

WESTERN AUSTRALIA

ANNO QUARTODECIMO

VICTORIÆ REGINÆ

No. 4

An Ordinance to facilitate the performance of Duties of Justices of the Peace out of Quarter Sessions in Western Australia with respect to persons charged with Indictable Offences.

[Assented to 28th November, 1850.]

WHEREAS it would conduce much to the improvement of the administration of criminal justice in Western Australia if the duties of Her Majesty's Justices of the Peace therein with respect to persons charged with indictable offences were clearly defined by positive enactment: Be it therefore declared and enacted by His Excellency the Governor of Western Australia, by and with the advice and consent of the Legislative Council thereof, that in all cases where a charge or complaint (A) shall be made before any one or more of Her Majesty's Justices of the Peace for the said Colony, that any person has committed or is suspected to have committed any treason, felony, or indictable misdemeanour, or other indictable offence whatsoever within the limits of the jurisdiction of such Justice or Justices of the Peace, or that any person guilty or suspected to be guilty of having committed any such crime or offence elsewhere out of the jurisdiction of such Justice or Justices, is residing or being or is suspected to reside or be within the limits of the jurisdiction of such Justice or Justices, then and in every such case if the person so charged or complained against shall not then be in custody it shall be lawful for such Justice or Justices of the Peace to issue his or their warrant (B) to apprehend such person and cause him to be brought before such Justice or Justices or any other Justice or Justices for the said Colony to answer to such charge or complaint, and to be further dealt with according to law: Provided always that in all cases it shall be lawful for such Justice or Justices to whom such charge or complaint shall be preferred if he or they shall so think fit, instead of issuing in the first instance his or their warrant to apprehend the person so charged or complained against, to issue his or their summons (C) directed to such person, requiring him to appear before the said Justice or Justices at a time and place to be therein mentioned or before such other Justice or Justices of the said Colony as may then be there; and if after being served with such summons in manner hereinafter mentioned he shall fail to appear at such time and place in obedience to such summons, then and in every such case the said Justice or Justices or any other Justice or Justices of the Peace for the said Colony may issue his or their warrant (D) to apprehend such person so charged or complained against and cause such person to be brought before him or them or before some other Justice or Justices of the Peace for the said Colony

For what offences a Justice of the Peace may grant a warrant or summons to cause a person charged therewith to be brought before him

In what cases the party may be summoned instead of issuing a warrant in the first instance

If the summons be not obeyed, then a warrant may be issued

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to answer to the said charge or complaint and to be further dealt with according to law : Provided nevertheless that nothing herein contained shall prevent any Justice or Justices of the Peace from issuing the warrant hereinbefore first mentioned at any time before or after the time mentioned in such summons for the appearance of the said accused party.

2. And be it enacted that in all cases of indictable crimes or offences of any kind or nature whatsoever committed on the high seas, or in any creek, harbour, haven, or other place in which the Admiralty of England have or claim to have jurisdiction, and in all cases of crimes or offences committed on land beyond the seas, for which an indictment may legally be preferred in any place within the said Colony, it shall be lawful for any one or more of Her Majesty's Justices of the Peace for the said Colony within which any person charged with having committed, or with being suspected to have committed, any such crime or offence shall reside or be, or shall be supposed or suspected to reside and be, to issue his or their warrant (E) to apprehend the person so charged, and to cause him to be brought before him or them or some other Justice or Justices of the Peace for the said Colony to answer to the said charges, and to be further dealt with according to law.

Warrant to apprehend for offences committed on the high seas or abroad

3. And be it enacted that where any indictment shall be found by the grand jury in any Court of Oyer and Terminer or general gaol delivery, or in any Court of General or Quarter Sessions of the Peace, against any person who shall then be at large, and whether such person shall have been bound by any recognisance to appear to answer the same or not, the person who shall act as Clerk of the Crown at such Court of Oyer and Terminer or gaol delivery, or as Clerk of the Peace at such Sessions, at which the said indictment shall be found, shall at any time afterwards after the Sessions of Oyer and Terminer or gaol delivery or Sessions of the Peace at which such indictment shall have been found, upon application of the prosecutor or of a person on his behalf, and on payment of the fee of sixpence, if such person shall not have already appeared and pleaded to such indictment, grant unto such prosecutor or person a certificate (F) of such indictment having been found ; and upon production of such certificate to any Justice or Justices of the Peace for the said Colony it shall be lawful for such Justice or Justices, and he and they are hereby required, to issue his or their warrant (G) to apprehend such person so indicted, and to cause him to be brought before such Justice or Justices, or any other Justice or Justices for the said Colony, to be dealt with according to law, and afterwards if such person be thereupon apprehended and brought before any such Justice or Justices, such Justice or Justices, upon its being proved upon oath or affirmation before him or them that the person so apprehended is the same person who is charged and named in such indictment shall, without further inquiry or examination, commit him (H) for trial, or admit him to bail, in manner hereinafter mentioned ; or if such person so indicted shall be confined in any gaol or prison for any other offence than that charged in the said indictment at the time of such application, and production of the said certificate to such Justice or Justices as aforesaid, it shall be lawful for such Justice or Justices, and he and they are hereby required, upon it being proved

Warrant to apprehend a party against whom an indictment is found

If person indicted be already in prison for some other offence, Justice may order him to be detained until removed by writ of *habeas*

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before him or them upon oath or affirmation that the person so indicted and the person so confined in prison are one and the same person, to issue his or their warrant (I) directed to the gaol or keeper of the gaol or prison in which the person so indicted shall then be confined as aforesaid, commanding him to detain such person in his custody until by Her Majesty's writ of *habeas corpus* he shall be removed therefrom, for the purpose of being tried upon the said indictment, or until he shall otherwise be removed or discharged out of his custody by due course of law.

Power to Justice to issue warrants on Sundays

4. And be it enacted that it shall be lawful for any Justice or Justices of the Peace to grant or issue and cause to be executed any warrant as aforesaid or any search warrant on a Sunday, as well as on any other day.

When charge, &c., is made, if a warrant is to be issued, information, &c., on oath to be laid before Justices

5. And be it enacted that in all cases where a charge or complaint for any indictable offence shall be made before such Justice or Justices as aforesaid, if it be intended to issue a warrant in the first instance against the parties so charged, an information and complaint thereof (A) in writing, on the oath or affirmation of the informant or of some witness in that behalf, shall be laid before such Justice or Justices: Provided always that in all cases where it is intended to issue a summons instead of a warrant, in the first instance, it shall not be necessary that such information and complaint shall be in writing, or be sworn to or affirmed in manner aforesaid, but in every such case such information and complaint may be by parol merely, and without any oath or affirmation whatsoever to support and substantiate the same: Provided also that no objection shall be taken or allowed to any such information or complaint for any alleged defect therein in substance or in form, or for any variance between it and the evidence adduced on the part of the prosecution before the Justice or Justices who shall take the examination of the witnesses in that behalf, as hereinafter mentioned.

