



ANNO SEXTO

VICTORIÆ REGINÆ.

No. 6.

By His Excellency GEORGE GREY Esquire Governor and Commander-in-Chief of Her Majesty's Province of South Australia and its Dependencies and Vice Admiral of the same by and with the advice and consent of the Legislative Council.

AN ACT for regulating summary Proceedings before Justices of the Peace.

WHEREAS it is expedient and necessary to make provision for regulating summary proceedings before Justices of the Peace in the cases and in the manner hereafter mentioned—

BE IT THEREFORE ENACTED BY HIS EXCELLENCY GEORGE GREY ESQUIRE Governor and Commander-in-Chief of Her Majesty's Province of South Australia and its Dependencies and Vice Admiral of the same by and with the advice and consent of the Legislative Council thereof—

Proceedings before Justices of the Peace in a summary way.

I. That from and after the passing of this Act in all cases wherein by any Act or Acts heretofore made and passed or hereafter to be made and passed any proceedings shall have been or shall be directed to be had or matter authorised to be heard and determined by or before one Justice or any two or more Justices in a summary way (and no particular mode or proceeding shall have been or shall be by any such Act directed in that behalf) it shall be lawful for any one Justice to receive the original information or complaint and to issue a summons or warrant requiring the parties and witnesses to appear before himself or before any one or more Justices as the case may require and upon the appearance of the defendant or his or her contempt

contempt by not appearing after having been duly summoned in manner hereinafter mentioned and after sufficient time for his or her appearance shall have been allowed it shall be lawful for such Justice or Justices (as the case may require) upon due proof on oath of the matters aforesaid to proceed and examine into and hear and determine the matter in a summary way and examine upon oath all necessary witnesses produced and give his or their judgment thereon and in case such Justice or Justices shall convict the defendant and award against him or her any fine or pecuniary penalty and he or she shall neglect to pay the same fine or penalty together with the costs and charges attending such conviction to be assessed and ascertained by the said Justice or Justices into the hands of the said convicting Justice or one of the said convicting Justices (in case there shall have been more than one such Justice) forthwith or within such time as the said Justice or Justices in their discretion may order not exceeding one week next after such conviction without any previous demand of such penalty other than the order of such Justice or Justices then it shall be lawful for such Justice or Justices or either of them or for any other Justice of the Peace upon proof made to him of such default in payment to cause such fine or penalty and costs and charges to be levied by distress and sale of the goods and chattels of the offender the overplus after deducting the charge of such distress and sale to be rendered to the said offender. Provided that if upon the return of the officer charged with the execution of the said distress it shall appear that no sufficient distress can be found or the party adjudged to pay any money shall at the time of the said adjudication or conviction declare that he or she has no goods or chattels on which the said distress can be levied then the convicting Justice or Justices or either of them or any other Justice of the Peace may by warrant commit such offender to one of Her Majesty's gaols there to remain and be imprisoned either simply or to be kept to hard labor in the discretion of the Magistrate for any time not exceeding the time hereinafter mentioned that is to say not exceeding seven clear days where the whole sum to be levied or remaining unpaid together with the costs shall not exceed ten shillings for a term not exceeding fourteen clear days where the said sum and costs shall not exceed one pound for a term not exceeding one calendar month where the said sum and costs shall not exceed five pounds and for a term not exceeding three calendar months where the said sum and costs shall be of any greater amount and may if he or she shall think fit direct that the offender shall be kept in separate confinement not exceeding one month unless the said sum to be levied together with the costs shall be sooner paid.

How penalties &c. to be levied distress and imprisonment.

Power to detain till return made to warrant of distress unless security be given &c.

II. And be it Enacted That it shall be lawful for such Justice or Justices at his or their discretion to order the offender so convicted to be kept and detained in safe custody until return shall be made to such warrant of distress unless such offender shall give sufficient security to the satisfaction of such Justice or Justices for his appearance before him or them on such day or days as shall be appointed for the return of such warrant of distress not being more than eight days

days from the time of taking such security and such security such Justice or Justices is and are hereby empowered to take by way of recognizance or otherwise as to him or them shall seem proper or in case it shall appear to the satisfaction of such Justice or Justices either by the confession of the offender or otherwise that he hath not goods or chattels within the jurisdiction of such Justice or Justices sufficient whereon to levy all such fines penalties or forfeitures costs and charges such Justice or Justices may at his or their discretion without issuing any warrant of distress commit the offender for such period of time and in such and like manner as if a warrant of distress had been issued and a *nulla bona* returned thereon.

III. And be it Enacted That all sums of money which any person is bound to pay under any recognizance taken for any appearance before a Magistrate and afterwards forfeited in case of non-payment thereof may be levied by such Magistrate having jurisdiction in the matter with costs by distress and sale of the goods and chattels of the person liable to pay the same by warrant under the hand of such Magistrate and the like proceedings may be had thereon as by this Act is directed for the recovery of any fine penalty or forfeiture.

Recognizances may be levied in like manner.

