

## No. XXIV.

### An Act for more effectually preventing the Sale of Obscene Books Pictures Prints and other Articles. [22nd April, 1880.]

OBSCENE  
PUBLICATIONS  
PREVENTION.

WHEREAS it is expedient to give additional powers for the Preamble. suppression of the trade in obscene books prints drawings and other obscene articles Be it therefore 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. It shall be lawful for any Police Magistrate or for any two Justices of the Peace upon complaint made before him or them upon oath that the complainant has reason to believe and does believe that any obscene books papers newspapers or printed matter of any kind whatsoever or any obscene writings prints pictures photographs lithographs drawings or representations are kept in any house shop room premises or place whatsoever for the purpose of sale or distribution exhibition for purposes of gain lending upon hire or being otherwise published for purposes of gain and if such complainant shall also state upon oath that one or more articles of the like character have been sold distributed exhibited lent or otherwise published as aforesaid at or in connection with such place so as to satisfy such Police Magistrate or Justices that the belief of the said complainant is well founded and upon such Police Magistrate or Justices being also satisfied that any of such articles so kept for any of the purposes aforesaid are of such a character and description that the publication of them would be a misdemeanour or an offence under this Act and proper

Search of suspected  
premises.  
20 & 21 Vic. c. 83  
s. 1.

*Obscene Publications Prevention.*

proper to be prosecuted as such to give authority by special warrant to any constable or police officer to enter in the daytime into such house shop room or other place with such assistance as may be necessary and if necessary to use force by breaking open doors or otherwise and to search for and seize all such books papers newspapers or printed matter writings prints pictures photographs lithographs drawings or other representations as aforesaid together with all printing presses engines types plates stones and working plant and material whatsoever used for the purposes of or in any way in connection with any of the said articles found in such house shop room premises or other place and to carry all the articles so seized which may be capable of removal before the Police Magistrate or Justices issuing the said warrant or some other Police Magistrate or Justices and such Police Magistrate or Justices shall thereupon issue a summons calling upon the occupier of the house or other place which may have been so entered by virtue of the said warrant to appear within seven days before such Police Magistrate or any two Justices assembled in Petty Sessions to show cause why the articles so seized should not be destroyed and such of them as are of the nature of working plant or material be forfeited to the use of Her Majesty And if such occupier or some other person claiming to be the owner of the said articles shall not appear within the time aforesaid or shall appear and such Police Magistrate or Justices shall be satisfied that such articles or any of them are of the character stated in the warrant and that such or any of them have been kept for any of the purposes aforesaid it shall be lawful for the said Police Magistrate or Justices and he or they are hereby required to order the articles so seized except such of them as he or they may consider necessary to be preserved as evidence in some further proceedings to be destroyed or forfeited as the case may be at the expiration of the time hereinafter allowed for lodging an appeal unless notice of appeal as hereinafter mentioned be given and such articles shall be in the meantime impounded or attached (as the case may be) and if such Police Magistrate or Justices shall be satisfied that the articles seized are not of the character stated in the warrant or have not been kept for any of the purposes aforesaid he or they shall forthwith direct them to be restored to the occupier of the house or other place in which they were seized or to be released from attachment (if any).

Penalty on occupiers  
owners &c.  
Victorian Act  
No. 544.

2. Every occupier of the house shop room premises or place wherein such articles shall have been seized or have been attached every owner and every person who in the opinion of the Police Magistrate or Justices adjudicating thereon appears to be the owner of such articles and every person printing photographing lithographing drawing making selling publishing distributing or exhibiting any obscene books papers newspapers or printed matter of any kind whatsoever or any obscene writings prints pictures photographs lithographs drawings or representations or assisting therein shall be liable on conviction for a first offence to a penalty not exceeding twenty pounds or imprisonment for any term not exceeding three months and for any second or subsequent offence to a penalty not exceeding fifty pounds or to imprisonment not exceeding six months.

Provisions as to  
attachment of  
working-plant &c

3. Working-plant or material seized under the authority of this Act may be attached by the constable or police officer executing the warrant in the following manner—He shall make an inventory of the articles or things constituting such plant or material and leave a copy thereof with the person in or apparently in possession of the said articles or things to which copy shall be subjoined a notice that the articles and things specified in such copy have been attached under this Act And any person who knowing the same to have been so attached shall dispose of remove retain embezzle conceal or receive the same

or

*Obscene Publications Prevention.*

or any part thereof with intent to defeat the said attachment shall be liable on conviction of such offence to be imprisoned with or without hard labour for any period not exceeding three years.

