such damages, not exceeding Forty Shillings, and such costs of the proceedings, or either of them, as the Court thinks reasonable:

(b) upon

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(b) upon convicting the defendant discharge him, either unconditionally, or conditionally upon giving security, with or without sureties, to appear for sentence when called upon, or to be of good behaviour, and either without payment of damages and costs, or subject to the payment of such damages and costs, or either of them, as the Court thinks reasonable.

Court may dismiss charge against juvenile offenders if punished by parents or guardians.  
Cf. 8 of 1869-70, s. 8.

(3) If the defendant is under the age of fourteen years, and it appears to the Court that chastisement inflicted by the parent or guardian of such person would be the most suitable punishment under the circumstances, the Court may allow such chastisement to be inflicted by such parent or guardian or by some other person and for such purpose may, if necessary, adjourn the hearing, and on its being shown to the satisfaction of the Court that suitable chastisement has been inflicted as aforesaid it may dismiss the complaint and give a certificate of dismissal accordingly.

Mitigation of prescribed punishment in particular cases.  
298 of 1883-4, s. 25.

(4) The Court may, in inflicting punishment of imprisonment, impose the same with or without hard labor, and may reduce the period of the same below the minimum prescribed.

Reduction of fine

(5) The Court may, in inflicting a fine, if it be imposed in respect of a first offence, reduce the amount thereof below the minimum prescribed; unless the Special Act by reference to the provisions hereof or of the Justices Procedure Amendment Act, 1883-4, expressly prohibits such reduction.

Dispensing with recognizance, &c.

(6) In the case either of imprisonment or a fine, where any requirement is prescribed for the offender to enter into his recognizance and to find sureties for keeping the peace and observing some other conditions, or to do any of such things, the Court may dispense with any such requirement, or any part thereof.

Fine in lieu of imprisonment.

(7) Where the Court has authority to impose imprisonment and has no authority to impose a fine for the particular offence, it may, nevertheless, if it thinks that the justice of the case will be better met by a fine than by imprisonment, impose a fine not exceeding Twenty-five Pounds and not being of such an amount as will subject the offender under the provisions of this Act, in default of payment of the fine, to any greater term of imprisonment than that to which he is liable under the Act authorising the imprisonment.

Court may allow time for payment or direct payment by instalments.  
298 of 1883-4, s. 26.

**76.** (1) A Court by whose conviction or order any fine or other sum is adjudged to be paid may do all or any of the following things, viz. :—

(a) allow time for the payment of the said sum :

(b) direct payment to be made of the said sum by instalments :

(c) direct that the person liable to pay the said sum shall be at liberty to give security for the payment thereof.

(2) Where a sum is directed to be paid by instalments, such instalments shall be paid to the clerk or to such person as the Court

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Court orders, and, if default is made in the payment of any one instalment, the same proceedings may be taken to recover the amount then remaining due as if no such order for payment by instalments had been made.

## DIVISION V.—COSTS.

## DIVISION V.

77. (1) When a Court makes a conviction or order it may, if it thinks fit, in and by the conviction or order, adjudge that the defendant pay to the complainant or, in the case of an order of dismissal, that the complainant pay to the defendant, such costs as the Court thinks just and reasonable.

Power to award costs.  
6 of 1850, s. 17

(2) Where a Court or a Justice has authority under this Act to grant any relief or indulgence to any party to any proceeding before Justices, and such authority includes a discretion as to the terms upon which such relief or indulgence may be granted, the Court or Justice may, in the exercise of its or his discretion, make an order for the payment of such costs by such party to any other party as it or he thinks just and reasonable, and such order shall be deemed to be, and be enforceable as, an order of a Court of Summary Jurisdiction.

(3) The amount so allowed for costs shall in every case be specified in the conviction or order.

Amount of costs to be specified.  
6 of 1850, s. 17.

78. The payment of any sum so adjudged to be paid as aforesaid shall be enforced as follows :—

Manner of enforcing payment of costs.  
6 of 1850, s. 17.

- I. When the costs are included in any conviction or order whereby any fine or other sum of money is also adjudged to be paid, the payment thereof shall be enforced in the same manner and under the same warrant as such fine or other sum :
- II. In any other case, by distress or by imprisonment for any term not exceeding the time prescribed by section 81 with reference to the amount to be recovered, unless such costs are sooner paid.

79. Payment of any costs ordered to be paid by a complainant to a defendant shall be enforced as in other cases, and for that purpose the expression "defendant" as used in Division VI. hereof shall be deemed to include a complainant against whom such an order has been made.

Enforcing costs payable by complainant.

## DIVISION VI.—EXECUTION.

## DIVISION VI.

*Convictions and Orders for the Payment of Money.*

80. When any fine or sum of money is adjudged to be paid by a conviction or order, it shall not be necessary for the conviction or order to direct or provide for any levy of distress.

Convictions or orders need not direct distress.

81. Whenever the payment of any fine or sum of money adjudged to be paid by any conviction or order is, by this or any other Act, authorised to be enforced by imprisonment, with or without

Term of imprisonment when none specially prescribed  
6 of 1850, s. 27.

without distress, but no term of imprisonment is prescribed by any Special Act, such imprisonment shall be for such period as the Court in its discretion thinks fit, but not exceeding the maximum fixed by the following scale, that is to say :—

Where the sum adjudged to be paid, including the costs—	The said period shall not exceed—
Does not exceed Ten Shillings .....	Seven days
Exceeds Ten Shillings, but does not exceed One Pound ...	Fourteen days
Exceeds One Pound, but does not exceed Five Pounds ...	One month
Exceeds Five Pounds, but does not exceed Twenty Pounds	Two months
Exceeds Twenty Pounds .....	Three months

Proof of default.  
Cf. (Eng.) 4 & 5  
Geo. V., c. 58, s. 28  
(4).

**82.** In any proceedings before a Court or upon any application made to a Justice to issue a warrant of distress or commitment to enforce the payment of any fine or sum of money adjudged by a conviction or order to be paid by one person to another person, then—

- (a) if the person to whom the sum is ordered to be paid is a clerk, the production of a certificate purporting to be signed by that clerk that the fine or sum or any part thereof has not been paid to him ; and
- (b) in any other case the production of a statutory declaration to a like effect purporting to be made by the person to whom the sum is ordered to be paid,

shall be sufficient evidence of the facts therein stated, unless the Court or the Justice requires such clerk or other person to be called as a witness, or requires further evidence of the facts.

Warrants to enforce payment may be postponed, and payment by instalments or security directed.  
Eng. S.J. Act, 1879, s. 21 (1).

**83.** (1) When any application is made to a Justice to issue a warrant of distress or commitment to enforce payment of any fine or sum of money adjudged or ordered to be paid by any conviction or order, the Justice may, if he deems it expedient so to do, postpone the issue of such warrant for such time and on such conditions (if any) as he thinks just.

(2) In any such case the Justice may direct payment of the fine or sum by instalments, or that security be given therefor, in the manner provided by section 76.

Convictions and orders may be enforced by distress or imprisonment, as provided by this Act.

**84.** When any fine or sum of money is adjudged to be paid by a conviction or order, payment of such fine or sum may, notwithstanding the provisions of any other Act, be enforced as provided by this Act, either—

- (a) by distress, and in default of sufficiency of distress by imprisonment ; or
- (b) by imprisonment without distress.

Conviction or order may impose imprisonment in default of payment of fine, etc.

**85.** (1) When a Court adjudges the payment of any fine or sum of money, it may, in and by its conviction or order, impose a term of imprisonment in default of payment. (2) If

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(2) If the Special Act upon which the conviction or order is founded directs or appoints any manner or term of imprisonment, the conviction or order shall be framed accordingly.

(3) If no manner or term of imprisonment is so directed or appointed, imprisonment may be imposed with or without hard labor, and for any term which the Court thinks fit, not exceeding the time prescribed by section 81 with reference to the amount to be recovered.

86. Whenever a Justice is satisfied that default has been made in the payment of any fine or sum adjudged to be paid as aforesaid, he may issue a warrant of distress or of commitment.

On proof of default Justice may issue warrant of distress or commitment.  
Cf. 6 of 1850, ss. 16 and 18.

*Distress.*

87. The following articles shall not be taken under a warrant of distress issued under this Act, namely:—

Wearing apparel, etc., protected against distress.  
Cf. Eng. S.J. Act, 1879, s. 21 (2).

- I. The wearing apparel and bedding of the defendant and his family, and the tools and implements of the defendant's trade, the whole not exceeding in value the sum of Twenty Pounds; and
- II. Any sewing machine, type-writing machine, or mangle, the property of or under hire to the defendant.

88. A warrant of distress shall be deemed to authorise the person charged with the execution thereof to take any money as well as any goods of the person against whom the distress is levied, and any money so taken shall be treated as if it were the proceeds of sale of goods taken under the warrant.

Money may be taken under warrant of distress.  
Eng., 4 & 5 Geo. V., c. 58, s. 4 (2).

89. (1) If any claim is made to or in respect of any goods or chattels distrained under the warrant of any Justice, or in respect of the proceeds or value thereof, by—

Justices to adjudicate on adverse claim to goods seized under warrant of distress.  
298 of 1883-4, s. 24.

- (a) any person not being the party against whom such warrant was issued; or
- (b) any defendant who claims that the goods or chattels are not distrainable under section 87 hereof,

any Justice, upon complaint of the constable charged with the execution of the warrant (as well before as after any action brought against such constable), may issue a summons in the prescribed form, directed as well to the party obtaining the warrant as to the party making the claim.

(2) Thereupon any action which has been brought in respect of such claim shall be stayed, and the party bringing the same may be ordered to pay the costs of any proceedings had therein after the service of the Justice's summons.

(3) Any two or more Justices shall adjudicate on the claim, and their order shall, subject to any appeal under the provisions of this Act, be final and conclusive upon all parties.

90. (1) If

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In default of sufficiency or of distress returned, warrant of commitment may issue.

Costs of distress to be ascertained and included in warrant of commitment.  
6 of 1850, s. 20.

