
JUSTICES ACT 1974

ANALYSIS.

- | | |
|---|---|
| <ol style="list-style-type: none"> 1. Short title, citation, and commencement. 2. Appointment of clerks, &c., of petty sessions. 3. Clerks of petty sessions. 4. Magistrate may discharge duties of the clerk of petty sessions. 5. Additional clerical assistance. 6. Time and place of sitting, &c., unrestricted. 7. Contempt. 8. Proceedings may be commenced by complaint. 9. Release by police officer.
Procedure on arrest.
Procedure on applications for bail and arrest of persons contravening orders for bail.
Arrest of principal by sureties.
Appeals in respect of bail. 10. Publication of accounts of certain proceedings. 11. Justice may summon witnesses to attend and give evidence. 12. Failure of witness to attend and give evidence. 13. Place of committal when defendant on remand. 14. Justices' record.
Adjournment of proceedings. 15. Summons or warrant may be issued against person indicted. 16. Procedure when brought before a justice. 17. Procedure on adjournment. 18. Bailing persons charged with indictable offences. 19. Committal of defendant. | <ol style="list-style-type: none"> Defendant pleading guilty. 20. Continuous bail. 21. Witnesses where no depositions taken. 22. Petty crimes triable summarily.
Other crimes triable summarily.
Attempts triable summarily.
Hearings under this Part.
Limitation excluded. 23. Procedure on arrest of defendant.
Procedure on adjournment.
Suspended sentence. 24. Provisions relating to time when terms of imprisonment take effect. 25. Rectification of certain orders. 26. Costs. 27. Provisions relating to time for payment of fines and enforcement of payment thereof.
Relief from terms of payment.
Scale of imprisonments. 28. Satisfaction of execution by payment. 29. Execution by civil process. 30. Amendments of Part XI.
Summary mode of reviewing decisions of justices.
Applicant limited to grounds to be stated in notice to review.
Interlocutory proceedings.
Powers of Supreme Court.
Hearings <i>de novo</i>.
Right of justices to show cause.
Affidavits. |
|---|---|

- | | |
|---|---|
| <p>Alternative appeals in certain cases.
Review by magistrate.</p> <p>31. Limitation of this Part.
Applications to justices for relief.</p> <p>32. Period pending review, &c.</p> | <p>33. Award of damages in certain cases.</p> <p>34. Recovery of stolen property.</p> <p>35. Appropriation of penalties.</p> <p>36. Rule committee and rules of procedure.</p> <p>37. Schedules.</p> <p>38. Consequential amendments.</p> |
|---|---|



JUSTICES

No. 108 of 1974

AN ACT to amend the Justices Act 1959 and to make consequential amendments to other Acts.

[24 January 1975]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1—(1) This Act may be cited as the *Justices Act 1974*.

(2) The *Justices Act 1959*, as subsequently amended, is in this Act referred to as the Principal Act.

(3) This Act shall commence on a day to be fixed by proclamation.

Short title,
citation, and
commencement.

Appointment
of clerks, &c.,
of petty
sessions.

2 Section 16A of the Principal Act is amended—

- (a) by omitting from subsection (1) the numeral “ 1923 ” and substituting therefor the numeral “ 1973 ”;
- (b) by omitting from that subsection the words “ a deputy clerk ” and substituting therefor the words “ one or more deputy clerks ”;
- (c) by omitting from subsection (2) the words “ subsection (1) of this section ” and substituting therefor the words “ that section ”; and
- (d) by omitting from that subsection all the words after the word “ positions ” to the end thereof and substituting therefor the words “ under this section, notwithstanding sections 25, 27, and 31 to 33 of the *Public Service Act* 1973 ”.

Clerks of
petty sessions.

3 Section 17 of the Principal Act is amended—

- (a) by inserting after subsection (1) the following subsection:—
“(1A) A person who holds the office of clerk of petty sessions by virtue of section 180 of the *Local Government Act* 1962 shall comply with the instructions of the Attorney-General with respect to the duties of his office.”; and
- (b) by omitting from subsection (3) the words “ his deputy ” and substituting therefor the words “ any of his deputies ”.

Magistrate may
discharge duties
of the clerk of
petty sessions.

4 Section 19 of the Principal Act is amended by omitting the words “ In a place appointed by the Governor for holding courts of petty sessions in a district where the office of clerk of petty sessions is vacant, or ” and substituting therefor the words “ In a district where the office of clerk of petty sessions is vacant or at a place ”.

5 After section 19 of the Principal Act the following section is inserted in Part IV:—

Additional
clerical
assistance.

“ 19A—(1) A magistrate may, subject to this section, when he sits in a district to which section 143 (1) (b) applies, have the clerical assistance of officers or temporary employees as defined in the *Public Service Act* 1973.

“(2) The provision of assistance under subsection (1) shall be made on the application of the corporation of the appropriate municipality and confirmed by the Secretary of the Attorney-General’s Department.

“(3) When a magistrate has assistance under subsection (1), the corporation shall pay into the Consolidated Revenue the Crown’s expenses of providing the assistance, including the part of that assistant’s salary attributable to the time he was away from his ordinary duties, as certified by the Secretary of the Attorney-General’s Department.”.

6 After section 23 of the Principal Act the following section is inserted:—

“ 23A Subject to any other provisions of this Act—

(a) all courts of summary jurisdiction;

(b) all justices examining into charges of indictable offences; and

(c) all justices dealing with bail or recognizances,

may sit and act at any time, including Sunday, and at any place.”.

Time and place
of sitting, &c.,
unrestricted.

7 Section 25 of the Principal Act is amended by omitting from subsection (1) the words “ three days, or may fine him a sum not exceeding forty dollars ” and substituting therefor the words “ 3 months or may fine him \$500 ”.

Contempt.

8 Section 27 of the Principal Act is amended—

(a) by omitting the word “ Except ” and substituting therefor the following words:—

“(1) Subject to subsections (2) and (3), and except ”; and

(b) by adding at the end thereof the following subsections:—

“(2) Where a person has been arrested without a warrant, oral information of the substance of the charge may take the place of a complaint up to the stage of the proceedings at which a complaint is needed for the person charged to plead to it.

“(3) A complaint of a breach of the *Criminal Code* may not be made by a person other than—

(a) a public officer;

(b) a person authorized or directed to make the complaint by the Crown or the Commonwealth; or

(c) an officer of a municipality or another statutory public or local authority,

acting in good faith in his official capacity, without the consent of the Crown Advocate, who shall satisfy himself

Proceedings
may be
commenced by
complaint.

by affidavit, statutory declaration, or otherwise that the complainant is acting in good faith and on reasonable grounds.”.

9 Sections 34, 35, and 36 of the Principal Act are repealed and the following sections are substituted therefor:—

Release by
police officer.

“ 34—(1) Where a person, other than a person arrested on warrant, has been taken into custody for a simple offence—

(a) an officer of police; or

(b) a police officer who is in charge, or has for the time being the charge, of a police office or police station,

shall thereupon inquire into the case and shall, unless he has reasonable ground for believing that such a course would not be desirable in the interests of justice, release that person from custody—

(c) on his undertaking to appear before justices at the day, time, and place specified in a notice handed to him when he is released; and

(d) on his depositing, if the officer of police or other police officer considers it desirable, a sum to be forfeited to the Crown if he fails to appear before justices at the day, time, and place specified in the receipt for the deposit, which sum shall be in accordance with subsection (3).

“(2) A person who contravenes or fails to comply with a notice under subsection (1) is guilty of an offence.

Penalty: 3 months’ imprisonment or \$500.

“(3) A sum for the purposes of subsection (1) (d) shall not be more than is, in the opinion of the officer of police or other police officer releasing a person pursuant to that subsection, sufficient to ensure that he will appear before justices as specified in the receipt for that sum.

“(4) Money deposited under subsection (1) (d) shall be paid to the clerk of petty sessions for the place specified in the receipt therefor and shall be dealt with as follows:—

(a) If the person appears as specified in the receipt, the money is payable to him, except that, where that person is convicted of the offence in respect of which he made the deposit, the clerk may—

(i) appropriate the deposit, or so much of it as is required, to pay on the person’s behalf any fine and costs payable on conviction and, if he makes such an appropriation, shall pay the balance thereof (if any) to him; or

- (ii) if the deposit is less than any fine and costs so payable, appropriate it in part payment thereof; or

(b) If the person does not so appear, the money is payable into the Consolidated Revenue.