4. All such attachments shall be reported forthwith by such constable or officer to the Police Magistrate or to one of the Justices who issued the warrant who shall take such measures and give such directions for the safe custody of the articles or things so attached as to him shall seem fit.

5. The constable or officer seizing or attaching any articles or things under this Act may secure the same on the premises where they are found by sealing up any repository room or closet but without causing any unnecessary hindrance or inconvenience to any party by so doing or he may leave some person on the premises in custody of such articles or things.

6. Any such articles or things may be released from attachment by an order under the hand of the Police Magistrate or of the Justices who issued the special warrant under which the seizure shall have been made or by an order of the Court of Appeal hereinafter mentioned.

7. Whenever any articles of the character described in this Act shall be found hawked about or carried in any street or public place for sale or for exhibition distribution or publication for gain it shall be lawful for any police officer above the rank of an ordinary constable forthwith to seize the same and carry them to the nearest police office reporting in writing to the Magistrate there presiding the fact of such seizure. And if within seven days thereafter the person having so hawked about or carried the articles or some person claiming to be their owner shall not appear before such Magistrate and demand possession of them or if such person does so appear and demand possession and the Magistrate is satisfied that the articles are of the character described and were hawked about or carried for any of the aforesaid purposes it shall be lawful for him to order them to be destroyed as in the case of articles seized under the first section but if not satisfied that the articles are of the aforesaid character or were hawked about or carried for any of the aforesaid purposes the Magistrate shall order them to be forthwith restored to the claimant.

8. No plaintiff shall recover in any action for any irregularity trespass or other wrongful proceeding made or committed in the execution of this Act or in under or by virtue of any authority hereby given if tender of sufficient amends shall have been made by or on behalf of the party who shall have committed such irregularity trespass or other wrongful proceeding before such action brought and in case no tender shall have been made it shall be lawful for the defendant in any such action by leave of the Court where such action shall depend at any time before issue joined to pay into Court such sum of money as he shall think fit whereupon such proceeding order and adjudication shall be had and made in and by such Court as in other actions where defendants are allowed to pay money into Court.

9. No action suit or information or any other proceeding of what nature soever shall be brought against any person for anything done or omitted to be done in pursuance of this Act or in the execution of the authorities conferred by this Act unless notice in writing shall be given by the party intending to prosecute such action suit information or other proceeding to the intended defendant one calendar month at least before prosecuting the same nor unless such action suit information or other proceeding shall be brought or commenced within three calendar months next after the act or omission complained of or in case there shall be a continuation of damage then within three calendar months next after the doing such damage shall have ceased.

*Tramways Extension.*

Appeal.  
20 and 21 Vic. c. 8  
s. 4.

10. Any person aggrieved by any act conviction or determination of such Police Magistrate or Justices in or concerning the execution of this Act may appeal against the same to the next Court of General or Quarter Sessions holden in the district where the subject matter thereof arose unless such Sessions shall be held within fourteen days from the date of such act conviction or determination and in that case to the Court of Quarter Sessions then next following. And such Court shall have power to hear and determine the matter in a summary way and shall have and exercise all other powers vested in them by the third section of the Act fifth William the Fourth number twenty-two. And the decision of such Court shall be final and conclusive in respect to the subject matter of such appeal. Provided always that the person so appealing shall have given written notice seven days at the least before the hearing of such appeal of his intention to appeal and stating the grounds thereof to the convicting Magistrates or one of them and to the prosecutor. And provided also that such person in case a penalty or forfeiture shall have been adjudged against him shall pay into the hands of the convicting Magistrate or Justices the full amount or value thereof (as the case may be) together with the costs awarded within one week next after the conviction and shall within the same period enter into a bond with two sureties approved by such Magistrate or Justices conditioned to prosecute such appeal and to pay the full amount of all such costs as may on such appeal be awarded against him. And if such appeal be dismissed or decided against the appellant or be not prosecuted such Court may order the articles seized forthwith to be destroyed and those attached (if any) to be forfeited to Her Majesty. Provided always that it shall not be lawful for the appellant on the hearing of any such appeal to go into or give evidence of any other grounds of appeal against any such order act or determination than those set forth in such notice of appeal.

Short title and construction.

11. This Act may be cited for all purposes as the "Obscene Publications Prevention Act 1880" and its provisions shall be read and construed cumulatively with the provisions of the Act fifteenth Victoria number four as amended by the Act twenty-four Victoria number twenty-five.