



WESTERN AUSTRALIA.

ANNO SEPTIMO,

VICTORIÆ REGINÆ.

No. 12.

An Act to regulate summary proceedings before Justices of the Peace.

WHEREAS it is expedient to make provision for regulating summary proceedings before Justices of the Peace in the cases and in the manner hereinafter mentioned—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, that from and after the passing of this Act in all cases wherein by any Act or Acts heretofore made and passed, or hereafter to be made and passed, any proceeding has been or shall be directed to be had or matter authorised

Proceedings before Justices of the Peace in a summary way.

authorized to be heard and determined by or before one Justice or any two or more Justices in a summary way, the course of any such proceeding, hearing, or determination, and the powers and authorities of such Justice or Justices in and about the same, shall be as hereinafter provided in all such particulars as to which no different or repugnant course or provision is or shall be contained in the Act or Acts under which such proceeding, hearing, or determination shall be had or made.

II. AND be it enacted, that in any such case as aforesaid it shall be lawful for any one Justice to receive the original Information or Complaint, and to issue a Summons or Summonses or Warrant requiring the appearance of the accused parties and any witnesses for the prosecution or defence before himself or before any one or more Justice or Justices, as the case may require, and upon the appearance of the accused, or his or her contempt by not appearing after having been duly summoned in manner hereinafter mentioned, and upon due proof of such summoning, it shall be lawful for such Justice or Justices, as the case may require, to proceed and examine into, and hear and determine, the matter in a summary way, and examine upon oath all necessary witnesses produced, and give his or their judgment; and in case such Justice or Justices shall convict the defendant and award against him or her any fine or pecuniary penalty, or other sum, and he or she shall neglect to pay the same fine, penalty, or sum, together with the costs and charges attending such conviction, to be assessed and ascertained by the said Justice or Justices, into the hands of the said convicting Justice, or one of the said convicting Justices (in case there shall have been more than one such Justice), forthwith or within such time as the said Justice or Justices in their discretion may order, without any previous demand of such penalty other than the oral award or order of such Justice or Justices, then it shall be lawful for such Justice or Justices, or either of them, or for any other Justice of the Peace, upon proof made to him of such default in payment, to cause such fine or penalty, and costs and charges, to be levied by distress and sale of the goods and chattels of the offender, the overplus, after deducting the charge of such distress and sale, to be rendered to the said offender—Provided that if upon the return of the Officer charged with the execution of the said distress it shall appear that no sufficient distress can be found, then the convicting Justice or Justices, or either of them, or any other Justice of

How penalties, &c., to be levied, distress and imprisonment.

the Peace, may by warrant commit such offender to one of Her Majesty's Gaols, there to remain and be imprisoned either simply or to be kept to hard labour in the discretion of such Justice for any time not exceeding the time hereinafter mentioned,—that is to say, not exceeding seven clear days when the whole sum to be levied or remaining unpaid, together with the costs, shall not exceed Ten shillings; for a term not exceeding fourteen clear days, when the said sum and costs shall not exceed One pound; for a term not exceeding three calendar months when the said sum and costs shall not exceed Five pounds; and for a term not exceeding six calendar months when the said sum and costs shall be of any greater amount; unless in any such case of commitment the sum to be levied, together with the costs, shall be sooner paid.

III. AND be it enacted, that it shall be lawful for such Justice or Justices, at his or their discretion, to order the offender so convicted to be kept and detained in safe custody until return shall be made to such warrant of distress, unless such offender shall give sufficient security to the satisfaction of such Justice or Justices for his or her appearance before him or them on such day or days as shall be appointed for the return of such warrant of distress, not being more than eight days from the time of taking such security, and such security such Justice or Justices is and are hereby empowered to take by way of recognizance or otherwise, as to him or them shall seem proper, or in case it shall appear to the satisfaction of such Justice or Justices, either by the confession of the offender or otherwise, that he hath not goods or chattels within the jurisdiction of such Justice or Justices sufficient whereon to levy all such fines, penalties or forfeitures, costs and charges, such Justice or Justices may, at his or their discretion, without issuing any warrant of distress, commit the offender for such period of time and in such and like manner as if a warrant of distress had been issued and a nulla bona returned thereon.

Power to detain till return made to warrant of distress, unless security be given, &c.