**90.** (1) If, upon the return of any warrant of distress, the constable who has had the execution of the same returns that he could find no goods or chattels, or not sufficient goods or chattels, whereon he could levy the sum or sums therein mentioned, or so much thereof as has not been before levied or paid, together with the costs of or occasioned by the levying of the same, the Justice who has issued the warrant of distress or any other Justice may (without further proof of default) issue a warrant of commitment.

(2) The costs and charges of the distress (if any) shall be ascertained by the Justice and included in the warrant of commitment, and shall be deemed to be adjudged to be paid by the conviction or order.

*Imprisonment.*

Form of warrant of commitment to enforce payment of money  
Cf. 6 of 1850, ss. 20, 21, 22.

**91.** (1) Every warrant of commitment to enforce the payment of any fine or sum adjudged to be paid by any conviction or order shall order the imprisonment, or the imprisonment with hard labor, of the defendant, unless the sum or sums adjudged to be paid, and also the costs and charges of taking and conveying the defendant to prison (if the Justice thinks fit so to order), are sooner paid.

(2) If the conviction or order directs or appoints any manner or term of imprisonment the warrant shall (subject to the provisions of section 94) be framed accordingly.

(3) If no term of imprisonment is so directed or appointed the Justice issuing the warrant may commit the defendant to imprisonment, with or without hard labor, for any term not exceeding the time prescribed by section 81 with reference to the amount to be recovered.

Warrant of commitment in other cases.  
6 of 1850, s. 23.

**92.** (1) Whenever—

(a) a conviction does not adjudge the payment of any penalty, but that the defendant be imprisoned, or imprisoned and kept to hard labor, for his offence; or

(b) an order is for the doing of some act, other than the payment of money, and directs that in case of the defendant's neglect or refusal to do such act he shall be imprisoned, or imprisoned and kept to hard labor, and the defendant neglects or refuses to do such act,

the Justices making the conviction or order, or any other Justice, may issue a warrant of commitment for the imprisonment, or the imprisonment with hard labor, of the defendant (as the case may be) for such time as the conviction or order directs.

Where costs also adjudged distress may issue.  
Ibid.  
Cf. *ibid.*, s. 17 and 23.

(2) If by any such conviction or order any sum for costs is also adjudged to be paid by the defendant to the complainant, the payment thereof may be enforced in the manner hereinbefore provided for the enforcement of orders for the payment of money, and, if the Justice issuing any warrant of commitment to enforce such payment thinks



thinks fit so to order, the term of imprisonment thereby imposed shall commence at the termination of the imprisonment the defendant is then undergoing.

**93.** When a warrant of commitment is issued against a defendant who is then in prison undergoing imprisonment upon a conviction for any other offence, such warrant of commitment for the subsequent offence shall in every such case be forthwith delivered to the keeper of the gaol to whom the same is directed, and the Justice issuing the same may, if he thinks fit, order that the imprisonment for such subsequent offence shall commence at the expiration of the imprisonment to which such defendant has been previously adjudged or sentenced.

Imprisonment for subsequent offence may commence at expiration of earlier sentence.

6 of 1850, s. 24.

Cf. 1090, 1912, s. 6 (2).

*Reduction of Imprisonment upon Part Payment.*

**94.** (1) When any conviction or order adjudges the payment of any fine or sum of money, and any term of imprisonment is imposed upon the defendant in default of such payment, the term of imprisonment so imposed shall, upon payment or satisfaction of any part of such fine or sum, be reduced by a number of days bearing, as nearly as possible, the same proportion to the total number of days in the term as the sum paid bears to the sum adjudged to be paid: Provided that in reckoning the number of days by which any term of imprisonment would be reduced under this section the first day of imprisonment shall not be taken into account, and that, in reckoning the sum which will secure the reduction of a term of imprisonment, fractions of a penny shall be omitted.

Reduction of imprisonment on part payment of sums adjudged to be paid.

Cf. 4 & 5 Geo. V., c. 58, s. 3.

(2) Payment under this section may be made to—

(a) the clerk; or

(b) the keeper of any gaol in which the defendant is imprisoned under a warrant of commitment issued in respect thereof.

(3) When application is made to any Justice to issue a warrant of commitment to enforce any such conviction or order as aforesaid, and it is made to appear to such Justice that any part of the fine or sum thereby adjudged to be paid has been paid, he shall issue his warrant of commitment accordingly for the term as reduced under this section.

(4) When a warrant of commitment has been issued against any defendant in respect of the non-payment of any fine or sum of money, and payment is made of any part of such fine or sum to the clerk as aforesaid, such clerk shall give to the person making the payment a certificate thereof under his hand.

(5) Upon receipt of such certificate, or of any sum paid under this section, the keeper of any gaol in which the defendant is imprisoned under such warrant of commitment shall endorse a memorandum of such payment, and of the reduction thereby effected, upon the warrant of commitment, which shall thereupon be deemed to have been amended accordingly.

*Payment*

PART IV.  
DIVISION VI.*Justices Act.—1921.**Payment under Distress or Commitment.*

Distress to be stayed  
on payment or  
tender.  
6 of 1850, s. 28.

**95.** If any defendant against whom a warrant of distress has issued pays or tenders to the constable having the execution of the same the sum or sums in such warrant mentioned, together with the amount of the expenses of such distress up to the time of such payment or tender, such constable shall cease to execute the same.

Defendant to be  
released upon pay-  
ment of fine, &c.  
6 of 1850, s. 28.

**96.** When any defendant is imprisoned under any warrant of commitment for non-payment of any fine or other sum, he may pay or cause to be paid to the keeper of the gaol in which he is so imprisoned the sum in the warrant of commitment mentioned, together with the amount of the costs, charges, and expenses (if any) therein also mentioned, and the said keeper shall receive the same, and shall thereupon discharge the defendant, if he be in his custody for no other matter.

Regulations as to  
whom penalties, &c.,  
to be paid.  
6 of 1850, s. 46.

**97.** (1) Every warrant of distress shall order the constable, or other person to whom the same is directed, to pay the amount of the sum to be levied thereunder to the clerk.

(2) If any defendant who has been adjudged by any conviction or order to pay any fine or sum of money pays the same to any constable or other person, such constable or other person shall forthwith pay the same to such clerk.

(3) If any defendant who has been committed to prison for non-payment of any fine or sum as aforesaid pays the same, or any part thereof, to the keeper of the gaol in which he is imprisoned, such keeper shall forthwith pay the same to the said clerk.

Application by clerk.

**98.** Upon receipt of any fine or sum of money adjudged to be paid by any conviction or order, or of any part thereof, the clerk shall forthwith pay the same as follows:—

- (a) in the first place, in or towards satisfaction of any costs incurred by any party in or about the execution of the conviction or order, or otherwise payable to such party thereunder; and secondly,
- (b) if the order is one for the payment of money to the complainant, then to the complainant; or
- (c) in any other case according to the direction of the Special Act, or, if the Special Act contains no directions for payment to any person or persons, then to the Treasury.

## DIVISION VII.

## DIVISION VII.—SURETIES TO KEEP THE PEACE.

This Act to apply to  
peace informations.  
298 of 1883-4, s. 28.

**99.** (1) The power of a Court of Summary Jurisdiction, upon complaint of any person, to adjudge a defendant to enter into a recognizance, and find sureties to keep the peace, or be of good behaviour towards the complainant, shall be exercised by an order upon complaint, and this Act shall apply accordingly.

(2) The

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DIVISION VII.

(2) The complainant and defendant and their witnesses may be called and examined and cross-examined, and the complainant and defendant shall be subject to costs, as in the case of any other complaint.

(3) The Court may order the defendant to enter into a recognizance, with or without sureties, to keep the peace, or be of good behaviour, and, in default of compliance with such order, to be imprisoned for any period not exceeding six months.

**100.** (1) When any defendant is committed to gaol in default of finding sureties, as in the last preceding section mentioned, he may in person, or by anyone acting on his behalf, apply for an order varying that under which he was committed.

Power to vary order with regard to sureties.  
298 of 1883-4, s. 29.

(2) The matter of the application shall be heard and determined by a Special Magistrate, who may inquire further into the case.

(3) If it appears just, upon new evidence produced, or upon proof of a change of circumstances, the Magistrate, having regard to all the circumstances of the case, may make an order reducing the amount for which it is proposed the sureties should be bound, or dispensing with the sureties or surety, or otherwise dealing with the case as the Court thinks just.

## PART V.

## INDICTABLE OFFENCES.

## DIVISION I.—PROCEDURE TO COMMITTAL.

*The Information.*

**101.** An information may be laid before a Justice in any case where—

Information of indictable offence.  
15 of 1849 s. 1.

(a) any person is suspected to have committed any treason, felony, or indictable misdemeanor, or other indictable offence whatsoever, within the State :

(b) any person suspected to be guilty of having committed any such offence out of the State (of which offence cognizance may be taken by the Courts of the State) is or is suspected to be within the State.

**102.** (1) If it is intended to issue a warrant in the first instance, as hereinafter provided, the information shall be in writing, and the matter thereof shall be substantiated by the oath of the informant or a witness.

If warrant to issue information to be upon oath; otherwise oath not necessary.  
Ibid., s. 4.

(2) In any other case the information may be by parol and without any oath.

*Issue of Warrants and Summonses.*

**103.** Whenever an information is laid before a Justice against any person, and the matter thereof is substantiated by the oath of the informant

Issue of warrant in first instance.  
Ibid., s. 1.

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DIVISION I.*Justices Act.—1921.*

informant or a witness, the Justice may, if such defendant is not then in custody, issue his warrant, in the first instance, for the apprehension of the defendant.

Issue of summons.  
Ibid., s. 1.

**104.** Whenever an information is laid before a Justice he may, if the defendant is not then in custody, issue his summons for the appearance of the defendant.

On disobedience to  
summons warrant  
may issue.  
Ibid., s. 1.

**105.** (1) If after being duly served with a summons the defendant fails to appear in obedience thereto, and if the matter of the information is or has been substantiated by the oath of the informant or a witness, any Justice may issue his warrant to apprehend the defendant.

Warrant may issue  
at any time not-  
withstanding issue  
of summons.  
Ibid., s. 1.

(2) Notwithstanding anything herein contained any Justice may issue his warrant, before or after the time appointed in a summons, for the appearance of a defendant against whom an information for an indictable offence has been duly laid and substantiated as hereinbefore provided.

