JUSTICES ACT, 1921-1936.

BEING

JUSTICES ACT, 1921, No. 1479 OF 1921 [ASSENTED TO 7TH DECEMBER, 1921.]

AS AMENDED BY

JUSTICES ACT AMENDMENT ACT, 1923, No. 1573 OF 1923 [ASSENTED TO 21ST NOVEMBER, 1923.]

JUSTICES ACT, 1931, No. 2051 OF 1931 [ASSENTED TO 9TH DECEMBER, 1931.]

CRIMINAL LAW CONSOLIDATION ACT, 1935, No. 2252 OF 1935 [ASSENTED TO 21ST DECEMBER, 1935.]

AND

JUSTICES ACT AMENDMENT ACT, 1936, No. 2261 OF 1936 [ASSENTED TO 23RD JULY, 1936.]

An Act to consolidate and amend certain statutes relating to justices of the peace.

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART I.

PART I.

INTRODUCTORY.

Short title.

1. This Act may be cited as the "Justices Act, 1921-1936."

Commencement of Act.

2. This Act shall come into operation on a day to be fixed by proclamation.

Division of Act.

3. This Act is divided into Parts and Divisions as follows:—

PART I.—Introductory (sections 1 to 9).

PART II.—Justices (sections 10 to 19).

PART III.—General Procedure (sections 20 to 41).

PART IV.—Summary Jurisdiction—

DIVISION I.—Courts of summary jurisdiction (sections 42 to 48):

s. 2. This Act was proclaimed to commence on 26th July, 1922: *Gazette* 29th June, 1922, p. 1575.

DIVISION II.—The complaint and the proceedings thereon (sections 49 to 60):

DIVISION III.—The hearing (sections 61 to 69):

DIVISION IV.—The judgment (sections 70 to 76):

DIVISION V.—Costs (sections 77 to 79):

DIVISION VI.—Execution (sections 80 to 98):

DIVISION VII.—Sureties to keep the peace (sections 99 and 100).

PART V.—Indictable Offences—

DIVISION I.—Procedure to committal (sections 101 to 119):

DIVISION II.—Minor offences (sections 120 to 133):

DIVISION III.—Committal for sentence (sections 134 to 142):

DIVISION IV.—Bail (sections 143 to 150):

DIVISION V.—Miscellaneous (sections 151 to 161):

PART VI.—Appeals from courts of summary jurisdiction (sections 162 to 180).

PART VII.—Supplementary Provisions (sections 181 to 203).

Interpretation.

Cf. U.K. 42 & 43 Vict. c. 49, s. 49.

4. In this Act, unless inconsistent with the context—

"clerk" means clerk appointed by or under section 42:

"complaint" includes a charge of a minor indictable offence, if, and when, a court of summary jurisdiction proceeds to dispose of such charge summarily:

"court of summary jurisdiction" or "court" means justices forming a court for the purposes of hearing and adjudicating upon any case or matter which they have power to determine in a summary manner, and whether they are acting under this Act, or under any other Act incorporated herewith, or by virtue of their commissions, or under the common law:

"defendant" means person charged with any offence or against whom relief is sought:

"fine" includes any pecuniary penalty or pecuniary forfeiture or pecuniary compensation payable under a conviction:

"gaol" includes any prison or other place in which imprisonment or detention is authorised by law according to the circumstances of the case:

"guardian" in relation to a child includes any person who, in the opinion of the justices having cognizance of any case in which a child is concerned, has, for the time being, the charge of, or control over, such child:

Cf. U.K. 20 & 21 Vict. c. 43, s. 12.

"justice" means justice of the peace for the State of South Australia, and includes any magistrate, by whatever name called, who is authorised to act as a justice of the peace in and for the said State:

"justices" includes a special magistrate or any other single justice, where a special magistrate or one justice (as the case may be) has jurisdiction or authority to act in relation to the matter in question:

"keeper of a gaol" includes any superintendent, keeper, or other chief officer of a gaol:

"minor indictable offence" means indictable offence, which is capable of being, and is, in the opinion of the justice before whom the case comes, fit to be, heard and determined in a summary way under the provisions of Division II. of Part V. of this Act:

"simple offence" means offence or act for which a person is liable by law, upon a summary conviction for the same before a justice or justices, to be imprisoned or fined or both or to be otherwise punished; but does not include an indictable offence which can only be heard and determined in a summary way as a minor indictable offence:

"Special Act" means statute, rule, regulation, or by-law authorising the making of the conviction or order, or the determination or adjudication in question, or otherwise specially applicable to the case:

"sum adjudged to be paid by a conviction" and "sum adjudged to be paid by an order" respectively include any costs adjudged to be paid by the conviction or order (as the case may be) of which the amount is ascertained by such conviction or order:

In Division IV. of Part V. "for trial" in relation to "committal for trial" includes "to appear for sentence."

Interpretation with respect to powers conferred upon a single Justice.

5. Every power in this Act expressed to be exercisable by a single justice may be exercised by any two or more justices acting together; or in the case of justices sitting as a court, by any two or more justices constituting a majority of such court, and the provisions of this Act conferring powers upon a single justice and referring thereto shall be read accordingly.

Powers of Supreme Court may be exercised by a Judge in Chambers.

6. The authority and jurisdiction by this Act vested in the Supreme Court may, subject to any rules or orders of such Court in relation thereto, be exercised by a Judge of such Court sitting in court or in chambers.

Powers conferred by this Act to be in amplification of powers existing by law unless inconsistent with this Act.

7. Nothing in this Act shall be construed to diminish or take away any power or authority conferred upon any justice by any other Act or otherwise existing at law, except in so far as the provisions of this Act are inconsistent with the existence or exercise of such power or authority.

Repeal and saving clause.

8. (1) The Acts mentioned in the first schedule hereto are, to the extent therein expressed, hereby repealed.

(2) All proceedings initiated before the commencement of this Act shall be carried on as far as practicable according to the provisions of this Act and, subject thereto, according to the provisions of the said Acts.

(3) All persons lawfully in custody or bound by recognizances, at the time of the commencement of this Act, under the provisions of any Act hereby repealed, shall be deemed to be in lawful custody or to be so bound as aforesaid under the provisions of this Act, and may be dealt with accordingly.

(4) In all cases where, prior to the commencement of this Act, notice has been given of intention to appeal to a local court from any conviction, order, determination, adjudication, or refusal to make an order by a justice or justices, but such appeal has not been heard or determined, the same shall be heard and determined as though this Act had not been passed.

Incorporation with past and future Acts.

9. (1) Wherever any Act, past or future, or any rule, regulation, or by-law made under or by virtue of any such Act—

(*a*) constitutes any act or omission a simple offence; or

s. 9. BYRNE v. LANCASTER (1924) S.A.S.R. 359. A Special Magistrate sitting to determine a summons under the Inter-state Destitute Persons Relief Act, 1910, is a court of summary jurisdiction and has power to state a case.

SEVERIN v. MANN (1933) S.A.S.R. 345; 12 Austn. Digest 633. Held that a magistrate hearing a complaint to try the validity of an election under the District Councils Act, 1929, was not *persona designata*, but was a court of summary jurisdiction, and an appeal lay from his decision to the Supreme Court.

(*b*) provides that any sum may be recovered, by summary proceedings or summarily, before a court of summary jurisdiction or before a justice or justices; or

(*c*) provides that any order may be made by a court of summary jurisdiction, or by a justice or justices in a summary way,

such Act, rule, regulation, or by-law shall, unless the Act otherwise provides, be deemed to refer to this Act, and the provisions hereof shall for that purpose be incorporated with such other Act.

Meaning of expression "information" in other Acts.

Amended by 2051, 1931, s. 4.

(2) When any other Act uses the term "information" in relation to a simple offence or to any other matter determinable by a justice or justices in a summary way, that term shall, for the purposes of this Act, be deemed to refer to and to mean a complaint under this Act.

PART II.

PART II.

JUSTICES.

Oaths of Office and of Allegiance.

Oaths of office, &c. 23 of 1859, s. 2.

10. (1) The oath of allegiance and the judicial oath to be taken by any person assigned by His Majesty's Commission to act as a justice may be taken in the Supreme Court.

Subsec. (1) amended by 2051, 1931, s. 5.

(2) The said oaths may be taken either in open court or before any Judge of the said Court in chambers.

Subsec. (2a) enacted by 2051, 1931, s. 5.

(2a) The said oaths may also be taken before any special magistrate sitting in open court or in chambers.

(3) In the case of a person residing more than twenty miles from the Supreme Court House in Adelaide, the said oaths may be taken before a commissioner for taking affidavits in the said Court.

Subsec. (4) substituted by 2051, 1931, s. 5.

(4) Every oath taken before a special magistrate or commissioner shall be subscribed by the person taking the same in the presence of, and attested by the special magistrate or commissioner, and the person taking the same shall forward the document containing the oath duly subscribed to the Attorney-General. The Attorney-General shall send all such oaths to the Master of the Supreme Court to be kept with the Roll of Justices.

---

s. 10. Women may be appointed as justices. See Sex Disqualification (Removal) Act, 1920, No. 1456 of 1920.

Special Magistrates.

Appointment and dismissal of Special Magistrates. 5 of 1850, s. 3. 6 of 1865.

11. (1) It shall be lawful for His Majesty, or for the Governor in the name and on behalf of His Majesty, from time to time, by commission under the Public Seal of the State, to nominate and appoint, during His Majesty's pleasure, such and so many justices as may be deemed fit and proper to be special magistrates, with or without salary.

Subsec. (2) enacted by 2051, 1931, s. 6. Cf. U.K. 24 & 25 Geo. 5 c. 17, ss. 2 (2), 3.

(2) After the commencement of the Justices Act, 1931, no special magistrate or Local Court Judge shall be appointed, except on the recommendation of the Public Service Commissioner endorsed by the Chief Justice of the Supreme Court, and no special magistrate or Local Court Judge (whether appointed before or after the commencement of the said Act) shall be dismissed or reduced in status except on the recommendation of the Chief Justice of the Supreme Court: Provided that this section shall not affect the application of section 57 of the Public Service Act, 1936, to special magistrates and to the Local Court Judge.

Commission of Special Magistrates confirmed. 6 of 1865, s. 1.

12. Every commission now or hereafter to be issued by which any justice is or shall be appointed a special magistrate shall be valid and effectual for all purposes whatsoever, and shall be deemed to give to the person therein named all the jurisdiction, powers, and authorities conferred upon special magistrates by this Act.

Powers of a Special Magistrate. Ibid., s. 2. Cf. U.K. 2 & 3 Vict. c. 71, s. 13; 21 & 22 Vict. c. 73, s. 1.

13. So long as his commission remains in force and unrevoked, every special magistrate shall have jurisdiction, power, and authority to do alone whatsoever any one, two, or more justices may lawfully do under this Act, or under or by virtue of any other Act conferring jurisdiction, power, or authority upon justices: Provided that nothing herein contained shall authorise any special magistrate to exercise any jurisdiction or to do any act which he is, by the express provisions of any statute, authorised to exercise or do only in conjunction with other justices.

General Provisions.

Authentication of acts of Justices.

14. (1) All summonses, warrants, convictions, and orders (not being by law authorised to be made by word of mouth only) shall be under the hands of the justices issuing or making the same.

s. 11. The expression "s. 57 of the Public Service Act, 1936," has been substituted for "s. 70 of the Public Service Act, 1916," pursuant to the Acts Republication Act, 1934.

Power to issue warrant on Sunday. Cf. 15 of 1849, s. 3. Cf. U.K. 11 & 12 Vict. c. 42, s. 4.

(2) A justice may receive any information or complaint and may grant or issue any warrant or summons on a Sunday as well as any other day.

Meaning of the letters "J.P." 926 of 1907, s. 6.

15. The letters "J.P." appearing after any signature in or upon any instrument, certificate, or other document shall respectively have and be taken to have the same meaning and effect as though instead thereof, respectively, appeared the words *"one of His Majesty's Justices of the Peace in and for the State of South Australia,"* unless it appears from the said instrument, certificate, or other document that such signature was affixed out of the said State, or unless another meaning shall be indicated in or upon the said instrument, certificate, or other document.

Justices may file an explanatory affidavit in answer to *ex parte* application. 298 of 1883-4, s. 44. Cf. U.K. 35 & 36 Vict. c. 26, s. 2.

16. Whenever the decision of any justice is called in question in the Supreme Court by any rule to show cause, or other process issued upon an *ex parte* application, it shall be lawful for such justice to make and file in the said Court an affidavit setting forth the grounds of the decision so brought under review, and any facts which he may consider to have a material bearing upon the question at issue, without being required to pay any fee in respect of filing such affidavit, and such affidavit may be sworn before a commissioner authorised to take affidavits in the Supreme Court, and may be forwarded by post to the Master thereof, for the purpose of being so filed.

Supreme Court to consider affidavit. 298 of 1883-4, s. 45. Cf. U.K. 35 & 36 Vict. c. 26, s. 3.

17. Whenever such affidavit is filed as aforesaid, the Supreme Court shall, before making the rule absolute, or otherwise determining the matter so as to overrule or set aside the act or decision to which the application relates, take into consideration the matters set forth in such affidavit, notwithstanding that no counsel appears on behalf of the justice.

Upon insolvency Justice incapable of acting. 298 of 1883-4, s. 34.

18. If any person assigned by His Majesty's Commission to act as a justice is adjudged insolvent, or makes any arrangement or composition with, or any assignment for the benefit of, his creditors, he shall be and remain incapable of acting as a justice until he has been newly assigned by His Majesty in that behalf.

Warrant or summons not avoided by death, &c., of Justice. 298 of 1883-4, s. 33. U.K. 42 & 43 Vict. c. 49, s. 37.

19. No warrant or summons granted or issued by a justice, whether under this Act or under any other Act past or future, or otherwise, shall be avoided by reason of the justice who signed the same dying or ceasing to hold office.

PART III.

PART III.

GENERAL PROCEDURE.

Form of Warrant and Summons.

Form of warrant.
15 of 1849, s. 6.
6 of 1850, s. 3.
Cf. U.K. 2 & 3 Vict. c. 71, s. 17; 11 & 12 Vict. c. 43, s. 3 (part).

20. (1) Every warrant for the apprehension of a defendant shall—

(*a*) state shortly the matter of the information or complaint upon which it is founded; and

(*b*) name or otherwise describe the defendant; and

(*c*) order the person or persons to whom it is directed to apprehend the defendant and bring him before the justice issuing it, or before some other justice, to answer the charge contained in the information or complaint, and to be further dealt with according to law.

Form of summons.
15 of 1849, s. 6.
6 of 1850, s. 1.

(2) The warrant may be directed specially to any constable or other person by name, or generally to all constables and peace officers of the State, or both specially and generally as aforesaid; and where the warrant is directed generally it shall be lawful for any constable or other peace officer to execute such warrant in like manner as if the same had been specially directed to him by name.

(3) It shall not be necessary to make the warrant returnable at any particular time, but the same shall remain in force until it is executed.

(4) Every warrant may be executed by apprehending the defendant at any place within the State.

Indorsement on warrant as to release on bail.
U.K. 4 & 5 Geo. 5 c. 58, s. 21.

21. (1) A justice, on issuing a warrant for the arrest of any person, may, if he thinks fit, by indorsement upon the warrant direct that the person named in the warrant be on arrest released upon his entering into a recognizance, with or without sureties, for his appearance as may be specified in the indorsement; and the indorsement shall fix the amounts in which the principal and sureties (if any) are to be bound.

(2) When such an indorsement is made, the recognizance in accordance with the indorsement may be taken as provided in section 33, and the defendant shall thereupon be discharged.

Form of summons.
15 of 1849, s. 5.
6 of 1850, s. 1.
Cf. U.K. 2 & 3 Vict. c. 71, s. 19; 11 & 12 Vict. c. 43, s. 1.

22. Every summons for the appearance of a defendant shall be in duplicate and—

(*a*) be directed to the defendant charged by the information or complaint:

(*b*) state shortly the matter so charged:

(*c*) require the defendant to be and appear at a certain time and place therein mentioned, before such justice as shall then be there, to answer to the charge contained in the information or complaint, and to be further dealt with according to law.

Description of offence in documents under this Act.
Enacted by 2051, 1931, s. 7.
Cf. U.K. 5 & 6 Geo. 5 c. 90, s. 3; 15 & 16 Geo. 5 c. 86, s. 32.

22a. (1) Every information, complaint, summons, warrant, or other document under this Act in which it is necessary to state the matter charged against any person shall be sufficient if it contains a statement of the specific offence with which the accused person is charged, together with such particulars as are necessary for giving reasonable information as to the nature of the charge.

(2) The statement of the offence shall describe the offence shortly in ordinary language, avoiding as far as possible the use of technical terms, and without necessarily stating all the essential elements of the offence, and, if the offence charged is one created by statute, shall contain a reference to the section of the statute creating the offence.

(3) After the statement of the offence, necessary particulars of the offence shall be set out in ordinary language, in which the use of technical terms shall not be required.

(4) Any information, complaint, summons, warrant, or other document to which this section applies which is in such form as would have been sufficient in law if this section had not passed shall notwithstanding anything in this section continue to be sufficient in law.

Witnesses.