IV. AND be it enacted, that all sums of money which any person is bound to pay under any recognizance taken for any appearance before a Justice of the Peace and afterwards forfeited, in case of non-payment thereof, may be levied by such Justice, with costs, by distress and sale of the goods and chattels of the person or persons liable to pay the same by warrant under the hand of such Justice in like manner as any fine or penalty may be levied by distress under this Act.

Recognizance may be levied in like manner.

Service of summons.

V. AND be it enacted, that in all cases in which no other mode of proceeding shall have been or shall be in that behalf provided, the directing of any Summons to or against any person whatsoever (whether defendant or witness) in the name or names by which he or she is or has been usually known, whether the same be the real or the feigned or assumed name or names of such person, and the leaving of such Summons at his or her then or last usual place of abode, or the affixing a copy thereof on one of the doors or some other conspicuous part of the outside of such abode (such service being proved on the oath of the person so serving such Summons, and it being also proved in like manner to the satisfaction of the sitting Justice or Justices at the hearing of the case that the person so serving such summons hath endeavoured to serve the same on the party personally but without effect, and that he verily believes that such party hath kept out of the way to avoid such service) shall be deemed to be a legal and effectual service on such party as fully to all intents and purposes as if the same Summons had been personally served on such party, and as if the same had been directed in his or her proper and real names, and that every summons may direct the party to appear either before the Justice or Justices issuing the same, or before any one or more Justice or Justices generally, as the case may require (without naming any Justice), provided that such Summons shall direct the party so to appear at a reasonable time and place certain to be named in such Summons.

To regulate Appeals.

VI. AND be it enacted, that in all cases in which by any Act of the Legislature of this Colony hereafter to be made and passed, any person shall be entitled to appeal from any judgment or conviction of any justice or justices, then if such person (in case a pecuniary penalty or compensation shall have been awarded) shall pay into the hands of the convicting Justice, or one of the convicting Justices (as the case may be), the full amount of such penalty or compensation, together with the assessed costs and charges, and a sum not exceeding Ten pounds for costs of appeal forthwith, or within such time as the said Justice or Justices in their discretion may order, or (in case no pecuniary penalty or compensation shall have been awarded) shall forthwith enter into a recognizance before the convicting Justice or Justices, or any one of them, to the use of Her Majesty, her heirs and successors, with two sufficient sureties, to be approved by such Justice or Justices, in any sum not exceeding

One Hundred Pounds, conditioned to prosecute such Appeal without effect, and to pay the full amount of all such costs as shall or may on such Appeal be awarded against the appealing party, and in either such case of appeal shall give notice thereof in writing, and of his intention to Appeal, and also of his having entered into recognizance when necessary, to the prosecuting party, at least six days before the Sessions to be appealed to, then it shall be lawful for such person to appeal from such Judgment or Conviction to the next General Sessions of the Peace (unless such Sessions shall be held within six days next ensuing, and in that case to the General Sessions of the Peace next but one afterwards)—Provided always, that the convicting Justice or Justices, at his or their discretion, may within such time as aforesaid dispense with payment into Court of any such penalty, costs, and charges, and allow an Appeal on sufficient recognizances to his or their satisfaction, and on such notice being given as aforesaid—Provided also that the matter of such Appeal shall be heard and determined by the Justices assembled and meeting at a Court or adjourned Court of General Sessions of the Peace holden at such one of the places which shall or may be appointed for the regular periodical holding of General Sessions of the Peace as shall happen to be the place (or nearest to the place) where the Judgment or Conviction appealed from shall have been had, and the Justices at such Sessions so assembled shall hear and thereupon finally determine the matter of every such appeal in a summary way, and their judgment thereon shall be final and conclusive to all intents and purposes, and such Justices at such Sessions so assembled are upon such Appeal hereby authorised to award in all cases such costs as to them shall appear proper to be paid by either party, and in case the Appeal shall be allowed, and the Conviction or Judgment appealed from be quashed, then (in cases where a pecuniary penalty or compensation was awarded) the whole amount of such penalty, and the costs and charges aforesaid, shall be forthwith on demand returned to the party so appealing; and in case of the dismissal of the Appeal, or the affirmance of the Conviction, they may order and adjudge the offender to be punished according to the Conviction, and may if necessary issue process for enforcing such judgment.

