

No. XXXIX.

An Act to amend the Justices Act of 1850 in respect of Prohibitions and Amendments and other matters. [12th November, 1853.] JUSTICES DUTIES.

WHIEREAS it is expedient to amend the Act of Council passed in the fourteenth year of the reign of Her present Majesty Queen Victoria and numbered forty-three relating to the Duties of Justices of the Peace and to Proceedings before and Convictions and Orders by them Be it enacted by His Excellency the Governor of New South Wales with the advice and consent of the Legislative Council thereof as follows:—

1. The said recited Act may be cited as “The Justices Act of 1850” and this Act may be cited as “The Justices Act Amendment Act of 1853.” Preamble. 14 Vic. No. 43. Short title.

2. This Act shall so far as is consistent with the contents and subject matter thereof be taken as part of and construed with the said recited Act. To be construed with recited Act.

3. The twelfth section of the said Act shall be deemed to extend to all summary convictions and orders of what nature or kind soever made by any Justice or Justices. Sec. 12 of recited Act to extend to all Justices' convictions and orders.

Justices Duties.

Time for application
for writ of prohibi-
tion extended.

4. The time limited for making applications under the said recited Act shall be extended as follows—where the place of residence of the party desirous of applying for any writ of prohibition shall be one hundred and fifty miles or upwards from Sydney such application may be made within sixty days after the conviction or order.

Power of a Judge
extended.

5. It shall be lawful for any Judge of the Supreme Court if he shall think fit as well in Term time as in Vacation (in all cases where imprisonment shall have been directed or where the fine awarded or the amount ordered to be paid or the value of the matter adjudicated upon shall not exceed thirty pounds) to hear and determine applications for writs of prohibition directed to any Justice or Justices and for that purpose to make such rules and orders and issue such writs and allow such amendments as might have been made or issued or allowed by the Court Provided that any such rule or order or writ may be discharged or varied or set aside by the Court in Term and such further order thereupon be made as the case may require.

Power to Court or
Judge to admit to
bail.

6. Where any person committed to prison by virtue of any summary conviction or order shall be brought up by writ of habeas corpus and the Court or Judge shall postpone the final decision of the case it shall be lawful for such Court or Judge to admit the person to bail with or without sureties for his appearance at such time and place and upon such conditions as the Court or Judge may appoint and if the judgment be against such person the Court or Judge may remand him to his former custody there to serve the rest of the term for which he shall have been committed.

Judge on Circuit.

7. Any Judge on the Circuit may exercise the powers given by this Act or the said recited Act.

Production of docu-
ments before
Justices.

8. In all cases where Justices have authority by law to summon any person as a witness they shall have the like authority to require and compel him to bring and produce for the purposes of evidence all documents and writings in his possession or power and to proceed against every such person in case of neglect or refusal as in any case of neglect or refusal to attend or refusal to be examined Provided that no person shall be bound to produce any document or writing not specified or otherwise sufficiently described in the summons or which he would not be bound to produce upon a subpœna *duces tecum* in the Supreme Court.

As to drawing up
and transmitting
convictions.

9. The time for applying for a writ of prohibition shall begin to run from the final adjudication as announced whether orally or in writing and the conviction or order need not be drawn up in form in order to entitle the party so applying to the benefit of this or the said recited Act Provided that the Court or Judge may postpone the decision if justice shall appear so to require until the conviction or order shall have been so drawn up and in due form transmitted.

Respecting the
amendment of con-
victions &c.

10. In every case where the facts or evidence appearing by the depositions shall in substance support the adjudication of the Justice or Justices (provided such adjudication shall not extend beyond the complaint or charge) and in every case where such facts or evidence would have justified or shall justify any necessary allegation or finding omitted in such adjudication or in the formal conviction or order or any warrant issued in pursuance of such adjudication the powers of amendment conferred by this and the said recited Act respectively shall or may be exercised and where a conviction shall be bad in respect of some excess which may (consistently with the merits of the case) be corrected the conviction shall be amended accordingly and shall stand good for the remainder subject nevertheless to such order as to costs and otherwise as the Court or Judge shall under the circumstances think proper.

Justices Duties.

11. And whereas doubts have arisen as to the special powers intended to be conferred by the said recited Act and the Acts of Parliament thereby adopted on Stipendiary or Police Magistrates Be it declared and enacted That every Stipendiary or Police Magistrate in this Colony shall in the absence of other Justices have full power to do alone at any time and place appointed for the holding of a Petty Sessions whatever might be done by two or more Justices sitting in such Petty Sessions.

Stipendiary Police Magistrate may in all cases act alone in the absence of other Justices.

12. The fifth section of the recited Act is hereby amended as follows Every Justice described as a Justice of the Peace for New South Wales shall be taken to be a Justice for the Colony generally but not for any incorporated City or Town having a separate Commission of the Peace unless words be used indicating that he is a Justice for such City or Town Provided that in all cases every act done or purporting to have been done by or before any Justice of the Peace shall be taken to have been within his jurisdiction without an allegation to that effect until the contrary be shewn and the words Justice of the Peace or the letters J.P. after the signature to any magisterial act shall be *prima facie* evidence that the party whose signature it purports to be is in fact a Justice of the Peace.

Justices for the Colony.

13. The sixteenth section of the said recited Act shall be extended to cases in which the witness shall be so ill as not to be able to travel and to all cases in which the Justices who committed the prisoner or held him to bail shall have certified before such committal or holding to bail that the evidence of the witness is material and that he is in their belief willing to attend the trial but will be unable to bear the expense of attendance Provided that this last enactment shall not extend to any witness who has in due time before the trial been subpoenaed by the Crown.

Attendance of witnesses for prisoner.

14. The prosecutor of any information shall be competent to give evidence notwithstanding that he may have a pecuniary interest in the result of the same.

Prosecutor a competent witness.

15. The practice before Justices upon the hearing of matters in respect of which any summary conviction or order may be made or any summary adjudication is sought shall (as nearly as may be) in respect of the examination and cross-examination of witnesses and the right of addressing such Justices upon the case in reply or otherwise be in accordance with that of the Supreme Court upon the trial of an issue of fact in an action at law.

Conduct of summary proceedings regulated.

16. Where the party convicted or any party whose goods shall have been condemned or directed to be sold as forfeited was present at the hearing of the case the conviction or order shall be sustained although there may have been no information or summons unless he objected at such hearing that there was no information or summons and no conviction or order shall be defeated for the want of any distribution or for a wrong distribution of the penalty or forfeiture.

Want of summons or information.

Distribution of penalty.