“(5) A person whose deposit is payable into the Consolidated Revenue under subsection (4) (b) may—

(a) within two months after his failure to appear before justices; or

(b) within such further time as may be allowed by a court of petty sessions sitting at the place where the relevant clerk of petty sessions has his office,

show cause to that court why the deposit should be returned to him, and thereupon the court shall inquire into the circumstances of the case and, if it thinks fit, may order the return of the whole or any part of the deposit.

“(6) Where an order is made for the return of a deposit under subsection (5), the clerk of petty sessions shall—

(a) if the deposit is still in his hands, deal with it in accordance with the order; or

(b) if the deposit has been paid into the Consolidated Revenue, give the person entitled an order for the payment of the deposit or so much thereof as has been ordered to be returned, and the sum of money so specified shall be paid out of the Consolidated Revenue accordingly.

“34A—(1) Where a person has been taken into custody for an offence, he shall, unless he has been released under section 34, be brought before a justice as soon as is practicable after he has been taken into custody. Procedure on arrest.

“(2) Where a defendant is brought before a justice as provided in subsection (1), the justice shall first satisfy himself that there is alleged against the defendant an act or omission that would constitute an offence, and—

(a) if there is not, he shall release him; or

(b) if there is, he shall, except in a case to which section 67 applies, proceed as provided in section 35.

“35—(1) Subject to this section, where a defendant is brought before a justice pursuant to section 34A, he shall ask the defendant if he wishes to apply for bail and, if he so wishes, the justice— Procedure on applications for bail and arrest of persons contravening orders for bail.

(a) may refuse bail; or

(b) may admit him to bail.

“(2) Where a justice admits a person to bail under subsection (1), he may make orders related to bail, its commencement or termination, and the conduct of the defendant during the currency of bail.

“(3) Without limiting the generality of subsection (2), the orders that a justice may make under that subsection include orders—

- (a) that the defendant shall appear at every time and place to which, during the course of the proceedings, the hearing may be adjourned from time to time;
- (b) that the defendant shall not be released from custody until a suitable or specified person enters into a bond to secure the observance by the defendant of any one or more of those orders;
- (c) that the defendant shall not be released from custody until the happening of a future event;
- (d) directing the defendant to appear before justices at a specified day, time, and place; and
- (e) controlling the conduct of the defendant, requiring him to report at specified places at specified times, and limiting his movements and social intercourse.

“(4) An order made by a justice under subsection (2) may, on cause being shown, be varied by that justice or another justice.

“(5) Where a justice is empowered by this Act to admit a person to bail, he may make any of the orders that he is authorized to make by the foregoing provisions of this section.

“(6) A police officer who has reasonable grounds to believe that a defendant has contravened or failed to comply with an order under this section or is about to contravene such an order may arrest him and take him before a justice who may—

- (a) if he considers it necessary or desirable to do so, revoke the defendant's bail; and
- (b) remand him in custody there to be kept and produced to the justices at the day, time, and place specified in that order.

“(7) A person who contravenes or fails to comply with an order under this section is guilty of an offence.

Penalty: 3 months' imprisonment or \$500.

“ 36—(1) Where sureties are bound by a bond under section 35 (3) (b), the sureties— Arrest of principal by sureties.

(a) may apprehend their principal and bring him before justices who shall, on his being brought before them, remand him in custody; and

(b) may thereupon apply to those justices to release them from the bond.

“(2) A police officer who is requested by any sureties to assist them in apprehending their principal under this section shall do so.

“ 36A—(1) A person who is aggrieved by an order for bail made— Appeals in respect of bail.

(a) by a justice other than a magistrate may apply to a magistrate; or

(b) by a magistrate may apply to a judge,

and the magistrate or judge to whom the application is made may supersede the existing arrangements wholly or in part and make such order for bail as he thinks fit.

“(2) The decision of a judge on the hearing of an application under subsection (1) is final.

“(3) For the purposes of this section, a person shall be deemed capable of being aggrieved by an order for bail not only because of the making of the order but also because of a change in his circumstances after its making.

“(4) In this section, ‘ order for bail ’ means an order for the release of the person aggrieved on bail, and includes refusal to grant bail and refusal to vary an order for bail.

“(5) This section applies to a person released on bail by an officer of police or other police officer under section 34 as if what was done by the police officer had been done by a justice under section 34A.”.

10 After section 37 of the Principal Act the following section is inserted:—

“ 37A—(1) Notwithstanding anything in section 13 of the *Defamation Act* 1957, a person shall not publish or cause or allow to be published an account of the proceedings on an application in respect of bail, except an account giving the fact of the application and stating that an order has been made in respect thereof. Publication of accounts of certain proceedings.

Penalty: 3 months’ imprisonment or \$500.

“(2) Subsection (1) does not apply to—

- (a) a report of proceedings in the Supreme Court or before a judge that is written as a law report; or
- (b) the publication of an account of proceedings referred to in that subsection that is published after the final determination of the charge upon which the applicant was then held in custody.

“(3) Notwithstanding anything contained in any other Act, a person who unlawfully publishes or causes or allows to be published an account of proceedings before justices that is forbidden to be published (other than an account to which subsection (1) applies) is liable to the penalty prescribed by that subsection.”.

Justice may
summon wit-
nesses to
attend and
give evidence.

11 Section 41 of the Principal Act is amended by adding at the end thereof the following subsections:—

“(3) A person served with a summons issued under this section may, at any reasonable time before the time at which he is thereby required to appear, apply—

- (a) where the party responsible for the issue of the summons is a public officer, to a superintendent of police or a police officer who is in charge, or has for the time being the charge, of a police office or police station; and
- (b) in any other case, to the party responsible for the issue of the summons,

to advance him a reasonable sum towards his costs and expenses of attending, and the person applied to shall, subject to subsection (4), forthwith advance him that sum.

“(4) A person applied to under subsection (3) may—

- (a) if he is a public officer or an officer of the Commonwealth, arrange for a witness to use official transport to attend or return from the court; or
- (b) where it is reasonable to use public transport to attend or return from the court, provide a witness with a ticket or warrant enabling him so to travel,

in lieu of advancing the witness the costs and expenses of that travel.”.

12 Section 42 of the Principal Act is repealed and the following section is substituted therefor:—

Failure of
witness to
attend and
give evidence.

“ 42—(1) If a person summoned as a witness neglects or refuses to appear at the time and place appointed by the summons, and no sufficient excuse is offered for his neglect or refusal, then, after

proof that the summons was duly served on that person or had come to his knowledge, the justices before whom that person was summoned to appear, or one of them, may issue a warrant to bring and have that person, at a time and place to be therein specified, before such justices as are then there to testify in accordance with the summons.

“(2) When a person appears to testify as provided in subsection (1), the justices may, if they think fit, impose on that person a penalty of \$200, unless he shows sufficient excuse for not having appeared to testify at the time and place appointed by the summons.”.

13 Section 47 of the Principal Act is repealed and the following section is substituted therefor:—

“47 Where justices have power to remand a defendant in custody, they may, instead of committing him to a gaol, commit him to another place of security or to such other custody as they think fit.”.

Place of committal when defendant on remand.

14 After section 50 of the Principal Act the following sections are inserted in Part VI:—

“50A Justices before whom any proceedings subject to this Part take place shall take, or cause to be taken, a record of—

Justices' record.

- (a) the course of;
- (b) the evidence received in; and
- (c) their decision and orders in,

those proceedings.

“50B—(1) Any justice or justices may, after hearing the parties to any proceedings, adjourn those proceedings from the court in which they are being heard to another court.

Adjournment of proceedings.

“(2) A clerk of petty sessions shall, if a consent, in writing, to the adjournment of proceedings has been—

- (a) signed by the parties to the proceedings or their attorneys or agents; and
- (b) lodged with him at any time before the date set down for the hearing of the proceedings before a justice or justices in his district,

adjourn those proceedings from the court in which they have been set down for hearing to another court nominated by the parties.

“(3) Where, pursuant to subsection (2), a clerk of petty sessions adjourns proceedings to a court outside his district, he shall forward all necessary documents to the clerk of petty sessions for the district in which the court is situated.

“(4) The rules made under section 144 may provide for or with respect to matters incidental to the adjournment of proceedings under this section, including the continuation of bail and remand.”.

15 Section 52 of the Principal Act is repealed and the following section is substituted therefor:—

Summons or
warrant may be
issued against
person indicted.