Summons to witness.
Cf. 15 of 1349, s. 7.
6 of 1850, s. 6.
Cf. U.K. 2 & 3 Vict. c. 71, s. 22; 11 & 12 Vict. c. 43, s. 7 (part); 4 & 5 Geo. 5 c. 58, s. 29.

23. If a justice or the clerk is satisfied that any person is likely to give material evidence or to have in his possession or power any article (which term includes any document, writing, or thing) required for the purposes of evidence upon behalf of either party to any information or complaint, the justice or clerk may issue a summons to such person requiring him to be and appear, at a time and place mentioned in the summons, before such justices as shall then be there, to testify what he shall know concerning the matter of the

information or complaint, or to produce such article, or to testify and produce as aforesaid (as the case may be).

On refusal warrant to issue.
Cf. U.K. 2 & 3 Vict. c. 71, s. 19; 11 & 12 Vict. c. 43, s. 7 (part).

24. If any person summoned as aforesaid neglects or refuses to appear, and no just excuse is offered for such neglect or refusal, then any justice before whom the person should have appeared may issue a warrant to bring and have such person, at a time and place therein mentioned, before such justices as shall then be there: Provided that it shall be proved to the satisfaction of the justice—

(*a*) that the summons was duly served; and

(*b*) (if the summons relates to a complaint) that a reasonable sum was paid or tendered for the costs and expenses of attendance.

Warrant in first instance.
Cf. U.K. 11 & 12 Vict. c. 43, s. 7 (part).

25. If the justice is satisfied, by evidence upon oath, that it is probable that any person will not attend to give evidence or to produce any article without being compelled to do so, then, instead of issuing a summons as provided by section 23, he may issue his warrant as aforesaid in the first instance.

Witness refusing to give evidence or produce documents may be committed to gaol.
Cf. 6 of 1850, s. 6.
Cf. U.K. 2 & 3 Vict. c. 71, s. 22; 11 & 12 Vict. c. 43, s. 7 (part). 4 & 5 Geo. 5 c. 58, s. 29.

26. Any justice before whom any person appears or is brought, upon summons or warrant, to give evidence or to produce any article may, if such person without offering any just excuse refuses—

(*a*) to be examined upon oath concerning the premises; or

(*b*) to take the oath; or

(*c*) to answer after having taken an oath such questions concerning the premises as are then put to him; or

(*d*) to bring or produce any such article,

by warrant commit him to the nearest gaol, there to remain and be imprisoned for any time not exceeding seven days, unless in the meantime he consents to be examined and to answer concerning the premises, or to produce such article (as the case may be): Provided that no person shall be bound to produce any article not specified or otherwise sufficiently described in the summons, or any document or writing which he would not be bound to produce upon a subpœna *duces tecum* in the Supreme Court.

Power to require evidence from persons in court.

Inserted by 2261, 1936, s. 3.

26a. (1) Any justice may, on the application of any party to the proceedings, require any person present in the court room or other place where he is sitting for the hearing of any complaint or information to take an oath and give evidence concerning the matter of that complaint or information.

(2) If any person so required refuses to take an oath or without offering any just excuse refuses to answer any question put to him concerning the matter of the complaint or information, or if any person voluntarily appearing as a witness without offering any just excuse refuses to answer any such question, the justice may by warrant commit him to the nearest gaol, there to remain and be imprisoned for any time not exceeding seven days, unless in the meantime he consents to be examined and to answer the question put to him.

Service.

Service of summonses and notices under this Act.

Amended by 1573, 1923, s. 3.

27. Subject to the provisions of this or any other enactment specially applicable to the particular case, any summons or notice required or authorised by this Act to be served upon any person may be served upon such person by—

(*a*) delivering the same to him personally; or

Cf. U.K. 2 & 3 Vict. c. 71, s. 20; 11 & 12 Vict. c. 43, s. 1 (part); 23 & 24 Geo. 5 c. 42, s. 1.

(*b*) leaving the same for him at his last or most usual place of abode or of business with some other person, apparently an inmate thereof or employed thereat, and apparently not less than sixteen years of age:

Provided that any court or justice before whom the matter comes may refuse to act upon any non-personal service as aforesaid, and may require the summons or notice to be re-served, if it or he is of opinion that there is a reasonable probability—

I. that the summons or notice has not come to the knowledge of the person so served; and

II. that such person would have complied with or acted upon such summons or notice if it had come to his knowledge.

s. 27. SCHMIDT v. SCHMIDT (1912) S.A.L.R. 101. Held that service of a summons upon a person by leaving it at his last known place of abode will only be good if it is shown that the summons came, or must be presumed to have come, to his notice. (When this decision was given the proviso to s. 27 was not in force.)

R. v. NESBIT; *Ex parte* SMITH (1928) S.A.S.R. 470; 12 Austn. Digest 328. Where a summons was served within the time prescribed by the Special Act, but was not shown to have come to the notice of the defendant within that time, and the magistrate took no action under the proviso to s. 27, held that the service was good.

Proof of service, and other matters.

Proof by affidavit of service of process, handwriting, &c. Cf. U.K. 42 & 43 Vict. c. 49, s. 41.

28. (1) In any proceeding within the jurisdiction of justices, without prejudice to any other mode of proof—

(*a*) the service on any person of any summons, notice, process, or document required or authorised to be served;

(*b*) the handwriting of any justice or other officer or person on any warrant, summons, notice, process, or document; or

(*c*) the payment or tender, to any person summoned to attend as a witness, of any sum in respect of the costs or expenses of such attendance,

may be proved by an affidavit taken before a justice or before a commissioner for taking affidavits in the Supreme Court: Provided that the justices may require the person making such affidavit to be called as a witness, or require further evidence of the facts.

(2) Any document purporting to be such an affidavit shall (subject to the proviso to subsection (1) hereof) be received in evidence in any court or legal proceeding as sufficient proof of the statements contained therein, without proof of the signature or of the official character of the person or persons taking or signing the same.

(3) If any affidavit made under this section is untrue in any material particular, the person wilfully making such false affidavit shall be guilty of wilful and corrupt perjury, and shall be punishable accordingly.

Assistance of counsel.

Parties to have assistance of counsel. Cf. 15 of 1849, s. 8. 6 of 1850, s. 11. Cf. U.K. 11 & 12 Vict. c. 43, s. 12.

29. Every party to any proceeding before justices shall be at liberty to conduct his case or to make his application or his full answer to the charge or complaint (as the case may be), and to have the witnesses examined and cross-examined, by his counsel or solicitor: Provided that nothing herein contained shall be deemed—

(*a*) to dispense with the personal attendance before the justice of any defendant who is charged with an indictable offence; or

(*b*) to authorise justices to proceed to hear or to hear and determine any charge of an indictable offence in the absence of the defendant.

s. 29. BRENNAN v. ALEXANDER (1932) S.A.S.R. 237; 12 Austn. Digest 346. Justices may permit a police constable to conduct the prosecution on behalf of the complainant.

Recognizances.

Continuous bail.
Cf. U.K. 2 & 3 Vict. c. 71, s. 36; 4 & 5 Geo. 5 c. 58, s. 19.

30. Where any person is remanded or discharged upon recognizance, the recognizance may be conditioned for his appearance at every time and place to which, during the course of the proceedings, the hearing may be from time to time adjourned, without prejudice, however, to the power of the court or a justice to vary the order at any subsequent hearing.

Discretion of Justice as to amount and sureties.

31. Every recognizance shall be for such amount and with such surety or sureties as the justice taking the same thinks fit to ensure the due fulfilment of the conditions thereof: Provided that, in the case of a recognizance taken under section 33 it shall be for such amount, and with such surety or sureties, as the justice authorising the taking thereof thinks fit for the purpose aforesaid.

Justice may fix amount of recognizance and sureties.

32. Where a justice is authorised to take a recognizance, or when any recognizance is required to be entered into before a justice, such justice may fix the amount or amounts in which the principal and sureties are to be bound, and the recognizances may then be entered into as provided in the next section.

Recognizances taken out of Court.
U.K. 42 & 43 Vict. c. 49, s. 42.
Subsec. (1) amended by 1573, 1923, s. 4.

33. (1) When a justice has fixed the amount in which the principal and the sureties are to be bound, the recognizance need not be entered into before such justice, but may be entered into before any other justice, or before any clerk or before an inspector of police or other officer of police of equal or superior rank or any member of the police force in charge of any police station, or where any of the parties is in gaol, before the keeper of such gaol:

Proviso substituted by 2051, 1931, s. 8.

Provided that no such other justice, and no clerk, officer of police, or keeper of a gaol shall take the recognizance of any person proposed as a surety unless the person so proposed first makes an affidavit or declaration of justification in the form prescribed by rules under this Act.

Recognizances taken separately.
U.K. 4 & 5 Geo. 5 c. 58, s. 24.

(2) Where, as a condition of the release of any person, he is required to enter into a recognizance with sureties, the recognizance of the sureties may be taken separately, and either before or after the recognizance of the defendant; and, if so taken, the recognizances of the principal and sureties shall be as binding as if they had been taken together and at the same time.

33a. The provisions of section 32 and section 33 of this Act shall apply and be deemed always to have applied in every case where a court of summary jurisdiction is authorised to take a recognizance or where any recognizance is required to be entered into before a court of summary jurisdiction.

Extension of provisions for taking recognizance out of Court.

Enacted by 2051, 1931, s. 9.
Cf. U.K. 42 & 43 Vict. c. 49, s. 42.

33b. When any defendant is bound by recognizance under this Act to appear before the Supreme Court or any court of summary jurisdiction or justice, and any person gives information on oath to a justice of any facts which raise a probable presumption that it is the intention of the defendant not to surrender himself in accordance with the recognizance, that justice or any other justice may issue a warrant for the apprehension of the defendant and may by the warrant commit him to gaol to be there safely kept, notwithstanding that he has been released under the said recognizance, until he shall thence be delivered by due course of law.

Power to arrest persons on bail suspected of intention to abscond.

Enacted by 2051, 1931, s. 9.

Security.

34. Any security required or permitted to be given under the provisions of this Act shall be given, whether by principal or surety, either—

(*a*) by the deposit of money with a clerk; or

(*b*) by a written acknowledgment given to a clerk of the undertaking or condition by which, and of the sum for which, the principal or surety is bound:

Provided that the security shall be given in such of the modes aforesaid as the court or person authorising the taking of the security may order or direct.

Security under this Act to be given by deposit with or acknowledgment to Clerk of the Court.

Cf. U.K. 42 & 43 Vict. c. 49, s. 23.

35. (1) Every clerk shall keep a security book, and shall enter therein, with respect to each security given in relation to any proceeding before the court, the name and address of each person bound, showing whether he is bound as principal or as surety, the sum in which each person is bound, the undertaking or condition by which he is bound, the date of the security, and the person before whom it is taken.

Entry of security and evidence thereof.

Cf. U.K. 42 & 43 Vict. c. 49, s. 23.

(2) The security book, and also any extract therefrom certified by the clerk, shall be *prima facie* evidence of the several matters hereby required to be entered therein.

Indemnity of surety by principal.
Cf. U.K. 42 & 43 Vict. c. 49, s. 23 (4).

36. Any sum paid by a surety on behalf of his principal in respect of a security under this Act, together with all costs, charges, and expenses incurred by such surety in respect of that security, shall be deemed a debt due to him from the principal, and shall be recoverable either summarily under this Act, or in any civil court of competent jurisdiction.

Security to be enforced in substitution of other remedies.
Cf. U.K. 42 & 43 Vict. c. 49, s. 23 (5).

37. Where security is given under this Act for payment of a sum of money, the payment of such sum shall be enforced by means of such security, in substitution for any other means of enforcing such payment.

Enforcement of Recognizances and Securities.

Justices' certificate of non-compliance with conditions, *prima facie* evidence of forfeiture.
Cf. 6 of 1850, s. 8.
298 of 1883-4, s. 52.
Cf. U.K. 20 & 21 Vict. c. 43, s. 13.

38. Whenever the conditions, or any of the conditions, mentioned in any recognizance or security are not complied with, any justice may certify in what respect the conditions have not been observed, and such certificate shall be *prima facie* evidence of such non-compliance, and of the recognizance or security having been forfeited.

Enforcement of recognizances.
Cf. 10 of 1854, s. 14.
6 of 1850, s. 44.
Cf. U.K. 42 & 43 Vict. c. 49, s. 9 (1).

39. (1) Upon proof of any breach of the condition, or of any of the conditions, of any recognizance or security, or upon other proof of the forfeiture thereof, any two justices may make an order adjudging the recognizance or security to be forfeited and for payment of any amount due thereunder.

Subsec. (2) amended by 2051, 1931, s. 10.

(2) No order shall be made under this section in the absence of any person sought to be bound thereby unless it is proved, to the satisfaction of the court, that a summons was duly served upon such person at least seven clear days before the return thereof: Provided that, in the case of a recognizance or security conditioned for the appearance of any person before a court of summary jurisdiction, or before a justice or justices for the purpose of a preliminary examination under Part V. of this Act, such order may be made by such court or justice or justices *ex parte* forthwith upon the non-appearance of such person.

(3) Every such order may be enforced by distress and imprisonment, as in other cases.

PART III.

Arrest of persons guilty of breach of condition to appear.

Enacted by 2051, 1931, s. 11.

39a. Upon proof of any breach of a condition binding a person discharged upon recognizance to appear before the court or a justice, the court or any justice may issue a warrant to apprehend the said person whether the matter of the information or complaint has been substantiated on oath or not.

Suspension or mitigation of forfeiture.

U.K. 42 & 43 Vict. c. 49, s. 9 (1).

40. When application is made for an adjudication of the forfeiture of any recognizance or security to, or when a recognizance or security has been adjudged to be forfeited by, any court of summary jurisdiction, such court or any special magistrate may, at any time before sale under a warrant of distress, suspend, cancel, or mitigate such forfeiture, and suspend, annul, or vary the order for payment accordingly on the giving of security for future performance, or on such other conditions as may seem just.

Application of moneys received on enforcement.

Cf. U.K. 42 & 43 Vict. c. 49, s. 9 (4).

41. (1) The order for payment of any amount due under any recognizance or security shall direct such amount to be paid to the clerk, and the court may further direct the same, or such portion thereof as may be just, to be paid by such clerk, upon receipt thereof, to any person in whose interest the recognizance or security was taken.

(2) Subject to any such direction the clerk of the court shall apply any amount paid under any such order in the manner in which fines are applied of which no special appropriation is made.

PART IV.

PART IV.

SUMMARY JURISDICTION.

DIVISION I.

DIVISION I.—COURTS OF SUMMARY JURISDICTION.

Clerks of Court.

Cf. 298 of 1883-4, s. 17.

42. (1) The clerk of every local court shall be, *ex officio*, clerk for courts of summary jurisdiction sitting in the district for which the local court is established: Provided that the Governor may—

(*a*) prescribe the district for which any clerk is appointed; and

---

Part IV. JOHNSON v. NOBLET (1929) S.A.S.R. 385; 12 Austn. Digest 197. A court of summary jurisdiction has no right to adjudicate on a serious offence over which it has no jurisdiction, under the name of a lesser offence over which it has jurisdiction.

s. 42. ALLCHURCH v. HEALEY (1927) S.A.S.R. 370; 12 Austn. Digest 391. The clerk of a court of summary jurisdiction should take notes of the facts found by the Magistrate and the reasons for his decision.

BRENNAN v. ALEXANDER (1932) S.A.S.R. 237; 12 Austn. Digest 356. Where practicable, justices should not allow an interested police officer to act as their clerk if some other disinterested police officer is available.

(*b*) appoint a clerk for any prescribed district or place.

(2) When a court of summary jurisdiction sits in any place other than the court house for which a clerk is appointed, the justices shall cause the record of the proceedings to be transmitted to the clerk for the court to be recorded and kept by him.

Subsec. (3) enacted by 2051, 1931, s. 12.

(3) The Governor may appoint any fit and proper person to be the deputy of any clerk. A deputy so appointed may, whenever directed by the clerk to whom he is deputy, and subject to any limitations imposed by the Governor at the time of his appointment, do anything which the said clerk might do, and anything done by a deputy shall be of the same validity and effect as if done by the said clerk.

Courts of summary jurisdiction to be constituted by a S.M. if any available, and if not by two or more Justices unless the Special Act otherwise requires or by consent of parties.
Cf. 6 of 1850, s. 11.
298 of 1883-4, s. 16.
Cf. U.K. 11 & 12 Vict. c. 43, ss. 12, 33.

43. Every matter of complaint shall (unless the provisions of some Special Act otherwise require) be heard and determined by—

(*a*) a special magistrate, if there is any special magistrate present who is competent and willing to act; or

(*b*) if there is no such special magistrate present, then by two or more justices:

Provided that a single justice or any two or more justices may (notwithstanding the provisions of any Special Act) hear and determine any matter of complaint if all the parties to the proceeding consent thereto in writing.

Powers of a single Justice.
6 of 1850, s. 29.
Cf. U.K. 11 & 12 Vict. c. 43, s. 29 (part).

44. In any case, whether the matter of complaint is or is not directed or required to be heard by two or more justices, a single justice may—

(*a*) receive the complaint;

(*b*) grant a summons or warrant thereon;

(*c*) issue his summons or warrant to compel the attendance of any witness;

(*d*) by consent of the parties expedite the date of hearing;

(*e*) either upon the return of the summons, or at any other time before the completion of the hearing, adjourn the hearing as hereinafter provided;

s. 43. BROWN v. GRIFFEY (1928) S.A.S.R. 293; 12 Austn. Digest 381. Where Justices sit with a Magistrate and the Special Act does not require their presence, the matter should be determined by the Magistrate without reference to the Justices.

