

Act No. 71, 1900.

An Act to amend the law relating to procedure before Justices and to appeals from Justices. [7th December, 1900.]

JUSTICES ACTS AMENDMENT.

BE it 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. This Act may be cited as the "Justices Acts Amendment Act of 1900." Short title.

2. (1) The Acts mentioned in the Schedule are, to the extent therein expressed, hereby repealed; and every enactment inconsistent with the provisions of this Act is also hereby repealed. Repeals and savings.

Provided that no such repeal shall invalidate or affect any proceeding, act, or thing, done or commenced before the passing of this Act.

(2) All proceedings initiated before the passing of this Act shall be carried on as far as practicable according to the provisions of this Act, and subject thereto, according to the provisions of the said Acts and enactments respectively; which for that purpose shall be deemed to continue in force notwithstanding the repeal thereof.

(3) All persons lawfully in custody, or bound by recognizances, at the time of the passing this Act, under the provisions of any Act or enactment hereby repealed, shall be deemed to be in lawful custody, or to be so bound as aforesaid, under the provisions of this Act, and may be dealt with accordingly.

3. In this Act, unless the context or subject matter otherwise indicates or requires:— Interpretation.

"Justices" means a Justice of the Peace, and includes Stipendiary and Police Magistrates.

4. (1) Where by any Act, past or future, any person is made liable to imprisonment or other punishment, or to any fine, penalty, or forfeiture, or to pay any sum of money or costs, for any offence, act, or omission, upon the conviction or order of a Justice or Justices, it shall be deemed to be provided that the matter shall be heard and determined by a Justice or by two or more Justices, as the Act dealing with the matter may prescribe, in a summary manner, according to the provisions of the Act or Acts for the time being regulating proceedings before Justices, although no such provision be expressly made in the Act dealing with the matter; and the matter shall be so heard and determined accordingly. Acts creating liability to fine, &c., on conviction or order of Justices to be deemed to provide that matters shall be dealt with summarily under provisions of Acts regulating proceedings before Justices.

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The like where no provision made for trial and offence, &c., not treason, felony, or misdemeanour.

(2) Where by any Act, past or future, any person is made liable as aforesaid, and no provision is made for the trial of such person, and such offence, act, or omission, is not by the Act declared to be treason, felony, or misdemeanour, the matter shall be heard and determined in a summary manner as aforesaid by two or more Justices or by a Stipendiary or Police Magistrate.

Bail may be granted where defendant is arrested for disobedience of summons.

5. (1) If, upon the non-appearance of a defendant at the time and place appointed in and by a summons duly served on him, for hearing and determining a complaint or information, a warrant has been issued, and the defendant is afterwards apprehended under the said warrant, the Justice before whom he is brought may, instead of committing the defendant to a house of correction, or other prison, lock-up, house, or place of security, or to the custody of a constable or other person, or to any other safe custody, discharge the defendant, upon his entering into a recognizance, with or without sureties, at the discretion of the said Justice, conditioned for his appearance at a time and place to be stated therein; of which time and place the complainant or informant shall have due notice.

(2) If the defendant does not afterwards appear at the time and place mentioned in the said recognizance, then the Justice who has taken the recognizance, or any Justice who may then be there present, may transmit the recognizance to the Clerk of the Peace for the Colony, to be proceeded upon in like manner as other recognizances; and the Justice so transmitting the same shall certify on the back thereof the non-appearance of the defendant, and the said certificate shall be deemed sufficient prima facie evidence of the non-appearance of the defendant.

Justices to have power to award costs against persons summarily convicted of indictable offences under s 18 of 55 Vic. No. 5.

6. In every case where a person charged before a Justice or Justices with an indictable offence mentioned in section eighteen of the Criminal Law and Evidence Amendment Act of 1891 has consented to the case being disposed of summarily under the provisions of the said Act the Justice or Justices shall have the same power to award costs to or against him as such Justice or Justices would have if he had been charged before such Justice or Justices with an offence, not indictable, punishable upon summary conviction.

Abolition of recovery of fine, &c., by levy and distress.