“52 Where a certificate granted under section 51 is produced to a justice, he shall—

- (a) if the person producing the certificate requests him to do so, issue a summons to the person against whom the relevant indictment is filed, ordering him to appear before the Supreme Court at the day, time, and place specified in the summons and to be there dealt with; or
- (b) if no such request is made to the justice, issue his warrant to apprehend that last-mentioned person.”.

Procedure when
brought before
a justice.

16 Section 56A of the Principal Act is amended—

- (a) by omitting from subsection (1) the words beginning with the word “When” and ending with the word “shall—” and substituting therefor the following words:—

“When a person charged with an indictable offence is brought before justices, the justices shall, unless the defendant is represented by counsel—”;

- (b) by omitting subsection (6) and substituting therefor the following subsections:—

“(6) If the defendant pleads not guilty or cause to show, he shall be asked to choose one of the following courses:—

- (a) That he does not require any depositions of witnesses to be taken before justices;
- (b) That, while he does not dispute that an order for committal should be made, he requires the depositions of one or more witnesses to be taken; and
- (c) That he requires the depositions of witnesses to be taken before justices and proposes to dispute that an order for committal should be made.

“(6A) For the purposes of subsection (6), the taking of a deposition of a witness means—

- (a) the examination of the witness before justices;
- (b) the reduction to writing of the statement made by the witness as a result of that examination; and
- (c) the signature of that statement by the witness.”;

(c) by omitting subsection (8) and substituting therefor the following subsection:—

“(8) If the defendant, on being asked to make a choice under subsection (6), stands mute or does not make a definite choice, he shall be deemed to have made the requisition set forth in paragraph (c) of that subsection.”; and

(d) by adding at the end thereof the following subsection:—

“(10) A plea of guilty for the purposes of this section—

(a) shall be endorsed on the complaint; and

(b) shall be in the following form:—

“ I plead guilty to the offence of [*here state the indictable offence to which the defendant pleads guilty*].

Dated this day of 19 .”,

and the defendant shall sign the plea or shall affix his mark thereto, which mark shall be certified to by the justices.”.

17 Sections 58 and 59 of the Principal Act are repealed and the following section is substituted therefor:—

“ 58—(1) If for any reason the proceedings on a complaint of an indictable offence are adjourned, the justices shall— Procedure on adjournment.

(a) remand the defendant in custody, a justice issuing his warrant accordingly;

(b) admit the defendant to bail; or

(c) order the defendant orally to appear before justices at the time and place to which the proceedings are adjourned.

“(2) Where the defendant is remanded in custody, the justices shall inform the defendant, and the warrant for his remand shall provide that the defendant shall be so remanded for a period (not exceeding 8 clear days at any one time) and then be brought before justices as specified in the warrant.

“(3) Where the defendant is admitted to bail, the period for which he is bailed shall not without his consent exceed 30 days.

“(4) An order under subsection (1) (c) has the same effect as a summons in similar terms.”.

Bailing persons
charged with
indictable
offences.

18 Section 60 of the Principal Act is repealed.

19 Sections 62 and 63 of the Principal Act are repealed and the following sections are substituted therefor:—

Committal of
defendant.

“ 62 Where a defendant—

- (a) who has pleaded not guilty or cause to show has not disputed that an order for committal be made; or
- (b) has disputed that such an order be made, and the evidence, in the opinion of the justices, is sufficient to put the defendant on his trial for an indictable offence,

the justices shall order the defendant to be committed for his trial in the Supreme Court on a day during the next criminal sittings of that court, and in the meantime shall, by warrant, remand the defendant in custody, to be safely kept so remanded until he is delivered in due course of law or admitted to bail.

Defendant
pleading guilty.
Ibid., s. 83.

“ 63—(1) Where a defendant has pleaded guilty as provided in section 56A, the justices shall commit the defendant to the Supreme Court for sentence.

“(2) So far as they are applicable, all the provisions of this Act relating to committal for trial apply to committal for sentence, and bail may be similarly granted and witnesses be similarly bound to appear and give evidence, but there shall be added to the condition of the recognizance to give evidence a proviso that, if the defendant is sentenced without trial in respect of the offence of which he has pleaded guilty, the recognizance shall be void.

“(3) For the purposes of this section, the Supreme Court—

- (a) may be held by any judge, in accordance with section 6 (3) of the *Supreme Court Act* 1959, at any time, notwithstanding that no rule or order for the purpose has been made under section 11 of the *Supreme Court Act* 1887;

(b) has jurisdiction over the defendant so committed for sentence as if he had appeared and pleaded guilty to an indictment for the offence set forth in accordance with section 56A (10); and

(c) may, subject to subsection (5), proceed as is done at criminal sittings so as finally to dispose of the charge and all incidental matters.

“(4) For the purposes of this section, a defendant so committed shall be brought before the Supreme Court as soon as practicable not less than 14 days after his committal, and, if no judge is available or likely to be available at the place to which he is committed during that period, the Registrar of the Supreme Court shall arrange for him to be brought before the Supreme Court at Hobart or Launceston as soon as practicable.

“(5) If the defendant is sentenced to imprisonment, the judge by whom the defendant is sentenced shall issue a warrant of commitment, directing that the defendant shall be conveyed to a gaol to be named in the warrant and be there detained for such time as the warrant shall direct; and the sentence takes effect from the date of its signing, unless the judge otherwise directs.

“(6) If, upon being brought up for sentence the defendant withdraws his plea of guilty, the court, on application on behalf of the Attorney-General, may direct the defendant to be tried at a criminal sitting of the Supreme Court and, in the meantime, may remand him in custody, admit him to bail, or may make such other order in the matter as the court deems right or just.”.

20 Section 65 of the Principal Act is repealed and the following section is substituted therefor:—

“65 Where justices have admitted a person to bail in accordance with section 58 or section 63, the order made by the justices may require that person’s appearance at the time and place at which he is required to appear before the Supreme Court and at every time and place to which, during the course of the proceedings, the hearing may be adjourned from time to time.”.

Continuous
bail.
Ibid., s. 86A.

21 Section 69A of the Principal Act is amended by inserting therein, after the word “depositions” (first occurring), the words “, or only depositions of such of the witnesses as he specifies,”.

Witnesses
where no
depositions
taken.

22 Sections 71 and 72 of the Principal Act are repealed and the following sections are substituted therefor:—

Petty crimes
triable
summarily.

“71—(1) Where a person is brought before justices upon a complaint for an offence under one of the sections of the *Criminal Code* referred to in Schedule II in respect of property the value of which does not exceed \$100, the section creating the offence shall, unless the justices think that the offence should be heard on indictment, be deemed, subject to subsection (2), to have created a simple offence, and the complaint shall be dealt with accordingly.

“(2) An offence mentioned in subsection (1) may be tried and punished on indictment unless—

- (a) the person arraigned therefor has been convicted therefor;
- (b) a complaint against him therefor has been dismissed upon summary trial by virtue of that subsection; or
- (c) a complaint against him therefor has been dismissed under the *Probation of Offenders Act* 1973 or he has been released on probation under that Act on the hearing of proceedings relating to such an offence.

Other crimes
triable
summarily.

“72—(1) Where a person is brought before justices upon a complaint for an offence—

- (a) under a section of the *Criminal Code* referred to in Part I of Schedule III;
- (b) under a section of the *Criminal Code* referred to in Part II of that Schedule, in respect of property the value of which exceeds \$100 and does not exceed \$1 000;
- (c) under section 244 of the *Criminal Code*, except where it is alleged in the complaint that—
 - (i) in the circumstances in which the offence was committed, property to the value of more than \$1 000 was stolen; or
 - (ii) in the commission of the offence, the defendant intended to commit a crime other than stealing; or
- (d) under section 278 or section 279 of the *Criminal Code* in respect of a cheque for not more than \$1 000,

instead of asking him to plead under section 56A, the justices may, in the prescribed form of words or in words of like import, ask the defendant if he is willing to be tried by the justices instead of by jury and, if that person, or, if he is under the age of 16 years, his parent or guardian, does not object to his being tried by the justices, the section creating the offence shall be deemed to have created a simple offence and the complaint shall be dealt with accordingly, subject to the provisions of this section.

“(2) In a case to which subsection (1) applies, if the complainant, before the defendant is asked whether he objects to being tried by the justices, shows to the justices that the defendant is—

- (a) under committal to the Supreme Court for trial or sentence;
or
- (b) has been charged with an offence for which he may be so committed, the examination into which is pending or not concluded,

and requests that the procedure provided by this section shall not apply, the justices may proceed as if this section had not been enacted.

