

## Act No. 75, 1902.

FINES AND  
FORFEITED  
RECOGNIZANCES  
RECOVERY.

An Act to consolidate the Statutes relating to the recovery of fines imposed by Courts of Quarter Sessions, the Sheriff, or Coroners, and of recognizances forfeited before such Courts or before Justices of the Peace. [11th September, 1902.]

**B**E it enacted by the King'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:—

Short title.

1. This Act may be cited as the "Fines and Forfeited Recognizances Recovery Act, 1902."

Repeals and savings.

2. (1) The Acts mentioned in the First Schedule hereto are, to the extent therein expressed, hereby repealed.

(2) All orders of any Court of Quarter Sessions, and all rolls, writs, lists, processes, levies, securities, bonds, returns, and discharge warrants made or issued under the authority of any Act hereby repealed and in force at the time of the passing of this Act, shall be deemed to have been made or issued under the authority of this Act.

(3) All persons lawfully in custody at the time of the passing of this Act shall be deemed to be in lawful custody under the provisions of this Act, and may be dealt with accordingly.

Interpretation.

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

"Justice" means a Justice of the Peace.

Clerk of the Peace  
to prepare an Estreat  
Roll at close of every  
Court of Quarter  
Sessions.

2 Vic. No. 8, s. 1.

4. The Clerk of the Peace shall, after the close of each sittings of every Court of Quarter Sessions, enter on a roll, to be called the Estreat Roll—

(a) every forfeited recognizance and fine certified to him as by law provided by any Justice or Coroner, or by the Sheriff, as having been forfeited or imposed within the district for which such Court is held;

(b) every forfeited recognizance and fine forfeited or imposed by or before such Court at the sittings then closed;

(c) every forfeited recognizance and fine entered in any previous roll which the Court has during such sittings ordered to be inserted in such roll as hereinafter provided:

Provided

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Provided that a recognizance entered into by any person conditioned that he or some other person shall appear to prosecute or give evidence in any case of felony or misdemeanour, or to answer for any common assault or to articles of the peace, and forfeited before a Justice, shall not be entered on such roll without the written order of the Chairman of such Court in that behalf having been obtained as in the next succeeding section provided.

Recognizances forfeited on non-appearance in certain cases not to be entered in Estreat Roll without order of the Court of Quarter Sessions.  
2 Vic. No. 8, s. 2.

5. (1) The Clerk of the Peace shall prepare for each sittings of every Court of Quarter Sessions a list of the persons bound by recognizance as in the proviso to the last section mentioned who have therein made default, giving the particulars of each case in the form and to the effect set out in the Second Schedule hereto.

Clerk of the Peace to make a list of cases within proviso to preceding section, and lay the same before the Court.  
*Ibid.*

(2) The Clerk of the Peace shall lay such list before the Chairman, who shall make such order in writing as to the estreating or putting in process of such recognizances as he thinks fit.

(3) The Clerk of the Peace shall not enter on the Estreat Roll, or estreat or put in process any such recognizance, without the order in writing of the Chairman.

6. (1) The Clerk of the Peace shall make a copy of the Estreat Roll, and attach the same to a writ of distringas and capias or fieri facias and capias in the form and to the effect set out in the Third Schedule to this Act, and shall endorse on the said writ or copy of the Estreat Roll a statement on oath made before any Justice in the form and to the effect set out in the Fourth Schedule to this Act.

Clerk of the Peace to send copy of the Estreat Roll to the Sheriff with appropriate writ.  
*Ibid.* s. 1.  
Such copy or writ to be endorsed with certificate on oath.  
*Ibid.* s. 3.

(2) The Clerk of the Peace shall send the said writ and copy of the Estreat Roll so endorsed to the Sheriff within such time, not exceeding twenty-one days, after the adjournment of the Court as may be fixed by the Court.

7. (1) The Sheriff shall, under the authority of such writ, proceed forthwith to levy and recover such fines and forfeited recognizances on the goods and chattels of the persons named in the copy Estreat Roll to which such writ is attached, or take such persons into custody if sufficient goods and chattels are not found on which distress can be made.

Under authority of such writ Sheriff to levy or in default of goods to take person into custody.  
*Ibid.* s. 1.

(2) Every person so taken shall be lodged in prison, there to be kept to abide the judgment of the next ensuing Court of Quarter Sessions.

Persons so taken to be lodged in prison to abide next Court.  
*Ibid.*

8. (1) Any person on whose goods and chattels the Sheriff has been authorised as hereinbefore provided to levy and recover any fine or forfeited recognizance may give to the Sheriff security for his appearance at the next sittings of the Court then and there to abide the decision of the Court, and to pay, if the decision of the Court be against him, the fine or forfeited recognizance, together with all such costs and expenses as are ordered by the Court to be paid by him.