7. (1) In no case shall any fine, or penalty, or any sum of money, or costs, adjudged to be paid for any offence, act or omission by any conviction or order made by any Justice or Justices founded on this or any other Act past or future be or be adjudged to be levied by distress.

Imprisonment to be alternative of non-payment, &c., and to be adjudged in all cases in the conviction or order.

(2) Whenever by any such conviction or order it is adjudged that any fine, or penalty, or any sum of money, or costs, shall be paid, the Justice or Justices making the conviction or order shall therein and thereby adjudge that, in default of payment, in accordance with the terms of the conviction or order, of the amount of the sum or sums and costs, if any, thereby adjudged to be paid as ascertained thereby, the

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the person so convicted or ordered to pay shall be imprisoned for such period, within the limits hereinafter prescribed, as such Justice or Justices think fit:

Provided that this subsection shall not affect the provisions relating to periodical payments contained in the "*Deserted Wives and Children's Act, 1840, as amended by the Act of 1858,*" and in the "*Lunacy Act of 1898.*"

(3) Where the said amount—	Such period shall not exceed—
Does not exceed ten shillings . . . . .	Seven days.
Exceed ten shillings, but does not exceed one pound . . . . .	Fourteen days.
Exceeds one pound, but does not exceed two pounds . . . . .	One month.
Exceeds two pounds, but does not exceed five pounds . . . . .	Two months.
Exceeds five pounds, but does not exceed twenty pounds . . . . .	Four months.
Exceeds twenty pounds, but does not exceed fifty pounds . . . . .	Six months.
Exceeds fifty pounds, but does not exceed one hundred pounds . . . . .	Nine months.
Exceeds one hundred pounds . . . . .	Twelve months.

Any enactment in any past Act to the contrary notwithstanding.

(4) Such imprisonment shall be with either hard labour or light labour, as the Justice or Justices in and by the conviction or order adjudge.

(5) On any such default as aforesaid any Justice may by warrant commit the person so convicted or ordered to pay to prison according to the terms of the conviction or order.

8. (1) In any order, made under section ten of the Act nineteenth Victoria number twenty-four, that goods be delivered up to the owner thereof, it shall be lawful for the adjudicating Justice to make and give such further order and direction (conditioned to take effect upon neglect or refusal to comply with the said order for delivery as aforesaid) as might under the said section or otherwise be subsequently made or given, if the person against whom the order for delivery was made had neglected or refused to comply with the same, and had been duly summoned, and had shown no good cause for his neglect or refusal.

In an order for delivery of goods, a further order may be made conditionally to take effect if goods not delivered up.

And upon the neglect or refusal as aforesaid the said further order or direction shall take effect; and all further proceedings may be taken in pursuance thereof as if the said order or direction had been **made absolutely.**

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(2) In any case where no further order and direction are made by the adjudicating Justice under the provisions of the last preceding subsection, any order that may, under the section therein mentioned, or otherwise, be subsequently made or given may be made or given by any Justice.

*Appeals.*

Appeal allowed in every case of conviction or order made by Justices on notice within seven days.

**9.** (1) Every person who, for any offence, act, or omission, has by the conviction or order of a Justice or of Justices, founded on this or any other Act past or future, been adjudged to be imprisoned or otherwise punished, or to pay any fine or penalty, or to suffer any forfeiture, or to pay any sum of money, and every person who, under the provisions of any Act past or future, is entitled to appeal against any order of a Justice or Justices founded on such Act, may appeal against such conviction or order, provided that a notice in writing stating his intention to appeal and the general grounds of such appeal is given by him or on his behalf to the clerk of the Court where conviction or order was made within seven days from the making of such conviction or order; and the said clerk shall at once send to the Clerk of the Peace and to the prosecutor, or other party, a copy of such notice:

Provided, however, that there shall be no appeal against an adjudication to imprisonment for failure to comply with an order for the payment of money, for the finding of sureties, for the entering into recognizances or for the giving of security.

Appeal to be heard at Court of Quarter Sessions.