“72A—(1) An attempt to commit an offence mentioned in section 71 (1) or section 72 (1) is an offence triable and punishable in the same way as the offence attempted.

*Attempts triable summarily.
Cf. 22 Geo. V
No. 59, s. 34.*

“(2) On a complaint of an offence referred to in subsection (1), the defendant may, where the evidence so requires, be convicted of an attempt to commit the offence.

“(3) On a complaint of attempting to commit an offence referred to in subsection (1), the defendant may, where the evidence so requires, be convicted of the offence that he is alleged to have attempted to commit.

“72B—(1) Where a charge is heard and determined summarily under this Part—

Hearings under this Part.

- (a) the complaint shall be deemed good and sufficient for the purposes of Part VI; and

- (b) the defendant or any one of joint defendants may, if he is found not guilty of the offence with which he is charged, be convicted of any other offence of which he might be convicted on an indictment charging the same facts if it is established by the evidence to have been committed by him.

“(2) If, during the hearing of a charge to be determined under this Part, the justices consider for any reason that the charge should be heard on indictment, they shall—

- (a) if they have not convicted the defendant, either abandon the hearing and begin again in accordance with Part VII or complete it and convict or discharge the defendant and if they convict him commit him to the Supreme Court for sentence; or
- (b) if they have convicted the defendant, commit him to the Supreme Court for sentence.

“(3) Where a person has been committed for sentence after conviction as provided in subsection (2)—

- (a) section 63 applies as nearly as possible as if he had pleaded guilty when charged with his offence, but so that the conviction stands, unless it is subsequently quashed by the Supreme Court; and
- (b) the justices shall transmit to the Registrar of the Supreme Court a statement from the record made by them pursuant to section 50A containing particulars of the facts found by them, together with a report of their reasons for committing.

“(4) Upon conviction under this section, the defendant is, subject to section 76, liable—

- (a) except as provided in paragraph (b), to 12 months' imprisonment for a first offence and 3 years' imprisonment for a subsequent offence; and
- (b) for an offence under section 244 of the *Criminal Code*, to 3 years' imprisonment.

“72C Section 26 does not apply to complaints dealt with under this Part.”.

23 After section 74 of the Principal Act the following sections are inserted:—

“ 74A—(1) When a person charged with a simple offence appears before justices, the justices, if they are satisfied that there is alleged against that person an act or omission that would constitute an offence, shall, if he is not represented by counsel—

Procedure on
arrest of
defendant.

- (a) explain to him with what he is charged and in the prescribed form of words, or in words of like import, explain his rights and duties under this Act in respect of the charge; and
- (b) inform the defendant that he is entitled to an adjournment if he wants time to consider his course of action or to obtain legal advice.

“(2) Subject to subsection (1), when the defendant is brought before a court of summary jurisdiction on a charge of a simple offence, the justices or their clerk shall read the charge to the defendant and require him to plead that—

- (a) he is guilty of the offence charged or, with the consent of the justices and the prosecutor, of any other offence of which he might be convicted on the complaint;
- (b) he is not guilty;
- (c) further proceedings ought not to be had on the complaint; or
- (d) he has cause to show why he should not be convicted of the charge.

“(3) If the defendant, on being asked to plead, stands mute or does not answer directly to the charge, he shall be deemed to plead not guilty.

“ 74B—(1) If for any reason a complaint is not heard and determined on the day on which the defendant is first brought before a court of summary jurisdiction in respect of it and an adjournment is ordered, the court shall—

Procedure on
adjournment.

- (a) remand the defendant in custody, a justice issuing his warrant accordingly;
- (b) admit the defendant to bail; or
- (c) order the defendant orally to appear before a court of petty sessions at the time and place to which the proceedings are adjourned.

“(2) Where the defendant is remanded in custody, the court shall inform the defendant, and the warrant shall provide that the defendant shall be kept there for a period (not exceeding 14 clear days at any one time) and then be brought before a court of petty sessions as specified in the warrant.

“(3) Where the defendant is admitted to bail, the period for which he is bailed shall not without his consent exceed 30 days.

“(4) An order under subsection (1) (c) has the same effect as a summons in similar terms.

“(5) The provisions of this section apply in respect of any adjournment of the proceedings on a complaint of a simple offence.

Suspended
sentence.

Crim. Code,
ss. 386 (1) (d),
386A, 397c.

“74C—(1) Justices who have adjudged a person convicted to be imprisoned or to pay a sum of money for his offence may, upon such conditions as they think fit, suspend the execution of the sentence in whole or in part.

“(2) Where the execution of a sentence has been suspended upon condition under subsection (1), the Attorney-General or a police officer or probation officer may make complaint to a justice that the person mentioned in the complaint has broken a condition of the suspension.

“(3) Where a complaint is made to a justice under subsection (2), the justice—

- (a) may issue a summons to the person mentioned in the complaint to appear before justices; or
- (b) may, if the complaint is on oath, issue a warrant for the apprehension of the person summoned.

“(4) On the application of the person on whose complaint a summons was issued under subsection (3) (a), a justice may—

- (a) if he is satisfied that the summons will not be effective; and
- (b) before or after the time of appearance mentioned in the summons,

issue a warrant for the apprehension of the person summoned.

“(5) If on hearing a complaint under subsection (2) the court finds that a condition of suspension has been broken, it may order that—

- (a) the sentence shall take effect;
- (b) a sentence (in this section referred to as a ‘substituted sentence’) shall take effect in place of the suspended sentence; or

(c) the conditions on which the execution of the sentence was suspended shall be varied.

“(6) A substituted sentence may be a sentence of a fine or a term of imprisonment, or both, but—

(a) no term of imprisonment shall be imposed by the substituted sentence unless a term of imprisonment was imposed by the suspended sentence;

(b) no greater term of imprisonment shall be imposed by the substituted sentence than was imposed by the suspended sentence; and

(c) where the suspended sentence imposed a fine, no greater fine shall be imposed by the substituted sentence,

and the court may exercise in relation to a substituted sentence the powers conferred by subsection (1) as if it were the justices therein referred to.

“(7) Where under this section the conditions on which the execution of a sentence was suspended are varied, that sentence continues to have effect as if its execution was suspended on those conditions as so varied.

“(8) If as a result of an order under subsection (5) the person whose sentence has been suspended becomes liable to immediate imprisonment, one of the justices composing the court shall—

(a) if that person is not already in custody, issue his warrant for that person's arrest; and

(b) whether or not that person is already in custody, issue his warrant for the committal of that person to a gaol for the execution or further execution of his sentence.

“(9) Where at the time a person is received into a gaol under a warrant under subsection (8) he is otherwise liable to imprisonment, the execution or further execution of the sentence first in this section mentioned shall commence on the expiration of the period of imprisonment to which he is then otherwise liable.

“(10) Where a person whose sentence has been suspended under subsection (1) is tried on indictment or summarily for an offence that is or could be a breach of condition for the purposes of this section, the court of trial shall not take into account the possibility of proceedings under this section.

“(11) The rules made under section 144 for the purposes of this section shall provide for—

- (a) the clerk of petty sessions for the district in which a complaint is to be made under subsection (2) to have notice that the complaint will be made and to obtain the necessary papers from the clerk of petty sessions for the district in which the suspended sentence was given; and
- (b) the return of those papers with information of what happened on the complaint.”.

24 Section 75 of the Principal Act is repealed and the following section is substituted therefor:—

Provisions
relating to
time when terms
of imprisonment
take effect.
Cf. 10 Geo. V
No. 55, s. 113.

“75—(1) Subject to this section, a term of imprisonment imposed on a defendant by justices under this Act takes effect on and from the date of the execution of the warrant of commitment on the defendant.

“(2) Justices may order that a term of imprisonment imposed by them under this Act shall take effect on and from a date earlier than that specified in subsection (1).

“(3) Where justices impose a term of imprisonment under this Act on a defendant who is already under sentence of imprisonment, the justices may order that the imprisonment for the subsequent offence shall commence at the expiration of the term of imprisonment that the defendant is already undergoing or is liable to undergo.

“(4) Subsection (3) does not apply in relation to a sentence of imprisonment the execution of which is suspended; and, where the further execution of a sentence of imprisonment after a term is suspended, that subsection has effect in relation to that sentence as if it were a sentence for that term.”.

25 After section 76 of the Principal Act the following section is inserted:—

Rectification of
certain orders.
No. 11 of 1902
(W.A.),
s. 166b.