Security may be given to Sheriff.  
*Ibid.* s. 5.

(2) Upon receipt of such security, the Sheriff shall withdraw from such levy, or if such person is in custody shall discharge him out of custody.

In that case Sheriff to withdraw or discharge out of custody.

9. *Ibid.*

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Where recognizance to prosecute appeal by way of special case forfeited, person aggrieved may appeal on notice.

45 Vic. No. 4, s. 13.

Sheriff to lay copy of Estreat Roll and a return before Chairman at each Court of Quarter Sessions.

2 Vic. No. 8, s. 7.

Chairman of Court of Quarter Sessions to order carrying forward in fresh roll of cases in former roll where no levy or discharge.

*Ibid.* s. 7.

Chairman of Court of Quarter Sessions to inquire into cases where person in default is in prison or has given security or has appealed.

2 Vic. No. 8, s. 6, and 45 Vic. No. 4, s. 13.

And may confirm or discharge fine, &c.

*Ibid.*

Such order to be discharge to Sheriff.

2 Vic. No. 8, s. 6.

9. Any person aggrieved by the forfeiture of any recognizance entered into for the prosecution of an appeal to the Supreme Court by way of special case from a determination of a Justice or Justices may appeal to the next Court of Quarter Sessions held nearest to the place where the information or complaint was determined, provided that he gives to the Clerk of the Peace and to the respondent five days' notice of such appeal.

10. The Sheriff shall at the opening of each sittings of every Court of Quarter Sessions lay before the Chairman the copy of the Estreat Roll sent him by the Clerk of the Peace after the last preceding sittings of the Court, as hereinbefore provided, and a return showing what has been done in the matter of every fine and forfeited recognizance appearing therein.

11. The Chairman of every Court of Quarter Sessions shall at each sittings of the Court order every fine and forfeited recognizance which, by the return presented to him by the Sheriff at such sittings, appears not to have been duly levied or recovered or properly accounted for by the Sheriff, or discharged by order of the Court as hereinafter provided or by authority of the Governor or other officer having lawful authority to remit or dispense with the enforcement of debts due to the Crown in New South Wales, to be inserted in the Estreat Roll to be prepared by the Clerk of the Peace at the close of such sittings, unless and until it has been ascertained that the person in default has no goods or chattels on which a levy can be made, and that he cannot be found or lodged in prison.

12. (1) The Chairman of every Court of Quarter Sessions shall at each sitting of the Court inquire into the circumstances of every case in which a person in default has, since the last preceding sittings of the Court, been lodged in prison or given security to the Sheriff as hereinbefore provided, or given notice of appeal in the case and in the manner hereinbefore provided, and may—

- (a) confirm the fine or forfeiture, and if the person, having given as such security as aforesaid a bond with a surety or sureties, does not appear may forthwith issue a writ of distringas and capias or fieri facias and capias against such surety or sureties;
- (b) order the discharge of the whole of the forfeited recognizance or fine or of any part thereof;
- (c) order such costs, charges, and expenses to be paid by either party as to the Court seems just and reasonable.

(2) Such order shall be in the form or to the effect set out in the Fifth Schedule to this Act, and shall be signed by the Clerk of the Peace.

(3) Such order shall, to the extent that it is a discharge of the forfeited recognizance or fine, be a discharge to the Sheriff on the passing of his accounts before any auditor or person authorised to pass the same.

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13. (1) For the purposes of any inquiry provided for in the two last preceding sections, the Court may summon and examine on oath any person as a witness.

On inquiry under two preceding sections, Court may summon and examine on oath any person.  
c.f., 2 Vic. No. 8, s. 7.

(2) Every such examination shall be recorded by the Clerk of the Peace in order that the Sheriff may be chargeable with all sums not satisfactorily accounted for on the final passing of his accounts.

Such examinations to be recorded by Clerk of the Peace.  
*Ibid.*

14. (1) The Sheriff shall keep in his possession all writs, with the copies of the Estreat Rolls attached thereto, sent him by the Clerk of the Peace as hereinbefore provided.

Sheriff to keep all writs and copies of the Estreat Roll sent him.  
*Ibid.* s. 7.

(2) Such original writs and rolls shall continue in force and be sufficient authority to the Sheriff, without any further writ or roll in respect of the forfeited recognizances and fines in respect of which they were issued.

