

No. VIII.

An Act for the more effectual recovery of Fines FINES &C. RECOVERY.
and enforcement of forfeited Recognizances
imposed and entered into by and before
Justices of the Peace in New South Wales.
[21st August, 1838.]

WHEREAS doubts and difficulties have arisen as to the applica- Preamble.
bility or mode of application in New South Wales of the Law
of England relating to the recovery of fines and enforcement of for-
feited recognizances imposed and entered into by and before Justices
of the Peace and it is therefore expedient to make special provision in
that behalf adapted to the circumstances of the Colony Be it therefore (Adapted from
enacted by His Excellency the Governor of New South Wales with the 3 Geo. IV. c. 46 s. 2.)
advice and consent of the Legislative Council thereof That from and Statements of fines
after the passing of this Act all fines issues amerciaments forfeited &c. to be forwarded
recognizances sum and sums of money paid or to be paid in lieu or to the Clerk of the
satisfaction of them or any of them (save and except the same are Peace by the Justice
or shall be by virtue of any Act or Acts of the Parliament of Great by whom the same
Britain or of the Colonial Legislature for the time being lawfully is imposed.
constituted directed to be otherwise levied recovered appropriated
or disposed of) which already are or hereafter shall be set imposed
lost or forfeited by or before any Justice or Justices of the Peace
in New South Wales shall be and are hereby required to be
certified by the Justice or Justices of the Peace by or before
whom any such fines issues amerciaments forfeited recognizances
sum or sums of money paid or to be paid in lieu or satisfaction
of them or any of them shall be set imposed lost or forfeited to
the Clerk of the Peace acting for the county district or place
or if there be none such to the Clerk of the Peace acting for the
nearest county district or place for which any Clerk of the Peace
shall act containing the names and residences trade profession or
calling of the parties the amount of the sum forfeited by each respec-
tively and the cause of each forfeiture signed by such Justice or
Justices of the Peace on or before the ensuing General or Quarter
Sessions of such county district or place or nearest county district or
place respectively and such Clerk of the Peace shall copy on a roll Clerk of the Peace
such fines issues amerciaments forfeited recognizances sum or sums of to copy on a roll such
money paid or to be paid in lieu or satisfaction of them or any of them fines &c. at Quarter
together with all fines issues amerciaments forfeited recognizances Sessions and send
sum or sums of money paid or to be paid in lieu or satisfaction copy to the Sheriff
of them or any of them imposed or forfeited at such Court of General with writ of
or Quarter Sessions and shall within such time as shall be fixed and distringas &c.
determined by such Court not exceeding twenty-one days after the
adjournment of such Court send a copy of such roll with a writ of
distringas and *capias* or *fieri facias* and *capias* according to the form
and effect in the Schedule marked A annexed to this Act to the Sheriff
of the Colony or to any Sheriff or other officer who shall at the time
being have lawful execution of process in the county district or place
which shall be the authority to such Sheriff or other officer as aforesaid
for proceeding to the immediate levying and recovering of all such
fines issues amerciaments forfeited recognizances sum or sums of
money paid or to be paid in lieu or satisfaction of them or any of them
on the goods and chattels of such several persons or for taking into
custody the bodies of such persons in case sufficient goods and chattels
shall

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shall not be found whereon distress can be made for recovery thereof and every person so taken shall be lodged in the common gaol until the next General or Quarter Sessions of the Peace there to abide the judgment of the said Court.

(Adapted from 7 Geo. IV. c. 64.)

Clerk of the Peace to prepare lists of defaulters bound by recognizance to appear and lay them before the Chairman of Quarter Sessions or any two Justices without whose order Clerk of the Peace shall not estreat or put in process any such recognizance.

2. Provided nevertheless and be it enacted That in every case in which any person bound by recognizance for his or her appearance or for whose appearance any other person shall be so bound to prosecute or give evidence in any case of felony or misdemeanor or to answer for any common assault or to articles of the Peace shall therein make default the Clerk of the Peace shall and is hereby required to prepare a list in writing specifying the name of every person so making default and the nature of the offence in respect of which every such person or his or her surety was so bound together with the residence trade profession or calling of every such person or surety and shall in such list distinguish the principals from the sureties and shall state the cause if known why each such person has not appeared and whether by reason of the non-appearance of such person the ends of justice have been defeated or delayed and every such Clerk of the Peace shall before any such recognizance shall be estreated lay such list before the Chairman or two other Justices of the Peace who shall have attended such Court who are respectively required to examine such list and to make such order touching the estreating or putting in process of any such recognizance as shall appear to them respectively to be just and it shall not be lawful for the said Clerk of the Peace to estreat or put in process any such recognizance without the written order of the Chairman or Justice of the Peace before whom respectively such lists shall have been laid.

