JUSTICES ACT—AMENDMENT.

10° Geo. V., No. VII.

No. 19 of 1919.

AN ACT to amend the Justices Act, 1902.

[*Assented to 28th October,* 1919.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title.

1. This Act may be cited as the *Justices Act Amendment Act,* 1919.

Amendment of Section 4.

2. Section four of the Justices Act, 1902 (hereinafter called the principal Act), is hereby amended, as follows:—

(a) By the omission of the definition of "Breach of Duty";

(b) By the insertion in its appropriate place of the following definition:—

"Matter" means any act, omission, fact, or event (except an indictable offence not punishable summarily) upon complaint whereof justices may give any decision against or in respect of any person.

Amendment of section 6.

3. Section six of the principal Act is hereby amended by inserting after the word "justices," in line one, the words "male and female."

Various consequential amendments. Schedule.

4. The principal Act is hereby amended as indicated in the schedule hereto.

5. Section twenty-nine of the principal Act is hereby repealed, and the following section is inserted in lieu thereof:—

Substitution of new section for Section 29.

29. Subject to this Act and notwithstanding the provisions of any other Act, every complaint for an indictable offence or a simple offence or other matter shall be heard by and before two or more justices.

6. Section thirty-three of the principal Act is hereby amended by the addition of the following paragraph:—

Amendment of Section 33.

Every police or resident magistrate hereafter or heretofore appointed shall be deemed to have and to have had authority as such throughout the State.

7. Section forty-three of the principal Act is hereby amended by the addition of the following proviso:—

Amendment of Section 43.

Provided, also, that when several simple offences are alleged to be constituted of the same acts or omissions or by a series of acts done or omitted to be done in the prosecution of a single purpose, charges of such offences may be joined in the same complaint against the same person; but if in any such case it appears to the justices that the defendant is likely to be prejudiced by such joinder, they may require the complainant to elect upon which of the charges he will proceed or may direct that the defendant shall be tried separately on each or any of the charges.

8. The following words are hereby added to section ninety-three of the principal Act, that is to say:—"and such justice shall on demand by or on behalf of any law officer (as defined by the Crown Suits Act, 1898) certify by writing under his hand, in the form contained in the Fourth Schedule to the said Act or to the like effect, that such forfeiture has taken place."

Amendment of Section 93.

9. Section one hundred and thirty of the principal Act is hereby amended by the addition of the following words:—

Amendment of Section 130.

Every direction of justices to bring a defendant before them under this section shall be reduced into writing and signed and have effect as a warrant, and shall be obeyed and carried into effect by all constables, gaolers, and other persons to whom it is directed, according to its tenor.

Repeal of Section 143.

10. Section one hundred and forty-three of the principal Act is hereby repealed.

Insertion of section between Sections 154 and 155.

11. The following section is hereby inserted in the principal Act between sections one hundred and fifty-four and one hundred and fifty-five:—

Enforcement of Recognisances.

Enforcement of recognisances.

See W.A. 1918, No. 32, s. 33.

154a. (1) When a person bound by a recognisance under this Act fails in a condition of the recognisance, complaint thereof may be made and proceedings issued and taken in manner provided in this Act in case complaint is made in respect of any matter, and on the hearing an order may be made forfeiting the recognisance and adjudging the payment by the person liable of the amount thereof.

(2.) The provisions of this section shall be without prejudice to any other method of enforcement.

Substitution of new section for Section 155.

12. Section one hundred and fifty-five of the principal Act is hereby repealed, and the following section substituted:—

Enforcement of convictions and orders.

155. (1.) When a conviction or order adjudges or requires the payment of a pecuniary penalty or compensation or sum of money or costs, then the conviction or order shall direct that the same shall be recoverable in default of payment by execution against the goods and chattels of the person liable, and that in default of payment and of sufficient goods and chattels he shall be imprisoned for a period determined in accordance with the provisions of section one hundred and sixty-seven, and subject to the provisions of that section: Provided that the justices may, in lieu of directing that such penalty, compensation, or sum of money or costs shall be recoverable by execution, may direct that in default of payment the person in default shall be imprisoned as aforesaid.

(2.) This section applies to an order directing any person to make any periodical payments, and such order shall direct that whenever and as often as default is made in any such payment, the person in default shall be liable to such process of execution and imprisonment or to such imprisonment only as is hereinbefore provided.

