

Justices (Amendment).

Act No. 24, 1909.

An Act to make further provision for the appointment of stipendiary magistrates and their deputies and of police magistrates; to amend the Liquor Act, 1898, the Small Debts Recovery Act, 1899, the Government Railways Act, 1901, the Justices Act, 1902, and the Public Service Act, 1902; and for other purposes. [20th December, 1909.]

JUSTICES
(AMENDMENT).

BE 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:—

Preliminary.

1. This Act may be cited as the "Justices (Amendment) Act, Short title. 1909."

The Justices Act, 1902, is hereinafter referred to as the Principal Act.

Amendment of the Justices Act, 1902.

2. Section seven of the Principal Act is amended by the omission of paragraphs (a), (b), and (c) of subsection one, and the insertion in lieu thereof of the following paragraph:—

Amendment of s. 7
of Principal Act.

"such persons as may be necessary to have jurisdiction within the metropolitan police district, or within the police district of Newcastle, and any adjoining police district to which the provisions of this Part of this Act have been or may hereafter be extended, or within any other police district to which the provisions of this Part of this Act have been or may hereafter be extended."

3. The same section is amended by the addition of the following subsection at the end of the section:—

Appointment by
Minister of deputy
stipendiary
magistrate.

(3) The Minister may appoint any person to act as a deputy for any stipendiary magistrate appointed under this Act, for a time not exceeding in any case fourteen days, while such magistrate is absent from his duties for any cause, and every such deputy shall, while acting

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acting as such, have the same jurisdiction and power, and perform the same duties, and be liable to all the provisions of this Act as if he were a stipendiary magistrate.

New section 7A.

4. The same Act is amended by the addition of the following section, to be read immediately after section seven :—

Appointment of police magistrates and certain stipendiary magistrates from persons outside the public service.

7A. (1) The Governor may appoint as a stipendiary magistrate, to have jurisdiction within the metropolitan police district, any person not an officer in the public service.

(2) The Governor, on the recommendation of the Public Service Board, may appoint one of the stipendiary magistrates having jurisdiction within the metropolitan police district to be chairman of the bench of such stipendiary magistrates.

(3) The Governor may appoint as a police magistrate any person not an officer in the public service.

(4) No appointment under paragraph one or paragraph three of this section shall be made until the Public Service Board have reported that, in their opinion, there is no person in the public service as capable of performing the duties of the office to which it is proposed to make the appointment as the person outside such service whom it is proposed to appoint.

All such reports shall be laid before Parliament.

(5) The provisions of subsections two and three of section thirty-six of the Public Service Act, 1902, shall not apply to an appointment under this section.

Amendment of s. 13 of Principal Act.

5. Section thirteen, paragraph (b), of the Principal Act is amended by the omission of the words "to which this Act is extended," and the insertion in lieu thereof of the words "to which this Part of this Act is extended"

Amendment of s. 15.

6. Section fifteen of the Principal Act is amended—

- (a) by omitting the words "The Stipendiary Magistrates appointed under this Act shall" and substituting in lieu thereof the words "The Governor may"; and
- (b) by omitting the words "in their respective Courts" and substituting therefor the words "under this Act"; and
- (c) by omitting the words "All such rules shall be subject to the approval of the Governor."

Amendment of s. 25 of Principal Act.

7. Section twenty-five, subsection one, of the Principal Act is amended by omitting the words "at any time after the end of the then sittings of such court if the person so indicted has not already appeared and pleaded to such indictment," and substituting therefor the words "at any time during the sittings of such court if the person so indicted fails to appear and plead to such indictment."

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8. Section thirty-one of the Principal Act is amended by Amendment of s. 31. adding the following subsection:—

(2) Whenever any person is apprehended under any such warrant, or under a warrant issued under the provisions of section twenty-six, the Justice or Justices before whom such person is brought shall thereupon either—

(a) commit him—

(i) by warrant to prison, or some lock-up, or place of security ;

or

(ii) verbally to such safe custody as such Justices may think fit ;

and order him to be brought up at a time and place to be appointed by such Justice or Justices ; or

(b) discharge him upon his entering into a recognizance.

And in either case shall give due notice of the time and place so appointed to the informant or complainant.

9. Section thirty-three of the Principal Act is amended by Amendment of s. 33. inserting after the words “ Provided that ” the words “ unless with the consent of the defendant.”

10. (1) Section thirty-five, subsection one, of the Principal Act Amendment of s. 35. is amended by omitting the words “ by warrant, cause ” and inserting in lieu thereof the word “ order ” ; and by adding to it the following : “ or may discharge him upon his entering into a recognizance with or without sureties conditioned that he shall appear at a time and place named in such recognizance to be further dealt with according to law.