(*f*) do all other acts and matters preliminary to the hearing; and

(*g*) issue any warrant of distress or commitment upon any conviction or order.

Interlocutory proceedings need not be before same Justice.
6 of 1850, s. 29.
Cf. U.K. 11 & 12 Vict. c. 43, s. 29 (part).

45. It shall not be necessary for any justice who acts before or after the hearing to be the justice, or one of the justices, by whom the case is heard; but wherever it is necessary for any matter of complaint to be heard and determined or for a conviction or order to be made by two or more justices, such two or more justices must be present and acting together during the whole of the hearing and determination of the case.

Contempt of Court.
Cf. 298 of 1883-4, ss. 19 and 20.
8 of 1869-70, s. 12.
Cf. U.K. 51 & 52 Vict. c. 43, s. 162.

46. (1) Any person who—

(*a*) wilfully interrupts the proceedings of any Court;

(*b*) conducts himself disrespectfully to the justice or justices during the sittings thereof;

(*c*) obstructs or assaults any person in attendance, or any officer thereof, in the execution of his duty, in view of the court; or

(*d*) wilfully disobeys any order made by the court under subsection (2) of section 61—

shall be guilty of an offence.

Punishment: Imprisonment for one calendar month; or,

Penalty: Ten pounds.

(2) Any person who in the opinion of the justice or justices wilfully prevaricates in giving evidence to any court of summary jurisdiction shall be guilty of an offence.

Punishment: Imprisonment for one calendar month; or,

Penalty: Ten pounds.

(3) The justice or justices constituting the court in whose presence any offence under this section is committted may forthwith convict the person guilty of such offence, either on their own view, or on the oath of some credible witness, and may issue their warrant of commitment accordingly.

(4) Every such warrant of commitment shall be good and valid in law without any other order, summons, or adjudication whatsoever.

(5) If any person convicted of any offence under subsection (1) hereof makes to the convicting justices, before the rising of the court, such an apology for the interruption or misbehaviour as they in their uncontrolled discretion deem satisfactory the justices may, if they think fit, remit the penalty or imprisonment either wholly or in part.

Proceedings to be brought in most convenient Court.
298 of 1883-4, s. 21.

47. (1) Upon the hearing of any complaint or application before any court the defendant may, before any evidence is given, object that there is a proper place at which a court might be held more easy of access than the place where the court is then sitting, not only from the place of abode of such defendant, but also from the place where the subject matter of such complaint or application arose.

(2) The court may hear any evidence adduced and, if it appears to the court that the objection is well founded, it may desist from further proceeding with the hearing.

Compensation may be awarded in vexatious cases.
298 of 1883-4, s. 22.

48. Whenever any objection under section 47 is established to the satisfaction of the court, and the person making the objection complains at once to the court that he has been brought to the place where the court is held vexatiously and oppressively, the court shall forthwith, and without any further summons or notice, proceed to hear and determine the matter of the objection in a summary way, and if the court is of opinion that such is the fact it may order the complainant or the applicant to pay to the person making the objection, by way of compensation or amends, such sum not exceeding five pounds as it may think fit, and in default of payment the sum so awarded may be enforced by imprisonment for any period not exceeding seven days.

DIVISION II.

DIVISION II.—THE COMPLAINT AND THE PROCEEDINGS THEREON.

The Complaint.

Complaint.
6 of 1850, s. 1.
Cf. U.K. 11 & 12 Vict. c. 43, s. 1 (part).

49. A complaint may be made to a justice in any case where—

(*a*) any person has committed, or is suspected to have committed, any simple offence; or

(*b*) a justice or justices has, or have or shall have, authority by law to make any order for the payment of money or otherwise.

s. 47. R. v. DENTON; *Ex parte* CRAFTER (1934) S.A.S.R. 445. When the complaint is to be heard by another Court, after a Court has desisted from hearing pursuant to s. 47, no further summons is necessary.

How laid.
Cf. 6 of 1850, s. 2, s. 7.
Cf. U.K. 11 & 12 Vict. c. 43, ss. 8, 10.

50. (1) A complaint may be made by the complainant in person, or by his counsel or solicitor, or by any other person authorised in that behalf.

(2) No complaint need be in writing unless it is required to be so by some Special Act.

(3) A complaint may be made without any oath being made of the truth thereof, except in any case—

(*a*) where some Special Act otherwise requires; or

(*b*) where the justice issues his warrant in the first instance.

Complaint to disclose only one matter.
6 of 1850, s. 9.
U.K. 11 & 12 Vict. c. 43, s. 10.

51. Every complaint shall be for one matter of complaint only, and not for two or more matters.

Limitation of time for laying information, etc.
6 of 1850, s. 10.
U.K. 11 & 12 Vict. c. 43, s. 11.

52. Where no time is specially limited for making the complaint by any statute or law relating to the particular case, the complaint shall be made within six months from the time when the matter of the complaint arose.

s. 50. RUSSELL v. O'HALLORAN, 5th June, 1895; 12 Austn. Digest, 272. A person laying an information or complaint must appear personally before the Justice who takes it.

s. 51. MILDREN v. NICHOLSON (1920) S.A.S.R. 369. Held, that an information charging an unlawful supply of liquor without stating the number of persons supplied did not charge two or more offences. Held also that the inclusion of two offences in one information is a defect in substance within the meaning of s. 182. (Approved on these points in BUTTFIELD v. KENNY (1921) S.A.S.R. 51; 12 Austn. Digest 365.)

ALLCHURCH v. DENTON (1922) S.A.S.R. 91; 12 Austn. Digest 363. A complaint charging two defendants with offences in identical terms was held not to be a joint charge, but two charges capable of being heard separately.

ALLCHURCH v. TASKER (1922) S.A.S.R. 336; 12 Austn. Digest 303. S. 51 does not apply to a complaint for offences against the Lottery and Gaming Act where not more than three offences are charged.

STOKES v. GRANT (1930) S.A.S.R. 394; 12 Austn. Digest 302. Held that a complaint which charged the defendant with the unlawful sale of liquor "from a motor car on a road at Long Plains," disclosed only one offence; but if the defendant was in any real doubt as to the occasion alleged he was entitled to particulars of the occasion. [See also TUCKER v. NOBLET on p. 165.]

s. 52. THE FEDERATED SAWMILL, TIMBERYARD AND GENERAL WOODWORKERS' EMPLOYEES' ASSOCIATION (ADELAIDE BRANCH) v. ALEXANDER (1912) 15 C.L.R. 308; 19 A.L.R. 22; 9 Austn. Digest 1091. Unless some Federal law otherwise provides, the limit of time fixed by s. 52 applies to proceedings in courts of summary jurisdiction, whilst exercising Federal jurisdiction.

CATFORD v. KEARNEY (1920) S.A.L.R. 294; 12 Austn. Digest 230. S. 52 precludes a claim for the expenses of a confinement which took place more than six months before the date of the complaint. [But see Maintenance Act, 1926, s. 48 (2).]

TREGILGAS v. HOWIE (1926) S.A.S.R. 122; 12 Austn. Digest 233. Where a complaint which disclosed no offence was amended, after the time fixed by the Special Act for making complaints, so as to disclose an offence, held that the proceedings were out of time.

TURNER v. TURNER (1926) S.A.S.R. 398. The six months' limitation does not apply to proceedings under s. 73 (2) of the Maintenance Act, 1926.

Accessories.

Punishment of aiders and abettors in the commission of offences.
6 of 1850, s. 5.
Cf. U.K. 11 & 12 Vict. c. 43, s. 5.

53. Every person who aids, abets, counsels, or procures the commission of any simple offence may be proceeded against and convicted for the same, either together with the principal offender, or before or after his conviction, and shall be liable upon conviction to any penalty and punishment to which the principal offender is or was liable, or would be liable if he were convicted.

Allegations and Descriptions in Complaints and Proceedings thereon.

Allegations as to ownership.
6 of 1850, s. 4.
Cf. U.K. 11 & 12 Vict. c. 43, s. 4.

54. (1) Whenever in any complaint, or the proceedings thereon, it is necessary to state the ownership of any property belonging to, or in the possession of, partners, joint tenants, parceners, or tenants in common, it shall be sufficient to name one of such persons, and to state the property to belong to the person so named and another or others (as the case may be).

Parties.

(2) Whenever in any complaint or the proceedings thereon it is necessary to mention for any purpose whatsoever any partners, joint tenants, parceners, or tenants in common, it shall be sufficient to describe them in the same manner.

Property in public works.

(3) Whenever in any complaint or the proceedings thereon it is necessary to describe the ownership of any work or building made, maintained, or repaired at the expense of any public board of commissioners or trustees, or of any materials for the making, altering, or repairing of the same, it shall be sufficient to describe the same as the property of such commissioners or trustees without naming them

Description of offence.
298 of 1883-4, s. 35.
U.K. 42 & 43 Vict. c. 49, s. 39 (1).

55. In any complaint and in any proceedings thereon the description of any offence in the words of the Special Act or other document creating the offence, or in similar words, shall be sufficient in law.

S. 55. MARTIN v. SHAKESPEARE (1920) S.A.L.R. 257; 12 Austn. Digest 277. S. 55 does not do away with the necessity of setting out in the conviction facts which are the necessary ingredients in the offence.

HUNT v. BOND (1930) S.A.S.R. 46; 12 Austn. Digest 285. Held that a complaint alleging negligent driving, without giving particulars of the negligence, was sufficient

Exceptions and Exemptions.

Exceptions or exemptions need not be specified or disproved by the complainant. 298 of 1883-4, s. 35. Cf. U.K. 11 & 12 Vict. c. 43, s. 14 (part); 42 & 43 Vict. c. 49, s. 39 (2).

56. (1) No exception, exemption, proviso, excuse, or qualification (whether it does or does not accompany in the same section the description of the offence in the Special Act or other document creating the offence) need be specified or negatived in the complaint.

(2) Any such exception, exemption, proviso, excuse, or qualification as aforesaid may be proved by the defendant, but, whether it is or is not specified or negatived in the complaint, no proof in relation to it shall be required on the part of the complainant.

Summons to Defendant.

Upon complaint summons to issue. 6 of 1850, s. 1. Cf. U.K. 11 & 12 Vict. c. 43, s. 2 (part).

57. Whenever a complaint is made in manner aforesaid any justice may issue his summons for the appearance of any person charged by the complaint or against whom the order is thereby sought to be made: Provided that nothing herein mentioned shall oblige any justice to issue his summons in any case where the application for any order of justices is by law to be made *ex parte*.

Warrant to Apprehend a Defendant.

Issue of warrant. 6 of 1850, ss. 2 and 12. Cf. U.K. 2 & 3 Vict. c. 71, s. 21; 11 & 12 Vict. c. 43, s. 2 (part), s. 10.

58. (1) No warrant to apprehend any defendant shall be issued unless the matter of the complaint is substantiated to the satisfaction of the justice upon oath made before him.

(2) When the matter of any complaint—

(*a*) charging the defendant with the commission of a simple offence; or

(*b*) made for the purpose of having the defendant bound over to keep the peace or be of good behaviour; or

(*c*) under any Special Act which authorises the issue of a warrant in the first instance,

---

s. 56. BEE v. ROBERTS (1885) 19 S.A.L.R. 47; 7 A.L.T. 88; 12 Austn. Digest 299. Where the defendant was charged under the Licensed Victuallers Act, 1880, s. 96, with unlawfully supplying liquor to a person who was not a *bona-fide* lodger, held that the fact that the person supplied was not a *bona-fide* lodger was not an exception or excuse to be negatived by the defendant, but should have been proved by the prosecution.

WALSH v. FAEHRMANN (1936) S.A.S.R. 49. On a complaint under s. 54 of the Road Traffic Act, 1934, charging that the defendant caused himself to be drawn by a motor vehicle without the consent of the driver, held that the onus was on the prosecutor to prove absence of consent. Discussion of the distinction between the essential ingredients of an offence, and exceptions which need not be negatived by prosecution.

is substantiated as aforesaid a justice may, instead of issuing his summons, issue his warrant in the first intance to apprehend the defendant.

Cf. U.K. 11 & 12 Vict. c. 43, s. 2 (part).

(3) If any defendant fails to appear in obedience to a summons any justice may issue his warrant for the apprehension of the defendant: Provided—

(*a*) that the matter of the complaint is substantiated as aforesaid; and

(*b*) that it is proved to the satisfaction of the justice that the summons was duly served (what he deems) a reasonable time before the time appointed for the hearing.

Return of Warrant and Remand.

Defendant on apprehension to be brought before Justice. 6 of 1850, s. 15. Cf. U.K. 11 & 12 Vict. c. 43, s. 16 (part).

59. When a defendant is apprehended under a warrant he shall be brought before a justice, who shall thereupon commit him into custody or discharge him upon recognizance as hereinafter provided.

Remand or discharge on recognizance. U.K. 11 & 12 Vict. c. 43, s. 16 (part).

60. (1) When a defendant is apprehended under a warrant or is remanded upon any adjournment of the hearing, the justice shall commit the defendant—

(*a*) by warrant to the nearest prison or to some place of security; or

(*b*) verbally to the custody of the constable or other person who has apprehended him; or

(*c*) verbally to such other safe custody as the justice deems fit,

and the justice shall order the defendant to be brought up at some stated time and place before such justice or justices as shall then be there, of which order the complainant shall have due notice.

Subsec. (2) amended by 2051, 1931, s. 13.

(2) In any such case the justice may, instead of committing the defendant as aforesaid, discharge him upon his entering into a recognizance with or without a surety or sureties and conditioned for his appearance at the time and place appointed for the hearing or further hearing (as the case may be).

DIVISION III.—THE HEARING.

DIVISION III

Sittings to be in open court but witnesses and other persons may be ordered to leave the Court.

61. (1) The room in which any court sits shall be deemed an open and public court, to which the public generally may have access so far as the same can conveniently contain them, and subject to the provisions hereinafter contained.

(2) The court may, if it thinks fit, order that all witnesses (except the parties and any of their witnesses whom it sees fit to except) shall go and remain outside and beyond the hearing of the court until required to give evidence.

Cf. 6 of 1850, ss. 11, 14. Cf. U.K. 11 & 12 Vict. c. 43, s. 12 (part).

(3) Nothing herein contained shall restrict the power of the court under Part VIII. of the Evidence Act, 1929, or require any case to be heard in open court if it is, by any Special Act, required or authorised to be heard in camera.

On non-appearance of defendant court may issue warrant or proceed *ex parte*.

62. If the defendant fails to appear in obedience to the summons the court may—

(*a*) issue a warrant as provided by section 58, and adjourn the hearing until the defendant is apprehended; or

(*b*) upon proof that the summons was served a reasonable time before the time thereby appointed for his appearance, proceed *ex parte* to the hearing of the complaint and to adjudicate thereon as fully and effectually, to all intents and purposes, as if the defendant had personally appeared before it in obedience to the summons.

6 of 1850, s. 12. Cf. U.K. 11 & 12 Vict. c. 43, s. 2 (part), s. 13 (part).

If the complainant does not appear Court to dismiss complaint, or at discretion adjourn hearing.

63. (1) If the defendant appears in obedience to the summons, or is brought before the court by virtue of any warrant, then if the complainant, having had due notice, does not appear in person or by his counsel or solicitor, the court shall dismiss the complaint, unless for some reason it thinks proper to adjourn the hearing.

(2) In any such case any single justice shall be competent to dismiss the complaint, or to adjourn the hearing.

Cf. 6 of 1850. Cf. U.K. 11 & 12 Vict. c. 43, s. 13 (part).

s. 61. (3) The expression "Part VIII. of the Evidence Act, 1929," substituted for "the Evidence Publication Act, 1917," pursuant to the Acts Republication Act, 1934.

If both parties appear, court to hear and determine the case.
6 of 1850, s. 12.
Cf. U.K. 11 & 12 Vict. c. 43, s. 13 (part).

64. If both parties appear before the court, either in person or by their respective counsel or solicitors, then the court shall proceed to hear and determine the matter of the complaint.

Power to the court or a justice to adjourn the hearing.
6 of 1850, s. 15
Cf. U.K. 11 & 12 Vict. c. 43, s. 16.

65. (1) The hearing of any complaint may be adjourned from time to time, and at any time before it is completed, either—

(*a*) by any court before which the complaint comes for hearing; or

(*b*) if no court is then sitting to hear the complaint, then by any justice.

(2) Every such adjournment shall be to a time and place appointed and stated by the court or the justice in the presence and hearing of the party or parties then present.

(3) The adjournment shall be allowed upon such (if any) terms as the court or the justice thinks fit, and in the meantime the court or the justice may suffer the defendant to go at large, or may remand him into custody, or discharge him upon recognizance, in the manner provided by section 60.

Subsec. (4) inserted by 2051, 1931, s. 14.

(4) The court or any justice may, in any case where the defendant has been remanded into custody, order the defendant to be brought before the court or justice or any other court or justice for the hearing or the continuation of the hearing at any time before the expiration of the period for which the hearing has been adjourned, and any keeper of the gaol or officer in whose custody the defendant is shall duly obey such order.

