



ANNO TRICESIMO TERTIO

VICTORIÆ REGINÆ.

A.D. 1869-70.

No. 290 of 83, Sec. 12

No. 8.

*An Act to amend the Law relating to the Trial and Punishment of
Minor Offences.*

[Assented to, 9th February, 1870.]

WHEREAS it is expedient to amend the law relating to the trial Preamble.
and punishment of minor offences—Be it therefore Enacted,
by the Governor of the Province of South Australia, with the
advice and consent of the Legislative Council and House of Assembly
of the said Province, in this present Parliament assembled, as follows:

1. This Act may be cited for all purposes as the “Minor Short title.
Offences Procedure Act, 1869.”

2. Clause No. 1 of Act No. 10 of 1854, intituled “An Act to Repeal.
amend the Criminal Law,” and clauses 115, 116, 117, 118, 119, 120,
121, 122, 123, 124, and 125 of the “Local Court Act, 1861,” are
hereby repealed, except so far as may be necessary for supporting
any conviction or other proceeding under the same, made or taken
before the passing of this Act.

3. Where any person is charged before any Special Magistrate or Power to punish persons charged with
certain offences summarily.
two or more Justices of the Peace with having committed any of
the following offences, that is to say:

All simple larcenies (not being larcenies of cattle or other animals),
and all larcenies from the person without violence, where the
property stolen is of the value of Five Pounds or less:

And all larcenies or embezzlements, by clerks or servants, of
property of the like value:

And

Minor Offences Procedure Act.—1869-70.

And all felonies punishable as in the case of simple larceny :

And all misdemeanors not being by law punishable by imprisonment, with or without hard labor, exceeding two years :

And all other offences punishable by one or more Justice or Justices of the Peace :

such Special Magistrate or Justices shall have jurisdiction, with the consent of the person charged as hereinafter mentioned, to hear and finally determine the charge in a summary way: 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 and unnatural offences :

Concealment of child-birth :

And conspiracy.

Power to punish offenders on conviction.

4. If any person or persons charged with any offence cognizable under this Act shall confess the same, or if such Special Magistrate, or Justices, after hearing the whole case for the prosecution and for the defence, shall find the charge to be proved, such Special Magistrate or Justices may convict such person or persons, and may punish him or them as he or they is or are by law punishable; nevertheless, where the punishment is by imprisonment, by imprisonment not exceeding six calendar months with or without hard labor, and solitary and separate confinement not exceeding one calendar month; and where the punishment is by fine, by fine not exceeding Twenty Pounds; and the said Justices or Special Magistrate may also punish any person so fined, by imprisonment not exceeding six calendar months, unless the said fine shall be sooner paid; and where the punishment is by fine or imprisonment, by one or other of the punishments aforesaid: Provided that this enactment shall not limit any power which any Justice or Justices of the Peace, or Special Magistrate by law now has or have of punishing by longer imprisonment or by higher fine, and if he or they find the offence not proved, he shall dismiss the charge, and make out and deliver to the person charged a certificate under his or their hand stating the fact of such dismissal; and every such conviction and certificate respectively may be in the forms A or B in the Schedule to this Act, or to the like effect: Provided that, if it appear to such Justices or Special Magistrate that there are circumstances in the case which render it inexpedient to inflict any punishment, they or he shall have power to dismiss the person charged without proceeding to a conviction: Provided also, that if the person charged do not consent to have the case heard and determined

Minor Offences Procedure Act.—1869-70.

determined by such Justices or Special Magistrate, or if it shall appear to any such 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 such Court is competent to adjudge, or such as ought to be tried before a Jury, such Justices or Special Magistrate may commit the prisoner or party accused for trial before the Supreme Court.