“76A—(1) Where the justices who convict a defendant—

- (a) impose a penalty that is contrary to the law;
- (b) fail to impose a penalty that is in conformity with the law; or
- (c) make an order that is based on, or contains, an error of fact,

they may, of their own motion or on the application of a party to the complaint, and after giving the parties an opportunity of being heard, amend the order made on the complaint and impose a penalty in accordance with the law or alter the order to conform with the facts, as the case may require.

“(2) In this section, ‘penalty’ includes a forfeiture, disqualification, and loss or suspension of a licence or privilege.

“(3) Nothing in this section affects the operation of Part XI.”.

26 Section 77 of the Principal Act is amended—

Costs.

- (a) by omitting from subsection (1) the words “such costs as to them seem just and reasonable” and substituting therefor the words “the whole or a specified proportion of his costs of and incidental to his complaint”;
- (b) by omitting from subsection (2) the words “such costs as to them seem just and reasonable” and substituting therefor the words “the whole or a specified proportion of his costs of and incidental to his defence”;
- (c) by omitting subsections (3) and (4) and substituting therefor the following subsections:—

“(3) Where costs are allowed under subsection (1) or subsection (2) they shall be assessed—

- (a) as to counsel’s fees by the justices; and
- (b) as to other matters by the clerk of petty sessions, who shall have regard in respect of witnesses’ expenses to the amount that has, or might, if the justices had been asked, have, been ordered under section 45 in respect of a witness.

“(4) An assessment of costs under subsection (3)—

- (a) shall be in writing;
- (b) shall be signed by the justices or the clerk of petty sessions, as the case may require;
- (c) shall be deemed to be part of the conviction or order of dismissal to which it relates; and
- (d) shall comply with such requirements (if any) as are prescribed by the rules made under section 144.”; and

- (d) by omitting subsection (6).

27 Sections 78 to 86 of the Principal Act are repealed and the following sections are substituted therefor:—

Provisions
relating to time
for payment of
fines and
enforcement of
payment
thereof.

“78—(1) Where a defendant has been adjudged to pay a sum of money, with or without costs, or for costs alone, the justices, in the conviction or order so adjudging—

(a) except as provided by subsection (2)—

(i) shall provide that payment shall not be required until such time as appears to them reasonable in the circumstances; and

(ii) may provide that payment shall be made by specified instalments at specified times, or at specified intervals, and that on default in payment of any instalment all outstanding instalments shall be paid forthwith; and

(b) shall specify the period of imprisonment to which the defendant is liable for non-payment of that sum of money (being a period calculated as provided in section 80).

“(2) The provisions of subsection (1) do not apply where—

(a) the justices, at the time of making the conviction or order and in the presence of the defendant, determine that for any special reasons (whether having regard to the gravity of the offence, to the character of the defendant, or to other special circumstances) it is expedient that the defendant should be refused time for payment and should be imprisoned without further inquiry in default of payment;

(b) the justices making the conviction or order are satisfied that the defendant is possessed of sufficient means to pay the sum forthwith; or

(c) the defendant, on being asked by the justices making the conviction or order whether he desires time for payment, does not express such a desire.

“(3) Where justices who have not proceeded under subsection (2) have omitted to grant a defendant time to pay a sum of money as required by subsection (1), the defendant shall be deemed to have been granted a period of 14 days within which to pay that sum and be liable to a period of imprisonment for non-payment thereof (being a period calculated as provided in section 80).

“(4) Where a defendant who, pursuant to this section, has been granted time to pay a sum of money fails to pay that sum within

the time required by the justices, the clerk of petty sessions may issue a warrant to apprehend the defendant and bring him before justices.

(5) Where a defendant against whom a warrant has been issued pursuant to subsection (4) fails to pay the sum of money in respect of which the warrant is issued and the prescribed costs of that warrant, the justices may, subject to subsection (6), on the defendant being brought before them—

- (a) grant him additional time to pay that sum and those costs;
- (b) direct that proceedings be taken against him under section 92A; or
- (c) issue a warrant of commitment of the defendant to gaol, to be imprisoned there for the period specified in the conviction or order pursuant to subsection (1) (b) or, with the defendant's consent, make a work order against him under section 11 (1) of the *Probation of Offenders Act* 1973.

“(6) A justice may, on the application of the clerk of petty sessions, issue a warrant of commitment of the defendant to gaol, to be imprisoned there for the period specified in the conviction or order pursuant to subsection (1) (b) if the defendant, having been granted additional time to pay a sum of money and costs pursuant to subsection (5) (a), fails to pay that sum and those costs within that time.

“(7) Where a justice does not grant an application for the issue of a warrant under subsection (6), he shall refer the matter to the Attorney-General.

“79—(1) Where payment is not immediately required under section 78, the defendant may, within the time before payment is required and upon notice to the complainant, apply to a court of petty sessions for an order that the time be extended for the whole or any part of the sum adjudged to be paid, and the court may, upon evidence as to the defendant's means and ability to comply with the original order, order that the time be extended and that—

Relief from
terms of
payment.

- (a) where payment by instalments has been directed or ordered, the provision for such payment be varied; or
- (b) where such payment has not been directed or ordered, the provision for payment be discharged and a provision for payment by instalments substituted.

“(2) Where an order is made under subsection (1), the original conviction or order is varied accordingly and where the court that

made the order under that subsection sat in another district than that in which the court that did or made the original conviction or order, the clerk of petty sessions for the one district shall forthwith inform the court of petty sessions for the other district of the making of the varying order by telephone, telegraph, or other quickest means and confirm the information by post.

“(3) Where the time when payment is required by the original conviction or order, as varied, if it had been varied, is past and payment has not been made as directed or ordered, the clerk of petty sessions may issue a warrant to apprehend the defendant as provided in section 78 (4).

“(4) Where payment has not been required immediately and also payment by instalments has been allowed, on default in the payment of any instalment the whole of the sum outstanding is presently payable as provided in the conviction or order and this section shall be complied with accordingly.

“(5) Where a court of petty sessions makes an order under subsection (1) varying the instalments payable by a defendant or providing for payment of instalments by a defendant, the clerk of petty sessions for the district shall forthwith give the defendant notice, in writing, of the variation or, as the case may be, of the instalments that are payable by him.

Scale of
imprisonments.

“80 Notwithstanding any enactment to the contrary in any Act, the period of imprisonment imposed by a court of summary jurisdiction under any Act on the non-payment of a sum of money (whether including costs or not, or for costs alone) that is adjudged to be paid by a conviction or order shall be such period as is fixed by a scale of imprisonments prescribed by rules made under section 144.”.

28 Sections 90 and 91 of the Principal Act are repealed and the following section is substituted therefor:—

Satisfaction
of execution
by payment.
Ibid., s. 126.

“90 When a person against whom there has been issued a warrant to apprehend or of committal under section 78—

(a) pays or tenders to the police officer charged with the execution of the warrant the sum mentioned in the warrant and the amount of the prescribed costs and charges of the warrant; or

(b) produces to the officer the receipt of the clerk of petty sessions for that sum and that amount,
the officer shall not execute the warrant.”.

29 Section 92A (2) of the Principal Act is amended by omitting therefrom the words “enforceable therein by the Crown” and substituting therefor the words “in favour of, and enforceable therein by, the clerk of petty sessions”. Execution by civil process.

30 Part XI of the Principal Act is amended—

Amendments of Part XI.

(a) by omitting the heading thereof and substituting therefor the following heading:—

“PART XI

“MOTIONS TO REVIEW, APPEALS, AND SIMILAR PROCEEDINGS”; and

(b) by omitting Divisions I and II thereof and substituting therefor the following Divisions:—

“*Division I—Motions to review to the Supreme Court and hearings de novo*

“107—(1) A person who is aggrieved by an order of justices may, upon notice in accordance with this section, move the Supreme Court to review that order. Summary mode of reviewing decisions of justices.

“(2) A notice of motion under this section—

(a) shall be known as a notice to review; and

(b) shall set forth in specific terms the ground on which review is sought.

“(3) An applicant under this section shall, within 14 days after the making of the order to be reviewed—

(a) file a notice to review in the Supreme Court; and

(b) serve a copy of that notice on—

(i) the person interested in upholding the order; and

(ii) the clerk to the justices making the order.

“(4) The grounds set forth in a notice to review shall allege—

(a) an error or mistake on the part of the justices on a matter or question of fact alone, or of law alone, or of both fact and law; or

(b) that the justices had no jurisdiction to make the relevant order.

