

No. IV.

JUSTICES APPEAL.

An Act to improve the administration of the law so far as respects summary proceedings before Justices of the Peace. [4th October, 1881.]

Preamble.

WHEREAS it is expedient that provision should be made for obtaining the opinion of the Supreme Court on questions of law which arise in the exercise of summary jurisdiction by Justices of the Peace 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:—

Justices on the application of party aggrieved to state case for the opinion of the Supreme Court.

1. After the hearing and determination by a Justice or Justices of the Peace of any information or complaint which he or they have power to determine in a summary way by any law now in force or hereafter to be made either party to the proceeding before the said Justice or Justices may if dissatisfied with the said determination as being erroneous in point of law apply in writing within eight days where the information or complaint shall have been determined in the County of Cumberland or within one hundred miles of the City of Sydney or within sixteen days if within two hundred miles of the City of Sydney or within twenty-four days if over two hundred miles from Sydney after the same to the said Justice or Justices to state and sign a case (which may be in the form in the Schedule A hereto) setting forth the facts and the grounds of such determination for the opinion thereon of the Supreme Court of New South Wales and the party applying hereinafter called the "appellant" shall within five days after receiving such case transmit the same to the Prothonotary of the Supreme Court first giving notice in writing of such appeal with a copy of the case so stated and signed to the other party to the proceeding in which the determination was given hereinafter called "respondent."

Security and notice to be given by the appellant.

2. The appellant at the time of making such application and before a case shall be stated and delivered to him by the Justice or Justices shall in every instance enter into a recognizance before such Justice or Justices or any one or more of them or any other Justice exercising the same jurisdiction with or without surety or sureties and in such sum as to the said Justice or Justices shall seem meet conditioned to prosecute without delay such appeal and to submit to the judgment of the Supreme Court and pay such costs as may be awarded by the same and the appellant shall at the same time and before he shall be entitled to have the case delivered to him pay to the Clerk of Petty Sessions his fees for and in respect of the case and recognizances and any other fees to which such Clerk shall be entitled which fees (except such as are already provided for by law shall be according to the Schedule to this Act marked "B" and the appellant if then in custody shall be liberated upon the recognizance being further conditioned for his appearance before the same Justice or Justices or if that is impracticable then before some other Justice or Justices exercising the same jurisdiction who shall then be sitting within ten days after the judgment of the Supreme Court shall have been given to abide such judgment unless the determination appealed against be reversed.

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3. If the Justice or Justices be of opinion that the application is merely frivolous but not otherwise he or they may refuse to state a case and shall on the request of the appellant sign and deliver to him a certificate of such refusal provided that the Justice or Justices shall not refuse to state a case where application for that purpose is made to him or them by or under the direction of Her Majesty's Attorney General for the said Colony.

Justices may refuse case where they think the application frivolous.

4. Where the Justice or Justices shall refuse to state a case as aforesaid it shall be lawful for the appellant to apply to the Supreme Court upon an affidavit of the facts for a rule calling upon such Justice or Justices and also upon the respondent to show cause why such case should not be stated and the said Court may make the same absolute or discharge it with or without payment of costs as to the Court shall seem meet and the Justice or Justices upon being served with such rule absolute shall state a case accordingly upon the appellant entering into such recognizance as is hereinbefore provided.

Where Justices refuse the Supreme Court may by rule order a case to be stated.

5. The Court shall hear and determine the question or questions of law arising thereon and shall thereupon reverse affirm or amend the determination in respect of which the case has been stated or remit the matter to the Justice or Justices with the opinion of the Court thereon or may make such other order in relation to the matter and may make such order in relation to costs as to the Court may seem fit and such orders shall be final and conclusive on all parties. Provided always that no Justice or Justices of the Peace who shall state and deliver a case in pursuance of this Act shall be liable to any costs in respect or by reason of such appeal against his or their determination.

Supreme Court to determine the questions on the case. Its decisions final.

6. The Court shall have power if they think fit to cause the case to be sent back for amendment and thereupon the same shall be amended accordingly and judgment shall be delivered after it shall have been amended.

Case may be sent back for amendment.

7. The authority and jurisdiction hereby vested in the Supreme Court shall and may (subject to any rules and orders of the said Court in relation thereto) be exercised by a Judge of such Court sitting in Chambers and as well in vacation as in term time.

Powers of the Supreme Court may be exercised by Judge in Chambers.