(3.) Every such conviction or order as aforesaid shall have effect according to its tenor, and any neces-

sary warrant of execution or commitment may be issued for the purpose of enforcing the same.

(4.) The provisions of this section shall apply to all convictions or orders of justices, notwithstanding the provisions of any other Act: Provided that nothing herein shall render any person liable to imprisonment who is expressly exempted from such liability by any Act.

(5.) Every conviction or order adjudging or requiring the payment (whether periodically or otherwise) ot a pecuniary penalty or compensation, or sum of money or costs, which has been heretofore pronounced or made by justices or which has heretofore or shall hereafter become enforceable as if so pronounced or made, shall, for the purposes of enforcement, be deemed to direct recovery in default of payment by execution and imprisonment as aforesaid, and this section shall apply thereto accordingly.

Amendment of Section 157.

13. Section one-hundred and fifty-seven of the principal Act is hereby amended by the deletion of the words "such period as shall have been adjudged by the conviction," and the insertion of the words "a period determined according to the scale in section one hundred and sixty-seven, subject to any reduction ordered under that section" in lieu thereof, and by the addition of the following paragraph, that is to say:—

When portion of the penalty, compensation, sum of money, or costs directed to be levied by the warrant of execution has been levied or paid, due credit shall be given and allowed for such portion in the warrant of commitment.

Substitution of new section for Section 158.

14. Section one hundred and fifty-eight of the principal Act is hereby repealed, and the following section is inserted in lieu thereof:—

Commitment for non-payment of a penalty or sum ordered to be paid.

158. In any case in which a conviction or order for a penalty or compensation or for the payment of a sum of money or costs does not direct that the same shall be recoverable by execution, but directs that in default of payment the person in default shall be imprisoned, then any justice may issue his warrant of commitment of the person in default to gaol, there to be imprisoned for a period determined according to the scale in section one

hundred and sixty-seven, subject to any reduction ordered under that section, unless the sum adjudged to be paid and all costs and charges of taking and conveying such person to gaol (the amount thereof being ascertained and stated in the warrant of commitment) are sooner paid. Due credit shall be given and allowed in the warrant of commitment for any portion of such penalty, compensation, sum of money, or costs paid before the issue thereof.

Insertion of new section after Section 165.

15. The following section is hereby inserted in the principal Act after section one hundred and sixty-five, that is to say:—

Interpleader.

165a. (1.) If a claim is made to or in respect of goods seized under a warrant of execution or in respect of the proceeds or value of the goods by a person not being the person against whom the process has been issued, the clerk of the local court nearest to where the seizure was made, upon application of the officer charged with the execution of the warrant whether an action has been brought against the officer or not, may enter an interpleader plaint, and may issue a summons thereon calling before the court the person making the claim, and thereupon any action which has been brought in the Supreme or any other court in respect of the claim shall be stayed.

(2.) The clerk shall also, if the magistrate so directs, by the same summons call before the court any other person whom the magistrate may deem interested in the proceedings.

(3.) Upon the return of the summons the magistrate of the local court shall have and may exercise such and the same powers as a judge of the Supreme Court has, and may exercise upon the application of the sheriff in the case of goods taken in execution under process issued from the Supreme Court, and may without any consent of parties dispose of the merits of the claim, and decide the same in a summary manner and on such terms as shall be just.

(4.) The magistrate may allow any person to intervene and take part in the proceedings at any stage.

(5.) The Governor may by rules made in manner provided in the Local Courts Act, 1904, prescribe, with regard to proceedings under this section, such and the like matters as he is empowered to prescribe under section one hundred and fifty-eight of that Act.

16. Section one hundred and sixty-seven of the principal Act is hereby repealed, and the following section shall stand in lieu thereof, that is to say:—

Repeal of Section 167 and substitution of new section.

167. (1.) The period of imprisonment to be inserted in a warrant of commitment issued under section one hundred and fifty-seven or one hundred and fifty-eight of this Act shall, where the total amount payable under the warrant is under two pounds, be three days, and in other cases shall be calculated at the rate of three days for every pound payable (disregarding any fractional part of a pound): provided that in no case shall the period of imprisonment exceed six months.

(2.) Any such imprisonment shall in general be without hard labour, but shall be with hard labour if the justices pronouncing or making the conviction or order shall have determined that such imprisonment shall be with hard labour, which determination such justices are hereby empowered to make notwithstanding that the imposition of hard labour be not expressly authorised by the Act on which the conviction or order is founded.