*Preliminary Examination.*

Examination be-  
fore Justices.  
15 of 1849, s. 8.

**106.** Whenever any defendant charged with an indictable offence upon an information under section 101 appears or is brought before any Justice, whether voluntarily upon summons, or upon apprehension under or without warrant, or in custody, for the same or any other offence, the Justice, before he commits the defendant to trial or admits him to bail, shall, in the presence of the defendant, take the statement of those who know the facts and circumstances of the case.

Place where ex-  
amination taken  
not to be deemed  
an open Court, and  
no person to remain  
without consent.  
Cf., *ibid.*, s. 10.

**107.** The room or building in which the examination is taken shall not be deemed an open Court for that purpose, and the Justice may, if it appears to him that the ends of justice will be best answered by so doing, order that no person shall have access to or be or remain in such room or building without his consent or permission: Provided that nothing herein contained shall authorise the exclusion of any counsel or solicitor for either party.

Evidence upon  
oath.  
Ibid., s. 8.

**108.** (1) Every witness shall have the usual oath administered to him before he is examined.

Depositions to be  
signed.  
Ibid., s. 8.

(2) The statement of every witness shall be taken down in writing in the presence of the defendant, and his deposition shall be read over to the witness and be signed by him and by the Justice.

On completion of  
the evidence for the  
prosecution Justice  
to consider whether  
*prima facie* case  
made.

**109.** (1) When all the evidence offered upon the part of the prosecution has been heard, the Justice then present shall consider whether it is sufficient to put the defendant upon his trial.

If not made  
defendant to be  
discharged.

(2) If the Justice is of opinion that the evidence is not so sufficient, he shall forthwith order the defendant, if in custody, to be discharged as to the information then under inquiry.

(3) If

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- (3) If the Justice is of opinion that the evidence is so sufficient, the Justice—
- If made, Justice to proceed to—
- (a) may (if the charge is one of a minor indictable offence), proceed in the manner directed and under the provisions in that behalf contained in Division II. hereof; dispose of case as a minor offence,
- (b) may (unless the defendant is charged with a capital offence, or with manslaughter), ask the defendant whether he wishes to plead to the charge as provided in Division III. hereof, and proceed as thereby directed; or ask defendant to plead,
- (c) shall proceed with the examination as hereinafter provided. or complete the examination.

110. (1) Where the Justice proceeds with the examination, he shall say to the defendant these words, or words to the like effect : Accused to be asked whether he desires to give evidence, &c.

“ Having heard the evidence for the prosecution, do you wish to be sworn and give evidence on your own behalf, or do you desire to say anything in answer to the charge. You are not obliged to be sworn and give evidence, nor are you required to say anything unless you desire to do so; but whatever evidence you may give upon oath, or anything you may say, will be taken down in writing, and may be given in evidence upon your trial.” Amended by 15 of 1849, s. 9. 298 of 1883-4, s. 3,

“ You are clearly to understand that you have nothing to hope from any promise of favor, and nothing to fear from any threat, which may have been held out to you to induce you to make any admission or confession of your guilt; but that whatever you now say may be given in evidence upon your trial, notwithstanding any such promise or threat.”

(2) Whatever the defendant then says in answer thereto shall be taken down in writing and read over to him, and shall be signed by the Justice, and kept with the depositions of the witnesses, and transmitted with them as hereinafter mentioned.

(3) Upon the trial of the defendant such statement or evidence as aforesaid may be given in evidence without further proof thereof, unless it is proved that the Justice by whom it purports to be signed did not in fact sign it.

(4) Nothing herein contained shall prevent the prosecutor in any case from giving in evidence any admission or confession or other statement of the defendant made at any time, which by law would be admissible as evidence against him.

111. (1) When the defendant has given evidence or made his statement, or has declined to do so, the Justice, before he commits the defendant for trial or admits him to bail, shall ask the defendant whether he desires to call any witness. Defendant may call witnesses. 298 of 1883-4, s. 3.

(2) Any witness whom the defendant desires to call shall then be called, and the statement of any such witness who knows anything relating

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DIVISION I.*Justices Act.—1921.*

relating to the facts and circumstances of the case, or anything tending to prove the innocence of the defendant, shall be taken in the manner hereinbefore provided.

If on completion of examination the evidence is not thought sufficient to warrant commitment, defendant to be discharged.  
If considered sufficient defendant to be committed or admitted to bail.  
15 of 1849, s. 15.

**112** (1) When the examination is completed the Justice then present shall consider whether the evidence is sufficient to put the defendant upon his trial.

(2) If, in the opinion of the Justice, it is not so sufficient, he shall forthwith order the defendant, if in custody, to be discharged as to the information then under inquiry.

(3) If, in the opinion of the Justice, the evidence is so sufficient, he shall—

(a) by his warrant commit the defendant to the gaol or the place to which by law he may be committed, to be there safely kept until he shall be thence delivered by due course of law ; or

(b) admit him to bail, as provided in Division IV. hereof.

*Adjournment of Preliminary Examination.*

Power to remand defendant from time to time. Remand not to exceed fifteen days without consent. For three days by verbal order. For more than three days by warrant.  
Cf. 15 of 1849, s. 12, amended by 298 of 1883-4, s. 11.

**113.** (1) If from the absence of witnesses, or from any other reasonable cause, it becomes necessary or advisable to defer or adjourn the examination for any time, the Justice before whom the defendant appears or is brought may, from time to time, remand the defendant for such time as in his discretion he deems reasonable, but not exceeding fifteen clear days at any one time, unless both parties consent thereto.

(2) If the remand is for a time not exceeding three clear days, the Justice may verbally order the constable or other person in whose custody the defendant then is, or any other constable or person named by the Justice in that behalf, to continue or keep the defendant in custody, and to bring him before the same or any other Justice acting at the time appointed for continuing the examination.

(3) If the remand is for any time exceeding three clear days the defendant shall be remanded by a warrant of the Justice to gaol, or to some other place of security.

Power to admit to bail in lieu of remand.  
15 of 1849, s. 12.

**114.** Instead of detaining the defendant in custody as aforesaid, any Justice before whom the defendant appears or is brought may discharge him upon a recognizance, conditioned for his appearance at the time and place appointed for the continuance of the examination.

Power to continue examination before expiry of remand.  
Ibid., s. 12.

**115.** The Justice may, notwithstanding that the defendant has been remanded, order the defendant to be brought before him or any other Justice, at any time before the expiration of the period for which the defendant has been remanded, and any keeper of the gaol or officer in whose custody the defendant is shall duly obey such order.

*Custody*

*Justices Act.—1921.*PART V.  
DIVISION I.*Custody of Depositions, Etc.*

116. (1) Whenever a defendant is committed for trial or admitted to bail, the Justice shall forthwith deliver, or cause to be delivered, to the Attorney-General the written information (if any), the depositions, the statement of the accused, and all recognizances of witnesses and of bail.

Depositions, recognizances, &c., to be transmitted to the Court in which the trial is to be had. Cf. *ibid.*, s. 11.

(2) The Attorney-General shall cause the same to be delivered to the proper officer of the Court in which the trial is to be had, before or at the opening of the said Court, on the first day of the sitting thereof, or at such other time as the Judge who is to preside in such Court at the said trial shall order and appoint.

(3) Whilst the documents are in the custody of the Attorney-General as aforesaid, he shall have and be subject to the same duties and liabilities with respect to the said several documents upon a *certiorari* directed to him, or upon a rule or order directed to him in lieu of that writ, as the Justice would have had, and been subject to, if such documents had not been so transmitted as aforesaid.

*Recognizances of Prosecutor and Witnesses to Appear on Trial.*

117. (1) The Justice before whom any witness is examined as aforesaid may bind the prosecutor or any witness, by recognizance, to appear at the Court at which the defendant is to be tried, then and there to prosecute, or to prosecute and give evidence, or to give evidence against the defendant, or at the trial of the defendant (as the case may be).

Binding prosecutor and witnesses by recognizances. 15 of 1849, s. 11.

(2) Every witness called by the defendant (except a witness merely to the character of the accused) who, in the opinion of the Justice, gives evidence in any way material to the case, or tending to prove the guilt or innocence of the accused person, shall be bound as aforesaid.

298 of 1893-4, s. 3.

118. (1) The recognizance shall specify—

- (a) the Christian and surname of the witness ; and
- (b) the place of his residence, and, if it is in a city or town, the name of the street and the number (if any) of the house, and whether he is the owner or tenant thereof, or a lodger therein ; and
- (c) his occupation.

Form of recognizance of witness. 15 of 1849, s. 11.

(2) The recognizance shall be entered into and duly acknowledged by the witness before, and be subscribed by, the Justice.

(3) The recognizances in respect of all or any two or more of such persons as aforesaid who are bound in the same sum or penalty may be included in one form or document, and in respect of every such person every such recognizance shall be as valid and effectual as if it had been entered into by a separate form or document.

Where several witnesses recognizances may be in one form. Cf. *Vic.*, No. 2675 of 1915, s. 50.

119. If

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Witness refusing to enter into recognizance may be committed to gaol.  
15 of 1849, s. 11.

**119.** If any witness refuses to enter into or acknowledge the recognizance the Justice may, by his warrant, commit such witness to the gaol nearest to the place in which the defendant is to be tried, there to be imprisoned and safely kept until after the trial of the defendant, unless in the meantime such witness shall duly enter into and acknowledge such recognizance as aforesaid before some Justice; but if afterwards, from want of sufficient evidence in that behalf, or other cause, the Justice before whom the defendant is brought does not commit him or hold him to bail for the offence with which he is charged, any Justice may order and direct the keeper of the gaol to discharge any such witness from custody, and he shall be discharged accordingly.

DIVISION II.

DIVISION II.—MINOR OFFENCES.

Minor offences cognizable by Justices.  
8 of 1869-70, s. 3.  
298 of 1883-4, s. 12.