5. Where the Justices or Special Magistrate, before whom any person is charged as aforesaid, proposes to dispose of the case summarily, under the foregoing provisions, they or he shall, after the examination of all the witnesses for the prosecution has been completed, and before calling upon the person charged for any statement which he may wish to make, state to such person the substance of such charge against him, and shall then say to him these words, or words to the like effect:—"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?" and if the person charged shall consent to the charge being summarily tried and determined as aforesaid, then such Justices or Special Magistrate shall reduce the charge into writing, and read the same to such person, and shall then ask him whether he is guilty or not of such charge; and if the person shall say that he is guilty, such Justices or Special Magistrate shall then proceed to pass such sentence upon him as may by law be passed, subject to the provisions of this Act in respect to such offence; but if the person charged shall say that he is not guilty, such Justices or Special Magistrate shall then inquire of such person whether he has any defence to make to such charge, and if he shall state he has a defence, such Justices or Special Magistrate shall hear such defence, and then proceed to dispose of the case summarily: Provided that such Justices or Special Magistrate may adjourn the hearing from time to time for any period not exceeding eight days.

Special Magistrate to ask accused whether he consents to charge being disposed of summarily.

6. If any person or persons shall appear before any single Justice, other than a Special Magistrate, charged with any offence cognizable under this Act, and which in the opinion of such Justice might be proper to be disposed of under this Act, then such Justice shall remand such person and adjourn the hearing of the charge to some future time or place, then and there to be heard by two or more Justices of the Peace or Special Magistrate.

A single Justice may remand.

7. In every case of summary proceeding under this Act, the person accused shall be allowed to make his full answer and defence, and to have all witnesses examined and cross-examined by counsel or attorney.

Persons accused may have assistance of counsel, &c.

8. If any person charged before any Special Magistrate or Justices, or a Justice under the provisions of this Act, shall be under the age of fourteen years, and it shall appear to such Special Magistrate, Justices, or Justice, that chastisement inflicted by the parent or guardian of such person, would be the most suitable punishment

Juvenile offenders, if punished by parents or guardians, charges may be dismissed.

under

Minor Offences Procedure Act.—1869-70.

under the circumstances, such Special Magistrate, Justices, or Justice, may allow such chastisement to be inflicted by such parent or guardian, or by some person at the request of such parent or guardian, and for such purpose, may, if necessary, adjourn the hearing, and on its being shown to the satisfaction of such Special Magistrate, Justices, or Justice, that suitable chastisement has been inflicted as aforesaid, such Special Magistrate, Justices, or Justice, may dismiss the charge, and give a certificate of dismissal accordingly, in the form of Schedule B.

Power of appeal to Supreme Court.

9. Any person who shall be convicted under this Act, may appeal to the Supreme Court for the reversal of the said conviction, on the ground that no evidence was given on the hearing, of the commission by the applicant of the offence whereof he was convicted: Provided that the said appeal shall be duly set down for hearing before the Supreme Court, in a book to be kept by the Master of the said Court, and four days' notice thereof be given to the prosecutor or his attorney.

Convictions and other proceedings to be forwarded to Supreme Court.

10. All Justices or Special Magistrates adjudicating under this Act shall transmit the conviction, or a duplicate of a certificate of dismissal, with the written charge, the depositions of the witnesses for the prosecution and for the defence, and the statement of the accused, to the Clerk of Arraignment of the Supreme Court of the said Province, there to be kept among the records of the Court; and a copy of such conviction, or such certificate 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.

Special Magistrate may order restitution of stolen property.

11. Any Justice or Special Magistrate, by whom any person is convicted under this Act, may order restitution of the property stolen, taken, or obtained by false pretences, in all cases in which the Supreme Court of the Province, if the person convicted had been tried before such Court, would be by law authorized to order restitution.

Power to punish for contempt.

12. Every sitting of Justices or a Special Magistrate, for the purposes of this Act, shall be an open Court, and if any person shall wilfully interrupt the proceedings of any such Court, or conduct himself disrespectfully to the Justices or Special Magistrate during the sittings thereof, or hinder, obstruct, or assault any person in attendance on such Court, or any officer thereof in the lawful execution of his duty in view of such Court, every such person shall be guilty of contempt of Court; and the Justices or Special Magistrate, either on their or his own view, or on the oath of some credible witness, may punish any person guilty of such contempt in a summary way, by imprisonment in any gaol in the said Province for any time not exceeding one calendar month, or by fine not exceeding Ten Pounds; and, if such fine be not forthwith paid, by imprisonment in any such gaol as aforesaid, for any time not exceeding one calendar

Minor Offences Procedure Act.—1869-70.

calendar month, unless such fine be sooner paid; and, in either of the cases aforesaid, a warrant of commitment, in the form contained in Schedules C or D, shall and may be issued by such Justices or Special Magistrate, and shall be good and valid in law, without any other order, summons, or adjudication whatsoever.