(3.) Notwithstanding anything in this section, when an order or conviction does not order the payment of any penalty or compensation or sum of money, but orders the payment of costs and when a complaint is dismissed with costs to be paid by the complainant, the period of imprisonment to be inserted pursuant to this section in the warrant of commitment issued in such case shall not exceed one month.

(4.) When the person imprisoned under any such warrant of commitment shall pay any portion of the amount payable under the warrant, then the period of imprisonment shall be thereby reduced by a period which shall bear the same ratio to the period of imprisonment as the portion paid bears to the total amount that was payable, and the prisoner shall be entitled to be released on the expiry of the reduced period. In calculating any reduction hereunder fractional parts of days shall be disregarded.

(5.) Notwithstanding anything herein, any justices giving any decision may thereby order that the period of imprisonment to be inserted in any warrant of commitment to be issued in respect of any penalty, compensation, sum of money, or costs payable under the de-

cision shall be reduced to such an extent as the justices think just.

(6.) Any sentence of imprisonment imposed by justices for any offence shall, if the justices so order, commence to run from the expiry of any term of imprisonment for any cause whatsoever which the person sentenced may be undergoing under any such warrant of commitment as aforesaid, and any term which any person is liable to undergo hereunder for non-payment of any pecuniary penalty, compensation, sum of money, or costs shall, if the justice issuing the warrant in respect thereof so orders, commence to run from the expiry of any other term of imprisonment for any cause whatsoever which the person so liable may be undergoing.

Insertion of a new paragraph at the end of Part VII.

17. The following section is hereby inserted at the end of Part VII. of the principal Act:—

Procedure in cases of sureties to keep the peace or be of good behaviour.

182a. Upon the making of any such complaint as aforesaid, the matter may be proceeded with and heard and adjudicated upon as in the case of other matters complaint whereof is made in manner provided in this Act, and the justices shall in dealing with the matter of any such complaint have such and the like powers as they have in dealing with other matters, and it shall be no objection to any order made under this Part that any of the special rules of procedure prescribed in this Part have not been observed.

Amendment of Section 183.

18. Section one hundred and eighty-three of the principal Act is hereby amended by the excision of the words "or (b) a fine or penalty is imposed exceeding ten pounds, and in either case," and by the substitution of the word "and," and by the excision of sub-paragraph (a) of paragraph (2).

Amendment of Section 187.

19. Section one hundred and eighty-seven of the principal Act is hereby amended by the addition of the following proviso:—

Provided further that, notwithstanding anything hereinbefore contained, in no case shall any surety be accepted unless he justifies to the satisfaction of the justice, and that sureties shall not be dispensed with, except by a police or resident magistrate, unless a deposit of money is made as aforesaid.

Repeal of Sections 197 to 206

20. Sections one hundred and ninety-seven to two hundred and six (both inclusive) of the principal Act are hereby repealed.

21. The following sections are hereby inserted after section one hundred and ninety-six in Part VIII. of the principal Act:—

Insertion of new sections in Part VIII.

Appeal by way of Order to Review.

197. When any person who feels aggrieved as complainant, defendant, or otherwise by the decision of any justices shows by affidavit to a judge of the Supreme Court sitting in court or chambers a *prima facie* case of error or mistake in law or fact on the part of such justices, or that the justices had no jurisdiction to give such decision or exceeded their jurisdiction in giving such decision the judge may, whether any other remedy is provided by law or not, within one month from the giving of the decision grant the applicant (hereinafter called "the appellant") an order (hereinafter called "an order to review") calling upon the party interested in maintaining the decision and also, if the judge for any special reason so directs, upon the justices to show cause (at a time to be therein mentioned or so soon thereafter as the matter can come on for hearing) why the decision should not be reviewed.

Order to Review.

198. An order to review may be made returnable before the Supreme Court sitting as the Full Court or before a single judge sitting in court.

Order to review: Before whom returnable.

199. The order to review shall state the grounds upon which it is sought to review the decision appealed against, but on the return of the order the court or judge shall have power to amend or add to the grounds stated.

Grounds to be stated in Order.

