



ANNO SEPTIMO

GEORGI VI REGIS.

A.D. 1943.

No. 24 of 1943.

An Act to amend the Justices Act, 1921-1936, and for other purposes.

[Assented to 16th December, 1943.]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows :

1. (1) This Act may be cited as the "Justices Act Amendment Act, 1943". Short titles.

(2) The Justices Act, 1921-1936, as amended by this Act, may be cited as the "Justices Act, 1921-1943".

(3) The Justices Act, 1921-1936, is hereinafter called "the principal Act".

2. This Act is incorporated with the principal Act and that Act and this Act shall be read as one Act. Incorporation.

3. Section 10 of the principal Act is repealed and the following section is enacted and substituted in lieu thereof:— Repeal of s. 10 of principal Act and enactment of other provisions—

10. (1) The oath of allegiance and the judicial oath to be taken by any person assigned by His Majesty's Commission to act as a justice may be taken— Oaths to be taken by justices.

(a) in open court or in chambers before a judge of the Supreme Court or a special magistrate;

(b) before a commissioner for taking affidavits in the Supreme Court.

(2) Every oath taken by any person assigned by His Majesty's Commission to act as a justice shall be subscribed by the person taking it, and attested by the person before whom it is taken.

The person taking any such oath shall forward the document containing it duly subscribed to the Attorney-General.

(3) The Attorney-General shall keep a Roll of Justices in such form and containing such information as he deems proper, and shall keep in his custody all documents containing oaths taken, whether before or after the enactment of this section, by persons assigned by His Majesty's Commission to act as justices.

Repeal and re-enactment of s. 18 of principal Act—

Vacation of office of Justice.

4. Section 18 of the principal Act is repealed and the following section is enacted and substituted in lieu thereof:—

18. (1) If a justice—

(a) becomes bankrupt ;

(b) makes a composition with his creditors or assigns his property for the benefit of his creditors ;

(c) is convicted of any offence and the Governor considers that by reason of that conviction he should cease to be a justice ;

(d) is found by any court or justice to be a mentally defective person ;

the Governor shall direct the Attorney-General to remove his name from the roll of justices. The Attorney-General shall thereupon remove his name accordingly, and publish notice of the removal in the *Gazette*. Upon such publication the justice shall cease to hold office as a justice.

(2) Nothing in this section shall affect any other power of the Governor to remove a justice from his office.

(3) The Governor may, if he deems it just and expedient to do so, re-appoint as a justice any person who has ceased to hold office as a justice.

5. Section 40 of the principal Act is repealed and the following section is enacted and substituted in lieu thereof :—

Repeal and re-enactment of s. 40 of principal Act—

40. (1) Upon an application for an order adjudging a recognizance or security to be forfeited, the justices to whom the application is made may order that the liability of all or any of the persons liable upon or in respect of the recognizance or security shall be remitted, suspended, or reduced.

Suspension or mitigation of forfeiture.

(2) Where an order has been made adjudging a recognizance or security to be forfeited, any two justices may at any time whether goods have or have not been sold under a warrant of distress issued to enforce the said order, make any of the following orders which they deem just :—

(a) that the forfeiture and any order for payment of any amount due under the recognizance or security be cancelled or suspended :

(b) that the liability of all or any of the persons liable upon or in respect of the recognizance or security shall be remitted, suspended, or reduced.

(3) The justices making an order under the preceding subsection of this section, may—

(a) impose any terms and conditions which they deem just : and

(b) make any order consequential on or incidental to any such order.

(4) An order made under this section shall not affect the validity of any thing done to enforce the forfeiture of the recognizance or security before the making of the order.

6. Section 51 of the principal Act is repealed and the following section is enacted and substituted in lieu thereof :—

Repeal of s. 51 of principal Act and enactment of other provisions—
Joinder of charges.

51. (1) Charges for any number of offences may be joined in the same complaint, if the charges arise out of the same set of circumstances.

(2) Where an enactment constituting an offence states the offence to be the doing or the omission to do any act in any one of different capacities, or with any one of any different intentions, or states any part of the offence in the alternative, the acts, omissions, capacities, or intentions, or other matters stated in the alternative in the enactment, may be stated in the alternative in the complaint.

(3) The court may, if it thinks just, deal with any charge so joined, separately.

(4) This section shall apply notwithstanding anything inconsistent therewith contained in the Special Act.

Enactment of s. 62a of principal Act— **7.** The following section is hereby enacted and inserted in the principal Act after section 62 thereof :—

Power to proceed *ex parte*.