(3 Geo. IV. c. 46 s. 3.)
Clerk of the Peace to make oath to all fines &c. which shall be paid.

3. And be it enacted That the Clerk of the Peace shall before he shall deliver the roll to such Sheriff or other officer as aforesaid containing the fines issues amerciaments forfeited recognizances sum and sums of money paid or to be paid in lieu or satisfaction of them or any of them and he is hereby required to make oath before any Justice of the Peace of the county district or place for which such Clerk of the Peace shall act which oath shall be endorsed on the back of the writ or of the said roll attached thereto such Clerk of the Peace stating therein all such fines issues amerciaments forfeited recognizances sum or sums of money which shall have been paid or otherwise accounted for and such oath shall be made in the form following—

Form of oath.

“ I make oath that this roll is truly and
“ carefully made up and examined and that all fines issues
“ amerciaments recognizances and forfeitures which were
“ set imposed or forfeited and in right and due course of
“ law ought to be levied and paid are to the best of my
“ knowledge and understanding inserted in the said roll
“ with the exception of such as are now under reference to
“ the Chairman of Quarter Sessions upon a list submitted
“ to him by me according to law and as yet undetermined
“ and that in the said roll are also contained and expressed
“ all such fines as have been paid to or received by me
“ either in Court or otherwise without any wilful or
“ fraudulent discharge omission misnomer or defect what-
“ ever.

“ So help me God.”

(3 Geo. IV. c. 46 s. 4.)

4. And be it further enacted That each and every Justice of the Peace before whom any recognizance shall be entered into or taken shall and is hereby required to give at the time of entering into such recognizance to the person or persons surety or sureties so entering into the same and to each of them a written paper or notice in the form

Notices to be given to sureties.

or

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or to the effect stated in the Schedule marked B to this Act annexed adapting the same to the particular circumstances of the case and each such Justice shall in such recognizance state and particularly specify not only the profession art mystery or trade of every person so entering into such recognizance together with his christian name and surname but also his place of residence and in case such residence shall be in Sydney shall also specify the name of the street in which such person shall reside.

5. Provided always and be it further enacted That if any person on whose goods and chattels such Sheriff shall be authorized to levy any such forfeited recognizance or sum of money to be paid in lieu or satisfaction thereof shall give security to the said Sheriff or other officer as aforesaid for his appearance at the next General or Quarter Sessions then and there to abide the decision of the Court and also to pay such forfeited recognizance or sum of money to be paid in lieu or satisfaction thereof together with all such expenses as shall be ordered and adjudged by the Court it shall be lawful for such Sheriff or other officer as aforesaid and he is hereby authorized and required to discharge such person so giving security out of custody Provided always that in case such party so giving security shall not appear in pursuance of his undertaking it shall be lawful for the Court forthwith to issue a writ of *distringas* and *capias* or *fieri facias* and *capias* against the surety or sureties of the person so bound as aforesaid.

(3 Geo. IV. c. 46
s. 5.)

Persons may appeal
to Quarter Sessions
against fines &c.
upon giving security.

6. And be it enacted That the Court of General or Quarter Sessions before whom any person so committed to gaol or bound to appear shall be brought is hereby authorized and required to enquire into the circumstances of the case and shall at its discretion be empowered to order the discharge of the whole of the forfeited recognizance or sum of money to be paid in lieu or satisfaction thereof or of any part thereof and such order shall be made in the form or to the effect of the Schedule marked C to this Act annexed and shall be signed by the Clerk of the Peace which said order shall be a discharge to such Sheriff or other officer as aforesaid on the passing of his accounts before any Auditor or other proper officer duly authorized to pass the same and it shall and may be lawful for the said Court of General or Quarter Sessions to award such costs charges and expenses to be paid by either party to the other as to the said Court shall seem just and reasonable.

(3 Geo. IV. c. 46
s. 6.)

Justices at Quarter
Sessions to hear and
determine appeals.

7. And be it enacted That it shall be lawful for the Justices assembled at any General or Quarter Sessions of the Peace and they are hereby authorized and required at the following or any subsequent General or Quarter Sessions held after the return of the writ and roll issued from any preceding General or Quarter Sessions at the opening of the Court to insert or cause to be inserted in any following roll all such fines issues amerciaments forfeited recognizances sum or sums of money to be paid in lieu or satisfaction of them or any of them which have not been duly levied or recovered or properly accounted for by the Sheriff or other officer or have not been discharged on appeal before the General or Quarter Sessions or by warrant or authority of His Excellency the Governor or other officer having lawful authority for the time being to remit or dispense with the enforcement of debts due to the Crown in New South Wales and so to continue such process from Sessions to Sessions till it shall be duly ascertained that the party in default has not any goods or chattels lands or tenements upon which a levy can be made and that he is not to be found or that his body cannot be lodged in any of Her Majesty's gaols Provided always that the said Sheriff or other officer to whom the writ of *distringas* and *capias* or *fieri facias* or other writ deemed necessary by the Justices at any such General or Quarter Sessions to meet the exigency of the case shall

(Adapted from 4 Geo.
IV. c. 37 s. 1.)
Justices in Sessions
may insert in follow-
ing rolls all such
fines &c. as have not
been levied or
accounted for by the
Sheriff &c. or that
have not been dis-
charged.