**120.** (1) A Court of Summary Jurisdiction constituted by a Special Magistrate or by any two or more Justices shall have such jurisdiction as hereinafter appears to hear and determine in a summary way any charge in respect of any of the following offences, that is to say—

- i. All simple larcenies (not being larcenies of cattle and other animals), and all larcenies from the person without violence, and all larcenies punishable under section 185 of the Criminal Law Consolidation Act, 1876, where the property stolen is of the value of Five Pounds or less ;
- ii. All larcenies or embezzlements by clerks or servants of property of the like value ;
- iii. Obtaining money or goods by false pretences, when the property obtained is of the value of Five Pounds or less ;
- iv. All felonies punishable as in the case of simple larceny ; and
- v. All misdemeanors not being by law punishable by imprisonment, with or without hard labor, exceeding two years :

Provided that nothing herein contained shall extend or apply to any of the offences next mentioned, that is to say—

libel,  
abduction,  
procuring the defilement of women or children,  
indecent assault on women and children,  
attempts to commit rape or unnatural offences,  
concealment of childbirth,  
conspiracy.

Minor offences cognizable by a Special Magistrate.  
1127 of 1913, s. 3.

(2) A Court of Summary Jurisdiction constituted by a Special Magistrate shall also have such jurisdiction as hereinafter appears to hear and determine in a summary way any charge in respect of any



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DIVISION II.

any offence mentioned in paragraphs I., II., and III. of subsection (1) hereof where the property stolen, embezzled, or obtained does not exceed in value Fifty Pounds.

**121.** For the purposes of the preceding section the value of the share, interest, or deposit or of the goods or other valuable thing to which any valuable security relates, or of the money due thereon or secured thereby and remaining unsatisfied, shall be deemed to be the value of such security.

Valuation of  
valuable security.  
8 of 1869-70, s. 20.  
Cf. 38 of 1876, s. 412.

**122.** Nothing hereinbefore contained shall extend or apply to give jurisdiction to Justices or a Special Magistrate to hear and finally determine any charge—

No jurisdiction  
unless defendant  
consents, and case  
fit for summary  
trial.  
8 of 1869-70, s. 4.

(a) unless—

- I. the defendant consents thereto, as hereinafter provided ;  
or
- II. the defendant is under the age of eighteen years, as provided in section 161 ; or

(b) if it appears to the Justices or Special Magistrate that the offence, either because of its aggravated character or other circumstances, is such as to require a punishment exceeding that which a Court of Summary Jurisdiction is competent to adjudge, or that the charge ought to be tried before a jury.

**123.** (1) When a defendant appears before any Special Magistrate or Justices charged with any offence cognizable by such Special Magistrate or Justices under section 120, and it appears to such Special Magistrate or Justices that the case is one fit to be heard and determined in a summary way, he or they shall, when all the evidence offered on the part of the prosecution has been heard, say to the defendant these words, or words to the like effect :

Special Magistrate  
to ask accused  
whether he consents  
to charge being dis-  
posed of summarily.  
8 of 1869-70, s. 5.

“ Do you consent that the charge against you shall be tried by me (or us), or do you desire that it should be sent for trial by a jury ? ”

(2) Unless the defendant consents as aforesaid, or the case is one under section 161, the Special Magistrate or Justices shall proceed to complete the preliminary examination.

**124.** If the Justice or Justices before whom any defendant appears, charged with any offence cognizable under section 120, is or are not competent to hear and determine the case in a summary way, and it appears to him or them that the case is or may be one fit to be so heard and determined, he or they may remand the defendant, and adjourn the hearing to such time and place as he deems or they deem fit, then and there to be heard before a Special Magistrate or two or more Justices, as the case may require: Provided that the hearing shall not be so adjourned unless the defendant signifies his consent thereto.

Justice or Justices  
not having  
jurisdiction may  
remand for hearing  
by a competent  
Court.  
1127 of 1913 s. 6.

**125.** (1) When

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Charge to be reduced into writing and defendant required to plead.

**125.** (1) When Justices or a Special Magistrate proceed to dispose of any case as a minor offence the charge shall, in the case of a parol information, be reduced into writing, and the defendant shall be asked whether he is guilty or not guilty of the charge.

Thereafter summary jurisdiction provisions to apply to the case save as expressly provided.

(2) Thereafter the Justices or Special Magistrate shall be a Court of Summary Jurisdiction within the meaning of this Act, and (subject as hereinafter appears) the procedure and the powers of the Court shall be the same, and the provisions of this Act shall apply, as if the charge were a complaint for a simple offence under this Act.

Witnesses for prosecution may be recalled for cross-examination.

Cf. Eng., S. J. Act, 1879, s. 27.

**126.** When the evidence of any witness has been taken before the Justices constituting the Court, such evidence need not be taken again, but any such witness shall, if the defendant so requires, be recalled for the purposes of cross-examination.

Costs not to be adjudged upon dismissal.

**127.** Nothing in this Act contained shall empower the Court to adjudge the payment by the informant to the defendant of costs upon an order of dismissal of a charge of an indictable offence.

Defendant entitled to certificate of dismissal under section 139.

Cf. 8 of 1889-70, s. 4.

**128.** If the Court dismisses the charge, an order of dismissal shall be drawn up, and a certificate thereof granted to the defendant in the manner provided by section 71.

Limitation of punishment.

Ibid., s. 4.

**129.** If the defendant is convicted, the Court may adjudge him to be punished by fine or imprisonment as he is by law punishable: Provided that (except in any case where Justices or a Special Magistrate have or has, independently of this Act, power to punish by longer imprisonment or higher fine) the Court shall not inflict any punishment exceeding, in the case of imprisonment, imprisonment for twelve months, or, in the case of a fine, Fifty Pounds.

Power to order restitution of stolen property.

Ibid., s. 11.

**130.** If the Court convicts the defendant, it may order restitution of the property stolen, taken, or obtained by false pretences, in any case in which the Supreme Court would, if the defendant had been tried before it, be by law authorised to order restitution.

Proceedings to be forwarded to the Supreme Court and to be evidence.

Ibid., s. 10.

**131.** (1) When any charge is heard and determined under the provisions hereof, the written charge, the depositions of the witnesses for the prosecution and for the defence, and the statement of the accused, and the conviction, or the order of dismissal, shall be transmitted to the Clerk of Arraignment of the Supreme Court, there to be kept among the records of the said Court.

(2) A copy of such conviction, or of such order of dismissal, certified by the said Clerk of Arraignment, or proved to be a true copy, shall be sufficient evidence to prove a conviction or dismissal for the offence mentioned therein, in any legal proceeding whatever.

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DIVISION II.

**132.** A conviction under the provisions hereof shall have the same effect as a conviction upon an indictment for the same offence would have had.

Effect of conviction  
*Ibid.*, s. 13.

**133.** A defendant who obtains an order of dismissal, or is convicted, under the provisions hereof, shall be released from all further or other criminal proceedings for the same cause.

Proceedings to be  
a bar to further  
prosecution.  
*Ibid.*, s. 14.

## DIVISION III.—COMMITTAL FOR SENTENCE.

## DIVISION III.

**134.** (1) Unless the defendant is charged with a capital offence or with manslaughter, the Justice may, when all the evidence offered upon the part of the prosecution has been heard, and if he thinks fit, ask the defendant whether he wishes to plead to the charge.

Defendant may be  
asked to plead to the  
charge.  
1133 of 1913, s. 4.

(2) If the defendant thereupon signifies a desire to plead to the charge, the Justice shall reduce the charge into writing and read the same to the defendant, and say to him, "Are you guilty or not guilty of the offence with which you are charged?"

**135.** If the defendant does not signify a wish to plead, or pleads not guilty, the Justice shall proceed to complete the preliminary examination in the manner provided in Division I. hereof.

On plea of not  
guilty examination  
to proceed.  
*Ibid.*, s. 4 (4).

**136.** If the defendant pleads guilty, the Justice shall—

(a) by his warrant commit the defendant to gaol, or admit him to bail to appear for sentence as hereinafter provided; and

On plea of guilty  
defendant to be  
committed or  
admitted to bail for  
sentence.  
*Ibid.*

(b) cause a record of the plea, and of the committal, or admission to bail, to be put into writing.

**137.** (1) The defendant, upon pleading guilty, may, if he so desires, call any witnesses as to his character.

Defendant may call  
witnesses as to  
character.

(2) If any such witnesses are called, their depositions shall be taken in the manner provided in section 108.

*Ibid.*, s. 6.

(3) Nothing herein contained shall be deemed to take away, or in any way limit, the power of the Judge before whom the defendant appears for sentence to hear witnesses as to his character, or to hear any statement by him or on his behalf.

**138.** (1) The Justice may bind the prosecutor or any witness by recognizance to appear at the Court before which the defendant is to appear for sentence, in the same manner as if he had been committed for trial: Provided that, unless the Justice when binding the prosecutor or any witness otherwise directs, every such recognizance shall be void unless the defendant, within the time and in the manner prescribed by section 141, withdraws his plea of guilty and substitutes therefor a plea of not guilty.

Attendance of  
witnesses at the  
Criminal Court.  
*Ibid.*, s. 7.

(2) The provisions of section 119 shall apply to any witness who refuses to enter into any such recognizance.

**139.** When

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DIVISION III.

*Justices Act.*—1921.

Record to be forwarded to the Criminal Court.  
*Ibid.*, s. 5.

**139.** When the defendant is committed, or admitted to bail, as aforesaid, the Justice shall forthwith deliver the record, or cause the same to be delivered, with the written information or charge, and the depositions, and the recognizances (if any), to the Attorney-General, who shall cause the same to be delivered to the proper officer of the Court at which the defendant is to appear for sentence, before or at the opening of the said Court on the first sitting thereof, or at such other time as the Judge who is to preside in such Court may order.

Form of warrant and venue.  
Cf. *ibid.*, s. 4.

**140.** (1) The warrant shall commit the defendant to a gaol, specified by the Justice, to appear for sentence before the next Court of Oyer and Terminer or General Gaol Delivery to be held at the place specified in that behalf by such Justice, or at such other place as may thereafter be ordered by a Judge of the Supreme Court, and in the meantime to be safely kept in such gaol.

(2) If the defendant is committed or admitted to bail by a Justice sitting within any Circuit Court District within the meaning of the Act No. 6 of 1868-9, he shall be committed or bailed to appear at the first Court of Oyer and Terminer or General Gaol Delivery to be held within the said District.

(3) Sections 10 and 12 of the last-mentioned Act shall apply, *mutatis mutandis*, with respect to any defendant committed or admitted to bail under this section to the same extent as if the defendant had been committed for trial.