If summons to be issued instead, information, &c., not necessary to be on oath

No objection allowed for alleged defect in form

6. And be it enacted that upon such information and complaint being so laid as aforesaid, the Justice or Justices receiving the same may if he or they shall think fit issue his or their summons or warrant respectively as hereinbefore is directed to cause the person charged as aforesaid to be and appear before him or them or any other Justice or Justices of the Peace for the said Colony, to be dealt with according to law; and every such summons (C) shall be directed to the party so charged in and by such information, and shall state shortly the matter of such information and shall require the party to whom it is so directed to be and appear at a certain time and place therein mentioned before the Justice who shall issue the summons, or before such other Justice or Justices of the Peace of the said Colony as may then be there to answer to the said charge and to be further dealt with according to law; and every such summons shall be served by a Constable or other Peace Officer on the person to whom it is so directed by delivering the same to the party personally, or if he cannot conveniently be met with then by leaving the same with some person for him at his last or most usual place of abode; and the person who shall have served the same in manner aforesaid shall attend at the time and place and before the Justices in the said summons mentioned to depose if necessary to the service of such summons; and if the person so

Upon complaint being laid, Justices receiving the same may issue summons or warrant for appearance of person charged

How summons to be served

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served shall not be and appear before the Justice or Justices at the time and place mentioned in such summons in obedience to the same or at such other time and place, if any, to which the hearing of such case may be adjourned, then it shall be lawful for such Justice or Justices to issue his or their warrant (D) for apprehending the party so summoned, and bringing him before such Justice or Justices or some other Justice or Justices of the Peace for the said Colony to answer the charge in the said information and complaint mentioned and to be further dealt with according to law: Provided always that no objection shall be taken or allowed to any such summons or warrant for any alleged defect therein in substance or in form, or for any variance between it and the evidence adduced on the part of the prosecution before the Justice or Justices who shall take the examinations of the witnesses in that behalf as hereinafter mentioned; but if any such variance shall appear to such Justice or Justices to be such that the party charged has been thereby deceived or misled, it shall be lawful for such Justice or Justices at the request of the party so charged to adjourn the hearing of the case to some future day, and in the meantime to remand the party so charged or admit him to bail in manner hereinafter mentioned.

If party summoned do not attend, Justice may issue a warrant to compel attendance

No objection allowed for alleged defect in form, &c.

7. And be it declared and enacted that every warrant (B) hereafter to be issued by any Justice or Justices of the Peace to apprehend any person charged with any indictable offence shall be under the hand and seal or hands and seals of the Justice or Justices issuing the same and may be directed either to any Constable or other person or generally to the Constables of the district within which the same is to be executed, or any of them without naming them, or to such Constables and all other Constables or Peace Officers in the said Colony, or generally to all or any of the Constables or Peace Officers within the said Colony, and it shall state shortly the offence on which it is founded, and shall name or otherwise describe the offender, and it shall order the person or persons to whom it is directed to apprehend the offender and bring him before the Justice or Justices issuing the said warrant or before some other Justice or Justices of the Peace for the said Colony to answer the charge contained in the said information and to be further dealt with according to law; and it shall not be necessary to make such warrant returnable at any particular time, but the same may remain in force until it shall be executed; and such warrant may be executed by apprehending the offender at any place within the said Colony; and in all cases where such warrant shall be directed to all Constables or other Peace Officers within the said Colony it shall be lawful for any Constable or other Peace Officer for any place within such Colony to execute the said warrant in like manner as if such warrant be directed specially to such Constable by name, and notwithstanding the place in which warrant shall be executed shall not be within the place for which he shall be such Constable or other Peace Officer: Provided always that no objection shall be taken or allowed to any such warrant for any defect therein in substance or in form or for any variance between it and the evidence adduced on the part of the prosecution before the Justice or Justices who shall take the examinations of the witnesses in that behalf as is hereinafter mentioned; but if any such variance shall appear to such Justice or Justices to be such that the party charged has been thereby deceived or misled, it shall be lawful for such Justice

Warrant to apprehend parties, to be under the hand and seal of Justice

How warrant is to be directed, and to whom

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or Justices at the request of the party so charged to adjourn the hearing of the case to some future day, and in the meantime to remand the party so charged or to admit him to bail in manner hereinafter mentioned.

8. And be it enacted that if it shall be made to appear to any Justice of the Peace by the oath or affirmation of any credible person that any person within the jurisdiction of such Justice is likely to give material evidence for the prosecution, and will not voluntarily appear for the purpose of being examined as a witness at the time and place appointed for the examination of the witnesses against the accused, such Justice may and is hereby required to issue his summons (K 1) to such person under his hand and seal, requiring him to be and appear at a time and place mentioned in such summons before the said Justice or before such other Justice or Justices of the Peace for the said Colony as shall then be there, to testify what he shall know concerning the charge made against such accused party and also (if such Justice shall think fit) to bring with him and produce for examination such paper or papers or documents as shall be in his possession or power, and as shall by such Justice be deemed necessary and be therein set forth; and if any person so summoned shall neglect or refuse to appear at the time and place appointed by the said summons and no just excuse shall be offered for such neglect or refusal, then (after proof upon oath or affirmation of such summons having been served upon such person, either personally or by leaving the same for him with some person at his last or most usual place of abode) it shall be lawful for the Justice or Justices before whom such person should have appeared to issue a warrant (K 2) under his or their hands and seals to bring and have such person, at a time and place to be therein mentioned, before the Justice who issued the said summons or before such other Justice or Justices of the Peace for the said Colony as shall then be there, to testify as aforesaid and (as the case may be) to produce such papers and documents as aforesaid, or if such Justice or Justices shall be satisfied by evidence upon oath or affirmation that it is probable that such person will not attend to give evidence without being compelled to do so, then, instead of issuing such summons, it shall be lawful for him or them to issue his or their warrant in (K 3) the first instance, and if on the appearance of such person so summoned before the said last-mentioned Justice or Justices, either in obedience to the said summons or upon being brought before him or them by virtue of the said warrant, such person shall refuse to be examined upon oath or affirmation concerning the premises or shall refuse to take such oath or affirmation, or having taken such oath or affirmation shall refuse to answer such questions concerning the premises as shall then be put to him or (as the case may be) shall refuse to produce for examination any such paper or document as aforesaid which shall be in his possession or power, without offering any just excuse for such refusal, any Justice or Justices of the Peace then present and having there jurisdiction may by warrant (K 4) under his hand and seal commit the person so refusing to the common gaol, house of correction or bridewell for the place where such person so refusing shall then be, there to remain and be imprisoned for any time not exceeding seven days, unless he shall in the meantime consent to be examined and

If summons not obeyed, warrant may be issued to compel attendance

In certain cases warrants may be issued in the first instance

Persons appearing on summons, &c., refusing to be examined, may be committed

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to answer concerning the premises or (as the case may be) to produce the said papers or documents as aforesaid.

9. And be it enacted that in all cases where any person shall appear or be brought before any Justice or Justices of the Peace, charged with any indictable offence, whether committed in the Colony aforesaid or on the high seas or on land beyond the sea, or whether such person appear voluntarily upon summons or have been apprehended with or without warrant, or be in custody for the same or any other offence, such Justice or Justices, before he or they shall commit such accused person to prison for trial, or before he or they shall admit him to bail, shall in the presence of such accused person, who shall be at liberty to put questions to any witness produced against him, take the statement (L) on oath or affirmation of those who shall know the facts and circumstances of the case, and shall put the same into writing, and such depositions shall be read over to and signed respectively by the witnesses who shall have been so examined, and shall be signed also by the Justice or Justices taking the same, and the Justice or Justices before whom any such witness shall appear to be examined as aforesaid shall before such witness is examined administer to such witness the usual oath or affirmation, which such Justice or Justices shall have full power and authority to do; and if upon the trial of the person so accused as first aforesaid it shall be proved by the oath or affirmation of any credible witness that any person whose deposition shall have been taken as aforesaid is dead or so ill as not to be able to travel, and if also it be proved that such deposition was taken in the presence and hearing of the person so accused, and that he or his counsel or attorney had a full opportunity of cross-examining the witness, then, if such deposition purport to be signed by the Justice or Justices by or before whom the same purports to have been taken, it shall be lawful to read such deposition as evidence in such prosecution, without further proof thereof, unless it shall be proved that such deposition was not in fact signed by the Justice or Justices purporting to sign the same.