(2) Every such appeal shall be heard at the Court of Quarter Sessions, for the district where the conviction or order was made, holden next after the expiration of fourteen days after the day on which notice of appeal was given, or at such other Court of Quarter Sessions, holden after the expiration of the said period, as the Attorney-General may direct.

Notice of the time and place of hearing of the appeal shall be given, as early as possible, by the Clerk of the Peace, to the appellant, and to all parties interested or concerned in such appeal.

(3) No application to quash or vary any conviction or order of a Justice or Justices shall be made to any Court of Quarter Sessions except by way of appeal as herein provided.

(4) Notice of appeal and all other notices herein required to be given may be sent by registered letter, and in the case of the prosecutor or other party to the address given at the hearing, and if so sent shall be taken to have been served on the day on which such letter would be delivered in the ordinary course of post.

(5) Upon receipt of such notice of appeal, the clerk of the Court shall forthwith inform the Justice or Justices who made the conviction or order, or, in their absence, any other Justice or Justices,  
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of the same, and he or they shall then and there determine the amount in which the appellant and his surety or sureties are to be bound by recognizance or which he is to deposit in respect of the costs of the appeal under the provisions of the next following section, if in his or their opinion the sum of ten pounds would be insufficient or excessive for that purpose; and such clerk shall inform the appellant of such determination and shall also transmit the conviction or order to the Clerk of the Peace to be kept among the records of such Court.

10. If (a) notice of appeal has been duly given as hereinbefore provided, and

Conditions on which execution of conviction or order stayed.

(b) the appellant either—

- (i) remains in custody till the hearing of the appeal, or
- (ii) within three days after the day on which notice of appeal was given, enters before a Justice into a recognizance, with a surety, or sureties, in the sum of ten pounds, or in such sum as the Justice or Justices have determined, conditioned to appear at the Court of Quarter Sessions and prosecute the appeal, and abide the judgment of the Court thereon and pay such costs as may be awarded by such court, or

where money only has been adjudged to be paid—

- (iii) deposits with the clerk of the Court, where the conviction or order was made, the sum and costs (if any) thereby adjudged to be paid, and the further sum of ten pounds or such less sum as the Justice or Justices have determined in respect of the costs of the appeal,

then the execution of the conviction or order shall be stayed.

11. After notice of appeal and compliance with the provisions of the last preceding section as to recognizances or deposit, the appellant, if in custody, may be liberated by the order of any Justice.

Conditions on which appellant may be liberated.

12. (1) The Court hearing the appeal shall determine the matter of every such appeal, and may adjourn the hearing thereof, and may by its order confirm, quash, set aside, vary, or reduce, the conviction, order, sentence, or adjudication appealed against, or make such other order in the matter, and as to costs to be paid by either party, including the Crown, as to the Court seems just; and may, in and by any such order, exercise any power which the Justice or Justices who made the conviction or order might have exercised; and any order so made shall have the same effect and shall be enforced in the same manner as if it had been made by such Justice or Justices.

Powers of Court appealed to.

(2) When the appellant has made a deposit in accordance with the provisions of section ten, the Court may order the money so deposited to be applied, so far as it will extend, in payment of the sum adjudged by the Court to be paid, and of the costs, both of the conviction or order and of the appeal; and the residue, if any, or, if the conviction or order be quashed or set aside, the whole, of such money shall be repaid to the appellant.

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Conditions subject to which depositions may be read as evidence on appeal.

**13.** The deposition of any witness called and examined before the Justice or Justices who made the conviction or order appealed against may be read as evidence for either party at the hearing of the appeal if—

- (1) the other party consents; or
- (2) it is proved on oath
  - (a) that the deposition was taken in the presence of the other party; and
  - (b) that the other party or his counsel or attorney had full opportunity of cross-examining the witness; and
  - (c) that—
    - (i) the witness is dead, or so ill as to be unable to travel; or,
    - (ii) cannot, after such search or for such reason as to the Court seems sufficient, be produced by the party tendering the deposition.

Appeal not to be defeated for defect in notice, &c., if amendable.