---

s. 64. WALL v. THE KING: *Ex parte* KING WON, AND THE KING: *Ex parte* WAH ON (1927) 39 C.L.R. 266; 1 A.L.J. 26; 33 A.L.R. 125; 10 Austn. Digest 470. *Semble*, a court of summary jurisdiction may and should hear an information properly before it, notwithstanding that the defendant has upon *habeas corpus* proceedings been released from the gaol to which he was committed upon adjournment of the information.

s. 65. TUCKER v. NOBLET (1924) S.A.S.R. 326; 12 Austn. Digest 365. SARA v. LENTHALL (1930); S.A.S.R. 384; 12 Austn. Digest 375. If the defendant is prejudiced by evidence showing two offences the court should on application grant him an adjournment.

TYLER v. PAYNE (1929) S.A.S.R. 13; 12 Austn. Digest 372. Where the appellant failed at the original hearing to ask for an adjournment in order to enable him to prove facts on which he relied, the appellate court refused to order a re-hearing.

R. v. DENTON. *Ex parte* CRAFTER (1934) S.A.S.R. 445. The power of adjournment conferred by s. 65 does not apply where, under s. 47, a court desists from hearing a complaint.

(5) If a defendant, who has been suffered to go at large or discharge upon recognizance, does not appear at the time and place appointed under subsection (2) the court then sitting to hear the adjourned complaint or any justice may issue a warrant for his arrest and further adjourn the case until the defendant is apprehended. Subsec. (5) inserted by 2051, 1931, s. 14.

If the defendant is by virtue of the warrant brought before the court which sat to hear the complaint before the adjournment the court shall hear the case or continue the hearing as if there had been no adjournment.

If the defendant is arrested by virtue of the warrant but it is impracticable to bring him before the court which sat to hear the complaint before the adjournment he shall be taken before some other court and that court shall proceed to hear and determine the matter of the complaint.

(6) Instead of issuing a warrant as provided in subsection (5) the court sitting to hear the adjourned complaint or any justice may issue a summons for the appearance of the defendant at a time and place mentioned in the summons. Subsec. (6) inserted by 2051, 1931, s. 14.

If the defendant appears before the court which sat to hear the complaint before the adjournment the court shall hear the case or continue hearing as if there had been no adjournment. If it is impracticable to summon the defendant to appear before the court which sat to hear the case before the adjournment the summons may issue for his appearance before some other court and the matter of the complaint shall be heard and determined by that court.

If a defendant summoned under this subsection fails to appear in obedience to the summons the court before which he is summoned may proceed in the manner provided by section 62.

(7) Notwithstanding the previous provisions of this section if a defendant who has been suffered to go at large or has been discharged upon recognizance does not appear at the time and place appointed under subsection (2) of this section, the court then sitting for the purpose of hearing or continuing the hearing of the complaint may hear or complete the hearing of the complaint *ex parte* and adjudicate thereon as fully and effectually to all intents and purposes as if the defendant had personally appeared before it at that time and place. Subsec. (7) inserted by 2261, 1936, s. 4.

(8) If the complainant does not appear at the time and place appointed under subsection (2) of this section, the court then sitting for the purpose of hearing or continuing Subsec. (8) inserted by 2261, 1936, s. 4.

the hearing of the complaint may dismiss the complaint with or without costs.

Postponement of hearing where no competent court available.
Cf. 298 of 1883-4, s. 23.

66. (1) If no justice is present at the time and place at which any summons is returnable, or to which the hearing is adjourned or postponed, the clerk shall, at the request of the complainant, postpone the hearing until the next day on which a justice or justices (as the case may require) will attend at such place.

(2) Such postponement shall be made by delivering to the complainant and to the defendant, or such of them as may be present, a memorandum in the prescribed form, and every defendant and witness to whom a copy of such memorandum is delivered shall be under the like obligation to attend at the time and place therein mentioned, and shall be subject to the same obligations and liabilities, as if such memorandum were a summons issued by a justice.

When defendant pleads guilty, court to convict or make an order.
6 of 1850, s. 13.
Cf. U.K. 11 & 12 Vict. c. 43, s. 14.

67. (1) When the defendant is present at the hearing the substance of the complaint shall be stated to him, and he shall be asked if he has any cause to show why he should not be convicted or why an order should not be made against him (as the case may be).

(2) If the defendant admits the truth of the complaint, and shows no sufficient cause why he should not be convicted, or why an order should not be made against him, the court shall convict him or make an order against him accordingly.

If defendant pleads not guilty court to hear parties and their evidence.
Cf. 6 of 1850, s. 13.
Cf. U.K. 11 & 12 Vict. c. 43, s. 12 (part); s. 14 (part).

68. (1) If the defendant does not admit the truth of the complaint the court shall proceed to hear—

(*a*) the complainant and his witnesses and any other evidence which he adduces in support of his complaint;

(*b*) the defendant and his witnesses and any other evidence which he adduces in his defence; and

(*c*) any evidence which the complainant adduces in reply if the defendant adduces any evidence other than as to his, the defendant's, general character.

---

s. 67. BARNES v. MCELROY (1924) S.A.S.R. 41; 12 Austn. Digest 345. It is irregular to wait till the case for prosecution is completed before taking the plea. Where an undefended defendant pleaded guilty, which plea was inconsistent with a statement made by him to the police, held that the justices should have entered a plea of not guilty.

s. 68. TOTHILL v. BUTTFIELD (1921) S.A.S.R. 264; 12 Austn. Digest 353. It is not desirable that the evidence given on one charge should be used on the hearing of another charge even by consent.

HOLMES v. ALLCHURCH (1926) S.A.S.R. 255; 12 Austn. Digest 362. Where the defendants were charged jointly and one intimated, after the close of the case for the prosecution, that he desired to call no evidence and asked the magistate to dispose

1907, 1929. Cf. U.K. 11 & 12 Vict. c. 43, s. 15.

(2) Subject to the provisions of section 12 of the Evidence Act, 1929, every witness shall be examined upon oath.

(3) The practice before a court of summary jurisdiction upon the hearing of any complaint with respect to the examination and cross-examination of witnesses and the right of addressing the court in reply, or otherwise, shall be in accordance, as nearly as may be, with the practice for the time being of the Supreme Court upon the trial of an action.

After hearing the parties court to convict or dismiss. Cf. 6 of 1850, s. 13. Cf. U.K. 11 & 12 Vict. c. 43, s. 14 (part).

69. When the parties and their evidence have been heard, the court shall consider the whole matter and determine the same, and shall convict or make an order against the defendant or dismiss the complaint, as the case may require: Provided that the court may, at any time before the matter has been finally determined, without determining the same permit the complaint to be withdrawn, upon such terms (if any) as it thinks fit.

---

s. 68. (*contd.*) of the case against him so that he could be called as a witness by his co-defendant, held that the magistrate was justified in refusing to dispose of the case against him unless he withdrew his plea of not guilty.

LAMPARD v. WEST (1926) S.A.S.R. 293; 8 Austn. Digest 469. The term "*prima facie* case" may mean:—(*a*) Evidence of such a nature that by it a presumption of law is raised; (*b*) evidence of such a nature that by it so strong a presumption of fact is raised that to find contrary to it would be perverse; (*c*) evidence capable of supporting a verdict either way. The term "*prima facie* case" should be confined in its use of the first and second of these meanings.

CRAFTER v. THOMPSON (1935) S.A.S.R. 159. Where the evidence for the prosecution establishes a substantial balance of probability in favour of the inference of guilt, although there may be a hypothesis consistent with innocence, the court should not dismiss the case, but should call upon the defendant for his answer.

HINTON v. TROTTER (1931) S.A.S.R. 123; 5 Austn. Digest 716. After a *prima facie* case has been made out against the accused, the fact that he preferred to offer no explanation of suspicious circumstances when questioned by police can be used to support an inference unfavourable to his innocence.

PINCHBECK v. PINCHBECK (1931) S.A.S.R. 508. On the second hearing of a case depending greatly on credibility of witnesses, the evidence taken on the first hearing should not be read, but the witnesses should be called again and give their evidence orally.

POLONI v. LENTHALL (1933) S.A.S.R. 146; 12 Austn. Digest 353. The name of every witness must be disclosed to the court.

s. 68. (2) The expression "section 12 of the Evidence Act, 1929," substituted for "section 377 of the Criminal Law Consolidation Act, 1929," pursuant to the Acts Republication Act, 1934.

s. 69. McEWIN v. JOHNS (1921) S.A.S.R. 7; 12 Austn. Digest 340. Conviction quashed where the justices conferred privately with the informant as to the power to mitigate the penalty, and as to a birth certificate produced in evidence.

BUTTFIELD v. KENNY (1921) S.A.S.R. 51; 12 Austn. Digest 365. Held, that where the evidence for the prosecution discloses more than one offence the prosecutor need not elect for which offence a conviction shall be recorded until all the evidence on both sides has been taken.

ALLCHURCH v. TASKER (1922) S.A.S.R. 336; 12 Austn. Digest 303. In proceedings for an offence against the Lottery and Gaming Act, 1936, if the evidence proves more than one offence the court cannot compel an informant to elect for which offence a conviction should be recorded, but it is the duty of the court to convict on such offence as it thinks fit.

TUCKER v. NOBLET (1924) S.A.S.R. 326; 12 Austn. Digest 365. SARA v. LENTHALL (1930) S.A.S.R. 384; 12 Austn. Digest 375. If, at the close of the evidence, the court finds that more than one offence has been committed, it may properly ask the complainant to elect for which offence he wishes the conviction to be drawn up, but if he refuses to elect the court must decide the matter for itself. If the

DIVISION IV.—JUDGMENT.

The Conviction or order.

Conviction to be minuted.
6 of 1850, s. 13.
Cf. U.K. 11 & 12 Vict. c. 43, s. 14 (part).

70. When the court convicts or makes an order against the defendant a minute or memorandum of the conviction or order shall then be made.

No fee shall be paid for any such minute or memorandum.

Order and certificate of dismissal.
6 of 1850, s. 13.
Cf. U.K. 11 & 12 Vict. c. 43, s. 14 (part).

71. (1) If the court dismisses the complaint a minute or memorandum shall be made as aforesaid, and the court may, on being required to do so and if it thinks fit, draw up an order of dismissal and give the defendant a certificate thereof.

(2) A certificate of dismissal shall, upon production and without further proof, be a bar to any subsequent complaint for the same matter against the same party.

Person interested may obtain copies of the proceedings.
298 of 1883-4, s. 36.
Cf. 11 & 12 Vict. c. 42, s. 27.

72. Every party interested in any conviction or order shall be entitled to demand and have copies of the complaint and depositions, and of the conviction or order (as the case may be), and the clerk shall furnish the same upon payment of the fees authorised in that behalf.

Distribution of penalties.

For discouraging corrupt practices by common informers.
Cf. 6 of 1850, s. 48.
Cf. U.K. 2 & 3 Vict. c. 71, s. 34.

73. In order to discourage corrupt practices by common informers the court may, upon any conviction, and notwithstanding the provisions of any Special Act to the contrary, adjudge that no part, or such part only of the penalty as it thinks fit, be paid to the informer.

Discretion of the court with relation to penalties and punishment.

Penalties in discretion of Court.
6 of 1850, s. 47.

74. In any case where the special Act authorises the imposition of a fine of uncertain amount—that is to say, a fine of not less than, or not exceeding, some certain amount or

---

s. 69. (*contd.*) defendant is prejudiced by evidence showing two offences he is entitled to an adjournment.

HUTTON v. HUTTON (1928) S.A.S.R. 512. The clerk of a court of summary jurisdiction should make a note of the magistrate's oral reasons for judgment and transmit this note to the Supreme Court with the appeal papers.

BRENNAN v. ALEXANDER (1932) S.A.S.R. 237; 12 Austn. Digest 356. It is not necessarily improper for a police constable who has prepared the case for the prosecution, and acts as clerk to the justices, to remain in court while the justices are considering their verdict.

HANCOCK v. RADCLIFF (1936) S.A.S.R. 30. It is unwise for an informant, who is also prosecutor and clerk of the court, to be with the justices while they are considering their verdict in private unless he is accompanied by the defendant. Where, however, it appeared that the informant, who was also prosecutor and clerk, had merely been with the justices to procure a book for them the conviction was affirmed.

s. 71. GILBEY v. STANTON (1880) 14 S.A.L.R. 64; 12 Austn. Digest 390, 639. Held that the dismissal of a complaint under sections 9, 10, and 14 of The Destitute Persons Relief Act, 1872, was no bar to further proceedings for maintenance in respect of the same destitute person.

s. 74. AMES v. NICHOLSON (1921) S.A.S.R. 224; 9 Austn. Digest 549. Where a heavier penalty is imposed for a second offence, the defendant should be definitely charged

amounts in that behalf specified—the amount of every such fine, within the limits so prescribed, shall be in the discretion of the court.

General power of courts to refrain from or mitigate punishment.

75. (1) Upon the hearing of any complaint under this or any Act, whether past or future, and notwithstanding the provisions of any other enactment to the contrary, a court of summary jurisdiction shall have the powers conferred by this section: Provided that nothing herein contained—

Proviso against reduction of fine below amount provided by treaty, etc. 298 of 1883-4, s. 38. Cf. U.K. 42 & 43 Vict. c. 49, s. 54.

I. shall authorise any court to reduce below the prescribed minimum the amount of any fine imposed under any Act passed for carrying into effect any treaty, convention, or agreement made with the Imperial Government of Great Britain, or with any British possession or with any foreign State, where such treaty, convention, or agreement stipulates for a fine of such minimum amount; or

II. shall affect the powers conferred upon the Court by the Offenders Probation Act, 1913.

Power of court to discharge defendant without punishment in certain cases. 298 of 1883-4, s. 32. Cf. U.K. 2 & 3 Vict. c. 71, s. 35.

(2) If the court thinks that the charge is proved, but that the offence was in the particular case of so trifling a nature that it is inexpedient to inflict any punishment, or to inflict any other than a nominal punishment, the court may—

(*a*) without proceeding to conviction dismiss the complaint, and, if the court thinks fit, order the defendant to pay such damages, not exceeding forty shillings, and such costs of the proceedings, or either of them, as the court thinks reasonable:

---

s. 74. (*contd.*) with the previous conviction after he has been found guilty and before the penalty is imposed.

SPENCER v. BUTTFIELD (1921) S.A.S.R. 273; 12 Austn. Digest 399. Strict proof of a prior conviction is not necessary in every case before attention can be paid to it in imposing a penalty; but where a heavier penalty is prescribed for a subsequent offence there must be strict proof of the conviction for a prior offence.

BAKER v. BOND (1929) S.A.S.R. 388. The sentence for an offence for which a defendant is convicted should not be increased by reason of the commission of other offences with which he has not been charged.

CRAFTER v. WISE (1934) S.A.S.R. 404. Special leave to appeal to the High Court refused, 52 C.L.R. 746. S. 74 only applies to cases in which both limits of the penalty are prescribed by the Special Act. Where the Special Act prescribes a penalty of not less than a specified amount, a penalty greater than that amount cannot be imposed.

s. 75. (2) LEONARD v. CRESWELL (1920) S.A.L.R. 165. An offence not distinguishable from other offences of the same class cannot be held to be trivial on the ground that all offences of that class are trivial.

SIMONS v. CAMPBELL (1924) S.A.S.R. 1; 12 Austn. Digest 384. Where the Legislature has created an offence, the court cannot say that the offence so created must in all cases be trivial. There must be something either in the act or omission constituting the offence, or in the circumstances in which the act was done or the omission made, to distinguish the case from other cases before the offence can be treated as trivial, and this distinctive thing must be such as to reasonably lead the court to consider the actual offence committed trifling.

TIPPITT v. BELCHER (1925) S.A.S.R. 1; 12 Austn. Digest 383. Where a notice to remove or amend condemned premises has been served under the Health Act, 1935,

(*b*) upon convicting the defendant discharge him, either unconditionally, or conditionally upon giving security, with or without sureties, to appear for sentence when called upon, or to be of good behaviour, and either without payment of damages and costs, or subject to the payment of such damages and costs, or either of them, as the court thinks reasonable.

Court may dismiss charge against juvenile offenders if punished by parents or guardians.
Cf. 8 of 1869-70, s. 8.
Cf. U.K. 22 & 23 Geo. 5 c. 46, s. 15 (2).

(3) If the defendant is under the age of fourteen years, and it appears to the court that chastisement inflicted by the parent or guardian of such person would be the most suitable punishment under the circumstances, the court may allow such chastisement to be inflicted by such parent or guardian or by some other person and for such purpose may, if necessary, adjourn the hearing, and on its being shown to the satisfaction of the court that suitable chastisement has been inflicted as aforesaid it may dismiss the complaint and give a certificate of dismissal accordingly.

Mitigation of prescribed punishment in particular cases.
298 of 1883-4, s. 25.
Cf. U.K. 42 & 43 Vict. c. 49, s. 4.

(4) The court may, in inflicting punishment of imprisonment, impose the same with or without hard labour, and may reduce the period of the same below the minimum prescribed.

Reduction of fine.
Substituted by 1573, 1923, s. 6.

(5) Subject to the provisions of the Special Act the court may, in inflicting a fine, if it is imposed in respect of a first offence, reduce the prescribed amount thereof.