Withdrawal of plea and substitution of plea of not guilty.  
*Ibid.*, s. 9.

**141.** (1) When a defendant has been committed or admitted to bail to appear as aforesaid, he may, nevertheless, by notice in writing to the Attorney-General, not less than seven clear days before the day of the first sitting of the Court at which he is to appear as aforesaid, withdraw his plea of guilty and substitute therefor a plea of not guilty: Provided that in such case any Judge presiding over such Court may adjourn or postpone the trial to such day as he thinks proper.

(2) Thereupon the defendant—

(a) if committed to appear for sentence, shall be deemed to have been committed for trial, and the warrant of committal shall be construed accordingly:

(b) if admitted to bail to appear for sentence, shall be deemed to have been admitted to bail to appear for trial, and any recognizance or other undertaking (whether in writing or otherwise), by whomsoever entered into, in connection with the admission to bail, shall be construed accordingly.

(3) Upon receipt of a notice under this section it shall be the duty of the Attorney-General to cause the same to be delivered to the proper officer mentioned in section 139.

(4) At

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(4) At the trial of any person who has, under this section, substituted a plea of not guilty, the fact that he had pleaded guilty to the charge on which he is being tried shall not be put in evidence, nor be made the subject of any comment to the jury by the prosecution.

**142.** Subject to the provisions of section 141, upon the appearance for sentence of a defendant committed or admitted to bail as aforesaid, the Court may pass sentence or otherwise deal with the defendant as if he had been arraigned and had pleaded guilty in such Court, and all the same consequences shall ensue as if he had been so arraigned and had so pleaded guilty: Provided that if, for any reason, it appears to the presiding Judge of such Court that the plea of guilty should be withdrawn, he may advise such person to withdraw such plea, and, if the same be thereupon withdrawn, the defendant shall be deemed to have been committed for trial, and may forthwith, or after adjournment, and notwithstanding that no information has been filed in such Court, be arraigned, and the case shall proceed in the usual course.

Court to sentence accordingly unless the Judge advises withdrawal of the plea.

*Ibid.*, s. 10.

## DIVISION IV.—BAIL.

## DIVISION IV.

*Cases in which Bail is Discretionary.*

**143.** Where the defendant is charged with any of the following offences, namely—

Power to admit to bail persons charged with felony or certain misdemeanors. 15 of 1849, s. 13.

- I. any felony, assault with intent to commit a felony, or attempt to commit a felony;
- II. obtaining or attempting to obtain property by false pretences;
- III. any misdemeanor in receiving property stolen or obtained by false pretences;
- IV. perjury or subornation of perjury;
- V. concealing the birth of a child by secret burying or otherwise;
- VI. wilful or indecent exposure of the person;
- VII. riot;
- VIII. assault in pursuance of a conspiracy to raise wages, or upon a peace officer in the execution of his duty, or upon any person acting in his aid; or
- IX. neglect or breach of duty as a peace officer,

the Justice may, in his discretion—

- (a) admit the defendant to bail instead of committing him for trial as provided in section 112 or 140; or
- (b) commit the defendant for trial as aforesaid, and certify for his admission to bail.

*Cases*

*Cases in which Bail is Obligatory.*

Bail for persons charged with other misdemeanors.

*Ibid.*, s. 13.

**144.** Where the defendant is charged with any indictable misdemeanor not mentioned in section 143, the Justice shall—

- (a) admit him to bail instead of committing him for trial; or
- (b) commit him for trial, and certify for his admission to bail.

*General Provisions.*

Bail after commitment for trial or sentence.

15 of 1849, s. 3, amended by 1133 of 1913.

**145.** When a defendant charged with any offence for which bail is required or authorised to be granted is committed for trial, the Justice who has signed the warrant for his commitment may admit the defendant to bail, or certify for his admission to bail, at any time before the first day of the sitting or session at which he is to be tried, or to appear, or before the day to which such sitting or session is adjourned.

Amount and form of recognizance.

15 of 1849, s. 13, as modified by The Criminal Law Consolidation Act, 1876, s. 370

**146.** (1) Where a Justice is hereby authorised or required to admit any defendant to bail, he shall do so only upon the defendant entering into a recognizance, with or without a surety or sureties, to ensure his appearance at the time and place when and where he is to be tried or sentenced.

(2) The recognizance shall be conditioned for the appearance of the defendant at the time and place aforesaid, and that he will then surrender and take his trial, or appear for sentence, and not depart the Court without leave.

Certificate for bail.

*Cf.* 15 of 1849, s. 13.

**147.** (1) The certificate for the admission of a defendant to bail shall fix the amount in which the defendant and sureties are to be bound.

(2) Upon such certificate the recognizance may be entered into as provided by section 33.

(3) Upon the production of such certificate and the recognizance or sureties taken thereunder any Justice may release the defendant upon bail.

Defendant bailed after commitment to be discharged upon warrant of deliverance.

*Ibid.*, s. 14.

**148.** When a defendant is in gaol charged with the offence for which he is admitted to bail, or released upon bail, the Justice who so admits or releases him shall send to, or cause to be lodged with, the keeper of the gaol, a warrant of deliverance requiring the keeper to discharge the defendant if he is detained for no other offence, and upon such warrant being delivered to or lodged with the keeper, he shall forthwith obey the same.

Transmission of recognizance.

*Ibid.*, s. 13.

**149.** When any defendant is released upon bail by a Justice other than the committing Justice, such Justice shall forthwith transmit the recognizance or recognizances of bail to the Attorney-General.

Persons admitted to gaol and suspected of an intention to abscond may be arrested.

**150.** When any defendant has been admitted to or released upon bail by any Court, Judge, Justice, or person having authority in that

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that behalf to appear for trial or for sentence, and any person gives information on oath to a Justice of any facts which raise a probable presumption that it is the intention of such defendant not to surrender himself in accordance with the condition of the recognizance of bail entered into by him, or on his behalf, such or any other Justice may issue a warrant for the apprehension of the defendant, and may commit him to gaol, to be there safely kept, notwithstanding his having been admitted to bail as aforesaid, until he shall be thence delivered by due course of law.

298 of 1883-4, s. 10  
1133 of 1913, s. 4 (7).

## DIVISION V.—MISCELLANEOUS.

## DIVISION V.

*The Warrant of Committal.*

151. Any constable or other person to whom a warrant of commitment is directed shall convey the person therein named or described to the gaol mentioned in the warrant, and there deliver him, together with the warrant, to the keeper of such gaol, who shall thereupon give such constable or other person so delivering such prisoner into his custody a receipt for such prisoner, setting forth the state and condition in which such prisoner was when he was so delivered.

Regulations for conveying prisoners to gaol.

15 of 1849, s. 16.  
1133 of 1913, s. 8.

*Use of Depositions at Trial.*

152. The deposition of any witness, taken at the preliminary examination, and purporting to be signed by the Justice before whom it purports to have been taken, may be read as evidence upon the trial of the defendant, upon proof—

Deposition of witness for prosecution taken at preliminary examination may be used if witness dead or unable to travel.

15 of 1849, s. 8.  
Cf. 298 of 1883-4, s. 9.

- (a) that the witness is dead, or so ill as not to be able to travel; and
- (b) in the case of a witness for the prosecution, that the deposition was taken in the presence of the defendant, and that he, or his counsel or solicitor, had a full opportunity of cross-examining the witness,

and without further proof, unless it is proved that the deposition was not in fact signed by the Justice purporting to sign the same.

153. (1) Whenever it is made to appear to the satisfaction of any Justice that—

Justice may take deposition of person dangerously ill and unable to attend preliminary examination.

- (a) any person is dangerously ill and is, in the opinion of some legally qualified medical practitioner, not likely to recover from such illness; and
- (b) such person is able and willing to give material information relating to any indictable offence, or to any defendant accused of any such offence; and
- (c) it is not practicable for any Justice to take the deposition of such person at the preliminary examination of such defendant,

the Justice may take the statement upon oath of such person.

(2) The

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(2) The Justice taking the deposition shall thereupon subscribe the same, and shall add thereto, by way of caption, a statement of his reason for taking it, and of the day and place when and where it was taken, and of the names of the persons (if any) present at the taking thereof.

(3) If the deposition relates to any indictable offence for which any defendant is already committed or bailed to appear for trial, the Justice shall transmit the same, with the said addition thereto, to the officer to whom the depositions are by law required to be transmitted, and the said officer shall preserve the same.

Use of such  
deposition at trial.  
Ibid., s. 8.

**154.** Afterwards, upon the trial of any defendant or defendants to whom the statement relates, the statement may be read in evidence, either for or against the accused, if—

- (a) the statement purports to be signed by the Justice by or before whom it purports to be taken ;
- (b) it is proved that the person who made the same is dead, or that there is no reasonable probability that such person will ever be able to travel or give evidence ; and
- (c) it is proved, to the satisfaction of the Court, that reasonable notice of the intention to take the statement was served upon the person (whether prosecutor or defendant) against whom it is proposed to be read in evidence, and that such person, or his counsel or solicitor, had, or might have had if he had chosen to be present, full opportunity of cross-examining the person who made the same.

Provision for  
prisoner being  
present at the  
taking of deposition.  
Ibid., s. 9.

**155.** Whenever any prisoner in actual custody causes to be served, or receives notice of, an intention to take such a statement as aforesaid, the Judge or Justice before whom the prisoner was committed, or a visiting Justice of the gaol in which he is confined, may, by an order in writing, direct the keeper of the gaol having the custody of the prisoner to convey him to the place mentioned in the said notice, for the purpose of being present at the taking of the statement ; and such keeper shall convey the prisoner accordingly, and the expenses of such conveyance shall be paid out of the funds applicable to the other expenses of the gaol from which the prisoner is conveyed.

*Payment to Prosecutors and Witnesses.*

Manner of payment  
under sec. 391 of  
the Criminal Law  
Consolidation Act,  
1876.  
186 of 1880, s. 4.