“ The warrant necessary to carry the abovementioned order into effect may be signed by any Justice.”

(2) Subsection two of the same section is amended by omitting the words “ issuing such warrant ” and inserting in lieu thereof the words “ before whom the defendant originally appears or is brought.”

11. Subsection two of section sixty-six of the Principal Act is Amendment of s. 66. amended—

(a) by omitting the words “ the defendant ” and substituting in lieu thereof the words “ any person ” ; and

(b) by inserting after the words “ such warrant ” the words “ or under a warrant issued in pursuance of the provisions of section sixty-one.”

12. Section seventy-two of the Principal Act is hereby repealed. Repeal of s. 72.

13. Subsections two, three, and four of section eighty-five are Amendment of s. 85. hereby repealed.

14. Section eighty-four, subsection three, is amended by omitting Amendment of s. 84. all the words commencing “ provided that ” to the end of the subsection.

15. Section eighty-seven and subsection two of section eighty-Amendment of ss. 87 and 88. eight are amended by omitting the words commencing “ and if the

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Justice" to the end of the section and subsection respectively, and substituting therefor the words "together with such further sum for the costs of enforcing such conviction or order, including the costs and charges of conveying such person to prison as to such Justice may seem just and reasonable."

Amendment of s. 90.

16. Section ninety, subsection (i), of the Principal Act is amended by inserting after the words "so to do" the words "allow time or further time for the payment of the said amount, or any part thereof, or direct that payment of the said amount or any part thereof be made by instalments or may."

Amendment of s. 98.

17. Subsection two of section ninety-eight is amended by the addition of the words "or any other process to enforce an adjudication."

Amendment of s. 101.

18. Section one hundred and one of the Principal Act is amended by omitting paragraphs (a), (b), and (c), and substituting therefor the words "twenty-one days."

Amendment of s. 105.

19. (1) Section one hundred and five of the Principal Act is amended by omitting the word "five" and substituting therefor the word "ten."

(2) The same section is amended by omitting the words "thereafter and."

(3) The same section is amended by adding the words "Such notice and copy of case may be served upon the respondent in the manner prescribed for the service of a summons by section sixty-three, subsection one, of this Act."

Amendment of s. 111.

20. Section one hundred and eleven, subsection one, is amended by inserting after the words "under the provisions of" the words "this division of."

Amendment of s. 112.

21. Subsection one of section one hundred and twelve of the Principal Act is amended by omitting the words "twenty days or, if his place of residence is one hundred and fifty miles or upwards from Sydney, within sixty days," and substituting therefor the words "twenty-one days."

Amendment of s. 122.

22. (1) Section one hundred and twenty-two, subsection one, of the Principal Act is amended by omitting the word "seven" before "days" and substituting therefor the word "twenty-one."

(2) Subsection two of the same section is amended—

(a) by omitting the words "holden after the expiration of the said period" and by inserting the words "either then sitting or thereafter to sit"; and

(b) by adding the words "The appeal may proceed, notwithstanding any omission or error in such notice or the non-service thereof, provided the court is satisfied that the appellant and the parties interested or concerned in the appeal had knowledge of such time and place of hearing, and were not prejudiced by such omission, error, or non-service."

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23. Section one hundred and twenty-three, paragraph (b) (ii), of the Principal Act is amended by omitting the words "within three days after the day on which notice of appeal was given" and substituting therefor the words "within eight days after the determination mentioned in subsection five of the preceding section."

Amendment of s. 123.

24. Section one hundred and twenty-eight of the Principal Act is repealed and the following section substituted in lieu thereof:—

Repeal of s. 128.

128. A warrant of commitment shall not be held void by reason of any defect therein, if it be therein alleged that the offender has been convicted or ordered to do or abstain from doing any act or thing required to be done or left undone, and there is a good and valid conviction or order to sustain the same.

Defects in warrant of commitment.

25. The following section shall be inserted in the Principal Act and read immediately before section one hundred and forty-six:—

New section 145A.

145A. (1) The description of any offence in the words of the Act, or any order, by-law, regulation, or other document creating the offence, or in similar words, shall be sufficient in law; and

Sufficient description of an offence.

(2) Any exception, exemption, proviso, excuse, or qualification, whether it does or does not accompany in the same section the description of the offence in the Act, order, by-law, regulation, or other document creating the offence, may be proved by the defendant, but need not be specified or negatived in the information or complaint, and if so specified or negatived, no proof in relation to the matter so specified or negatived shall be required on the part of the informant or complainant.

26. The following section shall be read as section one hundred and fifty-two of the Principal Act:—

New section 152.