“(5) A notice to review shall be made returnable on the prescribed day for the return of those notices that first occurs not less than 21 days after the making of the relevant order by the justices.

“(6) A judge in his discretion may, on an affidavit setting forth reasonable grounds, extend the time mentioned in subsection (3) at any time within that time or after it has expired.

Applicant limited to grounds to be stated in notice to review.

“108—(1) On the hearing of a motion made on notice to review, the applicant shall be held to the ground set forth in his notice to review unless the court, on such terms as to costs and otherwise as it thinks proper, allows amendment of the notice.

“(2) A notice to review may be amended under this section by adding new grounds and by striking out and amending existing grounds.

Interlocutory proceedings.

“109—(1) On the application of a person who has filed or been served with a notice to review, a judge may, *ex parte* or on summons to such parties as he requires or the rules or practice of the court require—

- (a) vary the return day of the notice to review;
 - (b) impose conditions as to costs and security to be complied with before the motion is heard;
 - (c) stay proceedings on the order or suspend the operation thereof *ab initio*; and
 - (d) admit the applicant for the review to bail,
- in his discretion and on such terms as to costs and otherwise as he thinks fit.

“(2) A clerk to justices who has been served with a notice to review shall forthwith deliver the notice to the justices who shall—

- (a) within 7 days of the delivery of the notice, cause to be transmitted to the Registrar of the Supreme Court the documents that are prescribed for that purpose (in this section referred to as ‘the prescribed documents’); and
- (b) take such steps as are necessary to preserve any tape recording of the proceedings to which the notice relates.

“(3) A party to a notice to review is entitled to obtain from—

- (a) the Registrar of the Supreme Court an office copy of the prescribed documents or any part thereof; and

- (b) the clerk to the justices, upon payment of the prescribed fee (if any), a transcript, or any portion thereof specified by the party, of the proceedings to which the notice relates, unless the clerk certifies that no record of the proceedings exists from which a transcript may be taken.

“(4) Subject to subsection (5), on the hearing of a motion to review, the Supreme Court shall have regard to the prescribed documents transmitted under subsection (2) and to such affidavits (if any) as have been filed that purport to set out material that was before the justices whose order is being reviewed.

“(5) The Supreme Court may have regard to the notes of evidence (if any) transmitted under subsection (2) so far as they are not contradicted on oath, by affidavit, or otherwise.

“110—(1) The Supreme Court shall be constituted by a single judge for the hearing of motions to review under section 107, but the judge may reserve the motion or any point arising thereon for the Full Court or direct the motion or any such point to be argued in the Full Court, and the Full Court has power to hear and determine any motion or point so reserved or directed to be argued. Powers of Supreme Court.

“(2) On the hearing of a motion to review, the court shall, upon consideration of the evidence and materials adduced and brought before the justices and such further evidence (if any) as it thinks fit, review the order so far as relates to the ground set forth in the notice to review, and thereupon may do all or any of the following things, namely:—

- (a) Dismiss the motion;
- (b) Confirm, vary, amend, rescind, set aside, or quash the order reviewed;
- (c) Remit the cause or matter to the justices by whom it was dealt with, either with or without any direction in law;
- (d) Order that the cause or matter be re-tried by a magistrate;

- (e) Prohibit the justices concerned, or any other person, from proceeding or further proceeding in respect of the order;
- (f) Amend or cause to be amended, on such terms as are just, any defect or error in any proceedings before the justices;
- (g) Make all such orders and cause all such proceedings to be had and taken as the court thinks necessary to secure a final determination of the cause or matter on the merits; and
- (h) Exercise, in addition to any other powers conferred by this section, any power which the court might exercise upon *certiorari*, *mandamus*, prohibition, or *habeas corpus*.

“(3) On the hearing of a motion to review, all such amendments shall be made under subsection (2) (f) as may be necessary for the purpose of determining the cause or matter on the merits.

Hearings
de novo

“111—(1) Notwithstanding anything contained in section 110 and subject to this section, a person who has filed, or has been served with, a notice to review may apply to the Supreme Court for an order that the complaint to which the notice relates be heard *de novo* and determined in the Supreme Court.

“(2) An application for an order under subsection (1) may be made on a return day fixed for the notice to review to which it relates or on summons on any day before that day and shall in any case, except with the consent of the respondent to the application, be made before the commencement of the hearing of the motion to review to which it relates.

“(3) No application for an order under subsection (1) shall be made in relation to a notice to review an order—

- (a) made *ex parte*, unless the applicant has first applied to set it aside;
- (b) made on the applicant's plea of guilty; or
- (c) made by two or more justices.

“(4) An order shall not be made under subsection (1) unless the court is satisfied that, having regard to all the circumstances, the interests of justice require that the complaint be reheard *de novo*.

“(5) Without limiting the generality of the provisions of subsection (4), the court may make an order under subsection (1), if—

- (a) there does not exist, or it is not practicable to bring into existence, any sufficient account of that part of the proceedings to which any ground set out in the notice to review relates;
- (b) at the hearing of the complaint the applicant was not represented by counsel and evidence available at that time amounting to a substantial ground of defence was not then adduced; or
- (c) the parties to the notice to review consent to the making of an order.

“(6) Upon the making of an order under subsection (1), the court—

- (a) may make such orders as to costs occasioned by the notice to review and the application as the court thinks fit;
- (b) may require security for the costs of the rehearing of the complaint to be given; and
- (c) may extend the operation of any order made on the notice to review or make any order that, but for the application, might have been made on the notice to review pursuant to paragraph (c) or paragraph (d) of section 109 (1).

“(7) Where a complaint is heard and determined *de novo* pursuant to this section, the court has all the powers of the justices at the original hearing of the complaint, and the orders and warrants of the court have the like effect, and are enforceable in the like manner, as if they were made or issued by the justices.

“(8) Notwithstanding anything contained in the foregoing provisions of this section, the court may, if it considers it expedient so to do, order that a complaint in

respect of which an application for an order under subsection (1) has been made shall be reheard by a magistrate and may exercise the powers referred to in subsection (6) on making such an order.

Right of
justices to
show cause.

“112—(1) Where a notice to review is served on the clerk to the justices pursuant to section 107 (3) (b) (ii), the justices may make and file in the Supreme Court without fee an affidavit setting forth—

(a) the grounds of the order sought to be reviewed;
and

(b) any facts that they consider to have a material bearing on the question at issue.

“(2) An affidavit under this section may be sworn before a justice, and sent by post to the Registrar of the Supreme Court for filing.

“(3) Where an affidavit is filed under this section, the court shall, before determining the matter so as to overrule, set aside, or vary the act or order of the justices, take into consideration the matters set forth in the affidavit, although no counsel appears on behalf of the justices.

Affidavits.

“113—(1) On the hearing of a motion to review, a party may not use an affidavit that has not been filed and a copy thereof delivered to every other party at least 48 hours before the motion is returnable, except by leave of the court, which may be granted on terms as to costs or otherwise.

“(2) This section does not apply to affidavits filed by justices under section 112.

“ Division II—Appeals to, and review by, magistrates

Alternative
appeals in
certain cases.

“113A—(1) A person who is aggrieved by an order made by a court of petty sessions (other than one constituted by a magistrate) may appeal to a magistrate as provided in this section.

“(2) An appellant shall, within 14 days after the making of the order to which the appeal relates, serve on the person concerned in upholding the order, and on the appropriate clerk of petty sessions, a notice of appeal setting forth the grounds of the appeal.

“(3) A clerk of petty sessions shall, on receipt of a notice of appeal, transmit a copy of the notice to the senior magistrate of the district in which the order appealed against was made.

“(4) The senior magistrate of a district in which an order appealed against was made shall cause to be given to the appellant or his attorney and to the person concerned in upholding the order or his attorney 14 days’ notice of the day on which, and the place at which, the appeal is to be heard.

“(5) An appeal under this section operates as a stay of execution of the order appealed against—

(a) in respect of the payment of money; and

(b) in respect of the imprisonment of the appellant, if a justice, in his discretion, admits the appellant to bail—

(i) with such surety or sureties as the justice may require; and

(ii) to appear on the appeal and at every time and place to which, during the course of the proceedings, the hearing may be from time to time adjourned.

“(6) Except as provided in subsection (5), a magistrate or any two justices may, on summons to the respondent, and on such terms and conditions as seem fit to him or them, stay any proceedings upon an order appealed against, or suspend its operation *ab initio*.