As to the examination of witnesses

Justice to administer oath or affirmation

Depositions of persons who have died, or who are absent, may in certain cases be read in evidence

10. And be it enacted that after the examinations of all the witnesses on the part of the prosecution as aforesaid shall have been completed, the Justice of the Peace or one of the Justices by or before whom such examination shall have been so completed as aforesaid shall, without requiring the attendance of the witnesses, read or cause to be read to the accused the depositions taken against him, and shall say to him these words or words to the like effect:—‘ Having heard the evidence, do you wish to say anything in answer to the charge? You are not obliged to say anything unless you desire to do so, but whatever you say will be taken down in writing and may be given in evidence against you upon your trial;’ and whatever the prisoner shall then say in answer thereto shall be taken down in writing (M) and read over to him, and shall be signed by the said Justice or Justices and kept with the depositions of the witnesses, and shall be transmitted with them as hereinafter mentioned, and afterwards upon the trial of the said accused person the same may, if necessary, be given in evidence against him without further proof thereof if the same purports to be signed by the Justice or Justices by or before whom the same purports to have been taken, unless it shall be proved

After examination of the accused, Justice to read depositions taken against them, and caution as to any statement they may make;

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and inform that he has nothing to hope or fear from either promise or threat

that the Justice or Justices purporting to sign the same did not in fact sign the same: Provided always that the said Justice or Justices, before such accused person shall make any statement, shall state to him and give him clearly to understand that he has nothing to hope from any promise of favour and nothing to fear from any threat which may have been holden out to him to induce him to make any admission or confession of his guilt, but that whatever he shall then say may be given in evidence against him upon his trial, notwithstanding such promise or threat: Provided, nevertheless, that nothing herein enacted or contained shall prevent the prosecutor in any case from giving in evidence any admission or confession or other statement of the person accused or charged, made at any time, which by law would be admissible as evidence against such person.

Place where examination taken, not to be deemed an open Court, and no person remain without consent

11. And be it declared and enacted that the room or building in which such Justice or Justices shall take such examinations and statement as aforesaid shall not be deemed an open Court for that purpose, and it shall be lawful for such Justice or Justices in his or their discretion to order that no person (the counsel or attorney of any person then being in such Court as a prisoner only excepted) shall have access to or be, or remain in such room or building without the consent or permission of such Justice or Justices, if it appear to him or them that the ends of justice will be best answered by so doing.

Power to Justice to bind over the prosecutors and witnesses by recognizance

12. And be it enacted that it shall be lawful for the Justice or Justices before whom any such witness shall be examined as aforesaid to bind by recognizance (N) the prosecutor and every such witness to appear at the next Court of Oyer and Terminer or gaol delivery or Court of General or Quarter Sessions of the Peace at which the accused is to be tried, then and there to prosecute or to prosecute and give evidence or to give evidence as the case may be against the party accused, which said recognizance shall particularly specify the profession, art, mystery or trade of every such person entering into or acknowledging the same together with his Christian and surname and the place of his residence, and if his residence be in a city or town; the recognizance shall also particularly specify the name of the street and the number (if any) of the house in which he resides and whether he is owner or tenant thereof or a lodger therein; and the said recognizance being duly acknowledged by the person so entering into the same, shall be subscribed by the Justice or Justices before whom the same shall be acknowledged and a notice (N 2) thereof, signed by the said Justice or Justices, shall at the same time be given to the person bound thereby; and the several recognizances so taken, together with the written information (if any), the depositions, the statement of the accused and the recognizance of bail (if any) in every such case shall be delivered by the said Justice or Justices, or he or they 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, Recorder or Justice who is to preside in such Court at the said trial order and appoint: Provided always that if any such witness shall refuse to enter into or acknowledge such recognizance as aforesaid, it shall be lawful for such Justice or Justices of the Peace by his or their warrant (O 1) to commit him to the common gaol or house of correc-

Recognizance, depositions, &c., to be transmitted to the Court in which the trial is to be had

Witnesses refusing to enter into recognizances may be committed

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tion of the district or place in which the accused party is to be tried, there to be imprisoned and safely kept until after the trial of such accused party, unless in the meantime such witness shall duly enter into such recognizance as aforesaid before some one Justice of the Peace of the said Colony: Provided nevertheless that if afterwards, from want of sufficient evidence in that behalf or other cause the Justice or Justices before whom such accused party shall have been brought shall not commit him or hold him to bail for the offence with which he is charged, it shall be lawful for such Justice or Justices or any other Justice or Justices of the said Colony by his or their order (O 2) in that behalf to order and direct the Keeper of such common gaol or house of correction where such witness shall be so in custody to discharge him from the same, and such Keeper shall thereupon forthwith discharge him accordingly.

13. And be it enacted that if, from the absence of witnesses, or from any other reasonable cause, it shall become necessary or advisable to defer the examination or further examination of the witnesses for any time, it shall be lawful to and for the Justice or Justices before whom the accused shall appear or be brought by his or their warrant (P 1) from time to time to remand the party accused for such time as by such Justice or Justices in their discretion shall be deemed reasonable, not exceeding eight clear days, to the common gaol or house of correction or other prison, lock-up house or place of security in the place for which such Justice or Justices shall then be acting; or if the remand be for a time not exceeding three clear days, it shall be lawful for such Justice or Justices verbally to order the Constable or other person in whose custody such party accused may then be, or any other Constable or person to be named by the said Justice or Justices in that behalf, to continue or keep such party accused in his custody, and to bring him before the same or such other Justice or Justices as shall be there acting at the time appointed for continuing such examination: Provided always, that any such Justice or Justices may order such accused party to be brought before him or them, or before any other Justice or Justices of the Peace for the said Colony at any time before the expiration of the time for which such accused party shall be so remanded, and the Gaoler or Officer in whose custody he shall then be shall duly obey such order: Provided also that, instead of detaining the accused party in custody during the period for which he shall be so remanded, the Justice or Justices of the Peace before whom such accused party shall so appear or be brought as aforesaid may discharge him upon his entering into recognizance (P 2, 3), with or without a surety or sureties, at the discretion of such Justice, conditioned for his appearance at the time and place appointed for the continuance of such examination; and if such accused party shall not afterwards appear at the time and place mentioned in such recognizance, then the said Justice or any other Justice of the Peace who may then and there be present, upon certifying (P 4) on the back of the recognizance the non-appearance of such accused party, may transmit such recognizance to the Clerk of the Peace of the place within which such recognizance shall have been taken, to be proceeded upon in like manner as other recognizances, and such certificate shall be deemed sufficient *prima facie* evidence of such non-appearance of the said accused party.