13. Every conviction by Justices, or by a Special Magistrate under this Act, shall have the same effect as a conviction upon indictment for the same offence would have had, save that no conviction under this Act shall be attended with any forfeiture.

Effect of conviction.

14. Every person who obtains a certificate of dismissal, or is convicted under this Act, shall be released from all further or other criminal proceedings for the same cause.

Proceedings under this Act to be a bar to further proceedings.

15. No conviction, sentence, or proceeding under this Act shall be quashed for want of form; and no warrant of commitment upon a conviction shall be held void by reason of any defect therein, if it be therein alleged that the offender has been convicted, and there be a good and valid conviction to sustain the same.

No conviction to be quashed for want of form.

16. Where any charge is summarily adjudicated upon under this Act, the Justices, or Special Magistrate, by whom such charge has been adjudicated upon, may, upon the request of any person who has preferred the charge, or appeared to prosecute, or give evidence against the person charged, if he or they think fit so to do, grant a certificate to such person of the amount of the compensation for his reasonable expense, trouble, and loss of time therein, subject to the regulations made, or to be made, as hereinafter mentioned; and every such certificate shall, when granted, have the effect of an order of Court for the payment of the expenses of a prosecution made under the Act No. 6 of 1859; and the amount mentioned in such certificate shall be paid in like manner as the money mentioned in any such order of Court; and all certificates to be granted under this Act shall be subject to the like regulations made, or to be made, in relation thereto, as the certificates mentioned in the said Act No. 6 of 1859, to be granted by the examining Magistrates, are or may be subject to under the same Act: Provided also, that the amount of the fees payable in respect of all such expenses of apprehending the person charged 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 aforesaid and paid in the like manner.

Special Magistrate may order payment of expenses of prosecution.

Revised: No 166d

1880: Sec. 1

17. In all cases where any Justice or Justices of the Peace have, or shall hereafter have, power to order a sum of money to be forfeited and paid to the party aggrieved, as amends or compensation for any injury to property, real or personal, the right of such party to receive the money so ordered to be paid shall not be affected by such party having been examined as a witness in proof of the offence, any law or statute to the contrary notwithstanding.

In cases of injury to property, parties aggrieved may receive compensation though examined as witnesses.

Minor Offences Procedure Act.—1869-70.

Act No. 6 of 1850
to apply to proceed-
ings under this Act.

18. The provisions of "An Ordinance to facilitate the performance of the duties of Justices of the Peace out of Sessions with respect to Summary Convictions and Orders," being No. 6 of 1850, shall be applicable to proceedings under this Act, for the purpose only of enforcing payment of any fine, when the person fined shall not be ordered to be imprisoned in case of non-payment of such fine, and of any costs, and sums of money, the payment of which the Justice, Justices, or Special Magistrate, may have power by law to order.

Act No. 10 of 1852
not applicable to pro-
ceedings under this
Act.

19. An Act for consolidating the Statute Law in force in South Australia, relating to criminal procedure by indictment or information by the Attorney-General, by virtue of the Act No. 10 of the year 1852, intituled "An Act to provide for the trial of offenders without the intervention of Grand Juries," shall not apply to or affect any of the provisions of this Act.

Interpretation of
terms.

20. In the interpretation of this Act, "property" shall be construed to include everything included under the words "chattel, money, or valuable security," as used in the Act of the Imperial Parliament, made and passed in the Session holden in the seventh and eighth years of King George the Fourth, chapter twenty-nine; and in the case of any "valuable security," the value of the share, interest, or deposit, to which the security may relate, or of the money due thereon or secured thereby, and remaining unsatisfied, or of the goods or other valuable thing mentioned in the warrant or order, shall be deemed to be the value of such security.

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

JAMES FERGUSSON, Governor.

Minor Offences Procedure Act.—1869-70.

SCHEDULES REFERRED TO.

A

Conviction.

