

WESTERN AUSTRALIA

ANNO VICESIMO TERTIO

VICTORIÆ REGINÆ

No. 3

An Ordinance to improve the Administration of the Law
so far as respects summary Proceedings before Justices
of the Peace. (Imp. Act 20 & 21 Vic., c. 43.)

[Assented to 18th November, 1859.]

WHEREAS it is expedient that provisions should be made for Preamble
obtaining the opinion of the Commissioner of the Civil Court
on questions of law which arise in the exercise of summary jurisdiction

Justices of the Peace, &c.

by Justices of the Peace: Be it therefore enacted by His Excellency the Governor of Western Australia, and its Dependencies, by and with the advice and consent of the Legislative Council thereof:—

Justices on appli-
cation of a party
aggrieved to
state a case for
the opinion of
the Civil Court

Appellant

Respondent

Security and
notice to be
given by the
appellant

To submit to
judgment of the
Civil Court

Schedule

Appellant in cus-
tody liberated on
recognizance

Justice may
refuse applica-
tion he deems
frivolous

But must do so
if required by

1. That after the hearing and determination by a Justice or Justices of the Peace of any information or complaint which he or they have power to determine in a summary way or by summary remedy by any law or Ordinance now in force or hereafter to be made, either party to the proceeding before the said Justice or Justices, such party not being a person serving under a sentence for any criminal offence whether such sentence be partially remitted or not, may if dissatisfied with the determination as being erroneous in point of law apply in writing within three weeks after the same to the said Justice or Justices requiring him or them to state and sign a case setting forth the facts and grounds of such determination for the opinion thereon of the Commissioner of the Civil Court, and such party hereinafter called the appellant shall within three days after receiving such case transmit the same to such Court through the Registrar Clerk thereof, first giving notice in writing of such appeal with a copy of the case so stated and signed to the other party to the proceeding in which the determination was given and hereinafter called the respondent.

2. That the appellant at the time of making such application and before a case shall be stated and delivered to him by the Justice or Justices shall in every instance enter into a recognizance before such Justice or Justices or any one or more of them or any other Justice exercising the like jurisdiction with or without surety or sureties and in such sum as to the Justice or Justices shall seem meet, conditioned to prosecute without delay such appeal and to submit to the judgment of the said Commissioner of the Civil Court and pay such costs as may be awarded by him: And the appellant shall at the same time and before he shall be entitled to have the case delivered to him pay to the Clerk to the said Justice or Justices his fees for and in respect of the said case and recognizances and any other fees to which such Clerk shall be entitled, which fees except such as are already provided for by law shall be according to the Schedule to this Ordinance annexed until the same shall be ascertained, appointed and regulated in the manner prescribed by an Ordinance passed in the fourteenth year of the reign of Her present Majesty, No. 5, intituled 'An Ordinance to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within the Colony of Western Australia with respect to summary convictions and orders,' section twenty-nine, and the appellant if then in custody shall be liberated upon the recognizance being further conditioned for his appearance before the same Justice or Justices, or if that be impracticable or unreasonable before some other Justice or Justices exercising the like jurisdiction who shall be then sitting within ten days after the judgment of the said Commissioner of the Civil Court shall have been given, to abide such judgment unless the determination appealed against shall be reversed.

3. That if the Justice or Justices be of opinion that the application is merely frivolous, but not otherwise, he or they may refuse to state a case, and shall on the request of the appellant sign and deliver to him a certificate of such refusal: Provided that the Justice or Justices shall not refuse to state a case where application for that purpose shall be