Power to Justice to remand the accused from time to time, not exceeding eight days, by warrant

Party accused may be admitted to bail on the examination being adjourned

If party does not appear upon recognizance, Justice may transmit the same to the Clerk of the Peace

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Power to Justice
to admit to bail
persons charged
with felony and
certain
misdemeanours

Justice may ad-
mit to bail in the
like cases after
commitment for
trial

Certain recogni-
zance to be
transmitted to
committing
Justice

14. And be it enacted that where any person shall appear or be brought before a Justice or Justices of the Peace, charged with any felony or with any misdemeanour, such Justice or Justices of the Peace may, if in his or their discretion (having regard to the nature of the charge and the cogency of the evidence adduced in support of it) it appears to him or them to be a case in which bail ought to be taken, admit such person to bail upon his procuring and producing a sufficient surety or sureties for the appearance of such accused person at the time and place when and where he is to be tried for such offence, and thereupon such Justice or Justices shall take the recognizance (Q 1, 2) of the said accused person and his surety or sureties, conditioned for the appearance of such accused person at the time and place of trial, and that he will then surrender and take his trial, and not depart the Court without leave; and in all cases where a person charged with any indictable offence shall be committed to prison to take his trial for the same it shall be lawful at any time afterwards, and before the first day of the sitting or session of the Court before which he shall have been committed to be tried, for the Justice or Justices of the Peace who shall have signed the warrant for his commitment in his or their discretion to admit such accused person to bail in manner aforesaid; or if such committing Justice or Justices shall be of opinion that for any of the offences hereinbefore mentioned the said accused person ought to be admitted to bail, he or they shall in such cases certify (Q 3) on the back of the warrant of commitment his or their consent to such accused party being bailed, stating also the amount of bail which ought to be required, it shall be lawful for any Justice of the Peace attending or being at the gaol or prison where such accused party shall be in custody, on production of such certificate at any time before the first day of the sitting or session of the Court before which he shall have been committed to be tried, to admit such accused person to bail in manner aforesaid; or if it shall be inconvenient for the surety or sureties in such a case to attend at such gaol or prison to join with such accused party in the recognizance of bail, then such committing Justice or Justices may make a duplicate of such certificate (Q 4) as aforesaid; and upon the same being produced to any Justice of the Peace for the said Colony, it shall be lawful for such last-mentioned Justice, before such time as aforesaid, to take the recognizance of the surety or sureties in conformity with such certificate; and upon such recognizance being transmitted to the Keeper of such gaol or prison, and produced together with the certificate on the warrant of commitment as aforesaid to any Justice of the Peace attending or being at such gaol or prison, it shall be lawful for such last-mentioned Justice thereupon, before such time as aforesaid, to take the recognizance of such accused party and to order him to be discharged out of custody as to that commitment, as hereinafter mentioned; and in all cases where such accused person in custody shall be admitted to bail by a Justice or Justices of the Peace other than the committing Justice or Justices of the Peace as aforesaid, such Justice or Justices of the Peace so admitting him to bail, shall forthwith transmit the recognizance or recognizances of bail to the committing Justice or Justices, or one of them, to be by him or them transmitted, with the examinations, to the proper officer: Provided also, that when, in cases of misdemeanour, the defendant shall be entitled to a traverse at the

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next Assizes, Court of Oyer and Terminer, or Quarter Sessions, and shall not be bound to take his trial until the second Assizes, or Court of Oyer and Terminer, or Sessions, in every such case the recognizance (Q 1) of bail shall be conditioned that he shall appear and plead at the next Assizes, Court of Oyer and Terminer, or Sessions, and then traverse the indictment, and that he shall surrender and take his trial at such second Assizes, Court of Oyer and Terminer, or Sessions, and unless such accused party shall, before he enter into such recognizance, choose and consent to take his trial at such first Assizes, Court of Oyer and Terminer, or Sessions, in which case the recognizance may be in the ordinary form hereinbefore mentioned.

15. And be it enacted that in all cases where a Justice or Justices of the Peace shall admit to bail any person who shall then be in any prison charged with the offence for which he shall be so admitted to bail, such Justice or Justices shall send to or caused to be lodged with the Keeper of such prison a warrant of deliverance (Q 5) under his or their hand and seal, or hands and seals, requiring the said Keeper to discharge the person so admitted to bail, if he be detained for no other offence or under no civil process, and upon such warrant of deliverance being delivered to or lodged with such Keeper he shall forthwith obey the same.

When Justice admits a person to bail after commitment, a writ of deliverance shall be sent to him, if not detained for any other offence

16. And be it enacted that when all the evidence offered upon the part of the prosecution against the accused party shall have been heard, if the Justice or Justices of the Peace then present shall be of opinion that it is not sufficient to put such accused party upon his trial for any indictable offence, such Justice or Justices shall forthwith order such accused party, if in custody, to be discharged as to the information then under inquiry; but if in the opinion of such Justice or Justices such evidence is sufficient to put the accused party upon his trial for an indictable offence, or if the evidence given raise a strong or probable presumption of the guilt of such accused party, then such Justice or Justices shall by his or their warrant (R 1) commit him to the common gaol or house of correction, to which by law he may now be committed, or in the case of an indictable offence committed on the high seas or on land beyond the sea, to any common gaol of the said Colony, to be there safely kept until he shall be thence delivered by due course of law or admit him to bail as hereinbefore mentioned.

If, after hearing evidence against the accused, it is not thought sufficient to warrant commitment, he shall be discharged; but if evidence considered sufficient, Justice shall, by warrant, commit the accused for trial

17. And be it enacted that the Constable or any of the Constables or other persons to whom the said warrant of commitment shall be directed shall convey such accused person therein named or described to the gaol or other prison mentioned in such warrant, and there deliver him, together with such warrant, to the gaoler, keeper, or governor of such gaol or prison, who shall thereupon give such Constable, or other person so delivering such prisoner into his custody, a receipt (R 2) for such prisoner, setting forth the state and condition in which such prisoner was when he was delivered into the custody of such gaoler, keeper, or governor; and in all cases where such Constable or other person shall be entitled to his costs or expenses for conveying such person to such prison as aforesaid, it shall be lawful for the Justice or Justices who shall have committed the accused party, or for any Justice of the Peace in and for the said Colony, to give such Constable or other person conveying such prisoner to such gaol or prison a written certifi-

Regulations for conveying prisoners to gaol

As to payment of costs conveying prisoners to prison

Justices of the Peace, &c.

cate that he is entitled to his costs and expenses for the same, and also for his expenses in returning, and such costs and expenses shall be defrayed and provided and accounted for in the usual manner: Provided nevertheless that if it shall appear to the Justice or Justices by whom any such warrant of commitment against such prisoner shall be granted as aforesaid, that such prisoner hath money sufficient to pay the expenses, or some part thereof, of conveying him to such gaol or prison, it shall be lawful for such Justice or Justices, in his or their discretion, to order such money, or a sufficient part thereof, to be applied to such purpose.

After examinations are completed, defendant entitled to copies of the depositions

18. And be it enacted that at any time after all the examinations aforesaid shall have been completed, and before the first day of the assizes or sessions or other first sitting of the Court at which any person so committed to prison or admitted to bail as aforesaid is to be tried, such person may require and shall be entitled to have of and from the officer or person having the custody of the same, copies of the depositions on which he shall have been committed or bailed or copies of depositions taken at an inquest in cases of murder and manslaughter, on payment of a reasonable sum for the same, not exceeding at the rate of three halfpence for each folio of ninety words.

Forms in Schedule deemed valid

19. And be it enacted that the several forms in the Schedule to this Ordinance contained, or forms to the same or the like effect, shall be deemed good, valid and sufficient in law.

CHARLES FITZGERALD,
GOVERNOR AND COMMANDER-IN-CHIEF.

SCHEDULE

(A)

INFORMATION AND COMPLAINT FOR AN INDICTABLE OFFENCE

To wit.