200. The appellant shall, within ten days after the granting of an order to review, enter into a recognisance before a justice, with or without a surety or sureties according (subject as hereinafter provided) to the decision of the justice, in such sum (not less than twenty pounds) as the justice shall determine conditioned to prosecute his appeal without delay and to submit to the judgment on the order to review and to pay such costs as the court or judge may thereon award, and the appellant shall before proceeding to set the order down for hearing pay the clerk of the petty sessions at which the decision complained of was delivered the prescribed fees:

Appellant to give security.

Provided that in no case shall any surety be accepted unless he justifies to the satisfaction of the justice, and

that sureties shall not be dispensed with, except by a police or resident magistrate, unless a sum of money, fixed by the justice, but not less than twenty pounds, be deposited by the appellant with a clerk of petty sessions, as security for the performance of the conditions of the recognisance.

Stay of execution. Release of appellant on further recognisance.

201. On such recognisance being given, execution shall be stayed until the order to review is disposed of or the Supreme Court or a judge otherwise orders, and the appellant, if then in custody, shall be liberated upon the recognisance being further conditioned for his appearance before justices within a reasonable time (not less than ten days after judgment has been given on the order to review) to abide by such judgment unless the decision appealed against is reversed.

Service of order of review.

202. The appellant shall, within the time fixed by the judge who granted the order, cause an official copy of the order to review to be served on each party, who is thereupon called upon to show cause, and such service shall be effected such number of days before the hearing as is indicated below, that is to say:—

Where the distance from the place where the order is returnable to the place where the service is effected is—	The number of days which must elapse between the service and the hearing shall be—
Not more than 200 miles ...	Ten days
More than 200 but not more than 400 miles	Sixteen days
More than 400 but not more than 600 miles	Twenty-one days
More than 600 miles	Thirty days

Entry of order to review for hearing.

203. Every order to review shall, within the time fixed by the judge who granted the order, be entered for hearing in the central office of the Supreme Court, and shall be inserted in the proper list, and come on for hearing as the Chief Justice may direct.

Appeal from refusal to grant order to review

204. An appeal from the refusal of a judge, whether sitting in court or chambers to grant an order to review or to grant it upon any ground or grounds, shall be to the Full Court as defined in the Supreme Court Act, 1880.

205. On the return of the order to review, the court or judge may, on a consideration of the evidence and materials adduced and brought before the justices, and if the court or judge thinks fit of any further evidence either oral or by affidavit, discharge such order to review or may confirm, vary, amend, rescind, set aside, or quash the decision appealed against, and any order, conviction, warrant, or other proceeding founded thereon, and may remit the case for hearing or re-hearing to the said justices or to any other justices, with or without any direction in law, and may prohibit the justices and all other persons concerned from proceeding or further proceeding in respect of the decision, and may make such other order as to such court or judge seems just, and may also, for such purposes or any of them and without prejudice to the generality of the powers hereinbefore conferred, exercise all or any of the powers or jurisdiction which the court possesses or might exercise upon *certiorari*, *mandamus*, prohibition, or *habeas corpus*: Provided that notwithstanding that the court or judge may be of opinion that any point raised by the order to review might be decided in favour of the appellant, discharge the order if he or it considers that no substantial miscarriage of justice has occurred.

Powers of Full Court or Judge on return of order to review.

206. Subject to this Act the court or judge may make such order as to costs as it or he deems just.

Cost.

206a. There shall be no appeal to the Full Court from any determination of a single judge made on the return of any order to review, but the judge on such return may, if he thinks it desirable, refer such order to review for hearing and determination by the Full Court at the request of any party thereto.

No appeal from judge.

206b. The Supreme Court or a judge shall have power to enlarge or abridge the time appointed by the preceding sections of this Part or fixed by any order for doing any act or taking any proceeding upon such terms (if any) as the justice of the case may require, and any such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed.

Enlargement or abridgment of time.

206c. The court or judge, on the hearing of an order to review, shall have power to determine and ascertain

Evidence of proceedings in court below.

what evidence was given or what proceedings taken before the justices on such evidence or statement of what occurred before the justices including the notes of the justices (if any) as the court or judge may deem sufficient, and may rehear the testimony of any witness.

Dismissal for want of prosecution.

206d. If any appellant makes default in prosecuting his appeal without delay or in taking any necessary steps in the presentation thereof, any other party may apply to the judge in chambers by summons served on such appellant for an order discharging the order to review, and the judge shall make such order as shall be just with regard to the subject matter of the application and to costs.

Procedure where decision reversed.