Original writs to continue in force.  
*Ibid.*

(3) The Sheriff shall, on vacating his office, deliver to his successor all such writs and rolls in his possession, that his successor may use every means in his power to recover all sums unpaid, and not charged to his predecessor on the passing of his accounts.

Sheriff to hand such writs and rolls to his successor.  
*Ibid.*

15. The Clerk of the Peace 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 person as the Governor directs, a duplicate, certified under his hand, of all such forfeited recognizances and fines as have been contained in the several copies of the Estreat Rolls sent to the Sheriff as hereinbefore provided during the year ending on the thirty-first day of December immediately preceding, in order that the Sheriff may be duly charged with all moneys levied by him in respect thereof, and that all persons entitled to any share of such forfeited recognizances or fines may be at liberty to claim the same according to law.

Clerk of the Peace to make annual returns to the Colonial Treasurer.  
*Ibid.* s. 10.

16. The Sheriff shall, on or before the thirty-first day of January in each year, make and transmit to the Colonial Treasurer, or at such other time and to such other person as the Governor directs, an account in writing containing—

Sheriff to make annual returns to the Colonial Treasurer.  
*Ibid.* s. 11.

- (a) the names and addresses of all persons whose forfeited recognizances or fines he has been authorised to levy by virtue of any writ issued to him or to any predecessor in office, and
- (b) where such forfeited recognizances or fines have not been levied, the cause of non-payment which shall be fully and particularly stated,

in order that such account may be duly inspected and checked in the manner appointed by law.

17. (1) Any Sheriff or Clerk of the Peace who refuses or neglects to do or perform any act or thing by this Act required of him in the manner therein directed, shall be liable to a penalty of fifty pounds.

Penalty for neglect of Sheriff or Clerk of the Peace.  
*Ibid.* s. 9.

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(2) Such penalty may be recovered together with full costs of suit by any person by action of debt or on the case in any Court of competent jurisdiction.

SCHEDULES.

FIRST SCHEDULE.

*Repeal of Act.*

See s. 2.

Reference to Act.	Title.	Extent of repeal.
2 Vic. No. 8 ...	An Act for the more effectual recovery of fines and enforcement of forfeited recognizances imposed and entered into by and before Justices of the Peace in New South Wales.	The whole.
45 Vic. No. 4 ...	Justices Appeal Act of 1881 ... ..	Section 13.

SECOND SCHEDULE.

*Form of List.*

See s. 5.

List of persons bound by recognizances to appear at the Courts hereunder stated, who have therein made default, laid before the Chairman of the Court of Quarter Sessions, holden at \_\_\_\_\_, in the State of New South Wales, on the \_\_\_\_\_ day of \_\_\_\_\_, and continued by adjournment until the \_\_\_\_\_ day of \_\_\_\_\_, in the year one thousand nine hundred and \_\_\_\_\_.

Name of Defaulter.	Residence.	Trade, profession, or calling.	Whether principal or surety.	Offence in respect of which bound.	Court at which bound to appear.	Cause of non-appearance.	Whether by non-appearance ends of justice were defeated or delayed.	Amount in which bound.	Order of Chairman.

THIRD

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THIRD SCHEDULE.

See s. 6.

*Writ to Sheriff.*

EDWARD, by the Grace of God of the United Kingdom of Great Britain and Ireland,  
King, Defender of the Faith.

To the Sheriff of the State of New South Wales—greeting.

You are hereby required and commanded as you regard yourself and all yours that of all the goods and chattels of all and singular the persons named in the copy Estreat Roll to this writ annexed you cause to be levied all and singular the debts and sums of money upon them severally imposed and charged as by the said copy Estreat Roll appears, so that the money may be ready for payment at the next Court of Quarter Sessions 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 next Court of 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  
Esquire, Chairman of the Court of Quarter Sessions holden at \_\_\_\_\_, in the State of New South Wales, the \_\_\_\_\_ day of \_\_\_\_\_, in \_\_\_\_\_ year of our reign.

Clerk of the Peace.

FOURTH SCHEDULE.

See s. 6.

*Certificate on oath of Clerk of the Peace.*

I, \_\_\_\_\_, make oath that this roll is truly and carefully made up and examined, and that all recognizances and fines which were forfeited or imposed 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 the Court 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 whatever.

So help me God.

FIFTH SCHEDULE.

See s. 12.

*Form of Order discharging forfeited recognizance or fine.*

To the Sheriff of the State of New South Wales.

WHEREAS \_\_\_\_\_ hath appeared before the Chairman of the Court of Quarter Sessions holden 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 said Chairman 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.