Sheriff to detain the
original writs in his
possession which
shall continue in
force and be autho-
rity to act upon.

shall

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Sheriff on quitting
office to deliver over
rolls and writs to his
successor.

shall be sent by order of the said Court shall keep and detain in his possession the writ or writs so directed to him and the roll or rolls attached to such writ or writs delivering to the said Court of General or Quarter Sessions a copy of such roll or rolls on the first day of the sitting of the said Court and also a copy of any former roll or rolls where the fines issues amerciaments forfeited recognizances sum or sums of money paid or to be paid in lieu or satisfaction of them or any of them shall not have been delivered and such original writ and roll or writs and rolls shall continue in force and effect and shall be sufficient authority without any further writ or roll and such Sheriff or other officer is hereby required in the event of quitting his office or division of the territory or district over which his office shall extend to deliver over to his successor or to his successor in any particular district county or division of territory as the case may be all rolls and writs in his possession relating to the office and duty of any such successor particularising any fines issues amerciaments forfeited recognizances sum and sums of money paid or to be paid in lieu or satisfaction of them or any of them in order that the Sheriff or other officer coming into office may use every means in his power for recovering the sums so unpaid and not charged to his predecessor on the passing of his accounts before the proper officer and the officer or officers entrusted with the execution of the process in any county district or place shall be duly and diligently examined on oath by the Court at the delivery of the roll or whenever thereunto required by the Court as to the execution or the circumstances attending the non-execution of any such writ or writs as aforesaid and every such examination shall be duly recorded by the Clerk of the Peace or other proper officer in order that the Sheriff or other officer may be chargeable with all sums not satisfactorily accounted for on the final passing of his accounts.

(Adapted from
4 Geo. IV. c. 37 s. 3.)

Sheriff may follow
the party or his goods
&c. into another
jurisdiction if his
own be too limited.

8. And be it enacted That in case by any means the Sheriff or other officer to whom any such writ or writs shall be directed as aforesaid shall not have or shall cease to have execution of process throughout the whole Colony and in case any party incurring or subject to any fine issue amerciament forfeited recognizance sum or sums of money to be paid in lieu or satisfaction of them or any of them shall reside or shall have fled or removed from or out of the jurisdiction of such Sheriff or other officer as aforesaid it shall be lawful for such Sheriff or other officer and he is hereby required to issue his warrant together with a copy of the writ directed to the Sheriff or other officer acting for the county district or place in which such person shall then reside or be or in which any goods or chattels or other his property shall be found requiring such last-mentioned Sheriff or other officer to execute such writ and every such last-mentioned Sheriff or other officer is hereby authorized and required to act in all respects under such warrant in the same manner as if the original writ had been directed to him by order of a Court of General or Quarter Sessions held within the county district or division of territory within which he shall act and the said last-mentioned Sheriff or other officer is hereby required within thirty days after the receipt of such warrant to return to the Sheriff or other officer from whom he shall have received the same what he shall have done in the execution of such process and whether the party shall have given good and sufficient security to appeal at the ensuing General or Quarter Sessions to be held for the county district or place from which the writ issued and in case a levy shall have been made to pay over all monies received in pursuance of the warrant to the Sheriff or other officer from whom he shall have received the same.

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9. And be it enacted That the Clerk of the Peace and other officers shall be entitled to their usual and legal fees on the discharge of any forfeited recognizance and other duties performed under this Act the amount thereof to be fixed where the same may not otherwise be ascertained by law by the Judges of the Supreme Court of New South Wales and in case any Sheriff or other officer as aforesaid or any Clerk of the Peace shall refuse or neglect to do and perform any duty act or thing imposed upon or required from him in manner by this Act directed then and in every such case such Sheriff or other officer or Clerk of the Peace so refusing or neglecting shall forfeit the sum of fifty pounds to be recovered by any person or persons who will sue for the same together with full costs of suit by action of debt or on the case in any competent Court in New South Wales wherein no essoign protection wager of law or any more than one imparlance shall be allowed.

(3 Geo. IV. c. 46 s. 10.)
Fees of Clerk of Peace and other officers.

Penalty for neglect of Sheriff &c.