The information and complaint of C.D. of *(yeoman)*, taken this *day* of *in* the year of our Lord 18 *before* the undersigned *(one)* of Her Majesty's Justices of the Peace in and for the said Colony of Western Australia, who saith that *(dc., stating the offence)*.
Sworn before *(me)*, the day and year first above mentioned, at

J.S.

(B)

WARRANT TO APPREHEND A PERSON CHARGED WITH AN INDICTABLE OFFENCE

To the Constable of *and to all other Peace Officers in the said Colony of Western Australia.*

Whereas A. B. of *(labourer)* hath this day been charged upon oath before the undersigned, *(one)* of Her Majesty's Justices of the Peace in and for the said Colony of Western Australia, for that he on *at* did *(dc., stating shortly the offence)*: These are therefore to

Justices of the Peace, &c.

command you, in Her Majesty's name forthwith to apprehend the said A.B., and to bring him before (*me*) or some other of Her Majesty's Justices of the Peace in and for the said Colony, to answer unto the said charge and to be further dealt with according to law.

Given under my hand and seal this _____ day of _____
 in the year of our Lord _____ at _____ in the Colony aforesaid.
 J.S.

(C)

SUMMONS TO A PERSON CHARGED WITH AN INDICTABLE OFFENCE

To A.B., of _____ (*Labourer*).

Whereas you have this day been charged before the undersigned (*one*) of Her Majesty's Justices of the Peace in and for the said Colony of Western Australia, for that you on _____ at _____ (*etc., stating shortly the offence*): These are therefore to command you, in Her Majesty's name, to be and appear before me on _____ at _____ o'clock in the forenoon, at _____ or before such other Justice or Justices of the Peace for the same Colony as may then be there, to answer to the said charge, and to be further dealt with according to law. Herein fail not.

Given under my hand and seal this _____ day of _____
 the year of our Lord _____ at _____ in the Colony aforesaid.
 J.S. (L.S.)

(D)

WARRANT WHERE THE SUMMONS IS DISOBEYED

To the Constable of _____ and to all other Peace Officers in the said Colony of Western Australia.

Whereas on the _____ last past, A.B., of _____ (*labourer*), was charged before the undersigned, (*one*) of Her Majesty's Justices of the Peace in and for the said Colony of Western Australia, for that (*etc., as in the summons*); and whereas (*I*) then issued (*my*) summons to the said A.B., commanding him, in Her Majesty's name, to be and appear before (*me*) on _____ at _____ o'clock in the forenoon, at _____ or before such other Justice or Justices of the Peace for the same Colony as might then be there, to answer to the said charge, and to be further dealt with according to law; and whereas the said A.B. hath neglected to be and appear at the time and place appointed in and by the said summons, although it hath now been proved to me upon oath that the said summons was duly served upon the said A.B.: These are therefore to command you, in Her Majesty's name, forthwith to apprehend the said A.B., and to bring him before me or some other of Her Majesty's Justices of the Peace in and for the said Colony, to answer to the charge, and to be further dealt with according to law.

Given under my hand and seal this _____ day of _____
 the year of our Lord _____ at _____ in the Colony aforesaid.
 J.S. (L.S.)

(E)

WARRANT TO APPREHEND A PERSON CHARGED WITH AN INDICTABLE OFFENCE COMMITTED ON THE HIGH SEAS OR ABROAD

For offences committed on the High Seas the warrant may be the same as in ordinary cases, but describing the offence to have been committed 'on the High Seas, out of the body of this Colony, and within the jurisdiction of the Admiralty of England.'

For offences committed abroad for which the parties may be indicted in this Colony the warrant also may be the same as in ordinary cases, but describing

Justices of the Peace, &c.

the offence to have been committed 'on land out of this Colony, to wit, at
in the kingdom of ' (or) 'at in the
East Indies,' (or) 'at in the island of in the West
Indies,' (or as the case may be).

(F)

CERTIFICATE OF INDICTMENT BEING FOUND

I hereby certify that at [a Court of Oyer and Terminer and General Gaol
Delivery or at a Court of General Quarter Sessions of the Peace] holden in and for
the Colony of Western Australia at in the said Colony on an
information in the name of was filed with against
A.B. therein described as A.B., late (labourer), for that he (&c.,
stating shortly the offence) and that the said A.B. hath not appeared or pleaded to
the said information.

See 24 Vic.,
No. 15, r. 21

Dated this day of 18

J.D.,
Clerk of the Indictments

or
Clerk of the Peace of and for the said Colony.

(G)

WARRANT TO APPREHEND A PERSON INDICTED

To the Constable of and to all other Peace Officers in the said
Colony of Western Australia.

Whereas it hath been duly certified by J.D., Registrar, Master and Keeper
of Records, Clerk of the Indictments (or Clerk of the Peace of and for the Colony
of Western Australia) that (&c., *stating the certificate*): These are therefore to
command you in Her Majesty's name forthwith to apprehend the said A.B. and to
bring him before (me) or some other Justice or Justices of the Peace in and for the
said Colony to be dealt with according to law.

Given under my hand and seal this day of
in the year of our Lord at in the Colony aforesaid.
J.S. (L.S.)

(H)

WARRANT OF COMMITMENT OF A PERSON INDICTED

To the Constable of and to the Keeper of the (Common Gaol or
House of Correction) at in the said Colony of Western Australia.

Whereas by (my) warrant under my hand and seal dated the day
of after reciting that it had been certified by J.D. (&c., as in the
certificate) (I) commanded the Constable of and all other Peace Officers
of the said Colony in Her Majesty's name forthwith to apprehend the said A.B. and
to bring him before (me) the undersigned (one) of Her Majesty's Justices of the
Peace in and for the said Colony or before some other Justice or Justices of the Peace
in and for the said Colony, to be dealt with according to law: And whereas the said
A.B. hath been apprehended under and by virtue of the said warrant and being now
brought before (me), it is hereupon duly proved to (me) upon oath that the said
A.B. is the same person who is named and charged in and by the said indictment:
These are therefore to command you the said Constable in Her Majesty's name
forthwith to take and safely convey the said A.B. to the said (House of Correction)
at in the said Colony, and there to deliver him to the Keeper
thereof together with this precept, and I hereby command you the said Keeper to
receive the said A.B. into your custody in the said House of Correction and him
there safely to keep until he shall be thence delivered by due course of law.

Given under my hand and seal this day of in the
year of our Lord at in the Colony aforesaid.
J.S. (L.S.)

Justices of the Peace, &c.

(I)

WARRANT TO DETAIN A PERSON INDICTED WHO IS ALREADY IN
CUSTODY FOR ANOTHER OFFENCE

To the Keeper of the (Common Gaol or House of Correction) at _____ in
the said Colony of Western Australia.

Whereas it hath been duly certified by J.D., Clerk of the Indictments (or Clerk of the Peace and for the Colony of Western Australia), that (*etc., stating the certificate*); and whereas (*I am*) informed that the said A.B. is in your custody in the said (*common gaol*) at _____ aforesaid, charged with some offence or other matter; and it being now duly proved upon oath before (*me*) that the said A.B., so indicted as aforesaid, and the said A.B. in your custody as aforesaid are one and the same person: These are therefore to command you, in Her Majesty's name to detain the said A.B. in your custody in the (*common gaol*) aforesaid until by Her Majesty's writ of *habeas corpus* he shall be removed therefrom for the purpose of being tried upon the said indictment or until he shall otherwise be removed or discharged out of your custody by due course of law.

