

59° VICTORIÆ, 1896.

A BILL

To make better provision for the administration of justice in a summary way and with respect to persons charged with indictable offences; to provide for appeals from summary convictions; to validate certain convictions and orders; and to amend the law relating to the recovery of Small Debts.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. The police magistrate shall take the chair at every court of petty sessions or meeting of justices within his police district at which he is present, and in his absence the justice chosen by a majority of the justices present shall be chairman; but if the votes given are equal, then the justice present who has seniority of appointment to the Commission of the Peace shall be chairman. Police magistrates to take the chair.

2. (1) It shall be lawful for any clerk of petty sessions authorised in writing under the hand of the Minister of Justice to receive informations and complaints, and to issue summonses, warrants, subpoenas, and other process in connection therewith, and to sign warrants of remand and commitment, and to take recognizances. Extended powers given to clerks of petty sessions.

A clerk of petty sessions authorised as aforesaid shall, for the purposes of this section, have all the powers and privileges and be subject to all the duties and liabilities of a justice; and in the exercise by him of the powers conferred by this section, all such proceedings may be had as if the said powers had been exercised by a justice.

(II) The provisions of any Act dealing with informations or complaints received, or summonses, warrants, subpœnas, or other process issued, or warrants of remand or commitment signed, or recognisances taken by a justice, shall apply to informations, complaints, summonses, warrants, subpœnas, and other process, and to warrants of remand and commitment, and recognisances received, issued, signed, or taken by a clerk of petty sessions under the authority of this section.

And the provisions of any statute protecting a justice from vexatious actions for acts done by him in the execution of his office or in pursuance of any statute shall apply to a clerk of petty sessions doing any acts under the authority aforesaid.

3. If within a reasonable time after the time appointed for the hearing of any information, complaint, or other matter, or after any time to which the said hearing has been postponed or adjourned no justice be present at the place appointed for the hearing, the clerk of petty sessions may, and, at the request of the informant, complainant, or plaintiff, shall postpone the hearing until the next day on which a justice will attend at the same place.

Clerk of petty sessions may adjourn court in the absence of any justice.

4. If, upon the non-appearance of a defendant at the time and place appointed in and by a summons duly served on him, for hearing and determining a complaint or information, a warrant has been issued, and the defendant is afterwards apprehended under the said warrant, the justice before whom he is brought may, instead of committing the defendant to a house of correction, or other prison, lock-up, house, or place of security, or to the custody of a constable or other person, or to any other safe custody, discharge the defendant upon his entering into a recognizance, with or without sureties, at the discretion of the said justice, conditioned for his appearance at the time and place to which the hearing of the complaint or information is adjourned, of which time and place the complainant or informant shall have due notice.

Bail may be granted where defendant is arrested for disobedience of summons.

If the defendant do not afterwards appear at the time and place mentioned in the said recognizance, then the justice who has taken the recognizance, or any justice who may then be there present, upon certifying on the back of the recognizance the non-appearance of the defendant, may transmit the recognizance to the clerk of the peace for the Colony, to be proceeded upon in like manner as other recognizances; and the said certificate shall be deemed sufficient *prima facie* evidence of the non-appearance of the defendant. But if both parties appear either personally or by their respective counsel or attorneys before the justice who is to hear and determine the complaint or information, then the said justice shall proceed to hear and determine the same.

5. On the hearing of any information or complaint, or upon any other proceedings before any justice, it shall be lawful for the said justice to amend all defects and errors in the information or complaint, or in any warrant, writ, summons, or other document or process, whether there is anything in writing to amend by or not.

Amendments may be made.

And all amendments which may be necessary by reason of any variance between the information, complaint, warrant, writ, summons, document, or process, and the evidence in support or in respect thereof, or which may be requisite for the purpose of determining, in the existing

existing proceeding, the real question in controversy between the parties shall be so made. If any defect, error, or variance, as aforesaid, appears to be such that either party has been thereby deceived or misled, the hearing may be adjourned upon such terms or otherwise as the justice may think fit.

6. The Judges of the Supreme Court or any two of them may frame and prescribe forms of informations, complaints, depositions, convictions, orders, writs, warrants, recognizances, summonses, subpoenas, and other documents in respect of proceedings before any justice; and every form so framed shall, upon being notified in the *Gazette*, be sufficient for the purpose, and be deemed to state sufficiently the offence, matter, or proceeding in respect of which it is framed :

Judges of Supreme Court may prescribe forms.

Provided that any forms as aforesaid framed or prescribed under the Criminal Law Amendment Act, or any other Act, by any authority duly empowered so to do shall, until superseded by forms framed under the provisions of this section, continue to be good and valid forms for the purposes and to the extent provided in the Act under which they were framed or prescribed.