**156.** Every order for payment to any prosecutor or other person under section 391 of the Criminal Law Consolidation Act, 1876, shall be forthwith made out and delivered by the proper officer of the Court to such prosecutor or other person, and shall be paid by the Sheriff out of any funds he may have in his hands, or which may be granted to him for the purpose, to the person named therein ; or if the said order shall have been indorsed with the words " Pay the bearer hereof," or words to that effect, signed by the person within named, and witnessed by one disinterested person, then to the bearer thereof ; and the Sheriff shall be allowed the same in his accounts ; and every



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every payment made by him shall effectually discharge him from any claims made by the person named therein, or any person claiming by, through, or under him.

**157.** Any Judge of the Court before which any defendant is prosecuted or tried, or for trial before which he is committed or bailed to appear, for any felony, misdemeanor, or other indictable offence, is hereby authorised and empowered in his discretion, at the request of any person who shall appear before such Court to give evidence on behalf of the person accused, to certify that such witness so appearing ought to be paid his expenses, and in that case the amount to be paid to such witness shall be the same as if he had been a witness for the prosecution, and shall be ascertained in like manner, and shall be defrayed out of any moneys provided by Parliament for allowances to witnesses.

Court may allow expenses to witnesses for the defence.  
298 of 1883-4, s. 5, amended by 355 of 1885, s. 16.

**158.** When any charge is summarily adjudicated upon under the provisions of Division II. of this Part of this Act, the Justices or Special Magistrate, upon the request of any person who has preferred the charge, or appeared to prosecute or to give evidence against the person charged, may, if they or he think fit, grant a certificate to such person for the amount of the compensation for his reasonable expense, trouble, and loss of time therein, subject to the regulations for the time being in force in relation to the certificates to be granted by the examining Magistrates under the Criminal Law Consolidation Act, 1876: Provided that the amount of fees payable in respect of the expenses of apprehending the defendant and detaining him in custody, and of such other expenses as are now by law payable when incurred before a commitment for trial, may be added to the certificate for compensation as aforesaid, and paid in the like manner.

Power to award payment of expenses of prosecution of a minor offence.  
166 of 1880, s. 2.

**159.** Where any defendant is charged before a Justice with felony, or with any indictable misdemeanor, and in the opinion of the Justice the charge was *bona fide* made upon reasonable and probable cause, the Justice may, in his discretion, at the request of the prosecutor, grant a certificate of the expenses and of the amount to be allowed for the trouble and loss of time to the witnesses appearing and examined on such charge, notwithstanding that the parties may not be bound over by recognizance to prosecute and give evidence, and although no committal for trial may take place: Provided that any certificate so granted as aforesaid shall be subject to the regulations for the time being in force with regard to certificates granted by examining Magistrates under the Criminal Law Consolidation Act, 1876, and shall be payable in manner directed by section 160 of this Act.

Power to award costs of prosecution although charge dismissed.  
298 of 1883-4, s. 7.

**160.** Every certificate for compensation under either of the two last preceding sections shall be paid by the clerk, or by the Clerk of the Local Court of Adelaide, upon the same being presented to him, upon sight, out of any funds in his hands, or which may be granted

Manner of payment under sections 158 and 159.  
166 of 1880, s. 3.

granted to him for the purpose, to the person named therein; or if the said certificate shall have been indorsed with the words "Pay the bearer hereof," or words to that effect, signed by the person named therein and witnessed by one disinterested person, then to the bearer thereof; and every such clerk shall be allowed the same in his accounts: And every payment made by him shall effectually discharge him from any claims made by the person named therein, or any person claiming by, through, or under him.

*Summary Trial of Children.*

Provision for  
summary trial of  
children.

Cf. 298 of 1883-4,  
s. 13.

**161.** (1) Where a child under the age of eighteen years is charged before a Special Magistrate, or two or more Justices, with any indictable offence, other than homicide, the Special Magistrate or Justices, if he or they think it expedient so to do, and if the parent or guardian of the child so charged, when informed of his right to have the child tried by a jury, does not object to the child being dealt with summarily, may deal summarily with the offence, and inflict the same description of punishment as might have been inflicted had the case been tried on indictment: Provided that—

(a) where a fine is awarded the amount shall not in any case exceed Five Pounds:

(b) in lieu of imprisonment the Court shall apply the provisions of the State Children Acts, 1895 to 1918.

(2) For the purpose of a proceeding under this section the provisions of Division II. of this Part of this Act shall be adopted so far as the same are applicable thereto, and the Special Magistrate or Justices may, if they think it desirable, make a statement for the information of the parent or guardian of the meaning of the case being dealt with summarily, and of the Court at which the child would be tried if tried by a jury.

(3) Where the parent or guardian of a child is not present when the child is charged with an indictable offence, the Special Magistrate or Justices may, if he or they think it just so to do, remand the child for the purpose of causing notice to be served on such parent or guardian, with a view, so far as practicable, of securing his attendance at the hearing of the charge, or the Special Magistrate or Justices may, if he or they think it expedient so to do, deal with the case summarily.

(4) This section shall not render punishable for an offence any child who is not, in the opinion of the Special Magistrate or Justices before whom he is charged, above the age of seven years, and of sufficient capacity to commit crime.

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## PART VI.

## PART VI.

## APPEALS FROM COURTS OF SUMMARY JURISDICTION.

*Special Case.*

**162.** (1) Any Court of Summary Jurisdiction may, at discretion, reserve any question of law for the consideration of the Supreme Court, and state a special case or cases for the opinion of the said Court.

Points of law may be reserved for the consideration of the Supreme Court.

Cf. 6 of 1850, s. 43.

1215 of 1915, s. 47.

(2) The Supreme Court shall deal with every such special case according to the practice of the Supreme Court on special cases, and may make such order thereon (including any order as to the costs of the proceedings in that Court and in the Courts below) as to the Supreme Court appears just.

(3) The Supreme Court may send any such special case back for amendment, or may itself amend the same.

(4) The Justices shall make a conviction or order in respect of the matters referred to the Supreme Court in conformity with the certificate of the Supreme Court.

*Appeals Generally.*

**163.** (1) Any person aggrieved by any conviction, order, or adjudication of a Court of Summary Jurisdiction (including a conviction of a minor indictable offence, or an order dismissing a complaint of a simple offence) may appeal to the Supreme Court from such conviction, order, or adjudication, as hereinafter provided, in every case, unless some Special Act expressly declares that such conviction, order, or adjudication shall be final, or otherwise expressly prohibits any appeal against the same: Provided that in proceedings under the Industrial Code, 1920, the appeal shall lie to the Industrial Court, and that, for the purposes of every such appeal, all references in this Part of this Act to the Supreme Court, or to the Master thereof, shall be read as references to the Industrial Court and to the Registrar thereof respectively.

Right of appeal to Supreme Court in every other case unless expressly taken away.

(2) Any provision of any Special Act conferring a right of appeal to a Local Court against any such conviction, order, or adjudication as mentioned in subsection (1) hereof shall be read as conferring a right of appeal to the Supreme Court under this Act in lieu of to such Local Court.

**164.** No appeal shall be allowed from any such conviction, order, determination, or adjudication as mentioned in subsection (1) of section 163, nor shall any such conviction, order, determination, or adjudication be removed into the Supreme Court by *certiorari* or otherwise, except as provided by this Act.

No appeal or removal into Supreme Court to be allowed except under this Act.

6 of 1850, s. 43.

Cf. *ibid.*, s. 35.

**165.** The

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Power of Supreme Court to dispense with conditions precedent to appeal where compliance impracticable.

**165.** The Supreme Court may dispense with compliance with any condition precedent to the right of appeal, as prescribed by this Act, if, in its opinion, the appellant has done whatever is reasonably practicable to comply with the provisions of this Act.

Amendment of notice of appeal.  
298 of 1883-4, s. 55.

**166.** No appeal shall be defeated merely by reason of any defect, whether of substance or of form, in any notice or statement of the grounds of appeal, but if upon the hearing thereof the Supreme Court is of opinion that any objection raised to such notice or statement is valid, it may cause the notice or statement to be forthwith amended: Provided that if the notice or statement appears to have been misleading, or to have occasioned expense, or to have prejudiced the respondent, such amendment shall be allowed only upon such terms as to costs or postponement, or both, as the Supreme Court thinks just.

Recognizances on appeal.  
Cf. 298 of 1883-4, s. 41.

**167.** Every recognizance on appeal shall be entered into before the Justices whose decision is appealed against, or some other Justice, and shall be conditioned duly to prosecute the appeal, and to abide the order of the Supreme Court thereon, and to pay such costs as may be awarded by such Court.

Appellant if in custody to be released on recognizance.  
Cf. 298 of 1883-4, s. 41.

**168.** If the appellant is then in custody, he shall be liberated upon the recognizance on appeal being further conditioned for his appearance before the same Justices, or, if that is impracticable, before some other Justice or Justices, within fourteen days after the decision of the appeal, to abide the result of such decision, unless the conviction or order is reversed.

Amendment of recognizances on appeal.  
298 of 1883-4, s. 54.

**169.** (1) If any recognizance entered into as a condition of any appeal appears to the Supreme Court to have been insufficiently entered into, or to be otherwise defective or invalid, such Court may—

- (a) permit the substitution of a new and sufficient recognizance to be entered into before such Court, in the place of the insufficient, defective, or invalid recognizance, or
- (b) dispense with such recognizance,

and in either case upon such terms as to adjournment and costs as it thinks just.

(2) Every such substituted recognizance shall be as valid and effectual and may be enforced as if it had been duly entered into in the first instance.

After decision on appeal Justices may enforce same.  
298 of 1883-4, s. 49.

**170.** (1) When any conviction or order has been affirmed, amended, or made upon any appeal, the Justices from whose decision the appeal has been brought, or any other Justice, shall have the same authority to enforce such conviction or order as if it had not been appealed against, or had been made in the first instance.

(2) No

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(2) No action or proceeding whatsoever shall be commenced or had against any Justice for enforcing such conviction or order by reason of any defect in the same respectively.

**171.** (1) The appeal shall be instituted by notice, and by entering into a recognizance on appeal as provided by sections 167 and 168.

Appeal to be instituted within one month.

(2) Every appeal shall be instituted within one calendar month from the time of the conviction, order, or adjudication appealed against.

Cf. 6 of 1850, s. 30.

**172.** (1) The notice of appeal shall be in writing, and shall be given to the respondent, and shall state the nature and grounds of the appeal.