Given under my hand and seal this _____ day of _____ in the
year of our Lord _____ at _____ in the Colony aforesaid.
J.S. (L.S.)

(K 1)

SUMMONS OF A WITNESS

To E.F. of _____ (*Labourer*).

Whereas information hath been laid before the undersigned (*one*) of Her Majesty's Justices of the Peace in and for the said Colony of Western Australia that A.B. (*etc., as in the summons or warrant against the accused*), and it hath been made to appear to me upon (*oath*) that you are likely to give material evidence for the (*prosecution*): These are therefore to require you to be and appear before me on _____ next, at _____ o'clock in the forenoon, at _____ or before such other Justice or Justices of the Peace of the same Colony as may then be there to testify what you shall know concerning the said charge so made against the said A.B. as aforesaid. Herein fail not.

Given under my hand and seal this _____ day of _____ in the
year of our Lord _____ at _____ in the Colony aforesaid.
J.S. (L.S.)

(K 2)

WARRANT WHERE A WITNESS HAS NOT OBEYED A SUMMONS

To the Constable of _____ and to all other Peace Officers in the said Colony
of Western Australia.

Whereas information having been laid before the undersigned, (*one*) of Her Majesty's Justices of the Peace in and for the said Colony of Western Australia, that A.B. (*etc., as in the summons*); and it having been made to appear to (*me*) upon oath that E.F. of _____ (*labourer*) was likely to give material evidence for the prosecution, I did duly issue my summons to the said E.F., requiring him to be and appear before me on _____ at _____ or before such other Justice or Justices of the Peace for the same Colony as might then be there, to testify what he should know respecting the said charge so made against the said A.B. as aforesaid: And whereas proof hath this day been made before me upon oath of such summons having been duly served upon the said E.F.: And whereas the said E.F. hath neglected to appear at the time and place appointed by the said summons, and no just excuse has been offered for such neglect: These are therefore to command you to bring and have the said E.F. before me on _____ at _____ o'clock in the forenoon, at _____ or before such other Justice

Justices of the Peace, &c.

or Justices of the Peace for the same Colony as may then be there to testify what he shall know concerning the said charge so made against the said A.B. as aforesaid.

Given under my hand and seal this _____ day of _____ in the year of our Lord _____ at _____ in the Colony aforesaid.
J.S. (L.S.)

(K 3)

WARRANT FOR A WITNESS IN THE FIRST INSTANCE

To the Constable of _____ and to all other Peace Officers in the said Colony of Western Australia.

Whereas information hath been laid before the undersigned (*one*) of Her Majesty's Justices of the Peace in and for the said Colony of Western Australia, that (*dc., as in the summons*); and it having been made to appear to (*me*) upon oath that E.F., of _____ (*labourer*), is likely to give material evidence

for the prosecution, and that it is probable that the said E.F. will not attend to give evidence without being compelled so to do: These are therefore to command you to bring and have the said E.F. before me on _____ at _____ o'clock in the forenoon, at _____, or before such other Justice or

Justices of the Peace for the same Colony as may then be there to testify what he shall know concerning the said charge so made against the said A.B. as aforesaid.

Given under my hand and seal this _____ day of _____ in the year of our Lord _____ at _____ in the Colony aforesaid.
J.S. (L.S.)

(K 4)

WARRANT OF COMMITMENT OF A WITNESS FOR REFUSING TO BE SWORN OR TO GIVE EVIDENCE

To the Constable of _____ and to the Keeper of the (*House of Correction*) at _____ in the said Colony of Western Australia.

Whereas A.B. was lately charged before the undersigned, (*one*) of Her Majesty's Justices of the Peace in and for the said Colony of Western Australia, for that (*dc., as in the summons*); and it having been made to appear to (*me*) upon oath that E.F., of _____, was likely to give material evidence for the prosecution, I duly issued my summons to the said E.F., requiring him to be and appear before me on _____ at _____, or before such other Justice or

Justices of the Peace as should then be there, to testify what he should know concerning the said charge so made against the said A.B. as aforesaid; and the said E.F. now appearing before me (*or* being brought before me by virtue of a warrant in that behalf to testify as aforesaid), and being required to make oath or affirmation as a witness in that behalf hath now refused so to do (*or* being duly sworn as a witness doth now refuse to answer certain questions concerning the premises which are here put to him) without offering any just excuse for such his refusal: These are therefore to command you the said Constable to take the said E.F. and him safely to convey to the (*House of Correction*) at _____ in the Colony aforesaid, and there deliver him to the Keeper thereof, together with this precept; and I do hereby command you the said Keeper of the said (*House of Correction*) to receive the said E.F. into your custody in the said (*House of Correction*), and him there safely to keep for the space of _____ days for his said contempt, unless he shall in the meantime consent to be examined and to answer concerning the premises; and for your so doing this shall be your sufficient warrant.

Given under my hand and seal this _____ day of _____ in the year of our Lord _____ at _____ in the Colony aforesaid.
J.S. (L.S.)

Justices of the Peace, &c.

(L)

DEPOSITIONS OF WITNESSES

To wit.

The examination of C.D., of _____ (farmer), and E.F., of _____ (labourer), taken on (oath) this _____ day of _____ in the year of our Lord _____ at _____ in the Colony aforesaid, before the undersigned, (one) of Her Majesty's Justices of the Peace for the said Colony, in the presence and hearing of A.B., who is charged this day before (me) for that he the said A.B. on _____ at _____ (i.e., describing the offence as in a warrant of commitment).

This deponent C.D. on his (oath) saith as follows (i.e., stating the deposition of the witness as nearly as possible in the words he uses. When his deposition is complete, let him sign it).

And this deponent E.F. on his (oath) saith as follows (i.e.).

The above depositions of C.D. and E.F. were taken and sworn before me, at _____ on the day and year first above mentioned.

J.S.

(M)

STATEMENT OF THE ACCUSED

: A.B. stand charged before the undersigned (one) of Her Majesty's Justices of the Peace in and for the Colony aforesaid, this _____ day of _____ in the year of our Lord _____ for that he the said A.B., on _____ at _____ (i.e., as in the caption to the depositions); and the said charge being read to the said A.B., and the witnesses for the prosecution, C.D. and E.F., being severally examined in his presence, the said A.B. is now addressed by me as follows:—'Having heard the evidence, do you wish to say anything in answer to the charge? You are not obliged to say anything unless you desire to do so; but whatever you say will be taken down in writing, and may be given in evidence against you on your trial. Do you desire to call any witness? If you do, it must be done after you have made your own statement.' Whereupon the said A.B. saith as follows:—

(Here state whatever the prisoner may say, and in his very words, as nearly as possible. Get him to sign it if he will.)

A.B.

Taken before me at _____ the day and year first above mentioned.

J.S.

(N 1)

RECOGNIZANCE TO PROSECUTE OR GIVE EVIDENCE

: Be it remembered that on the _____ day of _____ in the year of our Lord _____ C.D., of _____, in the township of _____, in the said Colony (farmer, or C.D.), of (No. 2 _____ street, in the parish of _____, in the town of _____, (surgeon), of which said house he is tenant, personally came before me, one of Her Majesty's Justices of the Peace for the said Colony, and acknowledged himself to owe to our Sovereign Lady the Queen the sum of _____, of good and lawful money of Great Britain, to be made and levied of his goods and chattels, lands and tenements, to the use of our said Lady the Queen, her heirs and successors, if he the said C.D. shall fail in the condition endorsed.