VII. AND be it enacted, that if any person shall be summoned to appear as a Witness to give evidence before any Justice or Justices touching any of the matters aforesaid, and shall neglect to appear, or shall refuse to give evidence, at the time and place for that purpose appointed, without a reasonable excuse for such neglect or refusal,

Witnesses not appearing when summoned liable to a penalty of £20.

every such person shall for every such offence forfeit and pay a penalty or sum not exceeding Twenty pounds, and such penalty shall and may, on any such case of refusal, be forthwith awarded and adjudged by the Justice or Justices then sitting, and in case of such default of appearance, such penalty shall and may be recoverable by proceeding before any one Justice of the Peace, who is hereby authorised to hear and determine such offence in a summary way, and every such penalty for any such refusal or neglect shall be levied and appropriated in the manner by this Act directed with respect to all other cases by this Act intended to be provided for.

Persons wilfully keeping out of the way to avoid giving evidence may be apprehended and detained.

VIII. AND be it enacted, that where the evidence of any person shall be required in any of the matters aforesaid, or when such Justice or Justices shall have power only to make inquiry preliminary to a subsequent trial, and it shall be proved upon oath to the satisfaction of any Justice or Justices that the person whose evidence is required has been duly summoned, and wilfully neglects to appear, or that such person purposely keep out of the way to avoid being summoned, it shall be lawful for such Justice or Justices to issue his or their Warrants to any Peace Officer to apprehend and bring before him or them such person wilfully neglecting to appear, or so keeping out of the way as aforesaid, and to detain him or her until he or she shall give his or her evidence, and in case of a preliminary enquiry further to detain such person until he or she shall give security for his or her appearance as a witness in the Court where the subsequent trial is to be heard, or shall give his or her evidence at such trial.

Form of conviction.

IX. AND be it enacted, that in all cases (except when a particular form of Judgment or Conviction shall have been, or shall be by any Act directed to be used in that behalf) a Judgment or Conviction in the form, or to the effect of the form (as the case shall happen to be), prescribed by the Schedule to the Act annexed, marked A, shall be good, valid, and effectual to all intents and purposes whatsoever, without setting forth or stating in any such Conviction the name of any witness, or the particular place where the offence was committed, or whether the defendant appeared, or was or was not summoned to appear, and without setting forth any part of the evidence, or stating the facts in any further or more particular manner than shall be necessary to shew that the offence was one against the true intent and meaning of the Act creating such offence, and no summary Conviction whatsoever by any Justice or Justices of the

Peace, whether under this Act or any other Act, and whether a particular form shall have been or shall be in that behalf directed or not, shall be quashed in any case for any mere matter of form, or technical error or mistake in any name, or date, or title, or in any matter of description only, but in all cases regard shall be had alone to the substantial merits and justice of the case.

X. AND be it enacted, that no such Conviction, Judgment, Award, or determination or adjudication made on Appeal therefrom, shall be removed by Certiorari or otherwise into any of Her Majesty's Superior Courts of Record in any case in which the convicting Justice or Court had jurisdiction in the subject matter; and no Warrant of Commitment shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted, and there be a good and valid conviction to sustain the same. No certiorari, &c.

XI. AND be it enacted, that every Justice before whom any offender shall be convicted, shall transmit the conviction to the next Court of General Sessions of the Peace, there to be kept by the proper Officer among the Records of the Court, and in any subsequent proceeding relative to such conviction, a copy thereof, certified by the proper Officer of the Court under his hand, shall be sufficient evidence to prove such conviction, and the conviction shall be presumed to have been unappealed against until the contrary be shewn. Convictions to be transmitted to Quarter Sessions.

XII. AND whereas doubts might arise as to the power of discharging the recognizances of persons who have become bail for the appearance of others to take their trial on any charge of Felony or misdemeanor, where the persons so becoming bail are desirous of surrendering the persons for whose appearance they may have so become bail, be it enacted, that in every case where the person who may have become bail by recognizance for the appearance of any other person or persons as aforesaid, or either of them, shall prove upon oath to the satisfaction of the Justice or Justices before whom he entered into such recognizance that there is reasonable ground to believe that the person or persons for whose appearance the recognizance has been entered into will abscond and make default, it shall be lawful for such Justice or Justices, before the return of the recognizance to the Court in which the trial is to be had, to receive from such bail, or either of them, the surrender of the person or persons for whose appearance bail has been so given, and by warrant to commit the person or persons so surrendered to the common gaol, there to await his or their trial in the same manner as Recognizances of persons surrendering those for whom they have become bail may be discharged.

if such bail had never been given, and the said Justice or Justices shall return the said recognizance to the proper Court, with a memorandum thereon that the same has been discharged by the surrender of the party for whose appearance it was entered into— Provided always, that such recognizance may be discharged, and the party accused committed as aforesaid by the Civil Court in all cases where such Court shall see fit.