Dispensing with recognizance, &c.

(6) In the case either of imprisonment or a fine, where any requirement is prescribed for the offender to enter into his recognizance and to find sureties for keeping the peace and observing some other conditions, or to do any of such things, the court may dispense with any such requirement, or any part thereof.

Fine in lieu of imprisonment.

(7) Where the court has authority to impose imprisonment and has no authority to impose a fine for the particular

---

s. 75. (2) (*contd.*) and a person fails to obey it in some minor or trivial respect or, making every reasonable effort to obey it, is unable to finish the work within the time allowed the offence may be trivial.
LANG v. REUTER (1927) S.A.S.R. 38; 12 Austn. Digest 383. When an offence is in itself serious, it can only be treated as trifling if there are marked mitigating circumstances.

s. 75. (4) *Re* PATRICK MCSWEENEY (1891-2) 24 S.A.L.R. 163; 12 Austn. Digest 419. The power to award imprisonment with hard labour under subsection (4) applies although the Special Act gives a power to imprison only. (See also Acts Interpretation Act, 1915, s. 31.)

s. 75. (5) ROBINSON v. O'KEEFFE (1908) S.A.L.R. 56; 12 Austn. Digest 411. Where a Special Act prescribes a minimum penalty for offences generally and not merely a minimum penalty for a first offence, the justices may reduce the penalty below the prescribed minimum for a first offence.
GILES v. BIGHAM (1925) S.A.S.R. 188; 12 Austn. Digest 412. S. 74 (5) means that there is power to reduce the penalty below that fixed by the Special Act

offence, it may, nevertheless, if it thinks that the justice of the case will be better met by a fine than by imprisonment, impose a fine not exceeding twenty-five pounds and not being of such an amount as will subject the offender under the provisions of this Act, in default of payment of the fine, to any greater term of imprisonment than that to which he is liable under the Act authorising the imprisonment.

Court may allow time for payment or direct payment by instalments. 298 of 1883-4, s. 26. Cf. U.K. 42 & 43 Vict. c. 49, s. 7; 4 & 5 Geo. 5 c. 58, s. 1.

76. (1) A court by whose conviction or order any fine or other sum is adjudged to be paid may do all or any of the following things, viz.:—

(*a*) allow time for the payment of the said sum:

(*b*) direct payment to be made of the said sum by instalments:

(*c*) direct that the person liable to pay the said sum shall be at liberty to give security for the payment thereof.

(2) Where a sum is directed to be paid by instalments, such instalments shall be paid to the clerk or to such person as the court orders, and, if default is made in the payment of any one instalment, the same proceedings may be taken to recover the amount then remaining due as if no such order for payment by instalments had been made.

DIVISION V.

DIVISION V.—COSTS.

Power to award costs. 6 of 1850, s. 17. Cf. U.K. 2 & 3 Vict. c. 71, s. 31. Cf. U.K. 11 & 12 Vict. c. 43, s. 18.

77. (1) When a court makes a conviction or order it may, if it thinks fit, in and by the conviction or order, adjudge that the defendant pay to the complainant or, in the case of an order of dismissal, that the complainant pay to the defendant, such costs as the court thinks just and reasonable.

(2) Where a court or a justice has authority under this Act to grant any relief or indulgence to any party to any proceeding before justices, and such authority includes a discretion as to the terms upon which such relief or indulgence may be granted, the court or justice may, in the exercise of its or his discretion, make an order for the payment of

---

s. 75. (5) (*contd.*) unless on a fair and reasonable construction of the Special Act it appears that the Legislature intended to take away that power.

CRAFTER v. JOHNSON (1935) S.A.S.R. 39. The penalty should only be reduced below the prescribed minimum when there are circumstances of extenuation or genuine hardship.

JACKSON v. KIMBER (1934) S.A.S.R. 315. The penalty should not be reduced below prescribed minimum unless facts are proved or admitted showing that the offence is less serious than the typical offence against which Parliament has legislated. The onus of proving triviality is on the defendant.

[Other cases as to penalties are noted under s. 177 (2) (*b*), p. 204.]

s. 77. LENTHALL v. HILLSON (1933) S.A.S.R. 31; 12 Austn. Digest 429. There is power to allow the complainant a counsel fee on a successful prosecution conducted by a Crown law officer.

KELLETT v. BUCHANAN (1935) S.A.S.R. 70 affirmed on appeal, same volume, p. 144. S. 77 confers on a court of summary jurisdiction both the power to order costs, and

such costs by such party to any other party as it or he thinks just and reasonable, and such order shall be deemed to be, and be enforceable as, an order of a court of summary jurisdiction.

(3) The amount so allowed for costs shall in every case be specified in the conviction or order.

Manner of enforcing payment of costs.
6 of 1850, s. 17. Cf. U.K. 11 & 12 Vict, c. 43, s. 18.

78. The payment of any sum so adjudged to be paid as aforesaid shall be enforced as follows:—

I. When the costs are included in any conviction or order whereby any fine or other sum of money is also adjudged to be paid, the payment thereof shall be enforced in the same manner and under the same warrant as such fine or other sum:

Cf. Ibid., s. 26.

II. In any other case, by distress or by imprisonment for any term not exceeding the time prescribed by section 81 with reference to the amount to be recovered, unless such costs are sooner paid.

Enforcing costs payable by complainant.

79. Payment of any costs ordered to be paid by a complainant to a defendant shall be enforced as in other cases, and for that purpose the expression "defendant" as used in Division VI. hereof shall be deemed to include a complainant against whom such an order has been made.

DIVISION VI.

DIVISION VI.—EXECUTION.

Convictions and orders for the payment of money.

Convictions or orders need not direct distress.

80. When any fine or sum of money is adjudged to be paid by a conviction or order, it shall not be necessary for the conviction or order to direct or provide for any levy of distress.

Term of imprisonment when none specially prescribed.
Substituted by 2051, 1931, s. 15.
Cf. U.K. 42 & 43 Vict, c. 49, s. 5. Cf. U.K. 25 & 26 Geo. 5 c. 46, s. 1.

81. Whenever the payment of any fine or sum of money adjudged to be paid by any conviction or order is by this or any other Act authorised to be enforced by imprisonment with or without distress, but no term of imprisonment is prescribed by any special Act, such imprisonment shall be for such period as the court or justice issuing the warrant

---

s. 77. (*contd.*) the functions of a taxing authority; and the allowance of particular items of costs, and the amounts, will not be reviewed on appeal unless the court has made an error in principle or there is irregularity in the proceedings.

ss. 78, 81. LANE v. WARD (1935) S.A.S.R. 111. Under s. 81 (prior to the amending Act of 1936) an order for costs only could not be enforced by imprisonment. [*Semble*, such an order can now be enforced by imprisonment.]

of commitment in its or his discretion thinks fit, within the limits fixed by the following scale:—

Heading of scale amended by 2261, 1936, s. 5.

Where the sum adjudged to be paid including the costs—	The said period shall be—
Does not exceed one pound	Not more than seven days
Exceeds one pound but does not exceed ten pounds	Not less than three nor more than fourteen days
Exceeds ten pounds but does not exceed fifty pounds	Not less than seven days nor more than three months
Exceeds fifty pounds	Not less than one month nor more than six months

Proof of default.
Cf. U.K. 4 & 5 Geo. 5 c. 58, s. 28 (4).

82. In any proceedings before a court or upon any application made to a justice to issue a warrant of distress or commitment to enforce the payment of any fine or sum of money adjudged by a conviction or order to be paid by one person to another person, then—

(*a*) if the person to whom the sum is ordered to be paid is a clerk, the production of a certificate purporting to be signed by that clerk that the fine or sum or any part thereof has not been paid to him; and

(*b*) in any other case the production of a statutory declaration to a like effect purporting to be made by the person to whom the sum is ordered to be paid,

shall be sufficient evidence of the facts therein stated, unless the court or the justice requires such clerk or other person to be called as a witness, or requires further evidence of the facts.

Warrants to enforce payment may be postponed, and payment by instalments or security directed.
U.K. 42 & 43 Vict. c. 49, s. 21 (1).

83. (1) When any application is made to a justice to issue a warrant of distress or commitment to enforce payment of any fine or sum of money adjudged or ordered to be paid by any conviction or order, the justice may, if he deems it expedient so to do, postpone the issue of such warrant for such time and on such conditions (if any) as he thinks just.

(2) In any such case the justice may direct payment of the fine or sum by instalments, or that security be given therefor, in the manner provided by section 76.

Convictions and orders may be enforced by distress or imprisonment, as provided by this Act.
Cf. U.K. 11 & 12 Vict. c. 43, s. 19.

84. When any fine or sum of money is adjudged to be paid by a conviction or order, payment of such fine or sum may, notwithstanding the provisions of any other Act, be enforced as provided by this Act, either—

(*a*) by distress, and in default of sufficiency of distress by imprisonment; or

(*b*) by imprisonment without distress.

Conviction or order may impose imprisonment in default of payment of fine, etc.
Cf. U.K. 11 & 12 Vict. c. 43, s. 23. Cf U.K. 25 & 26 Geo. 5 c. 46, s. 1.

85. (1) When a court adjudges the payment of any fine or sum of money, it may, in and by its conviction or order, impose a term of imprisonment in default of payment.

(2) If the special Act upon which the conviction or order is founded directs or appoints any manner or term of imprisonment, the conviction or order shall be framed accordingly.

(3) If no manner or term of imprisonment is so directed or appointed, imprisonment may be imposed with or without hard labour, and for any term which the court thinks fit, not exceeding the time prescribed by section 81 with reference to the amount to be recovered.

On proof of default Justice may issue warrant of distress or commitment.
Cf. 6 of 1850, ss. 16 and 18. Cf. U.K. 11 & 12 Vict. c. 43, s. 19.

86. Whenever a justice is satisfied that default has been made in the payment of any fine or sum adjudged to be paid as aforesaid, he may issue a warrant of distress or of commitment.

Distress.

Wearing apparel, etc., protected against distress.
Cf. U.K. 42 & 43 Vict. c. 49, s. 21 (2).

87. The following articles shall not be taken under a warrant of distress issued under this Act, namely:—

I. The wearing apparel and bedding of the defendant and his family, and the tools and implements of the defendant's trade, the whole not exceeding in value the sum of twenty pounds; and

II. any sewing machine, type-writing machine, or mangle, the property of or under hire to the defendant.

Money may be taken under warrant of distress.
U.K. 4 & 5 Geo. 5 c. 58, s. 4 (2).

88. A warrant of distress shall be deemed to authorise the person charged with the execution thereof to take any money as well as any goods of the person against whom the distress is levied, and any money so taken shall be treated as if it were the proceeds of sale of goods taken under the warrant.

Justices to adjudicate on adverse claim to goods seized under warrant of distress.
298 of 1883-4, s. 24.

89. (1) If any claim is made to or in respect of any goods or chattels distrained under the warrant of any justice, or in respect of the proceeds or value thereof, by—

(*a*) any person not being the party against whom such warrant was issued; or

(*b*) any defendant who claims that the goods or chattels are not distrainable under section 87 hereof,

any justice, upon complaint of the constable charged with the execution of the warrant (as well before as after any action brought against such constable), may issue a summons in the prescribed form, directed as well to the party obtaining the warrant as to the party making the claim.

(2) Thereupon any action which has been brought in respect of such claim shall be stayed, and the party bringing the same may be ordered to pay the costs of any proceedings had therein after the service of the justice's summons.

(3) Any two or more justices shall adjudicate on the claim, and their order shall, subject to any appeal under the provisions of this Act, be final and conclusive upon all parties.

In default of sufficiency or of distress returned, warrant of commitment may issue. Costs of distress to be ascertained and included in warrant of commitment. 6 of 1850, s. 20. Cf. U.K. 11 & 12 Vict. c. 43, ss. 21, 22.

90. (1) If, upon the return of any warrant of distress, the constable who has had the execution of the same returns that he could find no goods or chattels, or not sufficient goods or chattels, whereon he could levy the sum or sums therein mentioned, or so much thereof as has not been before levied or paid, together with the costs of or occasioned by the levying of the same, the justice who has issued the warrant of distress or any other justice may (without further proof of default) issue a warrant of commitment.

(2) The costs and charges of the distress (if any) shall be ascertained by the justice and included in the warrant of commitment, and shall be deemed to be adjudged to be paid by the conviction or order.

Imprisonment.

Form of warrant of commitment to enforce payment of money. Cf. 6 of 1850, ss. 20, 21, 22. Subsec. (1) amended by 2051, 1931, s. 16. Cf. U.K. 11 & 12 Vict. c. 43, s. 23.

91. (1) Every warrant of commitment to enforce the payment of any fine or sum adjudged to be paid by any conviction or order shall order the imprisonment, or the imprisonment with hard labour, of the defendant, unless the sum or sums adjudged to be paid, and also the costs and charges of the warrant of commitment and of taking and conveying the defendant to prison (if the justice thinks fit so to order), are sooner paid.

(2) If the conviction or order directs or appoints any manner or term of imprisonment the warrant shall (subject to the provisions of section 94) be framed accordingly.

(3) If no term of imprisonment is so directed or appointed the justice issuing the warrant may commit the defendant to

s. 91. LANE v. WARD (1935) S.A.S.R. 111. The period of imprisonment to be inserted in a warrant is a matter for the personal consideration of the justice issuing the warrant, and the duty to consider it cannot be delegated.

BULL v. LAING (1929) S.A.S.R. 65. A warrant of commitment must be produced to the person arrested thereunder, at the time of the arrest.

imprisonment, with or without hard labour, for any term not exceeding the time prescribed by section 81 with reference to the amount to be recovered.

Warrant of committal in other cases.
6 of 1850, s. 23.
Subsec. (1) amended by 2051, 1931, s. 17.
Cf. U.K. 11 & 12 Vict. c. 43, s. 24.

92. (1) Whenever—

(*a*) a conviction does not adjudge the payment of any penalty, but that the defendant be imprisoned, or imprisoned and kept to hard labour, for his offence; or

(*b*) an order is for the doing of some act, other than the payment of money, and directs that in case of the defendant's neglect or refusal to do such act he shall be imprisoned, or imprisoned and kept to hard labour, and the defendant neglects or refuses to do such act,

the justices making the conviction or order, or any other justice, may issue a warrant of commitment for the imprisonment, or the imprisonment with hard labour, of the defendant (as the case may be) for such time as the conviction directs, or for such time as the order directs, unless the order is sooner obeyed.

Where costs also adjudged distress may issue.
Cf. 6, 1850, ss. 17 and 23.

(2) If by any such conviction or order any sum for costs is also adjudged to be paid by the defendant to the complainant, the payment thereof may be enforced in the manner hereinbefore provided for the enforcement of orders for the payment of money, and, if the justice issuing any warrant of commitment to enforce such payment thinks fit so to order, the term of imprisonment thereby imposed shall commence at the termination of the imprisonment the defendant is then undergoing.

Imprisonment for subsequent offence may commence at expiration of earlier sentence.
6 of 1850, s. 24.
Cf. 1090, 1912, s. 6 (2).
Cf. U.K. 11 & 12 Vict. c. 43, s. 25.
Cf. U.K. 4 & 5 Geo. 5 c. 58, s. 18.
Cf. U.K. 15 & 16 Geo. 5 c. 86, s. 27.

93. When a warrant of commitment is issued against a defendant who is then in prison undergoing imprisonment upon a conviction for any other offence, such warrant of commitment for the subsequent offence shall in every such case be forthwith delivered to the keeper of the gaol to whom the same is directed, and the justice issuing the same may, if he thinks fit, order that the imprisonment for such subsequent offence shall commence at the expiration of the imprisonment to which such defendant has been previously adjudged or sentenced.

S. 93. TURNER v. CHILMAN (1928); S.A.S.R. 58; 12 Austn. Digest 418. S. 93 empowers the court to award cumulative sentences where the convictions are entered at the same time; but not more than one sentence may be made cumulative upon the first.

Power to imprison person arrested under warrant of commitment in any gaol.

Enacted by 2051 1931, s. 18.

Cf. U.K. 11 & 12 Vict. c. 43, s. 3 (part).

93a. A warrant of commitment, notwithstanding that it is addressed to the keeper of some particular gaol, shall be deemed to be lawfully executed if the defendant is taken and conveyed to any other gaol, and there received into custody, and kept to hard labour or otherwise for the time mentioned in the warrant, and the keeper of any such other gaol to which the defendant is conveyed shall have the same power and authority under the warrant as if he were the keeper of the gaol named therein.

Reduction of Imprisonment upon Part Payment.

Reduction of imprisonment on part payment of sums adjudged to be paid.

Cf. U.K. 4 & 5 Geo. 5 c. 58, s. 3.

94. (1) When any conviction or order adjudges the payment of any fine or sum of money, and any term of imprisonment is imposed upon the defendant in default of such payment, the term of imprisonment so imposed shall, upon payment or satisfaction of any part of such fine or sum, be reduced by a number of days bearing, as nearly as possible, the same proportion to the total number of days in the term as the sum paid bears to the sum adjudged to be paid: Provided that in reckoning the number of days by which any term of imprisonment would be reduced under this section the first day of imprisonment shall not be taken into account, and that, in reckoning the sum which will secure the reduction of a term of imprisonment, fractions of a penny shall be omitted.