Taken and acknowledged the day and year first above mentioned, at _____ before me,

J.S. (L.S.)

Justices of the Peace, &c.

CONDITION TO PROSECUTE

The condition of the within written recognizance is such that, whereas one A.B. was this day charged before me (*J.S.*), Justice of the Peace within mentioned, for that (*&c., as in the caption of the depositions*); if, therefore, he the said C.D. shall appear at the next Court of Oyer and Terminer, or General Gaol Delivery, or at the next Court of General Quarter Sessions of the Peace to be holden in and for the Colony of Western Australia,* and there prefer or cause to be preferred a bill of indictment for the offence aforesaid against the said A.B., and there also duly prosecute such indictment, then the said recognizance to be void, or else to stand in full force and virtue.

CONDITION TO PROSECUTE AND GIVE EVIDENCE

Same as the last form to the asterisk, and then thus:—* and there prefer or cause to be preferred a bill of indictment against the said A.B. for the offence aforesaid, and duly prosecute such indictment and give evidence thereon, as well to the Jurors who shall then inquire of the said offence, as also to them who shall pass upon the trial of the said A.B., then the said recognizance to be void, or else to stand in full force and virtue.'

CONDITION TO GIVE EVIDENCE

Same as the last form but one to the asterisk, and then thus:—* and there give such evidence as he knoweth upon a bill of indictment to be then and there preferred against the said A.B. for the offence aforesaid, as well to the Jurors who shall then inquire of the said offence as also to the Jurors who shall pass upon the trial of the said A.B.; if the said bill shall be found a true bill, then the said recognizance to be void, or else to stand in full force and virtue.'

(N 2)

NOTICE OF THE SAID RECOGNIZANCE TO BE GIVEN TO THE PROSECUTOR AND HIS WITNESSES

To wit.

Take notice that you, C.D., of _____ are bound in the sum of _____ to appear at the next Court of (*General Quarter Sessions of the Peace*) in and for the Colony of Western Australia, to be holden at _____ in the said Colony, and then and there (*prosecute and*) give evidence against A.B., and unless you then appear there and (*prosecute and*) give evidence accordingly the recognizance entered into by you will be forthwith levied on you.

Dated this _____ day of _____ 18 _____.

J.S.

(O 1)

COMMITMENT OF WITNESS FOR REFUSING TO ENTER INTO THE RECOGNIZANCE

To the Constable of _____ and to the Keeper of the (*House of Correction*) at _____ in the said Colony of Western Australia.

Whereas A.B. was lately charged before the undersigned, (*one*) of Her Majesty's Justices of the Peace in and for the said Colony of Western Australia, for that (*&c., as in the summons to the witness*), and it having been made to appear to (*me*) upon oath that E.F., of _____ was likely to give material evidence for the prosecution, (*I*) duly issued (*my summons to the said E.F., requiring him to be and appear*) before (*me*) on _____ at _____ or before such other Justice or Justices of the Peace as should then be there, to testify what he should know concerning the said charge so made against the said A.B. as aforesaid, and

Justices of the Peace, &c.

the said E.F. now appearing before *(me)* (*or*) being brought before *(me)* by virtue of a warrant in that behalf, to testify as aforesaid, hath been now examined by *(me)* touching the premises, but being by *(me)* required to enter into a recognizance conditioned to give evidence against the said A.B., hath now refused so to do: These are therefore to command you the said Constable to take the said E.F. and him safely to convey to the *(House of Correction)* at _____ in the Colony aforesaid, and there deliver him to the said Keeper thereof, together with this precept: and I do hereby command you the said Keeper of the said *(House of Correction)* to receive the said E.F. into your custody in the said *(House of Correction)*, there to imprison and safely keep him until after the trial of the said A.B. for the offence aforesaid, unless in the meantime such E.F. shall duly enter into such recognizance as aforesaid in the sum of _____ pounds before some one Justice of the Peace for the said Colony of Western Australia, conditioned in the usual form, to appear at the next Court of *(Oyer and Terminer or General Gaol Delivery, or General Quarter Sessions of the Peace)* to be holden in and for the Colony of Western Australia, and there to give evidence before the Grand Jury upon any bill of indictment which may then and there be preferred against the said A.B. for the offence aforesaid, and also to give evidence upon the trial of the said A.B. for the said offence if a true bill should be found against him for the same.

Given under my hand and seal this _____ day of _____ in the year of our Lord _____ at _____ in the Colony aforesaid.
J.S. (L.S.)

(O 2)

SUBSEQUENT ORDER TO DISCHARGE THE WITNESS

To the Keeper of the *(House of Correction)* at _____ in the Colony of Western Australia.

Whereas by *(my)* order dated the _____ day of _____ *(instant)*, reciting that A.B. was lately before then charged before *(me)* for a certain offence therein mentioned, and that E.F. having appeared before me, and being examined as a witness for the prosecution in that behalf, refused to enter into a recognizance to give evidence against the said A.B., and *(I)* therefore thereby committed the said E.F. to your custody, and required you safely to keep him until after the trial of the said A.B. for the offence aforesaid, unless in the meantime he should enter into such recognizance as aforesaid; and whereas for want of sufficient evidence against the said A.B., the said A.B. has not been committed or holden to bail for the said offence, but on the contrary thereof has been since discharged, and it is therefore not necessary that the said E.F. should be detained longer in your custody: These are therefore to order and direct you the said Keeper to discharge the said E.F. out of your custody as to the said commitment and suffer him to go at large.

Given under my hand and seal this _____ day of _____ in the year of our Lord _____ at _____ in the Colony aforesaid.
J.S. (L.S.)

(P 1)

WARRANT REMANDING A PRISONER

To the Constable of _____ and to the Keeper of the *(House of Correction)* at _____ in the said Colony of Western Australia.

Whereas A.B. was this day charged before the undersigned *(one)* of Her Majesty's Justices of the Peace in and for the said Colony of Western Australia for that *(dc., as in the warrant to apprehend)*, and it appears to me to be necessary to remand the said A.B.: These are therefore to command you the said Constable in Her Majesty's name forthwith to convey the said A.B. to the *(House of Correction)* at _____ in the said Colony and there to deliver him to the

Justices of the Peace, &c.

Keeper thereof, together with this precept; and I hereby command you the said Keeper to receive the said A.B. into your custody in the said House of Correction, and there safely keep him until the day of instant, when I hereby command you to have him at at o'clock in the forenoon of the same day before (*me*) or before such other Justice or Justices of the Peace for the said Colony as may then be there to answer further to the said charge, and to be further dealt with according to law, unless you shall be otherwise ordered in the meantime.

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

(P 2)

RECOGNIZANCE OF BAIL INSTEAD OF REMAND ON AN
ADJOURNMENT OF EXAMINATION

Be it remembered that on the day of in the year of our Lord A.B. of (*labourer*), L.M. of (*grocer*), and N.O. of (*butcher*) personally came before me, one of Her Majesty's Justices of the Peace for the said Colony, and severally acknowledged themselves to owe to our Lady the Queen the several sums following; that is to say, the said A.B. the sum of and the said L.M. and N.O. the sum of each of good and lawful money of Great Britain, to be made and levied of their several goods and chattels, lands and tenements respectively, to the use of our said Lady the Queen, her heirs and successors, if he the said A.B. fail in the condition endorsed.

Taken and acknowledged the day and year first above mentioned at before me

J.S. (L.S.)