South Australia, } Be it remembered, that on the day of , in the
to wit. } year of our Lord , at , in the said Province,
 A. B., being charged before me, the undersigned, a Special Magistrate of [or before
 us, the undersigned, two of Her Majesty's Justices of the Peace for] the said Province,
 and consenting to my [or our] deciding on the charge summarily, is convicted before
 me [or us], for that the said A. B., &c. [stating the offence, and the time and place
 when and where committed], and I [or we] adjudge the said A. B., for his said offence,
 to be imprisoned in the gaol at , in the said Province, for the space of
 [or to pay a fine of , or to be imprisoned in the gaol at , in
 the said Province, for the space of six calendar months, unless the said fine be sooner
 paid, or do pay a fine of £ .]

Given under my hand [or our hands] the day and year first above-mentioned, at
 , in the said Province.

A. B., Special Magistrate; or
 C. D.; or } Justices of the Peace.
 E. F.

B

Certificate of Dismissal.

South Australia, } I, the undersigned, a Special Magistrate of [or we, the undersigned
to wit. } two of Her Majesty's Justices of the Peace for] the said Pro-
 vince, certify, that on the day of , in the year of our Lord
 at , in the said Province, A. B., being charged before me [or us], and
 consenting to my [or our] deciding upon the charge summarily, for that he the said
 A. B. [stating the offence charged, and the time and place when and where alleged to be
 committed], did, having summarily adjudicated thereon, dismiss the said charge.

Given under my hand [or our hands] this day of , at
 in the said Province.

A. B., Special Magistrate; or
 C. D., and } Justices of the Peace.
 E. F.

C

Warrant of Commitment for Contempt of Court.

SOUTH AUSTRALIA.—In the Court of .
 To and to all constables and peace officers of the Province
 of South Australia, and to the keeper of the common gaol at .

Whereas A. B., of , [laborer], was this day duly convicted before
 the undersigned, sitting in open Court, at for that
 he, the said A. B., on the day of , in the year of our Lord
 one thousand eight hundred and , at , in the Province
 aforesaid, was guilty of a contempt of the said Court, and so deemed and adjudged
 by me, the said Special Magistrate [or us the Justices of the Peace], and I [or we]
 did thereupon adjudge the said A. B., for this his said offence, to be imprisoned in
 the common gaol at , for the space of : These are,

therefore, to command you the said , and you the said constables and
 peace officers to take the said A. B., and him safely to convey to the said common
 gaol aforesaid, and there to deliver him to the said keeper thereof, together with this
 precept; and I [or we] do hereby command you the said keeper to receive the said
 A. B. into the said common gaol, and there to imprison him for the space of
 , and for your so doing this shall be your sufficient warrant.

Given under hand and seal this day of in the year
 of our Lord , at aforesaid.

A. B., Special Magistrate; or
 C. D., } Justices of the Peace.
 E. F., }

D

Minor Offences Procedure Act.—1869-70.

D

Warrant of Commitment in Default of Payment of Fine for Contempt of Court.

SOUTH AUSTRALIA.—In the Court of
 To and to all constables and peace officers of the Province
 of South Australia, and to the keeper of the common gaol at
 Whereas E.F., of , [laborer], was this day duly convicted before
 the undersigned, sitting in open Court, at for that
 he the said E.F., on the day of in the year of
 our Lord, , at , in the Province aforesaid, was guilty of
 a contempt of the said Court, and so deemed and adjudged by me [or us] the said
 Special Magistrate [or Justices], and I [or we] did thereupon adjudge the said
 E.F. for his said offence to forfeit and pay the sum of : And whereas
 the said sum has not been paid, these are therefore to command you the said
 , and you the said constables and peace officers, to take the said
 E.F., and him safely convey to the said common gaol aforesaid, and there to deliver
 him to the said keeper thereof, together with this precept; and I [or we] do hereby
 command you the said keeper to receive the said E.F. into the said common gaol,
 and there to imprison him for the space of , unless the said sum
 shall be sooner paid, and for your so doing this shall be your sufficient warrant.
 Given under hand and seal this day of in the year
 of our Lord , at aforesaid.

A.B., Special Magistrate; or
 C.D., } Justices of the Peace.
 E.F., }