**14.** No appeal shall be defeated merely by reason of any defect, whether of substance or of form, in any notice or statement of grounds of appeal.

The Court hearing the appeal, if of opinion that any such notice or statement is capable of amendment and ought to be amended, may amend the same accordingly, upon such terms, as to the postponement or costs or both as to the court seems just.

Conviction or order not to be quashed by reason of error or omission in form.

**15.** No conviction or order of any Justice or Justices shall be quashed, set aside, or avoided on appeal under this Act, or in any proceeding in the Supreme Court, merely by reason of some omission or mistake in the form of the conviction or order, or for any error in law in the sentence imposed or order made, if it appears to the Court that sufficient grounds were in proof before the Justice or Justices who made the conviction or order to have authorised a conviction or order free from such omission, mistake, or error; but the Court may, upon such terms as to costs as it thinks fit, amend the conviction or order, and adjudicate thereupon as if no such omission, mistake, or error had existed, or may remit the case to the Justice or Justices to pronounce such judgment and sentence, or make such order as is authorised by law, and to amend the conviction or order accordingly.

Defects in warrant of commitment.

**16.** No warrant of commitment shall be held void, by reason of any defect therein, if it is therein alleged that the person named therein has been convicted, and if there is a valid conviction to sustain such commitment.

**17.** Whenever any conviction or order is quashed or set aside on appeal, the Clerk of the Peace or other proper officer shall forthwith endorse on the conviction or order a memorandum to that effect; and, whenever any certificate of such conviction or order is given, a copy of such memorandum shall be added; and, in every case where such certificate would be evidence of such conviction or order, it shall be sufficient evidence that such conviction or order has been quashed or set aside.

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18. No conviction, order, or adjudication, on appeal shall be removed by any writ or order into the Supreme Court. No certiorari.

19. (1) Upon the production to any Justice of the certificate mentioned in section twenty-seven of the Imperial Act eleventh and twelfth Victoria chapter forty-three as adopted by the Act fourteenth Victoria number forty-three, such Justice may commit the person named in such certificate, as having been adjudged to pay the costs therein mentioned, to prison, in the same manner and for the same period as if such certificate had been a conviction or order made by such Justice, and such person had failed to pay such sum according to the terms of such conviction or order by which such person had been adjudged to pay such costs forthwith. Production of certificate adopted by 14 Vic. ch. 43 to have effect of conviction or order by Justice.

(2) In no such case shall any such costs be or be adjudged to be levied by distress.

(3) The provisions of the said section, and of this section, shall apply in every case where costs are adjudged by a Court of Quarter Sessions to be paid by either party to an appeal under this Act, whether such party is or is not bound by any recognizance to pay such costs.

20. Nothing in this Act shall affect the provisions of section one hundred and nineteen of the Seamen's Act, 1898, or give any right of appeal against an order for the payment of wages, or of any sum recoverable in the same manner as wages, under the said Act, or against a conviction for an offence under Part IX of the said Act. Not to affect certain provisions of Seamen's Act, 1898.

SCHEDULE.

Reference to Act.	Title or short title.	Extent of repeal.
5 Wm. IV No. 22	An act to regulate Summary Proceedings before Justices of the Peace.	The unrepealed portion.
39 Vic. No. 33 ...	An Act to declare and amend the Law respecting Appeals from Summary Convictions, Justices of the Peace (Summary Proceedings)	The whole.
11 and 12 Vic. c. 43, as adopted by 14 Vic. No. 43.		S. 12 down to and including the words "shall have arisen." So much of ss. 17, 18, 24, 26, 27, 28, 29 as relates to levy by distress; ss. 19, 20, 21, 22, 23.
46 Vic. No. 17 ...	Criminal Law Amendment Act ... ..	Ss. 436, 440 to 444 inclusive.
52 Vic. No. 2 ...	Criminal Law Amendment Act of 1888 ...	S. 2.
55 Vic. No. 5 ...	Criminal Law and Evidence Amendment Act of 1891.	Ss. 24, 26.
No. 50, 1899 ...	Justices (Fines) Act, 1899 ... ..	Section 3.