

WESTERN AUSTRALIAN
GOVERNMENT GAZETTE.

(PUBLISHED BY AUTHORITY.)

FRIDAY, JUNE 14, 1844.

[NUMBER 409]

WESTERN AUSTRALIA.

ANNO SEPTIMO,
VICTORIÆ REGINÆ.

By His Excellency JOHN HUTT, Esq.,
Governor and Commander-in-Chief in
and over the Territory of Western Aus-
tralia, and its Dependencies, and Vice-
Admiral of the same, with the advice
and consent of the Legislative Council
thereof.

No. XI.

An Act to amend an Act intituled "An
Act to regulate the Apprenticeship
and otherwise to provide for the Guar-
dianship and control of a certain class
of Juvenile Immigrants.

Whereas in and by the first section of
an Act of Council passed in the sixth year
of the reign of Her present Majesty Queen
Victoria intituled "An Act to regulate the
Apprenticeship and otherwise to provide
for the Guardianship and control of a certain
class of Juvenile Immigrants," it is enacted
that a notice published by His Excellency's
command in the Government Gazette
setting forth that certain persons therein
named are Immigrants to be apprenticed
under that Act shall be conclusive evidence
in all proceedings at Law before Justices
of the Peace or otherwise that such persons
(on due proof of identity if requisite) are
within the operation of that Act; and where-
as it is expedient to discontinue the publica-
tion of such notices;—Be it therefore en-
acted by His Excellency the Governor of
Western Australia, by and with the advice
and consent of the Legislative Council
thereof, that so much of the said Act as
directs such notice as aforesaid to be con-
clusive evidence shall be repealed and that
no such notice shall be published after the
passing of this Act, and in all subsequent
parts of the said Act the expression such
Immigrants as aforesaid shall be taken and
understood to refer to the class of persons
described in and by the Preamble of the
said Act and not of the persons described
or intended to be described by any such
notice.

II. And be it enacted, that this Act
may be amended or repealed by any Act to
be passed during the present Session.

"JOHN HUTT,"

GOVERNOR.

Passed the Council,
May 21, 1844.

EDWARD C. SOUPER,
Clerk of the Council.

No. XII.

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 autho-
rised 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 proceed-
ing, 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 provi-
sion 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 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 appear-
ance 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, pecu-
nialy, 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 con-
victing 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 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 labor in the discretion of such jus-
tice 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, to-
gether 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 satisfac-
tion 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 Jus-

tice or Justices is and are hereby empowered
to take by way of recognizance or other-
wise 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.

IV. And be it enacted, that all sums of
money which any person is bound to pay
under any recognizance taken for any ap-
pearance 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.

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 pro-
vided, 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 Jus-
tices at the hearing of the case that the
person so serving such Summons hath en-
deavored 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 sum-
mons 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.

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 con-
victing 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 pecu-
niary 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 convicting justice or justices, in any sum not exceeding one hundred pounds conditioned to prosecute such appeal with 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 authorized 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 them (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, 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 authorized to hear and determine such offence in a summary way, and every such penalty for any such Act directed with respect to all other cases by this Act intended to be provided for.

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 enquiry 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 persons 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.

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 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.

XI. And be it enacted, that every justice before whom any offenders 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.

XII. And whereas doubts might arise as to the power of discharging the recognizances of persons who may have become bail for the appearance of others to take their trial on a 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, their to await his or their trial in the same manner as 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.

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.

(To be continued)

Colonial Secretary's Office, Perth,
June 11, 1844.

His Excellency the Governor has been pleased to appoint Marianne McLarty to be Postmistress for the Murray District.
By His Excellency's command,
PETER BROWN.

Colonial Secretary's Office, Perth,
May 31, 1844.

His Excellency the Governor directs it to be notified that Her Majesty's Principal Secretary of State for the Colonies has been pleased to confirm the appointment of Joseph Harris, Esquire, to act as Colonial Surgeon during the absence on leave of Dr. Crichton.

By His Excellency's command,
PETER BROWN.

Colonial Secretary's Office, Perth,
May 16, 1844.

OCCUPATION LICENCE.

Notice is hereby given that the Sub-Collector of Revenue Bunbury will put up to sale by public auction, on Monday, the 17th of June next, at 1 o'clock, a Licence to occupy for one year under the regulations of the 21st July, 1843, the land on the north side of the Estuary, known as North Bunbury.

Upset price, £5.

Further information may be obtained from the Resident Magistrate of the District.

By His Excellency's command,
PETER BROWN.

COMMISSARIAT NOTICE.

Commissariat Office, Perth,
May 6, 1844.

Sealed tenders in triplicate will be received at this office on Tuesday, 2nd July, at 12 o'clock, from such parties as may be desirous of obtaining Bills of Exchange on the Right Honorable the Lords Commissioners of Her Majesty's Treasury payable in London at thirty days' sight.

The Bills will not be drawn, or Tenders accepted, for any sum less than (100) one hundred pounds.

For further particulars application to be made to this office.

W. H. DRAKE,
Dep.-Asst.-Com.-General.

Printed by CHARLES MACFAULL,
Government Printer.