CONDITION

The condition of the within written recognizance is such that whereas the within-bounden A.B. was this day (*or on* last past) charged before me for that (*&c., as in the warrant*): And whereas the examination of the witnesses for the prosecution in this behalf is adjourned until the day of instant; if therefore the said A.B. shall appear before me on the said day of instant at o'clock in the forenoon, or before such other Justice or Justices of the Peace for the said Colony as may then be there to answer (*further*) to the said charge and to be further dealt with according to law, then the said recognizance to be void or else to stand in full force and virtue.

(P 3)

NOTICE OF SUCH RECOGNIZANCE TO BE GIVEN TO THE
ACCUSED AND HIS SURETIES

Take notice that you A.B. of are bound in the sum of and your sureties L.M. and N.O. in the sum of each, that you A.B. appear before me J.S. one of Her Majesty's Justices of the Peace for the Colony of Western Australia, on the day of instant, at o'clock in the forenoon, at or before such other Justice or Justices of the Peace for the same Colony as may then be there, to answer further to the charge made against you by C.D., and to be further dealt with according to law; and unless you A.B. personally appear accordingly, the recognizances entered into by yourself and sureties will be forthwith levied on you and them.

Dated this day of 18 .

J.S.

Justices of the Peace, &c.

(P 4)

CERTIFICATE OF NON-APPEARANCE TO BE ENDORSED ON THE
RECOGNIZANCE

I hereby certify that the said A.B. hath not appeared at the time and place in the above condition mentioned, but therein hath made default, by reason whereof the within-written recognizance is forfeited.

J.S.

(Q 1)

RECOGNIZANCE OF BAIL

Be it remembered that on the _____ day of _____ in the year of our Lord _____ A.B. of _____ (*labourer*), L.M. of _____ (*grocer*), and N.O. of _____ (*butcher*), personally came before (*us*) the undersigned, two of Her Majesty's Justices of the Peace for the said Colony, and severally acknowledged themselves to owe to our Lady the Queen, the several sums following: (*that is to say*) the said A.B. the sum of _____ and the said L.M. and N.O. the sum of _____ each of good and lawful money of Great Britain, to be made and levied of their several goods and chattels, lands and tenements respectively, to the use of our said Lady the Queen, her heirs and successors, if he the said A.B. fail in the condition endorsed.

Taken and acknowledged the day and year first above mentioned, at before me

J.S.
J.N.

CONDITION IN ORDINARY CASES

The condition of the within-written recognizance is such that whereas the said A.B. was this day charged before (*us*), the Justices within mentioned, for that (*dc., as in the warrant*): if therefore he the said A.B. will appear at the next Court of Oyer and Terminer or General Gaol Delivery (*or Court of General Quarter Sessions of the Peace*) to be holden in and for the Colony of Western Australia, and there surrender himself into the custody of the Keeper of the (*Common Gaol*), there and plead to such indictment as may be found against him by the grand jury for or in respect of the charge aforesaid and take his trial upon the same, and not depart the said Court without leave, then the said recognizance to be void or else to stand in full force and virtue.

CONDITION WHERE THE DEFENDANT IS ENTITLED TO A TRAVERSE

The condition of the within-written recognizance is such that whereas the said A.B. was this day charged before (*me*) the Justice within mentioned for that (*dc., as in the warrant or summons*); if, therefore, the said A.B. will appear at the next Court of General Quarter Sessions of the Peace (*or Court of Oyer and Terminer and General Gaol Delivery*) to be holden in and for the Colony of Western Australia, and there plead to such indictment as may be found against him by the grand jury for or in respect of the charge aforesaid, and shall afterwards at the then next Court of General Quarter Sessions of the Peace (*or Court of Oyer and Terminer and General Gaol Delivery*) surrender himself into the custody of the Keeper of the (*House of Correction*) there and take his trial upon the said indictment, and not depart the said Court without leave, then the said recognizance to be void or else to stand in full force and virtue.

(Q 2)

NOTICE OF THE SAID RECOGNIZANCE TO BE GIVEN TO THE
ACCUSED AND HIS BAIL

Take notice that you, A.B., of _____, are bound in the sum of _____ and your (*sureties L.M. and N.O.*) in the sum of _____ each, that you A.B. appear (*etc., as in the condition to the recognizance*) and not depart the said Court without leave; and unless you the said A.B. personally appear and plead and take your trial accordingly, the recognizance entered into by you and your sureties shall be forthwith levied on you and them.

Dated this _____ day of _____ 18 .

J.S. (L.S.)

(Q 3)

CERTIFICATE OF CONSENT TO BAIL BY THE COMMITTING JUSTICE
ENDORSED ON THE COMMITMENT

I hereby certify that I consent to the within-named A.B. being bailed by recognizance, himself in _____ and (*two*) sureties in _____ each.

J.S. (L.S.)

(Q 4)

THE LIKE ON A SEPARATE PAPER

Whereas A.B. was on the _____ committed by me to the (*House of Correction*) at _____, charged with (*etc., naming the offence shortly*):

I hereby certify that I consent to the said A.B. being bailed by recognizance, himself in _____ and (*two*) sureties in _____ each.

Dated the _____ day of _____ 18 .

J.S.

(Q 5)

WARRANT OF DELIVERANCE ON BAIL BEING GIVEN FOR A
PRISONER ALREADY COMMITTED

To the Keeper of the (*House of Correction*) at _____ in the Colony of
Western Australia.

Whereas A.B., late of _____ (*labourer*), hath before (*us, two*) of Her Majesty's Justices of the Peace in and for the said Colony, entered into his own recognizance and found sufficient sureties for his appearance at the next Court of Oyer and Terminer and General Gaol Delivery (or Court of General Quarter Sessions of the Peace) to be holden in and for the Colony of Western Australia, to answer our Sovereign Lady the Queen for that (*etc., as in the commitment*) for which he was taken and committed to your said (*House of Correction*): These are therefore to command you in Her said Majesty's name that if the said A.B. do remain in your custody in the said (*House of Correction*) for the said cause, and for no other, and you shall forthwith suffer him to go at large.

Given under our hands and seals this _____ day of _____, in the year of our Lord _____, at _____, in the Colony aforesaid.

J.S.

J.N.

(R 1)

WARRANT OF COMMITMENT

To the Constable of _____, and to the Keeper of the (*House of Correction*)
at _____, in the said Colony of Western Australia

Whereas A.B. was this day charged before me, J.S., one of Her Majesty's
Justices of the Peace in and for the said Colony of Western Australia, on the oath
of C.D., of _____ (*farmer*), and others, for that (*&c., stating shortly the*
offence): These are therefore to command you, the said Constable of
to take the said A.B. and him safely to convey to the (*House of Correction*)

aforesaid, and there to deliver him to the Keeper thereof, together with this
precept; and I do hereby command you, the said Keeper of the said (*House of*
Correction), to receive the said A.B. into your custody in the said (*House of*
Correction) and there safely keep him, until he shall be thence delivered by due
course of law.

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

J.S. (L.S.)

(R 2)

GAOLER'S RECEIPT TO THE CONSTABLE FOR THE PRISONER

I hereby certify that I have received from W.T., Constable, of _____,
the body of A.B., together with a warrant under the hand and seal of J.S., Esquire,
one of Her Majesty's Justices of the Peace for the Colony of Western Australia;
and that the said A.B. was (*sober, or as the case may be*) at the time he was so
delivered into my custody.

P.K.,
Keeper of the House of
Correction (*or*
Common Gaol) at _____