7. Any form heretofore in general use in proceedings before any justice, although not framed or prescribed by any authority empowered so to do, shall, until superseded by a form framed and prescribed as hereinbefore provided, be deemed to be good and sufficient for the purpose for which the said form is used.

Form of summons or subpoena.

8. Where any person served with a subpoena or summons to give evidence or produce documents in any proceedings before any justice, fails to attend when called in open court either at the hearing of the said proceedings or upon the day appointed for the said hearing, the adjudicating justice may, upon proof that payment or tender of his reasonable expenses has been made to the said person at the time of service of the subpoena or summons, and that his absence is, so far as can be known, without reasonable cause or excuse, then and there order the said person to forfeit and pay to the Colonial Treasurer for the use of Her Majesty any sum not exceeding *twenty* pounds, and may further order that if the said sum or any part thereof be not forthwith paid, the same may be recovered by distress and sale of the goods and chattels of the said person, and in default of sufficient distress, by imprisonment for any term not exceeding *three* months.

Penalty for disobedience of summons or subpoena to give evidence or produce documents.

Nothing in this section shall take away any remedy which a party may have who is aggrieved by the failure of the person served with a subpoena or summons to attend as aforesaid, or shall affect any other power of punishing a person who fails to attend as aforesaid, or of compelling the attendance of any person as aforesaid.

9. The service of any subpoena or summons to give evidence or produce documents before any justice, and the proof that such service has been effected, shall be regulated by the following provisions :—

Service of summons or subpoena.

(a) A subpoena or summons shall be served not less than forty-eight hours before the hearing of the matter in respect of which the subpoena or summons has been issued.

(b) Service shall be deemed to have been effected when a true copy of the subpoena or summons has been delivered to the person to whom the same is directed, or has been delivered at such person's last or most usual place of abode or business to some person apparently not less than sixteen years of age, or, in cases where leave for substituted or other service or for notice in lieu of service has been granted as hereinafter mentioned, when all things have been done according to the terms of such leave.

(c)

- (c) When it is made to appear to any justice that personal service or service at the last or most usual place of abode or business as aforesaid cannot be promptly effected, it shall be lawful for the said justice to grant leave for such substituted or other service, or such substitution of notice by advertisement or otherwise in lieu of service as may be deemed reasonable.
- (d) The person who has effected service shall either attend at the time and place at or to which the subpœna or summons is returnable and before such justice as may then be there, or shall make before some justice or commissioner of the Supreme Court for taking affidavits, or clerk of petty sessions, an affidavit endorsed on the original subpœna or summons setting forth the time when and manner in which service of a true copy thereof has been effected, and shall transmit the original subpœna or summons addressed to the clerk of petty sessions of the place to which the subpœna or summons is returnable for production before such justice as may be there.
- (e) Every affidavit purporting to have been so made shall be admissible as *primâ facie* evidence of the service of the subpœna or summons.

10. It shall not be necessary for a justice issuing any warrant to seal the same; and whenever a justice, whether by himself or in conjunction with other justices, is empowered or directed to issue a warrant under his hand and seal, the issue of a warrant under his hand without any seal shall be as valid as if it had been issued under his hand and seal.

11. Where a justice is authorised in a case of summary conviction to adjudge imprisonment, but is not authorised to order payment of a penalty in lieu of imprisonment, it shall nevertheless be lawful for the justice in such case as aforesaid, in lieu of ordering imprisonment, to order that the defendant pay such penalty not exceeding *twenty-five* pounds as he may think fit, if it appears to him that the ends of justice would thereby be better served.

12. In every case of a conviction or order by a justice, where the statute on which the same is founded authorises the issue of warrants of distress to levy penalties or other sums recovered before a justice by distress and sale of the offender's goods, but no further remedy is thereby provided in case no sufficient distress be found whereon to levy such penalties or other sums, or where such statute provides no remedy in case it be returned to a warrant of distress thereon that no sufficient goods of the party against whom such warrant has been issued can be found, or provides no mode of raising or levying any penalty, compensation, or sum of money adjudged or ordered to be paid, or of enforcing payment of the same, it shall be lawful for the said justice, in such conviction or order, to sentence the party against whom such conviction or order is made to imprisonment for any term not exceeding *three* months in case it be returned to a warrant of distress issued under the authority of the statute on which the conviction or order is founded, or under the authority of the Act eleventh and twelfth Victoria, chapter forty-three, that no sufficient goods of such party can be found. And thereupon such proceedings may be had and such steps taken as if the said sentence of imprisonment were authorised to be made as aforesaid by the statute on which the said conviction or order is founded.