(2) Payment under this section may be made to—

(*a*) the clerk; or

(*b*) the keeper of any gaol in which the defendant is imprisoned under a warrant of commitment issued in respect thereof.

(3) When application is made to any justice to issue a warrant of commitment to enforce any such conviction or order as aforesaid, and it is made to appear to such justice that any part of the fine or sum thereby adjudged to be paid has been paid, he shall issue his warrant of commitment accordingly for the term as reduced under this section.

(4) When a warrant of commitment has been issued against any defendant in respect of the non-payment of any fine or sum of money, and payment is made of any part of such fine or sum to the clerk as aforesaid, such clerk shall give to the person making the payment a certificate thereof under his hand.

(5) Upon receipt of such certificate, or of any sum paid under this section, the keeper of any gaol in which the defendant is imprisoned under such warrant of commitment shall endorse a memorandum of such payment, and of the reduction thereby effected, upon the warrant of commitment, which shall thereupon be deemed to have been amended accordingly.

Payment under distress or commitment.

Distress to be stayed on payment or tender.
6 of 1850, s. 28.
Cf. U.K. 11 & 12 Vict. c. 43, s. 28.
Cf. 42 & 43 Vict. c. 49, s. 43 (8).

95. If any defendant against whom a warrant of distress has issued pays or tenders to the constable having the execution of the same the sum or sums in such warrant mentioned, together with the amount of the expenses of such distress up to the time of such payment or tender, such constable shall cease to execute the same.

Defendant to be released upon payment of fine, &c.
6 of 1850, s. 28.
Cf. U.K. 11 & 12 Vict. c. 43, s. 28.

96. When any defendant is imprisoned under any warrant of commitment for non-payment of any fine or other sum, he may pay or cause to be paid to the keeper of the gaol in which he is so imprisoned the sum in the warrant of commitment mentioned, together with the amount of the costs, charges, and expenses (if any) therein also mentioned, and the said keeper shall receive the same, and shall thereupon discharge the defendant, if he be in his custody for no other matter.

Regulations as to whom penalties, etc., to be paid.
6 of 1850, s. 46.
Cf. U.K. 11 & 12 Vict. c. 43, s. 31.

97. (1) Every warrant of distress shall order the constable, or other person to whom the same is directed, to pay the amount of the sum to be levied thereunder to the clerk.

(2) If any defendant who has been adjudged by any conviction or order to pay any fine or sum of money pays the same to any constable or other person, such constable or other person shall forthwith pay the same to such clerk.

(3) If any defendant who has been committed to prison for non-payment of any fine or sum as aforesaid pays the same, or any part thereof, to the keeper of the gaol in which he is imprisoned, such keeper shall forthwith pay the same to the said clerk.

Application by clerk.
Cf. 4 & 5 Geo. 5 c. 58, s. 5 (part).

98. Upon receipt of any fine or sum of money adjudged to be paid by any conviction or order, or of any part thereof, the clerk shall forthwith pay the same as follows:—

(*a*) in the first place, in or towards satisfaction of any costs incurred by any party in or about the

execution of the conviction or order, or otherwise payable to such party thereunder; and secondly,

(*b*) if the order is one for the payment of money to the complainant, then to the complainant; or

(*c*) in any other case according to the direction of the special Act, or, if the special Act contains no directions for payment to any person or persons, then to the Treasury.

DIVISION VII.—SURETIES TO KEEP THE PEACE. DIVISION VII.

This Act to apply to peace informations. 298 of 1883-4, s. 28. Cf. U.K. 42 & 43 Vict. c. 49, s. 25.

99. (1) The power of a court of summary jurisdiction, upon complaint of any person, to adjudge a defendant to enter into a recognizance, and find sureties to keep the peace, or be of good behaviour towards the complainant, shall be exercised by an order upon complaint, and this Act shall apply accordingly.

(2) The complainant and defendant and their witnesses may be called and examined and cross-examined, and the complainant and defendant shall be subject to costs, as in the case of any other complaint.

Subsec. (3) amended by 2051, 1931, s. 19.

(3) The court may order the defendant to enter into a recognizance, with or without sureties, to keep the peace, or be of good behaviour, and, in default of compliance with such order, to be imprisoned for any period not exceeding six months with or without hard labour. The recognizance if entered into forthwith upon the making of the order may be taken by the court or any justice, or if entered into subsequently, may be taken by any justice.

Power to vary order with regard to sureties. 298 of 1883-4, s. 29. Cf. U.K. 42 & 43 Vict. c. 49, s. 26.

100. (1) When any defendant is committed to gaol in default of finding sureties, as in the last preceding section mentioned, he may in person, or by anyone acting on his behalf, apply for an order varying that under which he was committed.

(2) The matter of the application shall be heard and determined by a special magistrate, who may inquire further into the case.

(3) If it appears just, upon new evidence produced, or upon proof of a change of circumstances, the magistrate, having regard to all the circumstances of the case, may make an order reducing the amount for which it is proposed the sureties should be bound, or dispensing with the sureties or surety, or otherwise dealing with the case as the court thinks just.

PART V.

PART V.

INDICTABLE OFFENCES.

DIVISION I.

DIVISION I.—PROCEDURE TO COMMITTAL.

The information.

Information of indictable offence. 15 of 1849, s. 1. 11 & 12 Vict. c. 42, s. 1 (part).

101. An information may be laid before a justice in any case where—

(*a*) any person is suspected to have committed any treason, felony, or indictable misdemeanour, or other indictable offence whatsoever, within the State:

(*b*) any person suspected to be guilty of having committed any such offence out of the State (of which offence cognizance may be taken by the courts of the State) is or is suspected to be within the State.

Joinder of charges. Enacted by 2051, 1931, s. 20. U.K. 5 & 6 Geo. 5 c. 90, s. 4.

101a. (1) Charges for any offences, whether felonies or misdemeanours, may be joined in the same information if the charges are founded on the same facts, or form or are part of a series of offences of the same or a similar character.

(2) The justice may, if he thinks just, deal with any charge so joined, separately.

If warrant to issue information to be upon oath; otherwise oath not necessary. 15, 1849, s. 1. Cf. U.K. 11 & 12 Vict. c. 42, s. 1 (part).

102. (1) If it is intended to issue a warrant in the first instance, as hereinafter provided, the information shall be in writing, and the matter thereof shall be substantiated by the oath of the informant or a witness.

(2) In any other case the information may be by parol and without any oath.

Issue of Warrants and Summonses.

Issue of warrant in first instance. 15, 1849, s. 1. Cf. U.K. 11 & 12 Vict. c. 42, s. 1 (part).

103. Whenever an information is laid before a justice against any person, and the matter thereof is substantiated by the oath of the informant or a witness, the justice may, if such defendant is not then in custody, issue his warrant, in the first instance, for the apprehension of the defendant.

Issue of summons 15, 1849, s. 1. Cf. U.K. 11 & 12 Vict. c. 42, s. 1 (part).

104. Whenever an information is laid before a justice he may, if the defendant is not then in custody, issue his summons for the appearance of the defendant.

---

s. 101. R. v. SCOTT; *Ex parte* CHURCH (1924) S.A.S.R. 220; 12 Austn. Digest 640. A magistrate or a justice is under a duty to receive and consider what is alleged on an information and what process he will issue, but is not obliged by law to sign an information taken by him. *Semble*, he is not justified in refusing to take an information because he thinks a summons should not be issued.

RUSSELL v. O'HALLORAN, 5th June, 1895; 12 Austn. Digest 272. A person laying an information or complaint must appear personally before the justice who takes it.

On disobedience to summons warrant may issue.
15, 1849, s. 1.
Cf. U.K. 11 & 12 Vict. c. 42, s. 1 (part).

105. (1) If after being duly served with a summons the defendant fails to appear in obedience thereto, and if the matter of the information is or has been substantiated by the oath of the informant or a witness, any justice may issue his warrant to apprehend the defendant.

Warrant may issue at any time, notwithstanding issue of summons.
15, 1849, s. 1.

(2) Notwithstanding anything herein contained any justice may issue his warrant, before or after the time appointed in a summons, for the appearance of a defendant against whom an information for an indictable offence has been duly laid and substantiated as hereinbefore provided.

Preliminary examination.

Examination before justices.
15 of 1849, s. 8.
Cf. U.K. 11 & 12 Vict. c. 42, s. 17.

106. Whenever any defendant charged with an indictable offence upon an information under section 101 appears or is brought before any justice, whether voluntarily, upon summons, or upon apprehension under or without warrant, or in custody, for the same or any other offence, the justice, before he commits the defendant to trial or admits him to bail, shall, in the presence of the defendant, take the statement of those who know the facts and circumstances of the case.

Place where examination taken not to be deemed an open court, and no person to remain without consent.
Cf. 15, 1849, s. 10.
Cf. U.K. 11 & 12 Vict. c. 42, s. 19.

107. The room or building in which the examination is taken shall not be deemed an open court for that purpose, and the justice may, if it appears to him that the ends of justice will be best answered by so doing, order that no person shall have access to or be or remain in such room or building without his consent or permission: Provided that nothing herein contained shall authorise the exclusion of any counsel or solicitor for either party.

Evidence upon oath.
15, 1849, s. 8.
Cf. U.K. 11 & 12 Vict. c. 42, s. 17.

108. (1) Every witness shall have the usual oath administered to him before he is examined.

Dispositions to be signed.
15, 1849, s. 8.
Cf. U.K. 15 & 16 Geo. 5 c. 86, s. 12 (1).

(2) The statement of every witness shall be taken down in writing in the presence of the defendant, and his deposition shall be read over to the witness and be signed by him and by the justice.

Contemptuous behaviour on preliminary examination.
Enacted by 2051, 1931, s. 21.

108a. Section 46 of this Act shall apply in relation to the preliminary examination before a justice in the same way as it applies to proceedings before a court of summary jurisdiction, and shall be read and construed with all such modifications as are necessary to give effect to this section.

Procedure on completion of the evidence for the prosecution.

Subsec. (1) amended by 2051, 1931, s. 22.

Cf. U.K. 15 & 16 Geo. 5 c. 86, s. 12.

109. (1) When all the evidence offered upon the part of the prosecution has been heard, the justice then present shall consider whether it is sufficient to put the defendant upon his trial for any indictable offence.

(2) If the justice is of opinion that the evidence is not so sufficient, he shall forthwith order the defendant, if in custody, to be discharged as to the information then under inquiry.

(3) If the justice is of opinion that the evidence is so sufficient, the justice—

(*a*) may (if the charge is one of a minor indictable offence), proceed in the manner directed and under the provisions in that behalf contained in Division II. hereof;

(*b*) may (unless the defendant is charged with a capital offence, or with manslaughter), ask the defendant whether he wishes to plead to the charge as provided in Division III. hereof, and proceed as thereby directed; or

(*c*) shall proceed with the examination as hereinafter provided.

Accused to be asked whether he desires to give evidence, etc.

Amended by 15 of 1849, s. 9, 298 of 1883-4, s. 3.

Cf. U.K. 15 & 16 Geo. 5 c. 86, s. 12 (2), (3).

110. (1) Where the justice proceeds with the examination, he shall say to the defendant these words, or words to the like effect:

"Having heard the evidence for the prosecution, do you wish to be sworn and give evidence on your own behalf, or do you desire to say anything in answer to the charge. You are not obliged to be sworn and give evidence, nor are you required to say anything unless you desire to do so; but whatever evidence you may give upon oath, or anything you may say, will be taken down in writing, and may be given in evidence upon your trial."

"You are clearly to understand that you have nothing to hope from any promise of favour, and nothing to fear from any threat, which may have been held out to you to induce you to make any admission or confession of your guilt; but that whatever you now say may be given in evidence upon your trial, notwithstanding any such promise or threat."

(2) Whatever the defendant then says in answer thereto shall be taken down in writing and read over to him, and shall be signed by the justice, and kept with the depositions of the witnesses, and transmitted with them as hereinafter mentioned.

(3) Upon the trial of the defendant such statement or evidence as aforesaid may be given in evidence without further proof thereof, unless it is proved that the justice by whom it purports to be signed did not in fact sign it.

(4) Nothing herein contained shall prevent the prosecutor in any case from giving in evidence any admission or confession or other statement of the defendant made at any time, which by law would be admissible as evidence against him.

Defendant may call witnesses.
298 of 1883-4, s. 3.
Cf. U.K. 15 & 16 Geo. 5 c. 86, s. 12 (part).

111. (1) When the defendant has given evidence or made his statement, or has declined to do so, the justice, before he commits the defendant for trial or admits him to bail, shall ask the defendant whether he desires to call any witness.

(2) Any witness whom the defendant desires to call shall then be called, and the statement of any such witness who knows anything relating to the facts and circumstances of the case, or anything tending to prove the innocence of the defendant, shall be taken in the manner hereinbefore provided.

If on completion of examination the evidence is not thought sufficient to warrant commitment, defendant to be discharged. If considered sufficient defendant to be committed or admitted to bail.
15 of 1849, s. 15.
Subsec. (1) amended by 2051, 1931, s. 23.
Cf. U.K. 11 & 12 Vict. c. 42, s 25.

112. (1) When the examination is completed the justice then present shall consider whether the evidence is sufficient to put the defendant upon his trial for any indictable offence.

(2) If, in the opinion of the justice, it is not so sufficient, he shall forthwith order the defendant, if in custody, to be discharged as to the information then under inquiry.

(3) If, in the opinion of the justice, the evidence is so sufficient, he shall—

(*a*) by his warrant commit the defendant to the gaol or the place to which by law he may be committed, to be there safely kept until he shall be thence delivered by due course of law; or

(*b*) admit him to bail, as provided in Division IV. hereof.

Adjournment of preliminary examination.

Power to remand defendant from time to time. Remand not to exceed fifteen days without consent. For three days by verbal order. For more than three days by warrant.
Cf. 15 of 1849, s. 12, amended by 298 of 1883-4. s. 11.
Cf. U.K. 11 & 12 Vict. c. 42, s. 21 (part).
Cf. U.K. 4 & 5 Geo. 5 c. 58, s. 20.

113. (1) If from the absence of witnesses, or from any other reasonable cause, it becomes necessary or advisable to defer or adjourn the examination for any time, the justice before whom the defendant appears or is brought may, from time to time, remand the defendant for such time as in his discretion he deems reasonable, but not exceeding fifteen clear days at any one time, unless both parties consent thereto.

(2) If the remand is for a time not exceeding three clear days, the justice may verbally order the constable or other person in whose custody the defendant then is, or any other constable or person named by the justice in that behalf, to continue to keep the defendant in custody, and to bring him before the same or any other justice acting at the time appointed for continuing the examination.

(3) If the remand is for any time exceeding three clear days the defendant shall be remanded by a warrant of the justice to gaol, or to some other place of security.

Power to admit to bail in lieu of remand.
15 of 1849, s. 12.
Cf. U.K. 11 & 12 Vict. c. 42, s. 21 (part).

114. Instead of detaining the defendant in custody as aforesaid, any justice before whom the defendant appears or is brought may discharge him upon a recognizance, conditioned for his appearance at the time and place appointed for the continuance of the examination.

Power to continue examination before expiry of remand.
15. 1849 s. 12.
Cf. U.K. 11 & 12 Vict. c. 42, s. 21 (part).

115. The justice may, notwithstanding that the defendant has been remanded, order the defendant to be brought before him or any other justice, at any time before the expiration of the period for which the defendant has been remanded, and any keeper of the gaol or officer in whose custody the defendant is shall duly obey such order.

Custody of Depositions, Etc.

Depositions, recognizances, etc., to be transmitted to the court in which the trial is to be had.
Cf. 15, 1849, s. 11.

116. (1) Whenever a defendant is committed for trial or admitted to bail, the justice shall forthwith deliver, or cause to be delivered, to the Attorney-General the written information (if any), the depositions, the statement of the accused, and all recognizances of witnesses and of bail.

s. 114. R. v. ADAM (1924) S.A.S.R. 252; 5 Austn. Digest 960. The magistrate has a discretion to grant or refuse bail. The principles governing refusal are those stated in IN *re* BARRONET (1852) 1 E. & B. 1, and IN *re* BARTHELMY (1852) 1 E. & B. 8. The power of the Supreme Court to interfere with the discretion of the magistrate should be sparingly exercised.

s. 115. In *re* FAIRBAIRN (1901-3) S.A.L.R. 115; 5 Austn. Digest 1173. Held, that the Supreme Court had no power to make an order that the defendant be brought for identification before a witness, who was ill in hospital. *Semble*, an order of a like nature might be made by a justice under s. 153.

(2) The Attorney-General shall cause the same to be delivered to the proper officer of the court in which the trial is to be had, before or at the opening of the said court, on the first day of the sitting thereof, or at such other time as the judge who is to preside in such court at the said trial shall order and appoint.

(3) Whilst the documents are in the custody of the Attorney-General as aforesaid, he shall have and be subject to the same duties and liabilities with respect to the said several documents upon a *certiorari* directed to him, or upon a rule or order directed to him in lieu of that writ, as the justice would have had, and been subject to if such documents had not been so transmitted as aforesaid.

Recognizances of prosecutor and witnesses to appear on trial.

Binding prosecutor and witnesses by recognizances. 15 of 1849, s. 11. Cf. U.K. 11 & 12 Vict. c. 42, s. 20 (part).

