



ANNO NONO

Georgii IV. Regis.

No. 3.

*AN ACT to regulate summary proceedings
before Justices of the Peace.*

WHEREAS inconveniences have arisen in summary proceedings before Justices of the Peace from the want of a general form of conviction and it is expedient to regulate all such proceedings in the manner hereinafter mentioned **BE IT THEREFORE ENACTED** by His Excellency Colonel **GEORGE ARTHUR** Lieutenant-Governor of Van Diemen's Land and its Dependencies with the advice of the Legislative Council 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 proceeding shall have been or shall be or is by this Act directed to be had or matters or matter authorised to be heard and determined by or before a Justice or by or before two or more Justices in a summary way (and no particular mode of proceeding shall have been or shall be by any such Act directed in that behalf) it shall be lawful for any one Justice upon an information in that behalf exhibited before him to summon all necessary parties and witnesses in the manner hereinafter mentioned and upon the appearance of the defendant or his or her contempt by not appearing such Justice or any two or more Justices (as the case may require) shall or may proceed to examine into and hear and determine the matter in a summary way and to

Proceedings before Justices

examine upon oath all witnesses produced therein and to 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 of and attending such conviction to be assessed and ascertained by the said Justice or Justices into the hands of the said convicting Justice or of one of the said convicting Justices (in case there shall have been more than one such Justice) within one week next after such conviction (without any previous demand of such penalty) then it shall be lawful for such Justice or Justices or either of them or for any other Justice of the Peace (at his or their discretion) 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 charges of such distress and sale to be rendered to the said offender; or such offender may by such convicting Justice or Justices or either of such Justices or by any other Justice of the Peace be committed by warrant to one of His Majesty's Gaols there to remain until payment of the full amount of such fine or penalty and costs and charges, of such offender may be proceeded against by both distress and sale and by such committal also (at the discretion of any such Justices or Justices until the whole of such penalty costs and charges shall be satisfied.

How penalties to be levied.

II.—AND BE IT FURTHER 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 on 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 but without effect and that there is reason to suspect and believe 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.

III.—AND BE IT FURTHER 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 (and no other mode of proceeding shall have been or shall be in that behalf provided) then if such person (in case a pecuniary penalty shall have been awarded) shall pay into the hands of the convicting Justice or one of the convicting Justices (as the case may be)

To regulate appeals.

the full amount of such penalty together with the assessed costs and charges within one week next after such conviction or (in case no pecuniary penalty shall have been awarded) shall within one week next after the date or time of such Judgment or conviction had enter into a bond to the convicting Justice or Justices to the use of His Majesty his 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 then it shall be lawful for such person to appeal from such judgment or conviction to the next General Quarter Sessions (unless such Sessions shall be held within six days next ensuing and in that case to the General Quarter Sessions next but one afterwards) *provided* 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 Quarter Sessions holden at such one of the places which shall or may be appointed for the holding of General Quarter Sessions 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 nor shall any writ of certiorari afterwards be allowed 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.

IV.—AND BE IT FURTHER ENACTED that if any person shall be summoned to appear as a witness to give evidence before any such Justice or Justices or before any Court of General or Quarter Sessions touching any of the matters aforesaid and shall neglect to appear at the time and place for that purpose appointed without a reasonable excuse for such neglect every such person shall for every such offence forfeit and pay a penalty or sum of not less than five pounds nor more than fifty pounds which said penalty shall or may be recovered 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 go and be distributed in the manner by this Act directed with respect to all other cases by this Act intended to be provided for.

Witnesses not appearing.

V.—AND BE IT FURTHER ENACTED that in all cases (except where a particular form of judgment or conviction shall have been or shall be by any such Act directed to be used in that behalf) a judgment or conviction in the form or to the effect of the form *mutatis mutandis* (as the case shall happen to be) prescribed by the schedule to this Act marked A shall be good valid and effectual to all intents and

Form of convictions.

purposes whatsoever without setting forth or stating in any such conviction the name of any informer or 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 or stating the evidence or 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 conviction whatsoever (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 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.

Distribution of penalties.

VI.—AND BE IT FURTHER ENACTED that in all cases where by any Act a pecuniary penalty of uncertain amount shall have been or shall be or is by this Act 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) go and be distributed one moiety thereof to the use of His Majesty 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.

GEORGE ARTHUR.

Passed the Council the
twelfth day of September
one thousand eight hun-
dred and twenty-eight.

JOHN MONTAGU, *Clerk of the Council.*

SCHEDULE A.

(Being the form of judgment or conviction by this Act referred to.)

Van Diemen's Land.—Be it remembered that on this
 day of 18 [Name] of [place] was duly convicted
 before me A. B. [or us] A. B. and C. D. one [or two or more as the
 case may be] of His Majesty's Justices of the Peace upon an Informa-
 tion in that behalf exhibited before [Name of the Justice or Justices]
 on the day of now last past; for that on the
 day of 18 [state the fact or offence in
 respect of which the judgment or conviction is had] and I [or we] do in
 pursuance of the Act in such case made and provided intituled [or made
 for] [state either the title or the principal subject of the Act]
 award order and adjudge that [set forth the adjudication and (if awarding
 a penalty) as follows] the said [Offender] do for such offence [where
 necessary add his (or her) second or third or subsequent offence as the
 case may be] forfeit and pay the sum of Pounds to go and
 be distributed as in and by the said Act [or if such Act shall not have
 specifically provided for any distribution of such penalty here state the
 title of the Act providing for such distribution] is provided besides the
 costs and charges of and attending this conviction, which said costs
 and charges I [or we] the said Justice [or Justices] do hereby ascertain
 and assess at the sum of

Given under my Hand and Seal [or our Hands and
 Seals] the day and year first above written.