IV. And be it Enacted That in all cases in which no other mode of proceeding shall have been or shall be in that behalf provided the directing of any summons to any person whatsoever in the name or names by which he or she is or has been usually known whether the same be the real or the feigned or assumed name or names of such person and the leaving of such summons at his or her then or last usual place of abode or the affixing a copy thereof on one of the doors or some other conspicuous part of the outside of such abode (such service being proved on the oath of the person so serving such summons and it being also in like manner proved to the satisfaction of the sitting Justice or Justices at the hearing of the case that the person so serving such summons hath endeavoured to serve the same on the party personally but without effect and that he verily believes that such party hath kept out of the way to avoid such service) shall be deemed to be a legal and effectual service on such party as fully to all intents and purposes as if the same summons had been personally served on such party and as if the same had been directed in his or her proper and real names and that every summons may direct the party to appear either before the Justice or Justices issuing the same or before any one or more Justice or Justices generally as the case may require (without naming any Justice) Provided that such summons shall direct the party so to appear at a time and place certain to be named in such summons.

Service of summons.

V. And be it Enacted That in all cases in which any person shall be or is now entitled to appeal from any judgment or conviction of any Justice or Justices under or by virtue of any such Act as aforesaid then if such person (in case a pecuniary penalty shall have been awarded) shall pay into the hands of the convicting Justice or

To regulate appeals.

one of the convicting Justices (as the case may be) the full amount of such penalty together with the assessed costs and charges forthwith or within such time as the said Justice or Justices in their discretion may order not exceeding one week next after such conviction or (in case no pecuniary penalty shall have been awarded) shall forthwith or within such time as aforesaid after the date of such judgment or conviction had enter into a recognizance before the convicting Justice or Justices to the use of Her Majesty her heirs and successors with two sufficient sureties to be approved by such convicting Justice or Justices conditioned to prosecute such appeal with effect and to abide the event of the same appeal and to pay the full amount of all such costs as shall or may on such appeal be awarded against the appealing party and having entered into such recognizance shall give notice thereof and of his intention to appeal to the prosecuting party at least six days before the Sessions then it shall be lawful for such person to appeal from such judgment or conviction to the next General Sessions of the Peace (unless such Sessions shall be held within six days next ensuing and in that case to the General Sessions of the Peace next but one afterwards) Provided always that the convicting Justice or Justices at his or their discretion may within such time as aforesaid dispense with payment into Court of any such penalty costs and charges and allow an appeal on sufficient recognizances to his or their satisfaction and on such notice being given as aforesaid Provided also that the matter of every such appeal shall be heard and determined by the Justices assembled and meeting at a Court or adjourned Court of General Sessions of the Peace holden at such one of the places which shall or may be appointed for the holding of General Sessions of the Peace as shall happen to be the place (or nearest to the place) where the judgment or conviction appealed from shall have been had and the Justices at such Sessions so assembled shall hear and thereupon finally determine the matter of every such appeal in a summary way and their judgment thereon shall be final and conclusive to all intents and purposes and such Justices at such Sessions so assembled are upon such appeal hereby authorised to award in all cases such costs as to them shall appear proper to be paid by either party not exceeding in the whole the sum of ten pounds on any one appeal and in case the appeal shall be allowed and the conviction or judgment appealed from be quashed then (in cases where a pecuniary penalty was awarded) the whole amount of such penalty and of the costs and charges aforesaid shall be forthwith on demand returned to the party so appealing.

Repeal of terms of
appeal of Acts of
Council.

VI. And whereas by divers Acts of the Governor and Council of South Australia an appeal is allowed on terms and conditions other than as aforesaid which has been found to impede the beneficial operation of the said Acts Be it Enacted That no appeal shall be allowed from the decision of any Magistrate under any such Act except on the terms and conditions hereinbefore set forth anything in any such Act to the contrary notwithstanding.

VII. And

VII. And be it Enacted That if any person shall be summoned to appear as a witness to give evidence before any Justice or Justices touching any of the matters aforesaid and shall neglect to appear or shall refuse to give evidence at the time and place for that purpose appointed without a reasonable excuse for such neglect or refusal every such person shall for every such offence forfeit and pay a penalty or sum of not less than two pounds nor more than twenty pounds which said penalty shall and may be recoverable by proceeding before any one Justice of the Peace who is hereby authorised to hear and determine such offence in a summary way and shall be levied and be appropriated in the manner by this Act directed with respect to all other cases by this Act intended to be provided for.

Witnesses not appearing when summoned liable to a penalty of £2 to £20.

VIII. And be it Enacted That where the evidence of any person shall be required in any of the matters aforesaid or when such Justice or Justices shall have power only to make enquiry preliminary to a subsequent trial and it shall be proved upon oath to the satisfaction of any Justice or Justices that the person whose evidence is required has been duly summoned and wilfully neglects to appear or that such persons purposely keep out of the way to avoid being summoned it shall be lawful for such Justice or Justices to issue his or their warrant to any peace officer to apprehend and bring before him or them such person so wilfully neglecting to appear or so keeping out of the way as aforesaid and to detain him or her until he or she shall give his or her evidence and in case of a preliminary enquiry further to detain such person until he or she shall give security for his or her appearance as a witness in the court where the subsequent trial is to be heard.