Distribution of penalties.

XIII. AND be it enacted, that in all cases where by any Act a pecuniary penalty of uncertain amount shall have been or shall be imposed, that is to say, a penalty or sum not exceeding a certain amount, or a penalty or sum of not less nor more than certain amounts in that behalf respectively specified, the amount of every such penalty (within the limits so prescribed) shall be in the discretion of the convicting Justice or Justices, and that every penalty awarded by such Justice or Justices shall in all cases (except when otherwise provided by any such Act, and except where the Informer or party prosecuting shall be examined as a Witness) go and be distributed one moiety thereof to the use of Her Majesty, Her Heirs and Successors, for the public uses of this Colony and the support of the Government thereof, and the other moiety to the use of the Informer or party prosecuting, who shall also be in all cases entitled to his or her costs and charges over and above such penalty, to be ascertained and assessed as aforesaid.

For discouraging common informers.

XIV. PROVIDED that in order to discourage corrupt practices by common Informers, it shall be lawful for the Justice or majority of the Justices before whom any conviction shall be had, although any part of a penalty shall be directed to be paid to the Informer by any Act, to adjudge that no part or such part only of the penalty as he or they shall think fit shall be paid to the Informer.

Powers given to one Justice residing in a remote district to hear and determine cases.

XV. AND whereas great inconvenience has been felt in several instances from want of power in one Justice of the Peace residing in a remote district to adjudicate or act in cases in which the presence of two or more Justices is required by law,—Be it enacted, that when and so often as any Justices of the Peace shall receive any Application, Information or Complaint touching any License, matter or proceeding in which by any Act now or hereafter to be in force in this colony any thing is directed to be granted, heard, determined, or done by or before two or more Justices of the Peace, and it shall so happen that no other Justice of the Peace is perma-

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nently resident, or can be found at the time within twenty miles from the residence of the Justice receiving such Application, Information, or Complaint, then in such case it shall be lawful for such last mentioned Justice to grant, hear, and determine any such Licence, matter, or proceeding, and to do all things incident or collateral thereto respectively as fully and effectually to all intents and purposes as any two or more Justices are or shall be by any such Act required or empowered to do— Provided that such Justice shall specially mention the fact of the non-residence of any other Justice within the distance aforesaid in any License, Recognizance or Conviction made or taken by him, and that such License, Recognizance, Order or Conviction was made or taken by him under and by virtue of the power and authority so given him by this Act—Provided further that no License granted as aforesaid by any one Justice shall be valid if a License for the same purpose shall have been previously refused by any other Justice or Justices of the same District within which such granting Justice shall be resident.

Such Justice to mention that it was done under the authority of this Act.

XVI. AND be it enacted, that this Act may be amended or repealed by any Act to be passed during this present Session.

JOHN HUTT,
GOVERNOR.

*Passed the Council the 30th
day of May, 1844.*

EDWARD C. SOUPER,
Clerk of Council.

SCHEDULE A REFERRED TO IN THE ANNEXED ACT.

FORM OF JUDGMENT OR CONVICTION.

Western Australia } *Be it remembered that on this* *day of*
to wit. §18 , [name] *of* [place] *was convicted before*
me A B [or us A B and C D] one [two or more, as the case
may be] of Her Majesty's Justices of the Peace in and for the
Colony of Western Australia, upon an Information in that behalf
exhibited before [name of the justice or justices] on the *day*
of *now past by C D of* *in the said colony,*
for that on the *day of* [state the fact or offence in
respect of which the judgment or conviction is had] *whereupon*
I [or we] do in pursuance of the Act in such case made and pro-
vided for [state the principal subject of Act, or the title] award,
order, and adjudge that [set forth the adjudication, and if award-
ing a penalty, as follows] the said (offender) do for such offence
(where necessary add being his or her second, or third, or subse-
quent offence, as the case may be) forfeit and pay the sum of
 pounds, to go and be distributed as in and by the said
Act (or if such Act shall not have specifically provided for any
distribution of such penalty, here state the title of the Act
providing for distribution) is provided, besides the costs and
charges of and attending this conviction, which costs and charges
I (or we) the said Justice (or justices) do hereby ascertain and
assess at the sum of

Given under my hand and seal (or our hands and seals) the day
and year first above mentioned.