8. After the decision of the Supreme Court in relation to any case stated for their opinion under this Act the Justice or Justices in relation to whose determination the case has been stated or any other Justice or Justices of the Peace exercising the same jurisdiction shall have the same authority to enforce any conviction or order which may have been affirmed amended or made by such Court as the Justice or Justices who originally decided the case would have had to enforce his or their determination if the same had not been appealed against and no action or proceeding whatever shall be commenced or had against the Justice or Justices for enforcing such conviction or order by reason of any defect in the same respectively.

After the decision of the Supreme Court Justices may issue warrants.

9. No writ of *certiorari* or other writ shall be required for the removal of any conviction order or other determination in relation to which a case is stated under this Act or otherwise for obtaining the judgment or determination of the said Court on such case under this Act.

Certiorari not to be required for proceedings under this Act.

10. The Supreme Court may from time to time and as often as it shall see occasion make and alter rules and orders to regulate the practice and proceedings in reference to the cases hereinbefore mentioned.

Supreme Court may make rules for proceedings.

11. In all cases where the conditions or any of them in the said recognizance mentioned shall not have been complied with the Justice or Justices who shall have taken the same or any other Justice or Justices shall certify upon the back of the recognizance in what respect the conditions thereof have not been observed and transmit the

Recognizances how to be enforced.

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the same to the Clerk of the Peace for the said Colony to be proceeded upon in like manner as other recognizances forfeited at the Quarter Sessions may now by law be enforced and such certificate shall be deemed sufficient *prima facie* evidence of the said recognizance having been forfeited.

Appellants under this Act not to be allowed to appeal to Quarter Sessions.

12. Any person who shall appeal under the provisions of this Act against any determination of a Justice or Justices of the Peace from which he is by law entitled to appeal to the Quarter Sessions shall be taken to have abandoned such last-mentioned right of appeal finally and conclusively to all intents and purposes.

Appeal against forfeiture of recognizance how made.

13. Any person who shall feel aggrieved by the forfeiture of any recognizance under this Act shall have the right to appeal to the next Court of Quarter Sessions holden nearest to the place where the complaint or information may have been determined of which appeal he shall give the Clerk of the Peace and the respondent five days notice and the Court of Quarter Sessions shall have the same power to deal with such recognizance upon such appeal as such Courts now have to deal with recognizances when forfeited in such Courts and to make such order thereon as to the Judge thereof shall appear to be reasonable and just.

The right to apply for writ of prohibition not interfered with.

14. The provisions of this Act shall not in any way interfere with curtail or limit the powers of any person to apply for a writ of prohibition against the determination of any Justice or Justices as such power now exists.

Short title.

15. This Act may be cited as the "Justices Appeal Act of 1881."

SCHEDULES.

SCHEDULE A.

In the Supreme Court of }
New South Wales. }

In the matter of an appeal from the determination of the undersigned (two) of Her Majesty's Justices of the Peace in and for the Colony of New South Wales in a proceeding before us at _____ in the said Colony between A B complainant and C D defendant.

THE (information or complaint as the case may be) alleged that (*here state the charge or claim*) The defendant pleaded not guilty and after hearing the parties and the evidence adduced by them we did on the _____ day of _____ 18 _____ convict the said defendant of the said offence and adjudged him to pay the sum of _____ for the same (*or in case of civil case say*) make an order against the defendant for the payment by him to the complainant of the sum of _____ or dismiss the said information or complaint.

The (defendant or complainant) alleging that he was aggrieved by the said determination as being erroneous in point of law did within (*here state time according to distance*) thereafter apply in writing to us to state and sign a case setting forth the facts and the grounds of such determination for the opinion thereon of this Honorable Court and did at the time of making such application and before the stating of this case before a Justice of the Peace enter into a recognizance to Her Majesty in the sum of _____ with a condition to prosecute this appeal with effect and without delay and to submit to the judgment of this honorable Court and pay such costs as may be awarded by the same and thereupon in pursuance of the Act in such case made and provided we state and sign the following case (*here set forth the depositions taken in the case if any if no depositions proceed as follows*):—

It was proved (or admitted as the case may be) upon the hearing that (*here state the facts*) We determine that the matter hereinbefore stated afforded no ground of answer or defence to the said (complaint or information as the case may be) or was insufficient to support the said (complaint or information).

The question for the opinion of the said Court is whether our said determination was erroneous in point of law.

Dated _____ day of _____ A.D. 18 _____

J.J. }
J.J. } Justices of the Peace.

SCHEDULE B.

Parliamentary Evidence.

SCHEDULE B.

Fees to be taken by Clerks of Petty Sessions.

	s.	d.
For drawing case and copy where the case does not exceed five folios of ninety words each	10	0
For every additional folio (beyond five folios)... ..	1	0
For the recognizance	5	0
For every enlargement or renewal thereof	2	6
For certificate of refusal of case	2	0