117. (1) The justice before whom any witness is examined as aforesaid may bind the prosecutor or any witness, by recognizance, to appear at the court at which the defendant is to be tried, then and there to prosecute, or to prosecute and give evidence, or to give evidence against the defendant, or at the trial of the defendant (as the case may be).

298 of 1883-4, s. 3.

(2) Every witness called by the defendant (except a witness merely to the character of the accused) who, in the opinion of the justice, gives evidence in any way material to the case, or tending to prove the guilt or innocence of the accused person, shall be bound as aforesaid.

Subsec. (3) enacted by 2051, 1931, s. 24.

(3) Any recognizance under this section may be entered into at any stage of the examination although the defendant has not then been committed for trial. A recognizance so entered into before committal shall be void if the defendant is not committed for trial.

Form of recognizance of witness. 15 of 1849, s. 11. Cf. U.K. 11 & 12 Vict. c. 42, s. 20 (part).

118. (1) The recognizance shall specify—

(*a*) the Christian and surname of the witness; and

(*b*) the place of his residence, and if it is in a city or town, the name of the street and the number (if any) of the house, and whether he is the owner or tenant thereof, or a lodger therein; and

(*c*) his occupation.

(2) The recognizance shall be entered into and duly acknowledged by the witness before, and be subscribed by, the justice.

(3) The recognizances in respect of all or any two or more of such persons as aforesaid who are bound in the same sum or penalty may be included in one form or document, and in respect of every such person every such recognizance shall be as valid and effectual as if it had been entered into by a separate form or document.

Witness refusing to enter into recognizance may be committed to gaol.
15 of 1849, s. 11.
Cf. U.K. 11 & 12 Vict. c. 42, s. 20 (part).

119. If any witness refuses to enter into or acknowledge the recognizance the justice may, by his warrant, commit such witness to the gaol nearest to the place in which the defendant is to be tried, there to be imprisoned and safely kept until after the trial of the defendant, unless in the meantime such witness shall duly enter into and acknowledge such recognizance as aforesaid before some justice; but if afterwards, from want of sufficient evidence in that behalf, or other cause, the justice before whom the defendant is brought does not commit him or hold him to bail for the offence with which he is charged, any justice may order and direct the keeper of the gaol to discharge any such witness from custody, and he shall be discharged accordingly.

DIVISION II.

DIVISION II.—MINOR OFFENCES.

Minor offences cognizable by justices.
8 of 1869-70, s. 3.
298 of 1883-4, s. 12.
Subsec. (1) amended by 2051, 1931, s. 25.
Cf. U.K. 15 & 16 Geo. 5 c. 86, s. 24.

120. (1) A court of summary jurisdiction constituted by a special magistrate or by any two or more justices shall have such jurisdiction as hereinafter appears to hear and determine in a summary way any charge in respect of any of the following offences, that is to say—

I. all simple larcenies (not being larcenies of cattle and other animals), and all larcenies from the person without violence, and all larcenies punishable under paragraph (*a*) or paragraph (*b*) of section 175 of the Criminal Law Consolidation Act, 1935, where the property stolen is of the value of five pounds or less;

II. all larcenies or embezzlements by clerks or servants of property of the like value;

III. obtaining or attempting to obtain money or goods or any valuable security by false pretences when the property obtained or attempted to be obtained is of is of the value of five pounds or less;

Inserted by 2051, 1931, s. 25.

IIIa. receiving any property stolen, embezzled, or obtained by false pretences knowing the same to have been so stolen, embezzled, or obtained, where the property is of the value of five pounds or less;

s. 120. The expression "paragraph (*a*) or paragraph (*b*) of section 175 of the Criminal Law Consolidation Act, 1935," has been substituted for "section 185 of the Criminal Law Consolidation Act, 1876," pursuant to the Acts Republication Act, 1934.

IV. all felonies punishable as in the case of simple larceny; and

V. all misdemeanours not being by law punishable by imprisonment, with or without hard labour, exceeding two years:

Provided that nothing herein contained shall extend or apply to any of the offences next mentioned, that is to say—

libel,

abduction,

procuring the defilement of women or children,

indecent assault on women and children,

attempts to commit rape or unnatural offences,

concealment of childbirth,

conspiracy.

Minor offences cognizable by a special magistrate. 1127 of 1913, s. 3.

(2) A court of summary jurisdiction constituted by a special magistrate shall also have such jurisdiction as hereinafter appears to hear and determine in a summary way—

Subsec. (2) amended by 2051, 1931, s. 25.

(*a*) any charge in respect of any offence mentioned in paragraphs I., II., III., and IIIa. of subsection (1) hereof where the property stolen, embezzled, obtained, attempted to be obtained, or received does not exceed in value one hundred pounds:

(*b*) any charge for an offence under section 184 of the Criminal Law Consolidation Act, 1935 (which section relates to fraudulent conversion) where the property converted does not exceed in value one hundred pounds.

Subsec. (3) enacted by 2051, 1931, s. 25.

(3) In this section the term "valuable security" includes any writing entitling or evidencing the title of any person to any share or interest in any public stock, annuity, fund, or debt of any body corporate, company, or society, whether within or without His Majesty's Dominions, or to any deposit in any bank, and includes any scrip, debenture, bill, note, warrant, order, or other security for payment of money, or any accountable receipt, release or discharge, or any receipt or other instrument evidencing the payment of money or the delivery of any chattel personal, and any document of title to land or goods as hereinafter defined.

The term "document of title to land" includes any deed, map, roll, register, paper, or parchment written or printed

s. 120. (2) The expression "section 184 of the Criminal Law Consolidation Act, 1935," has been substituted for "section 1 of the Criminal Law Amendment Act, 1902," pursuant to the Acts Republication Act, 1934.

or partly written and partly printed being or containing evidence of the title or any part of the title to any real estate or to any interest in or out of any real estate.

The term "document of title to goods" includes any bill of lading, dock warrant, warehouse keeper's certificate, warrant or order for the delivery or transfer of any goods or valuable thing, bought or sold note, or any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of such document to transfer or receive any goods thereby represented or therein mentioned or referred to.

Valuation of valuable security.
8 of 1869-70, s. 20.
Cf. 38 of 1876, s. 412.

121. For the purposes of the preceding section the value of the share, interest, or deposit or of the goods or other valuable thing to which any valuable security relates, or of the money due thereon or secured thereby and remaining unsatisfied, shall be deemed to be the value of such security.

Power of justices to deal with minor offence without consent of accused.
Substituted by 2051, 1931, s. 26.
Cf. U.K. 15 & 16 Geo. 5 c. 86, s. 24.

122. The jurisdiction conferred by section 120 may be exercised irrespective of the consent of the accused; but the justices or special magistrate shall not have jurisdiction to hear and finally determine any charge if it appears to them or him in their or his discretion that the offence, having regard to its seriousness or the intricacy of the facts or the difficulty of any questions of law likely to arise at the trial, or any other relevant circumstances, ought to be tried by the Supreme Court.

Duty of court to determine whether charge to be dealt with summarily.
Substituted by 2051, 1931, s. 27.
Cf. U.K. 42 & 43 Vict. c. 49, s. 27 (1).

123. (1) When a defendant appears before any special magistrate or justices charged with any offence cognizable by a special magistrate or justices under section 120, the court shall when all the evidence offered on the part of the prosecution has been heard, determine whether it will deal with the case in a summary way or not, and inform the defendant of its determination.

(2) If the court determines not to deal with the case in a summary way it shall complete the preliminary examination.

s. 122. MCLELLAN v. ALLCHURCH (1925) S.A.S.R. 256; 12 Austn. Digest 192. Until the defendant consents to trial by the magistrate or justices, he or they are not a court and if he or they dismiss the information before the defendant consents to his or their jurisdiction, the dismissal will not support a plea of *autrefois acquit*.

BJORKLUND v. NOBLET (1932) S.A.S.R. 196; 12 Austn. Digest 195, 196. Before deciding whether to deal with the case himself the magistrate should hear the accused on that point, and consider any reasonable application for adjournment. *Semble*, the magistrate may at any later stage recall his decision to deal with the case summarily, and commit the accused for trial.

(3) This section shall not apply where the defendant is a child under the age of eighteen years.

Justice or justices not having jurisdiction may remand for hearing by a competent court.

1127 of 1913, s. 6.

Amended by 2051, 1931, s. 28.

124. If the justice or justices before whom any defendant appears, charged with any offence cognizable under section 120, is or are not competent to hear and determine the case in a summary way, and it appears to him or them that the case is or may be one fit to be so heard and determined, he or they may remand the defendant, and adjourn the hearing to such time and place as he deems or they deem fit, then and there to be heard before a special magistrate or two or more justices, as the case may require.

Procedure when charge dealt with summarily.

Cf. U.K. 11 & 12 Vict. c. 43, s. 14.

Cf. U.K. 42 & 43 Vict. c. 49, s. 27.

125. (1) When justices or a special magistrate proceed to dispose of any case as a minor offence the charge shall, in the case of a parol information, be reduced into writing, and the defendant shall be asked whether he is guilty or not guilty of the charge.

(2) Thereafter the justices or special magistrate shall be a court of summary jurisdiction within the meaning of this Act, and (subject as hereinafter appears) the procedure and the powers of the court shall be the same, and the provisions of this Act shall apply, as if the charge were a complaint for a simple offence under this Act.

Witnesses for prosecution may be recalled for cross-examination.

Cf U.K. 42 & 43 Vict. c. 49, s. 27 (2).

126. When the evidence of any witness has been taken before the justices constituting the court, such evidence need not be taken again, but any such witness shall, if the defendant so requires, be recalled for the purposes of cross-examination.

Costs not to be adjudged upon dismissal.

Cf. U.K. 8 Edw. 7 c. 15, s. 6.

127. Nothing in this Act contained shall empower the court to adjudge the payment by the informant to the defendant of costs upon an order of dismissal of a charge of an indictable offence.

Defendant entitled to certificate of dismissal under section 139.

Cf. 8 of 1869-70, s. 4.

Cf. U.K. 42 & 43 Vict. c. 49, s. 27 (4).

128. If the court dismisses the charge, an order of dismissal shall be drawn up, and a certificate thereof granted to the defendant in the manner provided by section 71.

Powers of court as to punishment for minor offences.

Substituted by 2051, 1931, s. 29.

129. (1) Subject to this section, if the defendant is convicted the court may adjudge him to be punished by fine or imprisonment as he is by law punishable.

(2) Except where justices or a special magistrate have or has independently of this Act power to punish by longer imprisonment or higher fine, or where subsection (3) applies, the court shall not inflict any punishment exceeding in the case of imprisonment, imprisonment for two years, or in the case of a fine, one hundred pounds.

(3) If it is proved or admitted that the defendant has previously been convicted and sentenced, whether by a court of summary jurisdiction or the Supreme Court, to a term or terms of imprisonment not less in the aggregate than six months, for any indictable offence or offences, the court may, on the conviction of the defendant, inflict any punishment not exceeding the maximum fixed by law, although the punishment so inflicted exceeds in the case of imprisonment, imprisonment for two years or in the case of a fine, a fine of one hundred pounds.

Power to order restitution of stolen property.

8, 1869-70, s. 11.

Amended by 2051, 1931, s. 30.

Cf. U.K. 30 & 31 Vict. c. 35, s. 9.

130. If the court convicts the defendant, it may order restitution of the property stolen, taken, or obtained by false pretences or received, embezzled, or converted, in any case in which the Supreme Court would, if the defendant had been tried before it, be by law authorised to order restitution.

Application of Criminal Law Consolidation Acts to minor offences.

Enacted by 2051, 1931, s. 31.

130a. The following provisions of the Criminal Law Consolidation Act, 1935, namely, section 181, subsections (2) and (3) of section 195, subsection (4) of section 196, subsection (2) of section 198, so much of rule 6 of schedule 3 as relates to naming the owner of property, and rule 10 of schedule 3 shall apply on the trial under this division of any offence to which they relate in the same manner as far as possible as they apply on the trial of similar offences in the Supreme Court.

S. 131 repealed by 2051, 1931, s. 32.

* * * * * * * * * * *

Effect of conviction.

8, 1869-70, s. 13.

132. A conviction under the provisions hereof shall have the same effect as a conviction upon an indictment for the same offence would have had.

s. 130a. The first five lines of s. 130a have, pursuant to the Acts Republication Act, 1934, been substituted for the following references to the Criminal Law Consolidation Act, 1876:—"S. 196, the proviso contained in s. 213, s. 218 and s. 219 of the Criminal Law Consolidation Act, 1876."

133. A defendant who obtains an order of dismissal, or is convicted, under the provisions hereof, shall be released from all further or other criminal proceedings for the same cause.

Proceedings to be a bar to further prosecution.
8, 1869-70, s. 14.
U.K. 11 & 12 Vict. c. 43, s. 14 (part).

DIVISION III.—COMMITTAL FOR SENTENCE.

134. (1) Unless the defendant is charged with a capital offence or with manslaughter, the justice may, when all the evidence offered upon the part of the prosecution has been heard, and if he thinks fit, ask the defendant whether he wishes to plead to the charge.

Defendant may be asked to plead to the charge.
1133, 1913, s. 4.

(2) If the defendant thereupon signifies a desire to plead to the charge, the justice shall reduce the charge into writing and read the same to the defendant, and say to him, "Are you guilty or not guilty of the offence with which you are charged?"

135. If the defendant does not signify a wish to plead, or pleads not guilty, the justice shall proceed to complete the preliminary examination in the manner provided in Division I. hereof.

On plea of not guilty examination to proceed.
1133, 1913, s. 4 (4).

136. If the defendant pleads guilty, the justice shall—

(*a*) by his warrant commit the defendant to gaol, or admit him to bail to appear for sentence as hereinafter provided; and

(*b*) cause a record of the plea, and of the committal, or admission to bail, to be put into writing.

On plea of guilty defendant to be committed or admitted to bail for sentence.
1133, 1913, s. 4.

137. (1) The defendant, upon pleading guilty, may, if he so desires, call any witnesses as to his character.

Defendant may call witnesses as to character.
1133, 1913, s. 6.

(2) If any such witnesses are called, their depositions shall be taken in the manner provided in section 108.

(3) Nothing herein contained shall be deemed to take away, or in any way limit, the power of the Judge before whom the defendant appears for sentence to hear witnesses as to his character, or to hear any statement by him or on his behalf.

PART V. DIVISION III.

Attendance of witnesses at the Criminal Court.
1133, 1913, s. 7.
Cf. U.K. 15 & 16 Geo. 5 c. 86, s. 13.
Cf. U.K. 11 & 12 Vict. c. 42, s. 20.

138. (1) The justice may bind the prosecutor or any witness by recognizance to appear at the court before which the defendant is to appear for sentence, in the same manner as if he had been committed for trial: Provided that, unless the justice when binding the prosecutor or any witness otherwise directs, every such recognizance shall be void unless the defendant, within the time and in the manner prescribed by section 141, withdraws his plea of guilty and substitutes therefor a plea of not guilty.

(2) The provisions of section 119 shall apply to any witness who refuses to enter into any such recognizance.

Record to be forwarded to the Criminal Court.
1133, 1913, s. 5.

139. When the defendant is committed, or admitted to bail, as aforesaid, the justice shall forthwith deliver the record, or cause the same to be delivered, with the written information or charge, and the depositions, and the recognizances (if any), to the Attorney-General, who shall cause the same to be delivered to the proper officer of the court at which the defendant is to appear for sentence, before or at the opening of the said court on the first sitting thereof, or at such other time as the Judge who is to preside in such court may order.

Form of warrant and venue.
1133, 1913, s. 4.

140. (1) The warrant shall commit the defendant to a gaol, specified by the justice, to appear for sentence before the next Court of Oyer and Terminer or General Gaol Delivery to be held at the place specified in that behalf by such justice, or at such other place as may thereafter be ordered by a Judge of the Supreme Court, and in the meantime to be safely kept in such gaol.

(2) If the defendant is committed or admitted to bail by a justice sitting within any Circuit Court District within the meaning of the Act No. 6 of 1868-9, he shall be committed or bailed to appear at the first Court of Oyer and Terminer or General Gaol Delivery to be held within the said district.

(3) Sections 10 and 12 of the last-mentioned Act shall apply, *mutatis mutandis,* with respect to any defendant committed or admitted to bail under this section to the same extent as if the defendant had been committed for trial.

s. 140. Act No. 6 of 1868-9 is repealed by the Supreme Court Act, 1935, and superseded by sections 52-62 of that Act. Sections 10 and 12 of the Act No. 6 of 1868-9 are reproduced in ss. 59 and 62 respectively of the Supreme Court Act, 1935.

Withdrawal of plea and substitution of plea of not guilty. 1133, 1913, s. 9.

141. (1) When a defendant has been committed or admitted to bail to appear as aforesaid, he may, nevertheless, by notice in writing to the Attorney-General, not less than seven clear days before the day of the first sitting of the court at which he is appear as aforesaid, withdraw his plea of guilty and substitute therefor a plea of not guilty: Provided that in such case any Judge presiding over such court may adjourn or postpone the trial to such day as he thinks proper.

(2) Thereupon the defendant—

(*a*) if committed to appear for sentence, shall be deemed to have been committed for trial, and the warrant of committal shall be construed accordingly:

(*b*) if admitted to bail to appear for sentence, shall be deemed to have been admitted to bail to appear for trial, and any recognizance or other undertaking (whether in writing or otherwise), by whomsoever entered into, in connection with the admission to bail, shall be construed accordingly.