Notice of appeal. 6 of 1850, s. 30.

(2) A copy of the notice of appeal shall be served upon one or more of the Justices, or upon the clerk.

**173.** Forthwith after the institution of the appeal the appellant shall set the same down for hearing at the first sittings of the Supreme Court for hearing appeals under this Act to be held not less than ten days after the institution of the appeal, and shall forthwith after such setting down give notice thereof to the respondent.

Appellant to set down appeal and give notice.

**174.** (1) When an appeal is instituted the Justices by whom the conviction, order, or adjudication is made shall cause the same to be forthwith transmitted to the Master or other proper officer of the Supreme Court, there to be kept among the records of the said Court.

Convictions, &c., to be transmitted to Supreme Court. How proved thereafter. 6 of 1850, s. 32.

(2) In any subsequent proceeding relative thereto the conviction, order, or adjudication, or a copy thereof certified by the proper officer of the Supreme Court under his hand, shall be sufficient evidence thereof.

**175.** The Justices shall also cause the originals of the evidence given on the hearing, or true copies thereof certified by them as such, to be transmitted with the conviction, order, or adjudication as aforesaid.

Evidence given on hearing of information on conviction appealed from to be sent to the Supreme Court.

6 of 1850, s. 33.

**176.** No evidence shall be received on the hearing of the appeal other than such originals or copies as aforesaid, except by consent of the parties or by order of the Supreme Court on appeal.

No other evidence to be received on hearing without consent or order.

Cf. 6 of 1850, s. 34.

**177.** (1) Every appeal shall be heard and determined by the Supreme Court in a summary way, and according to the rules of practice in force with reference to the proceedings of the Court in that behalf, and the Supreme Court shall have all the powers and duties, as to amendment and otherwise, of the Justices whose decision is appealed from.

Procedure and power of Supreme Court on appeal.

6 of 1850, s. 31.

(2) Upon the hearing of the appeal the Supreme Court may—

- (a) adjourn the same from time to time;                      (b) mitigate

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- (b) mitigate any penalty, forfeiture, or sum ;
- (c) affirm, quash, or vary the conviction, order, or adjudication appealed from, or substitute or make any conviction, order, or adjudication which ought to have been made in the first instance ;
- (d) remit the case for hearing or for further hearing before the same or any other competent Court of Summary Jurisdiction ; and
- (e) make such further or other order as to costs or otherwise as the case requires.

If costs not paid according to order of Supreme Court, certificate to be granted. 6 of 1850. s. 26.

**178.** (1) When the Supreme Court makes any order as to the costs of the appeal it shall direct the same to be paid to the Master or other proper officer of the said Court, to be by him paid over to the party entitled thereto, and may state a time within which the costs are to be paid.

(2) If the costs are not paid within the time so limited (or if no time is so limited, then within seven days) the Master, or other proper officer of the Court, upon application of the party entitled to the costs, or of any person on his behalf, and on payment of the fee of One Shilling, shall grant to the party so applying a certificate that the costs have not been paid.

Enforcement of payment of costs of appeal. Cf. 6 of 1850, s. 26.

**179.** (1) Upon production of such certificate to any Justice the payment of the costs may be enforced in the same manner as is provided by this Act for enforcing the payment of costs awarded by Justices, or by putting the recognizances (if any) in suit, or in both of such modes.

(2) The payment of the costs may be enforced under the same warrant as any penalty or sum adjudged to be paid by any conviction or order affirmed or made upon the appeal.

Supreme Court may make rules for proceedings. Cf. 298 of 1883-4, s. 51.

**180.** (1) Rules of Court may be made under the Supreme Court Act, 1878, for regulating the practice and procedure under this Part of this Act.

(2) The provisions of Part V. of the Supreme Court Act, 1878, shall, so far as the same are applicable, apply to rules made by virtue of the powers hereby conferred.

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## PART VII.

## SUPPLEMENTARY PROVISIONS.

*Irregularities and Amendment.*

## PART VII.

**181.** It shall be sufficient in any information or complaint, if the same gives the defendant a reasonably clear and intelligible statement of the offence or matter with which he is charged.

Form of information or complaint.  
Cf. 1133 of 1913, s. 12.

**182.** (1) No objection shall be taken or allowed to any information or complaint in respect of—

Information or complaint not to be objected to for irregularity.

(a) any alleged defect therein, in substance or in form; or

Cf. 15 of 1849, ss. 4, 5, 6.  
6 of 1850, ss. 1, 38.

(b) any variance between it and the evidence adduced in its support at the preliminary examination or at the hearing (as the case may be):

Provided that the Justice or the Court shall dismiss the information or complaint, unless it is amended as provided by section 183, if it appears to him or to it—

(a) that the defendant has been prejudiced by such defect or variance; or

(b) that the information or complaint fails to disclose any offence or matter of complaint.

**183.** If it appears to the Justice, or to the Court before whom any defendant comes or is brought to answer any information or complaint that the information or complaint—

Amendment of information or complaint.

(a) fails to disclose any offence or matter of complaint, or is otherwise defective; and

(b) ought to be amended so as to disclose an offence or matter of complaint, or otherwise to cure such defect—

the Justice or the Court may amend the information or complaint upon such terms as may be just.

**184.** No objection shall be taken or allowed to any warrant or summons in respect of—

Warrant or summons not to be objected to for irregularity.  
Cf. *ibid.*

(a) any alleged defect therein, in substance or in form; or

(b) any variance between it and the evidence adduced in support of the information or complaint at the preliminary examination or at the hearing (as the case may be):

Provided that the Justice or the Court may adjourn the hearing, if it appears to him or to it that the defendant has been prejudiced by such defect or variance.

**185.** Any

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Amendment of convictions, warrants, &c. 1133 of 1913, s. 12.

**185. Any—**

- (a) conviction or order made by a Court of Summary Jurisdiction; or
- (b) warrant of committal, or other warrant or proceeding issued or had by or before any Justice,

may be amended, according to the evidence, by the Justices or Justice by or before whom the same was made, issued, or had, or by any Court before which it comes, on appeal or otherwise, at any time after the same has been signed, and before it has been executed, upon such (if any) terms as to costs, or otherwise, as to such Justices or Justice or such Court seems fit.

Convictions, &c., not voidable for want of form, &c. 6 of 1850, s. 38.

**186. (1)** No conviction or order of a Court, or other proceeding before Justices, shall be void or voidable, or liable to be quashed, annulled, or set aside in any manner, by reason of any deficiency in the statement of the offence therein described, if the offence is stated in the words of the Special Act, or if it appears that the offence was one against the true intent and meaning of the Special Act.

(2) No judgment, conviction, or order of a Court, or other proceeding before Justices, shall be quashed or set aside for any mere matter of form or technical error, or mistake in any name, date, or title, or in any matter of description only; but in all cases regard shall be had alone to the substantial merits and justice of the case.

Parties not to be discharged upon defects in warrants provided conviction took place upon good grounds. *Ibid.*, s. 39.

**187.** No warrant of commitment issued upon any conviction of a Court of Summary Jurisdiction shall be held void or invalid, or be quashed, for any defect in substance or in form, nor shall any party be entitled to be discharged out of custody on account of any such defect, provided—

- (a) it is alleged in the warrant that such party has been convicted of an offence; and
- (b) it appears to the Court or Judge before whom the warrant is returned that such conviction proceeded on good and valid grounds.

*Habeas Corpus.*

After summary conviction or order *habeas* not to be issued except on an affidavit. Writ to be returnable at least four days after issue, and notice to be given thereof. 6 of 1850, ss. 40, 41

**188. (1)** No writ of *habeas corpus* shall issue to bring up the body of any person who has been convicted by a Court of Summary Jurisdiction, or adjudged by any such Court to pay any sum or perform any duty, unless such person or his solicitor or agent states in an affidavit, in writing and duly sworn, the ground of objection to the conviction or proceedings.

(2) Upon the return to the writ, no objection shall be taken or considered unless it has been so stated.

(3) There



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(3) There shall be an interval of at least four clear days between the day upon which any such writ issues and the day upon which it is returnable, and no such writ shall issue without notice to the committing Justice, or to the Crown Solicitor, and to the opposite party or his solicitor.

(4) Such notice shall be in writing, and shall be given to them or left at their respective dwelling-places or offices at least four clear days before the return of the writ.

(5) No return to any such writ shall be considered by any Court or Judge unless it is proved by affidavit that such notice has been given.

(6) Any writ issuing without such notice, or not being in conformity to the directions herein contained, shall be void to all intents and purposes whatsoever.

*Proceedings Against and Protection to Justices.*

**189.** (1) If any Justice refuses to do any act relating to the duties of his office as such Justice, the person requiring such act to be done may apply to the Supreme Court upon an affidavit of the facts for a rule, calling upon such Justice, and any person to be affected by such act, to show cause why such act should not be done.

Proceeding in nature  
of mandamus.  
9 of 1849, s. 5.

(2) If after due service of such rule good cause is not shown against it, the said Court may make the same absolute with, or without, or upon payment of, costs.

(3) Upon being served with the rule absolute the Justice shall obey the same and do the act by it required to be done.

(4) No action or proceeding shall be maintainable against any Justice for obeying any such rule, or doing the act thereby required.

**190.** (1) Every action brought against a Justice for any act done by him in the execution of his duty as such, with respect to a matter within his jurisdiction as a Justice, shall be in the nature of an action on the case as for a tort.

Action for act done  
within jurisdiction  
as a Justice  
Ibid., s. 1.

(2) No such action shall be maintainable unless it is alleged and proved that the act was done maliciously, and without reasonable and probable cause.

**191.** (1) Any person injured by any act done—

(a) by a Justice in a matter of which by law he has not jurisdiction, or in which he has exceeded his jurisdiction; or

(b) under any conviction or order made, or any warrant issued, by a Justice in any such matter,

may maintain an action against such Justice without alleging that the act complained of was done maliciously, or without reasonable and probable cause.

Action for act done  
without or in excess  
of jurisdiction.  
Ibid., s. 2.

(2) No

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Not maintainable till conviction quashed if plaintiff did not appear on summons.

Ibid.

(2) No such action shall be maintainable for anything done under any conviction or order until after such conviction or order has been set aside upon appeal, or quashed.