13. In any order made under section ten of the Act nineteenth Victoria number twenty-four that goods be delivered up to the owner thereof, it shall be lawful for the adjudicating justice to make such further order and direction (conditioned to take effect upon neglect or refusal to comply with the said order for delivery as aforesaid) as might

No seal required to warrant.

Penalty not exceeding twenty-five pounds may be awarded instead of imprisonment.

Justice may, in conviction or order, award imprisonment in default of sufficient distress.

Order for delivery of goods. Further order may be made conditionally to take effect if goods not delivered up.

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might under the said section or otherwise be subsequently made or given, if the person against whom the order for delivery was made had neglected or refused to comply with the same, and had been duly summoned, and had shown no good cause for his neglect or refusal.

And upon the neglect or refusal as aforesaid the said further order or direction shall take effect, and all further proceedings may be taken in pursuance thereof as if the said order or direction had been made absolutely.

14. In any order made under section five of the Masters and Servants Act of 1857, it shall be lawful for the adjudicating justice to make further order that any wages, costs, or damages directed by the said order to be paid shall, if the said order be not forthwith obeyed, be recovered by distress and sale of the goods and chattels of the person on whom the said order is made, and in default of sufficient distress by imprisonment for any term not less than *fourteen* days nor more than *three* months, unless the said wages, costs, and damages be sooner paid.

Order for payment of wages; recovery by distress and sale, in default imprisonment.

15. In any case where, in pursuance of the Act eleventh George the Second, chapter nineteen, it would be lawful for justices to adjudge and order that a tenant, lessee, or other person should pay to the landlord, his bailiff, servant, or agent double the value of any goods or chattels removed, conveyed away, carried off, or concealed, it shall not hereafter be lawful or competent for the justices to adjudge any greater penalty or sum of money to be paid as aforesaid than double the amount of the arrears of rent proved to be due to the landlord, his bailiff, servant, or agent at the time when the said goods or chattels were removed, conveyed away, carried off, or concealed, or double the value of the said goods and chattels, whichever amount is the less: Provided that where double the value of the goods and chattels is less than the amount of the arrears of rent, the justices may adjudge that the said arrears be paid as aforesaid.

Alteration of penalty for removing goods to avoid distress.

In case the person adjudged to pay the said penalty or sum of money do not forthwith pay the same, the justices may, in the order, direct that it be recovered by distress and sale of the goods and chattels of the said person, and in default of sufficient distress, by imprisonment for any term not less than *fourteen* days nor more than *six* months.

16. The names of any number of persons convicted on the same day, and before the same justice, of offences within the provisions of the Drunkards' Punishment Act of 1866, or of any other Act providing punishment for persons being or found drunk and disorderly or drunk and incapable, and thereupon committed to the same prison, gaol, or house of correction for any period not exceeding *seven* days, may be included in one warrant of commitment.

Warrant of commitment may include any number of drunkards.

In any such warrant the sentence of each person included therein shall be separately stated; and the warrant may be in the form or to the effect of the Schedule B to the Act nineteenth Victoria number twenty-four.

17. In every case where a defendant is committed to a prison, gaol, or house of correction, and imprisoned in default of immediate payment of any penalty, compensation, or money, he may nevertheless pay or cause to be paid to the gaoler or keeper of the prison, gaol, or house of correction, in which he is imprisoned, the sum in the warrant of commitment mentioned together with the amount of the costs, charges, and expenses (if any) therein also mentioned, and the said gaoler or keeper shall receive the same, and shall thereupon discharge the defendant if he be in his custody for no other matter. And such of the provisions of section thirty-one of the Act eleventh and twelfth Victoria, chapter forty-three (as adopted and applied by the Act of Council fourteenth Victoria number forty-three), as relate to moneys paid to any gaoler or keeper of a prison shall apply to and in relation to moneys paid under the authority of this section.

Defendant imprisoned in default of immediate payment of a penalty shall be discharged on payment being made.

18. Where any order is made by a justice in a summary way for the payment of money, and the money or part thereof is not paid in accordance with the order it shall be lawful for the Governor, with the advice of the Executive Council, to discharge the person against whom the order has been made from his liability under the said order to pay the said money or the part thereof which remains unpaid. But in such case the person to whom the money is payable in pursuance of the order may take such proceedings as he may think fit, other than proceedings in a summary way before a justice, to recover the said money or any part thereof which remains unpaid as though the said order had not been made.

Governor may discharge any person from payment of money ordered to be paid.