206e. Whenever a decision is given on an order to review, the prescribed officer shall send to the proper clerk of petty sessions a memorandum of the decision of the court or judge, and such memorandum shall be sufficient evidence of the decision for all purposes.

Enforcement of decision of Supreme Court.

206f. Any conviction, sentence or order affirmed, amended, varied, adjudged, imposed or made by the decision of the Supreme Court or a judge thereof in relation to any order to review, may be enforced (subject to any variation made therein) by any justices (whether the justices in respect of whose decision the order to review was granted or not) in the same way as if it had been adjudged, imposed, or made by them, and any justices may issue, make, adjudge or impose all such summonses, warrants, orders, convictions, and sentences as may be necessary to carry into effect any directions contained in any decision of the Supreme Court or judge given in relation to any order to review, and no action or proceedings shall be taken against any justices for enforcing any such conviction, sentence, or order notwithstanding any defect therein.

If costs not paid, certificate to be granted.

206g. If any costs ordered to be paid by either party to an appeal hereunder are not paid, the prescribed officer shall, upon application of the party entitled to such costs, grant to him a certificate that such costs have not been paid, and shall therein specify the amount of such costs.

Enforcement of order for costs.

206h. Upon production of such certificate to any justice, the payment of such costs may be enforced in the

same manner as is hereinbefore provided for enforcing the payment of costs awarded by justices, but the provisions of this section are without prejudice to any other method of enforcement.

206i. Any person who appeals by way of order to review against any decision of justices, from which he is by law entitled to appeal in any other manner, shall be taken to have abandoned any such other right of appeal.

Appellant by way of order to review deemed to have abandoned other rights of appeal.

22. Section two hundred and fifteen of the principal Act is hereby repealed.

Repeal of Section 215.

23. The following new section is hereby inserted in the principal Act, and shall stand as Section two hundred and fifteen:—

Insertion of new section.

Service of Notices.

215. Where a party acts or is represented by a solicitor, any document, notice, or proceeding required under this Part of this Act to be served by or upon such party may be served by or upon such solicitor, and service of any such document, notice, or proceeding upon such solicitor or delivery of the same at his office or sending the same to him properly addressed by post prepaid shall be deemed to be good service upon the party whom such solicitor represents, or for whom he acts, as upon the day when the same is so served or delivered, or upon which in the ordinary course of post it would be delivered.

Service by or upon solicitor acting for party.

24. The judges of the Supreme Court or any two of them may by rule alter any of the forms in the Second Schedule of the principal Act in such way as they may deem to be necessitated by the amendments made by this Act.

Alteration of forms.

25. All copies of the principal Act hereafter printed by the Government Printer shall be printed under the supervision of the Clerk of the Parliaments as amended by this Act, and shall embody any alterations made in the forms in the Second Schedule, and all necessary references to this Act and any amending regulation shall be made in the margin:

Principal Act to be printed as amended.

Provided that the short title in such copies shall be altered to the Justices Act, 1902-1919, by which title the principal Act as so amended may be cited.

Section 4.

SCHEDULE:

Portions Amended.	Amendment.
Section 4 ...	Substitute "other matter" for the words "breach of duty," in the definition of "defendant." Substitute the words "any matter (not being a simple offence)" for the words "a breach of duty," in the definition of "order."
Section 30 ...	Strike out the words "a majority of the justices present" at the end of the first paragraph and substitute the words "the justices present or a majority of them, or if they are equally divided, by the senior justice present."
Section 51 ...	Substitute "other matter" for "breach of duty."
Section 52 ...	Insert the words "or is liable to be dealt with in respect of" after the word "committed." Strike out the words "breach of duty" and substitute the words "other matter."
Section 70 ...	Substitute "other matter" for "breach of duty."
Section 71 ...	do. do. do. do.
Section 72 ...	do. do. do. do
Section 79 ...	Add the words "The powers given by this and the next succeeding section may be exercised by one justice if only one is present."
Section 86 ...	Substitute "other matter" for "breach of duty."
Section 108 ...	Strike out this section.
Title of Part VI.	Substitute "other matters" for "breaches of duty."
Section 134 ...	Substitute "other matter" for "breach of duty."
Section 141 ...	do. do. do. do.
Section 150 ...	Strike out the words "or order" and also the words "or breach of duty" throughout the section. Insert after the word "aforesaid" the words "and to subsection 6 of section 167."