

No. XXII.

JUSTICES SUMMARY
JURISDICTION.
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An Act to regulate Summary Proceedings before Justices of the Peace. [2nd June, 1835.]

Preamble.

Proceedings before
Justices.

WHEREAS it is expedient and necessary 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 New South Wales with the advice 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 proceedings shall have been or shall be or is by this Act directed to be had or matter authorized to be heard and determined by or before one Justice or by or before two or more Justices in a summary way (and no particular mode of proceeding shall have been or shall be by any such Act directed in that behalf) it shall be lawful for any one Justice to receive the original information or complaint and to issue the summons or warrant requiring the parties and witnesses to appear before himself or before any two or more Justices as the case may require and upon the appearance

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appearance of the defendant or his or her contempt by not appearing after having been duly summoned in manner hereinafter mentioned and after sufficient time for his or her appearance and proof thereof on oath to the satisfaction of the Justice or Justices as the case may be such Justice or any two or more Justices (as the case may require) shall and may proceed to 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 thereon and in case such Justice or Justices shall convict the defendant and award against him or her any fine or pecuniary penalty and he or she shall neglect to pay the same fine or penalty together with the costs and charges of and 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) within one week next after such conviction (without any previous demand of such penalty) then it shall be lawful for such Justice or Justices or either of them or for any other Justice of the Peace (at his or their discretion) 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 charges of such distress and sale to be rendered to the said offender. ^{How penalties to be levied.} 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 or the party adjudged to pay any money shall at the time of the said adjudication or conviction declare that he or she has no goods or chattels on which the said distress can be levied then the convicting Justice or Justices or either of such Justices or any other Justice of the Peace may by warrant commit such offender to one of His Majesty's gaols there to remain for any time not exceeding fourteen days from the time of such commitment where the whole sum to be levied and remaining unpaid together with the costs shall not exceed ten shillings one calendar month where the said sum and costs shall not exceed one pound two calendar months where the said sum and costs shall not exceed five pounds and three calendar months where the said sum and costs shall be of any greater amount unless the said sum to be levied together with the costs shall be sooner paid.

2. And be it further 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 any person whatsoever 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 on the outside of such abode (such service being proved on the oath of the person so serving such summons and it being also in like manner proved 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 but without effect) 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) ^{Service of summons.} Provided that such summons shall direct the party so to appear at a time and place certain to be named in such summons.

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To regulate appeals.

3. And be it further enacted That in all cases in which any person shall be or is now entitled to appeal from any judgment or conviction of any Justice or Justices under or by virtue of any such Act as aforesaid (and no other mode of proceeding shall have been or shall be in that behalf provided) then if such person (in case a pecuniary penalty 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 together with the assessed costs and charges within one week next after such conviction or (in case no pecuniary penalty shall have been awarded) shall within one week next after the date or time of such judgment or conviction had enter into a bond to the convicting Justice or Justices to the use of His Majesty His Heirs and Successors with two sufficient sureties to be approved by such convicting Justice or Justices conditioned to prosecute such appeal with effect and to abide the event of the same appeal and to pay the full amount of all such costs as shall or may on such appeal be awarded against the appealing party then it shall be lawful for such person to appeal from such judgment or conviction to the next General Quarter Sessions (unless such Sessions shall be held within six days next ensuing and in that case to the General Quarter Sessions next but one afterwards) provided that the matter of every such appeal shall be heard and determined by the Justices assembled and meeting at a Court or adjourned Court of General Quarter Sessions holden at such one of the places which shall or may be appointed for the holding of General Quarter Sessions 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 nor shall any writ of *certiorari* afterwards be allowed 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 not exceeding in the whole the sum of ten pounds on any one appeal and in case the appeal shall be allowed and the conviction or judgment appealed from be quashed then (in cases where a pecuniary penalty was awarded) the whole amount of such penalty and of the costs and charges aforesaid shall be forthwith on demand returned to the party so appealing.

Witnesses not appearing.

4. And be it further enacted That if any person shall be summoned to appear as a witness to give evidence before any such Justice or Justices touching any of the matters aforesaid and shall neglect to appear at the time and place for that purpose appointed without a reasonable excuse for such neglect every such person shall for every such offence forfeit and pay a penalty or sum of not less than two pounds nor more than twenty pounds which said penalty shall and may be recovered by proceeding before any one Justice of the Peace who is hereby authorized to hear and determine such offence in a summary way and shall be levied and go to be distributed in the manner by this Act directed with respect to all other cases by this Act intended to be provided for.

Form of conviction.

5. And be it further enacted That in all cases (except where a particular form of judgment or conviction shall have been or shall be by any such 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 this 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 informer or witness or the particular place where

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where the offence was committed or whether the defendant appeared or was or was not summoned to appear and without setting forth or stating the evidence or 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 conviction whatsoever (whether under this 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 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.

6. And be it further enacted That in all cases where by any Act a pecuniary penalty of uncertain amount shall have been or shall be or is by this Act imposed (that is to say) a penalty or sum of not less nor more than an amount in that behalf 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 where otherwise provided by any such Act) go and be distributed one moiety thereof to the use of His Majesty His Heirs and Successors for the public uses of the said 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 aforesaid.

Distribution of penalties.

SCHEDULE REFERRED TO.

A.

Being a Form of Judgment or Conviction by this Act referred to.

NEW SOUTH WALES.

Be it remembered That on this day of 18 (name) of (place) was duly convicted before me A. B. (or us A. B. and C. D.) one (or two or more as the case may be) of His Majesty's Justices of the Peace upon an Information in that behalf exhibited before (name of the Justice or Justices) on the day of now last past for that on the day of 18 (state the fact or offence in respect of which the Judgment or Conviction is had) and I (or we) do in pursuance of the Act in such case made and provided for (state the principal subject of the Act but not the Title) award order and adjudge that (set forth the adjudication and if awarding a penalty as follows) the said (offender) do for such offence (where necessary add being his or her second or third or subsequent 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 such distribution) is provided besides the costs and charges of and attending this Conviction which said 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 written.