19. Where any person against whom an order for the payment of money has been made by a justice in a summary way is imprisoned for non-payment of the money so ordered to be paid or any part thereof, it shall be lawful for the Governor, with the advice of the Executive Council, to order the sheriff and the sheriff shall thereupon discharge the said person from imprisonment if he be in custody for no other matter.

Governor may discharge any person imprisoned for non-payment of money.

But in such case the person to whom the money is payable in pursuance of the order of the justice may take such proceedings as he may think fit other than proceedings in a summary way before a justice to recover the said money or any part thereof which remains unpaid as though the said order had not been made.

20. (I) In all cases of summary conviction in which imprisonment is awarded (not being imprisonment awarded in default of sufficient distress) or in which a fine or penalty of not less than *five* pounds is imposed, the person convicted shall have a right of appeal to the next court of quarter sessions appointed to be holden in the district where the cause of complaint arose, or where no court of quarter sessions is holden in the district, then to the next court of quarter sessions holden at the place appointed for the holding of such courts nearest to the place where the cause of complaint arose, or where the day of sitting is within ten days then to the next court but one after the conviction.

Appeal to general sessions.

(II) Where no right of appeal is given by the statute under which the conviction was had, or by any statute amending the same, for any offence made punishable thereby on summary conviction, the provisions of the Criminal Law Amendment Act in respect of appeals from summary convictions shall apply to appeals under this section.

(III) But where a right of appeal is given by the statute or statutes aforesaid for some offence made punishable thereby on summary conviction, the provisions of the said statute or statutes applicable to appeals thereunder shall be applicable to appeals under this section.

21. In every case of an appeal under this or any other Act from a summary conviction or order, the appellant shall, within ten days from the conviction or from the making of the order, give notice in writing to the clerk of the peace of the colony of his intention to appeal, and if he fails to give the notice as aforesaid he shall be deemed to have abandoned the appeal.

Notice of appeal to be given to the clerk of the peace.

22. In any appeal to a court of quarter sessions from a summary conviction or order made by any justice where no statutory provision is in force as to the costs of the appeal, it shall be lawful for the chairman of the said court to make such order as to costs, and as to the disposal of any money deposited to meet any costs or any sum adjudged to be paid, as he may think just.

Costs of appeal.

23. Any person committed for trial may apply to any of the committing justices to be supplied, without fee or reward, with copies of any depositions taken before or on his committal; and the justice,

Copies of depositions may be ordered to be supplied gratuitously.

justice, on being satisfied that the applicant is unable to pay for the copies applied for may order the same to be supplied accordingly, and such order shall be carried out by the officer or person having for the time being the custody of the depositions, and no fee or reward shall be asked or taken by any person supplying copies of depositions in compliance with an order made as aforesaid.

24. Notwithstanding anything contained in the Act tenth Victoria number ten or any Act amending the same, every judgment of a court of petty sessions under the said Acts recovered after the commencement of this Act shall be deemed to be an order of justices within the meaning of section twelve of the Act fourteenth Victoria number forty-three, as amended by the Act seventeenth Victoria number thirty-nine. And all such proceedings may be taken for the purpose of obtaining a prohibition in respect of a judgment of a court of petty sessions as aforesaid, and all such orders may be made and directions given in the premises as may, under the last-mentioned enactments, be taken, made, and given in respect of any order of justices.

Prohibition to small debts courts.

25. Where, in any conviction or order made before the passing of this Act, the adjudicating justice has adjudged that certain sums in the said conviction or order mentioned be levied by distress and sale of the goods and chattels of the defendant, and that in default of sufficient distress in that behalf the defendant be imprisoned, the said conviction or order and the said sentence of imprisonment shall be and are hereby declared to have been and to be as valid and effectual for all purposes as if the statute on which the said conviction or order was founded had authorised the said sentence of imprisonment to be made as aforesaid in the said conviction or order.

Validation of sentences of imprisonment in default of distress.

26. Section twenty-two of the said Act eleventh and twelfth Victoria, chapter forty-three, and the whole of the Act thirty-second Victoria number six, amending and extending the same, are hereby repealed: Provided that such repeal shall not, in the case of a conviction or order made before the passing of this Act, affect the powers of any justice to enforce the remedies provided in the said enactments.

Repeal of sec. 22 of 11 & 12 Vic., c. 43, and of 32 Vic. No. 6.

27. In this Act "justice" means justice of the peace, and includes justices of the peace where jurisdiction can only be exercised by two or more justices; and "clerk of petty sessions" includes any person duly authorised to perform the duties of a clerk of petty sessions.

Definitions.

28. This Act may be cited as the "Justices Act, 1896."

Short title.