Persons wilfully keeping out of the way to avoid giving evidence may be apprehended and detained.

IX. And be it Enacted That in all cases (except where a particular form of judgment or conviction shall have been or shall be by any Act directed to be used in that behalf) a judgment or conviction in the form or to the effect of the form (as the case shall happen to be) prescribed by the schedule to this Act annexed marked A shall be good valid and effectual to all intents and purposes whatsoever without setting forth or stating in any such conviction the name of any witness or the particular place where the offence was committed or whether the defendant appeared or was or was not summoned to appear and without setting forth any part of the evidence or stating the facts in any further or more particular manner than shall be necessary to show that the offence was one against the true intent and meaning of the Act creating such offence And no summary conviction whatsoever by any Justice or Justices of the Peace whether under this or any other Act and whether a particular form shall have been or shall be in that behalf directed or not shall be quashed in any case for any mere matter of form or technical error or mistake in any name or date or title or in any matter of description only but in all cases regard shall be had alone to the substantial merits and justice of the case.

Form of conviction.

X. And be it Enacted That no such conviction judgment award

No certiorari.

OR

or determination or adjudication made on appeal therefrom shall be removed by *certiorari* or otherwise into any of Her Majesty's Supreme Courts of Record in any case in which the convicting Justice or Court had jurisdiction in the subject matter.

Convictions to be transmitted to Quarter Sessions.

XI. And be it Enacted That every Justice before whom any offender shall be convicted shall transmit the conviction to the next Court of General Sessions of the Peace there to be kept by the proper officer among the records of the Court and in any subsequent proceeding relative to such conviction a copy thereof certified by the proper officer of the Court under his hand shall be sufficient evidence to prove such conviction and the conviction shall be presumed to have been unappealed against until the contrary be shewn.

Recognizances of persons surrendering those for whom they have become bail may be discharged.

XII. And whereas doubts have arisen as to the power of discharging the recognizances of persons who have become bail for the appearance of others to take their trial on any charge of felony or misdemeanor where the persons so becoming bail are desirous of surrendering the persons for whose appearance they may have so become bail Be it Enacted That in every case where the persons who may have become bail by recognizance for the appearance of any other person or persons as aforesaid or either of them shall prove upon oath to the satisfaction of the Justice or Justices before whom they entered into such recognizance that there is reasonable ground to believe that the person or persons for whose appearance the recognizance has been entered into will abscond and make default it shall be lawful for such Justice or Justices before the return of the recognizance to the Court in which the trial is to be had to receive from such bail or either of them the surrender of the person or persons for whose appearance bail has been so given and by warrant to commit the person or persons so surrendered to the common gaol there to await his or their trial in the same manner as if such bail had never been given and the said Justice or Justices shall return the said recognizance to the proper Court with a memorandum thereon that the same has been discharged by the surrender of the party for whose appearance it was entered into Provided always that such recognizance may be discharged and the party accused committed as aforesaid by the Supreme Court or by any Judge thereof in all cases where such Court shall see fit.

Distribution of penalties.

XIII. And be it Enacted That in all cases where by any Act a pecuniary penalty of uncertain amount shall have been or shall be imposed (that is to say) a penalty or sum of not less nor more than an amount in that behalf specified the amount of every such penalty (within the limits so prescribed) shall be in the discretion of the convicting Justice or Justices and that every penalty awarded by such Justice or Justices shall in all cases (except where otherwise provided by any such Act) and except where the informer or party prosecuting shall be examined as a witness go and be distributed one moiety thereof to the use of Her Majesty her heirs and successors for the public uses of this Province and the support of the Government thereof

thereof and the other moiety to the use of the informer or party prosecuting who shall also be in all cases entitled to his or her costs and charges over and above such penalty to be ascertained and assessed as aforesaid.

XIV. Provided that in order to discourage corrupt practices by common informers it shall be lawful for any one of the Justices before whom any conviction shall be had whether any share shall be directed to be paid to the informer by any Act or not to adjudge that no part or such part only of the penalty as he shall think fit shall be paid to the informer. For discouraging common informers.

XV. And be it Enacted That all suits for penalties and other proceedings which by any Act of Council of the Province shall or may be prosecuted or taken according to the provisions of the Act of Council passed in the third year of Her present Majesty's reign (No. 10) or any other law heretofore in force within the Province for regulating "Summary proceedings before Justices of the Peace" may in like manner be prosecuted or taken according to the provisions of this Act. As to proceedings under former Act.

GEORGE GREY,
Governor of South Australia.

*Passed the Legislative Council this Second }
day of November, One Thousand Eight }
Hundred and Forty-two.*

A. M. MUNDY,
Clerk of Council.