“(7) If an appellant proceeds under section 107, he shall be deemed to have waived his right of appeal under this section, and any proceedings taken by him under this section shall be deemed to be void, and the magistrate may order him to pay any other party’s costs occasioned by his appeal.

“(8) No appeal lies under this section against an order—

- (a) made on the appellant’s plea of guilty; or
- (b) against sentence only.

“(9) A magistrate may, on an affidavit setting forth reasonable grounds, enlarge the time for serving a notice of appeal or doing any act under subsection (5), either before or after the time has expired.

“(10) On an appeal under this section, the magistrate—

- (a) shall hear the appeal by way of re-hearing;
- (b) may at any time allow the grounds of appeal set forth in the notice of appeal to be amended on such terms as to costs or otherwise as the magistrate thinks fit;
- (c) may adjourn the hearing on terms, if he considers it proper to do so;
- (d) may exercise in relation to the appeal any power that might have been exercised by the justices against whose order the appeal is made; and
- (e) may confirm, reverse, mitigate, or vary the order of the justices appealed against or make such other order in the matter as he thinks fit.

Review by
magistrate.

“113B—(1) Subject to compliance with the provisions of the rules made under section 144, a person who is aggrieved by an order made by a court of petty sessions (other than one constituted by a magistrate) imposing a penalty on him for an offence or a breach of duty may apply to a magistrate to review that order.

“(2) On the hearing of an application under this section, the magistrate may—

- (a) if he is of opinion that the matter received by him from the original court is insufficient to enable him to review the order; or

(b) with the consent of the party who was the defendant in the original proceedings, proceed as if the applicant was then and there appearing before him on the first hearing of the relevant complaint and had pleaded guilty to the matter of complaint contained therein.

“(3) Upon the hearing of an application under this section—

(a) the magistrate may exercise any of the powers contained in paragraphs (a), (b), (f), and (g) of section 110 (2); and

(b) the provisions of section 111 (7) apply, with the necessary modifications, to the hearing of an application under this section.

“(4) The receipt by an original court of an application under this section operates as a suspension *ab initio* of the order to be reviewed, except in so far as that order imposes a term of imprisonment on the applicant.

“(5) Notwithstanding anything contained in subsection (4), a justice may grant bail to an applicant under this section for any period not exceeding 28 days if, in the opinion of the justice, adequate measures can be taken to secure the attendance of the applicant at the hearing of the application.”.

31 Section 117 of the Principal Act is repealed and the following sections are substituted therefor:—

“117 An order committing a defendant for trial is not subject to review or appeal under this Part.

Limitation of this Part.
Ibid., s. 162 (2).

“117A—(1) A person who is aggrieved by an order of justices may—

Applications to justices for relief.

(a) forthwith after the making of the order or within such further time thereafter as the justices allow; and

(b) on giving notice in the prescribed form of his intention to file a notice of review under section 107,

apply to the justices for relief as provided in this section.

“(2) On an application under this section, the justices may, in their discretion and on such terms as to costs and otherwise as they think fit, grant the application by—

(a) staying proceedings on the order to which the application relates or suspending the operation thereof *ab initio*; and

(b) admitting the applicant to bail,

for a period not exceeding 28 days after the date of the making of the order.”.

32 After section 121 of the Principal Act the following section is inserted:—

Period pending
review, &c.

“121A—(1) A person who is sentenced to a term of imprisonment by the order of justices and who is required to be treated in the same manner as a person awaiting trial may, except in respect of a period in which he is otherwise liable to undergo imprisonment for a crime or simple offence, elect (subject to the grant of any application for bail) between continuing to undergo his sentence or being treated in the same manner as a person awaiting trial.

“(2) The time during which a person is treated as a person awaiting trial under subsection (1) or is liberated on bail shall not count as part of that person’s imprisonment under the order in respect of which he is so treated or liberated.

“(3) If a person whose period of imprisonment is not running as provided in subsection (2) does not prosecute his motion to review or appeal, he may—

(a) if in prison, notify his gaoler that he elects to continue to undergo his sentence; or

(b) if on bail, surrender to his gaoler,
and in either case his gaoler shall make the prescribed declaration and resume the execution of the imprisonment originally ordered.”.

Award of
damages in
certain cases.

33 Section 140 of the Principal Act is amended—

(a) by omitting subsections (1) and (2) and substituting therefor the following subsections:—

“(1) The complainant or prosecutor of an offence—

(a) triable summarily under Part VIII; or

(b) against section 15A, section 24A, Part III, Part IV, Part IVA, or section 42 of the *Police Offences Act 1935*,

may, with the written consent of a person who has suffered loss or damage through or by means of the offence (in this section referred to as 'the civil party'), claim, in respect of that loss or damage, the recovery of money due from, or damages against, the person who committed the offence.

"(1A) The civil party may, with the leave of the court, withdraw his consent to the making of a claim under subsection (1) at any time before the court makes a final order with respect to the claim.

"(2) Where a claim is made under subsection (1) in respect of the making of which the civil party has not withdrawn his consent as provided in subsection (1A) and the defendant concerned is or has been convicted of the offence, the court, subject to this section, may, in respect of the loss or damage to which the claim relates—

(a) adjudge that the civil party shall recover, with or without costs, from that defendant the amount of any money due to him from the defendant or a sum by way of damages, or both (in this subsection referred to as 'the prescribed moneys'); and

(b) order that any money taken from the defendant on his apprehension for the offence—

(i) shall be applied, in whole or in part, in satisfaction of the prescribed moneys adjudged to be recovered by the civil party; or

(ii) shall, if there are more civil parties than one and the money so taken is not sufficient to satisfy the prescribed moneys adjudged to be recovered by those parties, be applied in the same proportion as the prescribed moneys awarded to each civil party.

"(2A) A sum by way of damages adjudged to be recovered against a defendant under subsection (2) may include the whole or part of the costs or expenses incurred in or about the prosecution and conviction for the offence of which the defendant is convicted.

“(2B) The total amount (exclusive of costs) that a civil party may be adjudged to recover under this section on any claim made thereunder shall not exceed—

(a) \$3 000, if a magistrate constitutes, or is a member of, the court; or

(b) \$200, in any other case.”;

(b) by omitting from subsection (3) the words “for damages”;

(c) by inserting after subsection (4) the following subsections:—

“(4A) Where the damages claimed under this section exceed \$200 and the court that convicts the defendant is not constituted by a magistrate, the claim shall be adjourned as provided in subsection (4).

“(4B) Where a claim for damages in excess of \$200 is adjourned under subsection (4), it shall be adjourned to a time and place when it can be heard by a magistrate, and a magistrate alone has jurisdiction to assess and adjudge the damages claimed.”;

(d) by inserting in subsection (5), after the word “complainant”, the words “or prosecutor”;

(e) by omitting subsection (6) and substituting therefor the following subsections:—

“(6) If a claim is made under this section—

(a) the civil party is bound by the finding thereon and the order of the court is a bar to any civil proceeding by him against the person who committed the offence in respect of the loss or damage in respect of which the claim is made; and

(b) that order is a bar to any civil proceeding by any person other than the civil party claiming any right, title, or interest in the money subject to the order.

“(6A) Where the court under this section adjudges that the civil party shall recover from the defendant convicted of the offence the amount of any money due to him from the defendant so convicted, it may include in its judgment, by way of damages, an amount of interest running from the date of commission of the offence until

payment of the amount so recoverable; and the amount of that interest shall be disregarded for the purposes of subsection (2B)."; and

(f) by adding, at the end thereof, the following subsections:—

"(9) If for any reason a claim which might have been made under subsection (1) was not made as provided in subsection (3), the person on whose behalf the claim might have been made may, within one month after the conviction, obtain a justice's summons for the appearance of the defendant before a court of summary jurisdiction to answer the claim, which shall be specified in the summons.

"(10) On the return of a summons under subsection (9), the claim shall be heard by such justices as may then be there as if they were the court that convicted the defendant and evidence may be given by affidavit or otherwise of the proceedings between the complainant and the defendant."

34 After section 140 of the Principal Act the following section is inserted:—

"140A—(1) The person (in this section referred to as 'the civil party') who claims to be the owner of property alleged to have been—

Recovery of
stolen property.
Cf. *Criminal
Code*, s. 424.

(a) stolen in the commission of a crime referred to in section 424 (1) of the *Criminal Code*, other than a crime referred to in subsection (3) (c) thereof; or

(b) obtained in the commission of a crime under the provisions of section 250 of the *Criminal Code*,

where the crime is triable summarily under Part VIII, may, in the proceedings in respect of that offence, claim and obtain restitution of that property as nearly as possible in the same manner as a person may, pursuant to section 140, claim the recovery of money due by reason of an offence.