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- made to them by or under the direction of the Advocate-General of the Colony.
4. That where the Justice or Justices shall refuse to state a case as aforesaid, it shall be lawful for the appellant to apply to the said Commissioner of the Civil Court upon an affidavit of the facts for a rule calling upon such Justice or Justices and also upon the respondent to show cause why such case should not be stated, and the said Commissioner may make the same absolute or discharge it with or without payment of costs as to the Commissioner shall seem meet, and the Justice or Justices upon being served with such rule absolute shall state a case accordingly upon the appellant entering into such recognizance as is hereinbefore provided.
5. That the Commissioner of the Civil Court shall hear and determine the question or questions of law arising on any and every case submitted under this Ordinance and shall thereupon reverse, affirm or amend the determination in respect of which the case has been stated or remit the matter to the Justice or Justices with the decision of the said Commissioner thereon, or may make such other order in relation to the matter, and may make such orders as to costs as to the said Commissioner may seem fit; and all such orders shall be final and conclusive on all parties: Provided always that no Justice or Justices of the Peace who shall state and deliver a case in pursuance of this Ordinance shall be liable to any costs in respect or by reason of such appeal against his or their determination.
6. That the said Commissioner of the Civil Court shall have power if he thinks fit to cause the case to be sent back for amendment, and thereupon the same shall be amended accordingly, and judgment shall be delivered after it shall have been so amended.
7. That the authority and jurisdiction hereby vested in the Commissioner of the Civil Court for the opinion of whom a case is stated under this Ordinance shall and may (subject to any rules and orders of such Commissioner in relation thereto) be exercised in chambers.
8. That after the decision of the said Commissioner of the Civil Court in relation to any case stated for his opinion under this Ordinance, the Justice or Justices in relation to whose determination the case has been stated or any other Justice or Justices of the Peace exercising the same jurisdiction, shall have the same authority to enforce any conviction or order which may have been affirmed, amended or made by the said Commissioner of the Civil Court as the Justice or Justices who originally decided the case would have had to enforce his or their determination if the same had not been appealed against: And no action or proceeding whatsoever shall be commenced or had against the Justice or Justices for enforcing such conviction or order by reason of any defect in the same respectively.
9. That no writ of *certiorari* or other writ shall be required for the removal of any conviction, order or other determination in relation to which a case is stated under this Ordinance or otherwise for obtaining the judgment or determination of the said Commissioner of the Civil Court on such case under this Ordinance.
10. That the said Commissioner of the Civil Court may from time to time and as often as he shall see occasion make and alter rules and

the Advocate-General

But on such refusal the Civil Court may by rule order case to be stated

Rule to show cause

With or without costs

Civil Court to settle the question of law

Also may remit to Justice with the opinion of Court thereon

Justice free from appeal costs

Case may be sent back for amendment

Powers in Chambers

Warrants

Certiorari not required

Rules and Order by Civil Court

Justices of the Peace, &c.

orders to regulate the practice and proceedings in reference to the cases hereinbefore mentioned.

Recognizances
how to be
enforced

Recognizance
before Justice
acting sum-
marily

Recognizance
how to be en-
forced by Justice
acting sum-
marily

Appellants under
this Ordinance
are not allowed
to appeal to
Quarter Sessions

11. That in all cases where the conditions or any of them in the said recognizances mentioned shall not have been complied with the Justice or Justices who shall have taken the same or any other Justice or Justices shall certify upon the back of the recognizance in what respect the conditions thereof have not been observed, and transmit the same to the Clerk of the Peace or Registrar Clerk of the Civil Court to be proceeded upon in like manner as other recognizances forfeited at Quarter Sessions may now by law be enforced, and such certificate shall be deemed sufficient *prima facie* evidence of the said recognizance having been forfeited: Provided that where any such recognizance shall have been taken before any Police Magistrate or Resident Magistrate or Justice or Justices of the Peace having summary jurisdiction in the particular case, all sums of money in which any person or persons shall be therein bound may, if the said Magistrate or Bench shall think fit, be levied upon such recognizance being forfeited and on non-payment thereof, together with the costs of the proceedings, enforce such payment in the same manner as Justices of the Peace in this Colony are now empowered to recover any penalty, forfeiture or sum of money according to the provisions in the said Ordinance of the fourteenth year of the reign of Her present Majesty, No. 5, and that all and every the provisions and enactments contained in the said Ordinance shall extend to and be applicable to this Ordinance in as ample a manner as if they had been herein re-enacted and made part of the same.

12. That any person who shall appeal under the provisions of this Ordinance against any determination of a Justice or Justices of the Peace from which he now is or may be by law entitled to appeal to the Quarter Sessions shall be taken to have abandoned such last mentioned right of appeal finally and conclusively and to all intents and purposes.

A. E. KENNEDY,

GOVERNOR AND COMMANDER-IN-CHIEF.

SCHEDULE

	<i>s. d.</i>
Drawing case and copy of case	
not exceeding five folios of 100 words each 10 6
Exceeding five such folios	
for every additional folio 2 6
Recognizance 5 0
For every enlargement or renewal thereof 3 6
Certificate of refusal 2 6