(3) No such action shall be maintainable for anything done under any warrant issued by the Justice to procure the appearance of such person, if the warrant has been followed by a conviction or order in the same matter, until after the conviction or order has been set aside on appeal, or quashed.

(4) No such action shall be maintainable for anything done under any warrant issued by the Justice to procure the appearance of such person, if a summons has been issued previously to the warrant and duly served, and such person has not appeared according to the exigency thereof, and the warrant—

(a) has not been followed by a conviction or order in the same matter; or

(b) was upon an information for an alleged indictable offence.

No action maintainable for exercise of discretion.

Ibid., s. 4.

**192.** No action shall be maintainable against a Justice—

(a) for or by reason of the manner in which he exercises his discretion in the execution of any discretionary power conferred upon him by statute:

Or where conviction affirmed on appeal.

Ibid., s. 6.

(b) for anything done under any warrant of distress or commitment, on the ground of any defect in the conviction or order on which it is founded, if, either before or after the granting of such warrant, the conviction or order is affirmed upon appeal.

Action for warrant founded upon a defective conviction to be brought against convicting Justice.

Ibid., s. 3.

**193.** No action shall be maintainable against a Justice who, *bona fide* and without collusion, grants a warrant of distress or commitment upon any conviction or order made by any other Justice, by reason of any defect in the conviction or order, or by reason of any want of jurisdiction in such other Justice; but the action shall be maintainable (if at all) against the Justice who made the conviction or order.

Limitation and notice of action.

Ibid., ss. 8 and 9.

**194.** (1) No action shall be brought against any Justice for anything done by him in the execution of his office, unless the same is commenced within six months after the act complained of was committed.

(2) No such action shall be commenced until one month after a notice in writing of the intended action has been delivered to the Justice, or left for him at his usual place of abode, by the party intending to commence the same, or by his solicitor or agent.

(3) Such notice shall—

(a) state clearly and explicitly the cause of action and the Court in which it is intended to bring the action; and

(b) set

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- (b) set out or be indorsed with the name and place of abode of the party intending to bring the action, and, if it is served by his solicitor or agent, the name and place of abode or of business of such solicitor or agent :

Provided that nothing herein contained shall restrict the operation of section 8 of the Evidence Further Amendment Act, 1888. Cf. 45 of 1888, s. 8.

**195.** (1) When any notice of action has been given, and before the action is commenced, the Justice may tender to the party intending to commence the same, or to his solicitor or agent, such sum as he thinks fit, as amends for the injury complained of in the notice. Tender of amends and payment into Court. 9 of 1849, s. 11

(2) After the action has been commenced and at any time before issue joined the Justice may, if he has not made any tender as aforesaid, or in addition to such tender, pay into Court such sum as he thinks fit.

(3) If at the trial of the action the plaintiff does not recover damages beyond the sum tendered as aforesaid, and if such sum has been paid into Court, the defendant shall be entitled to an order that the plaintiff pay his costs ; and the sum paid into Court shall in such case (notwithstanding any amount which the plaintiff has recovered in such action) be available for the payment of such costs. Ibid., s. 11.

(4) Subject to the provisions of this and the next succeeding section, the practice and procedure for the time being of the Court in which the action is had, in relation to the payment of money into Court and the consequences thereof, shall apply to every such action as aforesaid.

**196.** (1) Any Justice against whom any action is brought for anything done by him in the execution of his office may plead the general issue. Plea of general issue and evidence thereunder. Ss. 10 and 11.

(2) Evidence of any tender or payment into Court as aforesaid and of any special matter of defence, excuse, or justification, may be given at the trial under such plea.

**197.** (1) Any Justice against whom any such action is brought, or intended to be brought, in any Court of inferior jurisdiction may, at any time not later than six days after the service of the summons in such action, give or cause to be given to the plaintiff or intended plaintiff notice in writing that he objects to being sued in such Court for such cause of action. Justice may require the action to be brought in the Supreme Court Cf. *ibid.* s. 10.

(2) Thereupon the proceedings in such inferior Court, if already commenced, may, upon the application of the plaintiff, be removed into the Supreme Court, and thereafter, whether the proceedings have been commenced or not, the plaintiff may commence and maintain his action in the Supreme Court as if the notice of action had specified the Supreme Court instead of such Court of inferior jurisdiction.

(3) All

(3) All proceedings had in such Court of inferior jurisdiction after the giving of such notice as aforesaid shall be null and void.

What damages may be recovered where plaintiff proved guilty of the offence of which he was convicted, &c.  
Ibid., s. 13.

**198.** If the plaintiff in any such action (in which malice is not alleged and proved as aforesaid) is entitled to recover, and—

(a) proves the levying or payment of any penalty or sum of money under the conviction or order as part of the damages he seeks to recover; or

(b) proves that he was imprisoned under the conviction or order and seeks to recover damages for such imprisonment,

and it is further proved—

(c) that he was actually guilty of the offence of which he was convicted; or

(d) that he was liable by law to pay the sum he was ordered to pay; and

(e) that he has undergone no greater punishment in the way of imprisonment than that assigned by law for the offence of which he was convicted, or for non-payment of the sum he was ordered to pay,

he shall not be entitled to recover the amount of the penalty or sum so paid by him, or any sum beyond the sum of Two Pence as damages for such imprisonment, nor to recover any costs of suit.

Costs.  
Cf. *ibid.*, s. 15.

**199.** In any action against a Justice for anything done by such Justice in the execution of his office, costs, as between solicitor and client, may be awarded to a successful defendant, or to a plaintiff who has successfully alleged that the act complained of was done maliciously, and without reasonable and probable cause.

Protection to Justices in the exercise of duties under Commonwealth law.

**200.** The provisions of sections 190 to 200 inclusive shall apply to any Special Magistrate or other Justice, when acting or required to act in the exercise of any power or jurisdiction conferred upon him by any Act of the Parliament of the Commonwealth relating to the summary conviction, or to the examination and commitment for trial, of persons charged with offences against the law of the Commonwealth, and the exercise of any such power or jurisdiction as aforesaid shall, for the purposes of the said sections, be deemed to pertain to his duty and office as a Justice within the meaning of this Act.

#### *Fees and Rules.*

Fees.

**201.** (1) Subject to any rules for the time being in force under this Act, the fees set out in the Second Schedule hereto shall be payable in respect of the matters therein mentioned.

(2) The fees and exemptions mentioned in the said Schedule may be repealed or altered by the said rules, and new fees may be provided for, either in substitution for, or in addition to, the said fees.

(3) A

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(3) A Justice may, in his discretion, and at any time, remit any fee in whole or in part if it appears to him that, on account of the poverty of the party liable to pay the same, or for any other reason, such remission should be made.

Remission of fees.  
Cf. 4 of 1843, s. 1.

**202.** No clerk shall take, accept, or receive from any person any fee, gratuity, or reward not allowed by law, or greater in amount than is so allowed.

Penalty for extortion.  
Cf. 298 of 1883-4, s. 18.

Penalty—Twenty-five Pounds.

**203.** The Governor may make rules not repugnant to any provision of this Act in relation to the following matters or any of them :—

Rules.

- (a) The places at which Courts of Summary Jurisdiction shall or may sit, and the constitution and holding of Courts thereat :
- (b) The practice and procedure before Justices and Courts of Summary Jurisdiction :
- (c) The fees which shall be payable under this Act or under any other Act for the time being in force, so far as the same relates to any matter or proceeding as to which a Court of Summary Jurisdiction has jurisdiction :
- (d) The forms to be used under this Act, including the form of any recognizance mentioned in this Act :
- (e) The duties of clerks and the form of any record or account required to be kept by them, and providing for the discontinuance of any existing record or account rendered unnecessary by such rules.

In the name and on behalf of His Majesty, I hereby assent to this Bill.

W. E. G. A. WEIGALL, Governor.

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## SCHEDULES.

## FIRST SCHEDULE.

Number and Year of Act.	Title or Short Title.	Extent of Repeal.
4 of 1843.....	An ordinance appointing the fees to be taken by Magistrates in South Australia	The whole.
15 of 1849.....	To facilitate the performance of the duties of Justices of the Peace out of Sessions with respect to Persons charged with Indictable Offences	The whole.
6 of 1850.....	To facilitate the performance of the duties of Justices of the Peace out of Sessions with respect to Summary Convictions and Orders	The whole.
10 of 1854.....	An Act to amend the Criminal Law .....	Section 14.
8 of 1869-70 ..	Minor Offences Procedure Act, 1869 .....	The whole.
166 of 1880....	An Act to amend the " Minor Offences Procedure Act, 1869," and " The Criminal Law Consolidation Act, 1876 "	The whole.
245 of 1882....	An Act to enable Persons accused of Offences to give Evidence on Oath.	Section 2.
298 of 1883-4 .	The Justices Procedure Amendment Act, 1883-4 .	The whole.
926 of 1907....	The Magistrates' Fees Amendment Act, 1907 ....	The whole.
1127 of 1913...	The Minor Offences Procedure Act Amendment Act, 1913	The whole.
1133 of 1913...	The Justices Procedure (Indictable Offences) Amendment Act, 1913	The whole.

## SECOND SCHEDULE.

	£	s.	d.
For every complaint under any Act of the Parliament of the Commonwealth relating to Parliamentary elections.....	0	2	6
For every other complaint in respect of a simple offence.....	0	5	0
For every information in respect of an indictable offence.....	0	5	0
For every summons to, or warrant to apprehend, any defendant, and for every hearing, in any proceeding under any Act, of the Parliament of the Commonwealth relating to Parliamentary elections, each step (No fee shall be charged for the conviction or order in any such proceeding, or for any warrant issued to enforce any such conviction or order).	0	2	6
For every other summons (except a summons to a witness), warrant, hearing, commitment, and conviction, each step.....	0	5	0
For every recognizance upon appeal to the Supreme Court .....	0	5	0
For every other recognizance (except a recognizance to appear and prosecute or to appear and give evidence, upon which no fee shall be charged) .....	0	10	0
For any order of a Justice or Justices .....	0	1	0
For a copy of any proceedings (except in cases of felony, in which no fee shall be chargeable) per folio of 72 words.....	0	0	6