"(2) In proceedings under this section a court of petty sessions may, if the defendant is convicted, adjudge that the civil party shall recover the property appearing from the conviction to have been taken out of the possession of the civil party or his predecessor in title.

"(3) Where an order is made for the restitution of stolen property under this section and it appears to a court of petty sessions that the person convicted has sold the property to a pur-

chaser who did not know that it was stolen, that court may, upon the application of the purchaser, make an order under section 140.

“(4) The provisions of this section do not apply—

- (a) by reason only of the conviction, to goods as defined by the *Sale of Goods Act* 1896 that have been obtained by means not amounting to actual stealing; or
- (b) to a valuable security that has been in good faith paid or discharged by some person liable to the payment thereof, or, being a negotiable instrument, has been in good faith taken or received by transfer or delivery by some person for a just and valuable consideration without notice, or without reasonable cause to suspect, that the instrument was stolen.”.

Appropriation
of penalties.

35 Section 143 of the Principal Act is amended—

- (a) by omitting from subsection (1) the words “and (3)” and substituting therefor the words “, (3), and (3A)”;
- (b) by omitting from that subsection the words “offences committed” and substituting therefor the words “complaints heard”;
- (c) by omitting from paragraph (b) of that subsection the word “elsewhere” and substituting therefor the words “within any other municipality”; and
- (d) by inserting, after subsection (3), the following subsection:—

“(3A) Notwithstanding anything contained in subsection (1), fees incidental to complaints of simple offences and recoverable on conviction thereof are payable as provided in the rules made under section 144.”.

Rule committee
and rules of
procedure.

36 Section 144 of the Principal Act is amended—

- (a) by omitting from subsection (1) the words “appoint a rule committee for courts of summary jurisdiction, and may, on the advice of the rule committee,”;
- (b) by omitting subsections (2) and (3);
- (c) by inserting after paragraph (c) of subsection (4) the following paragraphs:—

- “(ca) the simple offences and breaches of duty in respect of which a defendant who is served with a summons to answer a complaint of such an offence or breach is, on filing a plea of guilty to the charge in the complaint, not required to appear as summoned;
- “(cb) the practice and procedure relating to the filing of pleas of guilty by defendants to complaints of simple offences and breaches of duty prescribed for the purposes of paragraph (ca);
- “(cc) the—
- (i) issue of summonses to defendants who are charged with simple offences and breaches of duty to appear; and
 - (ii) admitting to bail of defendants who are so charged, on condition that they appear,
- before justices for the taking of pleas only;”;
- (d) by renumbering paragraph (ca) (second occurring) of that subsection as paragraph (cd) and by omitting from that paragraph (as so renumbered) the words “recognizance of bail” and substituting therefor the words “admission to bail, and the taking at such a hearing of the complaint as admitted, but with a right in the defendant to have the conviction or order then made vacated and the complaint reheard, except where he has filed a plea of guilty before the hearing”;
- (e) by adding at the end of paragraph (f) of that subsection the words “, including fees for service and execution of process, including service by post”;
- (f) by omitting the word “and” at the end of that paragraph; and
- (g) by inserting after that paragraph the following paragraphs and word:—
- “(fa) the travelling and other expenses payable to witnesses under this Act and the advances (whether periodical or otherwise) that may be made to those witnesses on account of those expenses;

“(fb) the practice and procedure relating to appeals to magistrates, and reviews of orders by magistrates, under this Act and the fees, costs, and charges payable in respect of those appeals and reviews; and ”.

Schedules.

37 The Second Schedule to the Principal Act is repealed and the following Schedules are substituted therefor:—

“ SCHEDULE II

(Section 71)

Sections of the *Criminal Code*

234, 237, 239, 250, 252, 253, 258

“ SCHEDULE III

(Section 72)

Sections of the *Criminal Code*

PART I

106, 107, 108, 109, 113

PART II

234, 237, 239, 250, 252, 253, 258 ”.

Consequential amendments.

38—(1) The sections of the Principal Act referred to in the first column of Part I of the Schedule are amended as respectively set forth in the second column of that Part.

(2) The Acts that are specified in Part II of the Schedule are amended as respectively specified in that Part.

SCHEDULE

(Section 38)

PART I

Section	How amended
3	<p>(a) By omitting from subsection (1) the definitions of “magistrate” and “order” and substituting therefor the following definition:—</p> <p>“ ‘magistrate’ means a magistrate within the meaning of the <i>Magistrates Act</i> 1969; ”; and</p> <p>(b) By omitting from that subsection the definition of “police magistrate ”.</p>

Section	How amended
17	By omitting from subsection (1) (c) the word "police".
19	By omitting from subsection (1) the word "police" (wherever occurring).
20	By omitting from subsections (1) and (2) the word "police" (wherever occurring).
21	By omitting from subsections (1) and (2) the word "police" (wherever occurring).
22	By omitting therefrom the word "police" (wherever occurring).
23	By omitting from paragraph (c) the word "police".
45	By omitting subsection (5).
56A	<p>(a) By omitting from subsection (2) the words "examining justice shall cause his" and substituting therefor the words "justices shall cause their"; and</p> <p>(b) By omitting from subsections (3) (a), (4), and (9) the word "justice" (wherever occurring) and substituting therefor, in each case, the word "justices".</p>
57	By omitting from subsection (1) the words "to which section 56A applies and".
64	By inserting before the words "a capital" the words "treason, murder, or".
88	<p>(a) By omitting the words "commitment—</p> <p>(a) for non-payment of a sum of money (whether including costs or not, or for costs alone); or</p> <p>(b) in default of sufficient goods and chattels whereon to levy a sum of money,"</p> <p>and substituting therefor the words "commitment for non-payment of a sum of money (whether including costs or not, or for costs alone)";</p> <p>(b) By omitting the word "either"; and</p> <p>(c) By omitting the words "or by the net proceeds of the distress,".</p>
89	By omitting from subsection (1) the words ", or where, in default of sufficient goods and chattels, a person is imprisoned in respect of any such sum,".
120	By omitting therefrom the words "or amendment thereof" (wherever occurring).
122	By omitting from subsection (1) the words "discharge the person upon his recognizance" and substituting therefor the words "grant the person bail".

PART II

CONSEQUENTIAL AMENDMENTS OF OTHER ACTS

Acts Interpretation Act 1931

(22 Geo. V No. 59)

Section 38 is amended—

- (a) by omitting therefrom the words “*Justices Procedure Act 1919*” (wherever occurring) and substituting therefor, in each case, the words “*Justices Act 1959*”; and
- (b) by omitting from subsection (2) the words “or by imprisonment exceeding two years”.

Evidence Act 1910

(1 Geo. V No. 20)

1 Section 58 (1) is amended—

- (a) by omitting therefrom the words “‘Police Magistrate’ or the letters ‘P.M.’” and substituting therefor the word “‘Magistrate’”; and
- (b) by omitting therefrom the word “police”.

2 Section 87 (3) is amended by omitting therefrom the word “police”.

3 Section 88 (5) is amended by omitting therefrom the word “police”.

4 After section 103 of the Principal Act the following section is inserted:—

“103A The court may forbid the publication of—

- (a) any evidence given in court;
- (b) any argument addressed to the court; or
- (c) particulars of that evidence or argument,

in a case before the court, if it is of the opinion that the printing or publication of the evidence, argument, or particulars will prejudice, or be likely to prejudice, the fair trial of the case.”.

5 Section 104 of the Principal Act is repealed and the following section is substituted therefor:—

“104—(1) No person shall print or publish—

- (a) any question that the court—

- (i) has, under the provisions of section 103, forbidden or disallowed; or

- (ii) has informed the witness that he is not obliged to answer, and has ordered shall not be published; or

- (b) any evidence, argument, or particulars of any evidence or argument that the court has, under the provisions of section 103A, forbidden to be published.

Court may
forbid
publication of
certain
evidence, &c.

Prohibited
questions and
evidence, &c.,
not to be
published.

“(2) A person who prints or publishes anything in breach of this section commits a contempt of court, and is liable to punishment for that contempt as if it had been committed in the face of the court against which the contempt is committed and on similar proceedings as in that last-mentioned case.”.

6 Section 121 (1) is amended by omitting therefrom the word “ police ” (wherever occurring).

Traffic Act 1925
(16 Geo. V No. 38)

Section 34 is repealed.