152. If any person shall, during any proceeding before a court of petty sessions presided over by a stipendiary or police magistrate, or during any proceeding under this Act, or any Act amending the same, before a stipendiary or police magistrate, or before justices (one of whom is a stipendiary or police magistrate), be guilty of contempt, such person may be punished in a summary way by such stipendiary or police magistrate by fine not exceeding forty shillings, or by imprisonment for a period not exceeding fourteen days.

Contempt of court.

Amendment of the Small Debts Recovery Act, 1899.

27. Section sixty-seven of the Small Debts Recovery Act, 1899, is hereby repealed.

Repeal.

Amendment of the Government Railways Act, 1901.

28. The Government Railways Act, 1901, is amended as follows:—

Amendment of Railways Act with regard to recovery of penalties.

(1) Section one hundred and thirteen—

(a) in subsection one, by inserting after the word "magistrate" the words "or two justices of the peace"; and (b)

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- (b) in subsection two, by omitting the words "before such magistrate."
- (2) Section one hundred and fifteen, in subsection two by inserting after the word "magistrate" the words "or two justices of the peace."
- (3) Section one hundred and eighteen, by inserting after the word "magistrate" wherever occurring the words "or two justices of the peace."
- (4) Section one hundred and nineteen, by inserting after the word "magistrate" the words "or two justices of the peace."

Amendment of the Liquor Act, 1898.

Amendment of s. 5,

29. Section five of the Liquor Act, 1898, is amended—

- (a) in subsection one by omitting the words "consist of seven members, and" and substituting therefor the words "from such date as the Governor may determine, consist of three stipendiary magistrates who shall be appointed in that behalf";
- (b) in subsection three—
- (i) by omitting the first paragraph;
- (ii) in the second paragraph by omitting the words "For every other licensing district" and substituting therefor the words "For every licensing district other than the metropolitan, subject to the provisions of sections one hundred and forty-eight to one hundred and fifty-one, inclusive of the Justices Act, 1902";
- (iii) in the third paragraph by omitting the words "The senior police magistrate" and substituting therefor the words "The chairman of the bench of stipendiary magistrates";
- (c) in subsection seven by omitting paragraphs (a) and (b) and substituting therefor the words "Any two members thereof."

Amendment of s. 8,

30. Section eight of the same Act is amended by omitting the words "metropolitan police or stipendiary magistrates" and substituting therefor the words "members of the licensing court."

Amendment of s. 12,

31. Subsection three of section twelve of the same Act is amended by omitting the words "the chairman shall have (in addition to his original) a casting vote" and substituting therefor the words "the matter shall be adjourned to a meeting at which three members are present."Amendment of
s. 106,**32.** Section one hundred and six, subsection (i), is amended by adding at the end of the subsection the words "or before a court of petty sessions: Provided that a court of petty sessions shall not have jurisdiction in cases where the holder of a license is summoned to show cause why such license should not be cancelled, or in which the
court

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court might order a license to be cancelled or forfeited, or a licensee or any premises in respect of which a license has been granted, to be disqualified."

33. Section one hundred and seven is repealed.

Repeal of s. 107.

34. Section one hundred and eight is repealed and the following section substituted in its place:—

Repeal of s. 108.

108. (1) Any person aggrieved by any adjudication of a licensing court made under this Act, where such adjudication is not the refusal of a certificate for the grant, transfer, or removal of a license, or the cancellation or forfeiture of a license, or the refusal of a permit under section forty-nine or fifty, may appeal against such adjudication to a court of quarter sessions.

Appeals.

The provisions of Division Four of Part V of the Justices Act, 1902, or of any Act amending the same, relating to appeals from an order or conviction shall, save as hereinafter provided, apply, *mutatis mutandis*, to appeals under this section from any such adjudication.

(2) Any person appealing against the refusal of the renewal of a license shall, at the same time as he gives notice of his intention to appeal, lodge with the clerk of the licensing court a sum equal to the amount last paid as a fee for the license of the premises, together with a further sum of twenty pounds as security for costs.

Thereupon such premises shall be deemed to be licensed premises until the hearing of the appeal, subject to the payment of a proportionate part of the license fee for the time after the expiration of the former license.

If at such hearing the matter is determined against the appellant, the court shall apply the first-mentioned sum in paying the said proportionate part of the license fee, and shall refund the balance to the appellant.

(3) Where, during the pendency of such appeal, a vote of electors has been carried in favour of a reduction of licenses in the electorate in which the premises are situated, the license the subject of the appeal shall be dealt with by the special court constituted to determine the reduction to be made in the number of existing licenses, as if such license were in existence.