10. And be it enacted That every Clerk of the Peace in New South Wales do and shall on or before the thirty-first day of January in each year make and deliver to the Colonial Treasurer or at such other time and to such other officer as the Governor or person administering the Government of the Colony for the time being shall direct and require a true and perfect duplicate on certificate of all such fines issues amerciaments and forfeited recognizances and sum and sums of money and other forfeitures whatsoever paid in lieu or satisfaction of them or any of them as shall be contained in the several rolls or copies which shall be so sent out to the Sheriff for the purpose of levying as aforesaid during the year ending the thirty-first December then preceding to the intent that the Sheriff or Sheriffs or other officer or officers respectively may be duly charged with the monies levied by them in respect thereof and all parties entitled to any share of such fines forfeitures or sum or sums of money may be at liberty to claim the same according to law.

(Adapted from 3 Geo. IV. c. 46 s. 14.)
Clerk of the Peace to make annual returns to the Colonial Treasurer.

11. And be it further enacted That the Sheriff or Sheriffs or other officer or officers as the case may be having execution of any writ or writs to be sent to him or them by any Clerk of the Peace as aforesaid shall and he is hereby required to make up or cause to be made up annually on or before the thirty-first day of January in each year or within one month after the expiration of his or their office if the same shall expire at any other time than the thirty-first day of December an account in writing containing the names and residences of all persons incurring fines issues amerciaments forfeited recognizance sum or sums of money paid or to be paid in lieu or satisfaction of them or any of them which he has been authorized or required to levy by virtue of any writ or writs issued to him or to any predecessor in office and in case any fine issue amerciamement forfeited recognizance sum or sums of money paid or to be paid in lieu or satisfaction of them or any of them shall not have been levied or paid the causes of non-payment shall be fully and particularly stated and such account every such Sheriff or other officer is hereby required to transmit on or before such thirty-first day of January in each year or within one month after expiration of office as aforesaid (as the case may be) to the Colonial Treasurer of New South Wales or at or within such other period and to such other officer as the Governor or officer administering the Government of the Colony for the time being shall direct and require in order that such account may be duly examined checked and inspected in such manner as shall be from time to time lawfully appointed in that behalf.

(Adapted from 4 Geo. IV. c. 37 s. 4.)
Sheriff also to make an annual return.

12. Provided lastly and it is hereby declared and enacted That nothing herein contained shall be intended or construed to prevent the application

This Act not to interfere with the operation of English

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laws except so far as
the same is expressly
modified to suit the
Colony.

application of the Law of England to any matter except so far as such law is not by this Act expressly modified to suit the circumstances of the Colony but that such law shall be deemed and taken to apply except as aforesaid in like manner in all respects as before the passing of this Act.

SCHEDULE A.

Victoria by the Grace of God of the United Kingdom of Great Britain and Ireland Queen Defender of the Faith.

To the Sheriff of the Colony of New South Wales [or the Sheriff or Officer (as the case may be) of the County District or place (as the case may be)]—greeting

You are hereby required and commanded as you regard yourself and all yours that of all the goods and chattels lands and tenements of all and singular the persons in the several extracts to this writ annexed you cause to be levied all and singular the debts and sums of money upon them in the same extracts severally imposed and charged so that the money may be ready for payment at the next General or Quarter Sessions of the Peace to be paid over in such manner as is or shall be lawfully appointed and if any of the said several debts cannot be levied by reason of no goods or chattels being to be found belonging to the parties then in all cases that you take the bodies of the parties refusing to pay the aforesaid debts and lodge them in the proper gaol there to await the decision of the Justices assembled at the next General or Quarter Sessions unless the parties shall have given sufficient security for their appearance at such Sessions for which you will be held answerable and have you then there this writ Witness
of the Peace for the Esquire Chairman of the Quarter Sessions
South Wales the day of in year of our reign.

Clerk of the Peace.

SCHEDULE B.

COLONY OF NEW SOUTH WALES }
TO WIT. }

TAKE notice that you of are bound in the
sum of pounds and your sureties
in the sum of pounds each to appear
at the Quarter or General Sessions of the Peace to be holden at
in the Colony of New South Wales on the day of
next and unless you personally make your appearance accordingly the recognizances entered
into by yourself and your sureties will be forthwith levied on you and your bail. Dated
this day of one thousand eight
hundred and

Justice of the Peace.

SCHEDULE C.

To the Sheriff or Officer (as the case may be)

WHEREAS hath appeared before the Justices assembled
at the General or Quarter Sessions (as the case may be) held at
having forfeited the sum of [here describe the nature of the fine or
forfeiture] and having made it appear to the satisfaction of the Justices so assembled that
he should be relieved from the payment of the said sum of
[or if the penalty is mitigated state from part thereof] you are thereby required to discharge
the said sum of from the Estreat Roll delivered to you
after the Quarter Sessions held at on the
day of for which discharge this warrant shall be your authority
and shall exonerate you from the said charge on the passing of your accounts before the
proper officer.

By order of the Court

Clerk of the Peace.