62a. (1) If a person who has been apprehended (whether under a warrant or without a warrant), and discharged upon recognizance conditioned for his appearance at a time and place appointed for the hearing of a complaint laid or to be laid against him, fails to appear at that time and place, the court may in its discretion hear the complaint *ex parte*, and may adjudicate thereon as fully and effectually, to all intents and purposes, as if the defendant had appeared at that time and place.

(2) This section shall apply whether the defendant is discharged pursuant to powers granted by this or any other Act.

Amendment of s. 65 of principal Act— Remand. **8.** Section 65 of the principal Act is amended by inserting at the end thereof the following subsection :—

(9) A court of summary jurisdiction, or a justice, on being satisfied that a defendant who has been remanded into custody, is by reason of illness or accident unable at the expiration of the period for which he was remanded to appear personally before the court, may in the absence of the defendant order him to be kept in custody for such further period as the court or justice deems reasonable, but not exceeding fifteen clear days at any one time, unless both parties consent to a longer period.

The warrant for keeping the defendant in custody pursuant to any such order may be issued by the justice who made the order, or any other justice.

Enactment of ss. 70a and 70b of principal Act—

Convictions where charges joined in the complaint.

9. The following sections are enacted and inserted in the principal Act after section 70 thereof :—

70a. (1) Where charges for more than one offence have been joined in the same complaint, pursuant to this Act, the court may—

- (a) convict the defendant of such one or more of those offences as it finds proved :
- (b) include any number of offences in a minute or memorandum of conviction or in any formal conviction.

(2) This section shall apply notwithstanding anything contained in the Special Act.

70b. If upon the trial of a person charged with an offence (whether a simple offence or a minor indictable offence) it appears to the court upon the evidence that the defendant did not complete the offence charged, but that he was guilty only of an attempt to commit that offence, the court may convict him of an attempt to commit the offence charged and thereupon he shall be liable to be punished in the same manner as if he had been convicted upon a complaint for such an attempt.

Conviction for attempt where full offence charged.

10. Section 75 of the principal Act is amended by striking out the word "twenty-five" in the fifth line of subsection (7) and inserting in lieu thereof the words "one hundred".

Amendment of s. 75 of principal Act—
Fine in lieu of imprisonment.

11. Section 106 of the principal Act is amended by adding at the end thereof the following subsection (the previous part of section 106 being read as subsection (1) thereof):—

Amendment of s. 106 of principal Act—
Consequential amendment.

(2) This section is subject to section 106a of this Act.

12. The following section is enacted and inserted in the principal Act after section 106 thereof:—

Enactment of s. 106a of principal Act—

106a. (1) Where the defendant appears before a special magistrate or two or more justices and the information charges the defendant with a minor indictable offence, the defendant at any stage of the proceedings, and whether any statement has been taken from any witness or not, may plead guilty to the offence or any of the offences charged against him, and the magistrate or justices shall at the commencement of the proceedings inform the defendant of his right so to plead.

Power of justices to take plea of guilty without evidence.

(2) If the defendant pleads guilty to any such offence—

(a) the magistrate or justices shall, in relation to that offence, be a court of summary jurisdiction within the meaning of this Act;

(b) the procedure and 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;

(c) sections 129, 130, 130a, 132, and 133 of this Act shall, so far as they are applicable, apply in respect of the offence; but

(d) the plea of guilty may be withdrawn as provided in subsection (3) of this section.

(3) If after the defendant has so pleaded guilty to an offence, the magistrate or justices, upon consideration of any facts stated by the prosecution or given in evidence, is or are of opinion that the time for taking the plea should be postponed—

(a) he or they may order that the plea of guilty be withdrawn;

(b) thereupon all further proceedings in respect of the offence shall be conducted in accordance with this Part;

(c) if any such further proceedings are taken the defendant shall not, by reason of his plea of guilty, be entitled to plead *autrefois convict*.

Amendment of
s. 113 of
principal Act—
Remand of
defendant.

13. Section 113 is amended by adding at the end thereof the following subsection:—

(4) Any justice on being satisfied that a defendant who has been remanded into custody is, by reason of illness or accident, unable at the expiration of the period for which he was remanded to appear personally before a justice, may in the absence of the defendant order him to be kept in custody for such further period as the justice deems reasonable, but not exceeding fifteen days at any one time unless both parties consent to a longer period.

The warrant for keeping the defendant in custody pursuant to any such order may be issued by the justice who made the order, or any other justice.

Amendment of
s. 115 of
principal Act—
Power to
continue
examination
before expiry
of remand.

14. Section 115 of the principal Act is amended by inserting after the word “justice” in the first line the words “who remanded the defendant or any other justice”.

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

C. M. BARCLAY-HARVEY, Governor.