(3) Upon receipt of a notice under this section it shall be the duty of the Attorney-General to cause the same to be delivered to the proper officer mentioned in section 139.

(4) At the trial of any person who has, under this section, substituted a plea of not guilty, the fact that he had pleaded guilty to the charge on which he is being tried shall not be put in evidence, nor be made the subject of any comment to the jury by the prosecution.

Court to sentence accordingly unless the Judge advises withdrawal of the plea. 1133, 1913, s. 10.

142. Subject to the provisions of section 141, upon the appearance for sentence of a defendant committed or admitted to bail as aforesaid, the court may pass sentence or otherwise deal with the defendant as if he had been arraigned and had pleaded guilty in such court, and all the same consequences shall ensue as if he had been so arraigned and had so pleaded guilty: Provided that if, for any reason, it appears to the presiding Judge of such court that the plea of guilty should be withdrawn, he may advise such person to withdraw such plea, and, if the same be thereupon withdrawn, the defendant shall be deemed to have been committed for trial, and may forthwith, or after adjournment, and notwithstanding that no information has been filed in such court, be arraigned, and the case shall proceed in the usual course.

s. 141. R. v. HALL (1924) S.A.S.R. 249; 5 Austn. Digest 708. Any statement forming part of a plea of guilty, which has been withdrawn, is inadmissible in evidence.

DIVISION IV.—BAIL.

Cases in which bail is discretionary.

Power to admit to bail persons charged with felony or certain misdemeanours.
15 of 1849, s. 13.
Cf. U.K. 11 & 12 Vict. c. 42, s. 23.

143. Where the defendant is charged with any of the following offences, namely—

I. any felony, assault with intent to commit a felony, or attempt to commit a felony;

II. obtaining or attempting to obtain property by false pretences;

III. any misdemeanour in receiving property stolen or obtained by false pretences;

IV. perjury or subornation of perjury;

V. concealing the birth of a child by secret burying or otherwise;

VI. wilful or indecent exposure of the person;

VII. riot;

VIII. assault in pursuance of a conspiracy to raise wages, or upon a peace officer in the execution of his duty, or upon any person acting in his aid; or

IX. neglect or breach of duty as a peace officer,

the justice may, in his discretion—

(*a*) admit the defendant to bail instead of committing him for trial as provided in section 112 or 140; or

(*b*) commit the defendant for trial as aforesaid, and certify for his admission to bail.

Cases in which bail is obligatory.

Bail for persons charged with other misdemeanours.
15, 1849, s. 13.
Cf. U.K. 11 & 12 Vict. c. 42, s. 23 (part).

144. Where the defendant is charged with any indictable misdemeanour not mentioned in section 143, the justice shall—

(*a*) admit him to bail instead of committing him for trial; or

(*b*) commit him for trial, and certify for his admission to bail.

s. 143. R. v. ADAM (1924) S.A.S.R. 252; 5 Austn. Digest 960. The magistrate has a discretion to grant or refuse bail. The principles governing bail are those stated in IN *re* BARRONET (1852) 1 E. & B. 1, and IN *re* BARTHELMY (1852) 1 E. & B. 8. The power of the Supreme Court to interfere with the discretion of the magistrate should be sparingly exercised.

General Provisions.

Bail after commitment for trial or sentence. 15 of 1849, s. 13, amended by 1133 of 1913.

145. When a defendant charged with any offence for which bail is required or authorised to be granted is committed for trial, the justice who has signed the warrant for his commitment may admit the defendant to bail, or certify for his admission to bail, at any time before the first day of the sitting or session at which he is to be tried, or to appear, or before the day to which such sitting or session is adjourned.

Amount and form of recognizance. 15 of 1849, s. 13, as modified by The Criminal Law Consolidation Act, 1876, s. 370. Cf. U.K. 61 & 62 Vict. c. 7, s. 1.

146. (1) Where a justice is hereby authorised or required to admit any defendant to bail, he shall do so only upon the defendant entering into a recognizance, with or without a surety or sureties, to ensure his appearance at the time and place when and where he is to be tried or sentenced.

(2) The recognizance shall be conditioned for the appearance of the defendant at the time and place aforesaid, and that he will then surrender and take his trial, or appear for sentence, and not depart the court without leave.

Certificate for bail. Cf. 15 of 1849, s. 13. Cf. U.K. 11 & 12 Vict. c. 42, s. 23 (part).

147. (1) The certificate for the admission of a defendant to bail shall fix the amount in which the defendant and sureties are to be bound.

(2) Upon such certificate the recognizance may be entered into as provided by section 33.

(3) Upon the production of such certificate and the recognizance or sureties taken thereunder any justice may release the defendant upon bail.

Defendant bailed after commitment to be discharged upon warrant of deliverance. 15, 1849, s. 14. Cf. U.K. 11 & 12 Vict. c. 42, s. 24.

148. When a defendant is in gaol charged with the offence for which he is admitted to bail, or released upon bail, the justice who so admits or releases him shall send to, or cause to be lodged with, the keeper of the gaol, a warrant of deliverance requiring the keeper to discharge the defendant if he is detained for no other offence, and upon such warrant being delivered to or lodged with the keeper, he shall forthwith obey the same.

Transmission of recognizance. 15, 1849, s. 13.

149. When any defendant is released upon bail by a justice other than the committing justice, such justice shall forthwith transmit the recognizance or recognizances of bail to the Attorney-General.

PART V. DIVISION IV.

Persons admitted to gaol and suspected of an intention to abscond may be arrested.
298 of 1883-4, s. 10.
1133 of 1913, s. 4 (7).
Cf. U.K. 15 & 16 Geo. 5 c. 86, s. 26.

150. When any defendant has been admitted to or released upon bail by any court, Judge, justice, or person having authority in that behalf to appear for trial or for sentence, and any person gives information on oath to a justice of any facts which raise a probable presumption that it is the intention of such defendant not to surrender himself in accordance with the condition of the recognizance of bail entered into by him, or on his behalf, such or any other justice may issue a warrant for the apprehension of the defendant, and may commit him to gaol, to be there safely kept, notwithstanding his having been admitted to bail as aforesaid, until he shall be thence delivered by due course of law.

DIVISION V.

DIVISION V.—MISCELLANEOUS.

The Warrant of Committal.

Regulations for conveying prisoners to gaol.
15 of 1849, s. 16.
1133 of 1913, s. 8.

151. Any constable or other person to whom a warrant of commitment is directed shall convey the person therein named or described to the gaol mentioned in the warrant, and there deliver him, together with the warrant, to the keeper of such gaol, who shall thereupon give such constable or other person so delivering such prisoner into his custody a receipt for such prisoner, setting forth the state and condition in which such prisoner was when he was so delivered.

Use of Depositions at Trial.

Deposition of witness for prosecution taken at preliminary examination may be used if witness dead or unable to travel.
15 of 1849, s. 8.
Cf. 298 of 1883-4, s. 9.
Amended by 2051, 1931, s. 33.
Cf. U.K. 11 & 12 Vict. c. 42, s. 17 (part).
Cf. U.K. 15 & 16 Geo. 5 c. 86, s 13 (3).

152. The deposition of any witness, taken at the preliminary examination, and purporting to be signed by the justice before whom it purports to have been taken, may be read as evidence upon the trial of the defendant, upon proof—

(*a*) that the witness is dead, or so ill as not to be able to travel, or so ill as not to be able to attend at the trial or to give evidence thereat without danger to his health; and

(*b*) in the case of a witness for the prosecution, that the deposition was taken in the presence of the defendant, and that he, or his counsel or solicitor, had a full opportunity of cross-examining the witness,

and without further proof, unless it is proved that the deposition was not in fact signed by the justice purporting to sign the same.

Justice may take deposition of person dangerously ill and unable to attend preliminary examination.
298, 1883-4, s. 8.
Cf. U.K. 30 & 31 Vict. c. 35, s. 6.

153. (1) Whenever it is made to appear to the satisfaction of any justice that—

(*a*) any person is dangerously ill and is, in the opinion of some legally qualified medical practitioner, not likely to recover from such illness; and

(*b*) such person is able and willing to give material information relating to any indictable offence, or to any defendant accused of any such offence; and

(*c*) it is not practicable for any justice to take the deposition of such person at the preliminary examination of such defendant,

the justice may take the statement upon oath of such person.

(2) The justice taking the deposition shall thereupon subscribe the same, and shall add thereto, by way of caption, a statement of his reason for taking it, and of the day and place when and where it was taken, and of the names of the persons (if any) present at the taking thereof.

(3) If the deposition relates to any indictable offence for which any defendant is already committed or bailed to appear for trial, the justice shall transmit the same, with the said addition thereto, to the officer to whom the depositions are by law required to be transmitted, and the said officer shall preserve the same.

Use of such deposition at trial.
298, 1883-4, s. 8.
Cf. U.K. 30 & 31 Vict. c. 35, s. 6.

154. Afterwards, upon the trial of any defendant or defendants to whom the statement relates, the statement may be read in evidence, either for or against the accused, if—

(*a*) the statement purports to be signed by the justice by or before whom it purports to be taken;

(*b*) it is proved that the person who made the same is dead, or that there is no reasonable probability that such person will ever be able to travel or give evidence; and

(*c*) it is proved, to the satisfaction of the court, that reasonable notice of the intention to take the statement was served upon the person (whether prosecutor or defendant) against whom it is proposed to be read in evidence, and that such person, or his counsel or solicitor, had, or might have had if he had chosen to be present, full opportunity

s. 153. In *re* FAIRBAIRN (1901-3) S.A.L.R. 115; 5 Austn. Digest 1173. Held, that the Supreme Court had no power to make an order that an accused person be brought for identification, before a witness, who was ill in hospital. *Semble,* an order of a like nature might be made by a justice under s. 115.

of cross-examining the person who made the same.

Provision for prisoner being present at the taking of deposition.
298, 1883-4, s. 9.
Cf. U.K. 30 & 31 Vict. c. 35, s. 7.

155. Whenever any prisoner in actual custody causes to be served, or receives notice of, an intention to take such a statement as aforesaid, the Judge or justice before whom the prisoner was committed, or a visiting justice of the gaol in which he is confined, may, by an order in writing, direct the keeper of the gaol having the custody of the prisoner to convey him to the place mentioned in the said notice, for the purpose of being present at the taking of the statement; and such keeper shall convey the prisoner accordingly, and the expenses of such conveyance shall be paid out of the funds applicable to the other expenses of the gaol from which the prisoner is conveyed.

Ss. 156, 157 repealed by 2252, 1935, s. 4.

Payment to Prosecutors and Witnesses.

* * * * * * * * * * *

Power to award payment of expenses of prosecution of a minor offence.
166 of 1880, s. 2.
Cf U.K. 42 & 43 Vict. c. 49, s. 28.

158. When any charge is summarily adjudicated upon under the provisions of Division II. of this Part of this Act, the justices or special magistrate, upon the request of any person who has preferred the charge, or appeared to prosecute or to give evidence against the person charged, may, if they or he think fit, grant a certificate to such person for the amount of the compensation for his reasonable expense, trouble, and loss of time therein, subject to the regulations for the time being in force in relation to the certificates to be granted by the examining magistrates under the Criminal Law Consolidation Act, 1935: Provided that the amount of fees payable in respect of the expenses of apprehending the defendant and detaining him in custody, and of such other expenses as are now by law payable when incurred before a commitment for trial, may be added to the certificate for compensation as aforesaid, and paid in the like manner.

Power to award costs of prosecution although charge dismissed.
298 of 1883-4, s. 7.

159. Where any defendant is charged before a justice with felony, or with any indictable misdemeanour, and in the opinion of the justice the charge was *bona fide* made upon reasonable and probable cause, the justice may, in his discretion, at the request of the prosecutor, grant a certificate

ss. 158, 159. The provision for making regulations as to the certificates to be granted by examining magistrates is now contained in s. 297 (7) of the Criminal Law Consolidation Act, 1935. For references to these regulations see table on p. 216.

In both ss. 158, 159 the expression "Criminal Law Consolidation Act, 1935," has been substituted for "Criminal Law Consolidation Act, 1876," pursuant to the Acts Republication Act, 1934.

of the expenses and of the amount to be allowed for the trouble and loss of time to the witnesses appearing and examined on such charge, notwithstanding that the parties may not be bound over by recognizance to prosecute and give evidence, and although no committal for trial may take place: Provided that any certificate so granted as aforesaid shall be subject to the regulations for the time being in force with regard to certificates granted by examining magistrates under the Criminal Law Consolidation Act, 1935, and shall be payable in manner directed by section 160 of this Act.

Manner of payment under sections 158 and 159. 166 of 1880, s. 3.

160. Every certificate for compensation under either of the two last preceding sections shall be paid by the clerk, or by the Clerk of the Local Court of Adelaide, upon the same being presented to him, upon sight, out of any funds in his hands, or which may be granted to him for the purpose, to the person named therein; or if the said certificate shall have been indorsed with the words "Pay the bearer hereof," or words to that effect, signed by the person named therein and witnessed by one disinterested person, then to the bearer thereof; and every such clerk shall be allowed the same in his accounts: And every payment made by him shall effectually discharge him from any claims made by the person named therein, or any person claiming by, through, or under him:

Proviso added by 2051, 1931, s. 34.

Provided that no payment shall be made on any certificate for compensation under either of the last two preceding sections unless the certificate is presented for payment within six months from the date when it was signed by the justice or magistrate who granted it.

Summary Trial of Children.

Provision for summary trial of children. Cf. 298 of 1883-4, s. 13. Cf. U.K. 42 & 43 Vict. c. 49, s. 10. Cf. U.K. 22 & 23 Geo. 5 c. 46, ss. 15, 70.

161. (1) Where a child under the age of eighteen years is charged before a special magistrate, or two or more justices, with any indictable offence, other than homicide, the special magistrate or justices, if he or they think it expedient so to do, and if the parent or guardian of the child so charged, when informed of his right to have the child tried by jury, does not object to the child being dealt with summarily, may deal summarily with the offence, and inflict the same description of punishment as might have been inflicted had the case been tried on indictment: Provided that—

(*a*) where a fine is awarded the amount shall not in any case exceed five pounds:

(*b*) in lieu of imprisonment the court shall apply the provisions of the Maintenance Act, 1926.

(2) For the purpose of a proceeding under this section the provisions of Division II. of this Part of this Act shall be adopted so far as the same are applicable thereto, and the special magistrate or justices may, if they think it desirable, make a statement for the information of the parent or guardian of the meaning of the case being dealt with summarily, and of the court at which the child would be tried if tried by a jury.

(3) Where the parent or guardian of a child is not present when the child is charged with an indictable offence, the special magistrate or justices may, if he or they think it just so to do, remand the child for the purpose of causing notice to be served on such parent or guardian, with a view, so far as practicable, of securing his attendance at the hearing of the charge, or the special magistrate or justices may, if he or they think it expedient so to do, deal with the case summarily.

Cf. U.K. 23 Geo. 5 c. 12, s. 50.

(4) This section shall not render punishable for an offence any child who is not, in the opinion of the special magistrate or justices before whom he is charged, above the age of seven years, and of sufficient capacity to commit crime.

PART VI.

PART VI.

APPEALS FROM COURTS OF SUMMARY JURISDICTION.

Special Case.

Points of law may be reserved for the consideration of the Supreme Court.
Cf. 6 of 1850, s. 43. 1215 of 1915, s. 47.
Amended by 1573, 1923, s. 5.

162. (1) Any court of summary jurisdiction may, at discretion, reserve any question of law arising on or out of the hearing or determination of any information or complaint for the consideration of the Supreme Court, and state a special case or cases for the opinion of the said court.

---

s. 161. (1) (*b*) The expression "Maintenance Act, 1926," has been substituted for "State Children Acts, 1895 to 1918," pursuant to Acts Republication Act, 1934.

s. 162. HARRIS v. HOSKING (1917) S.A.L.R. 81; 8 Austn. Digest 187; 12 Austn. Digest 632. Where a special case set out the facts proved and asked whether, on those facts, the respondent had carried on retail trade, held that the question was one of law and not of fact. Discussion of the nature of questions of law and questions of fact.

McKENZIE v. ORDISH (1922) S.A.S.R. 21; 12 Austn. Digest 632. On an appeal under Act No. 6 of 1850 from a court of summary jurisdiction to a local court consti-

(1A) Any such question may be so reserved at any time during the hearing of the information or complaint, or at any time within one month after the court of summary jurisdiction has finally determined the information or complaint. Enacted by 1573, 1923, s. 5. Cf. U.K. 20 & 21 Vict. c. 43, ss. 2, 6 and 7. Cf. U.K. 42 & 43 Vict. c. 49, s. 33.

(2) The Supreme Court shall deal with every such special case according to the practice of the Supreme Court on special cases, and may make such order thereon (including any order as to the costs of the proceedings in that court and in the courts below) as to the Supreme Court appears just.

(3) The Supreme Court may send any such special case back for amendment, or may itself amend the same.

(4) The justices shall make a conviction or order in respect of the matters referred to the Supreme Court in conformity with the certificate of the Supreme Court.'

Appeals generally.

163. (1) There shall be an appeal to the Supreme Court from every conviction, order, and adjudication of a court of summary jurisdiction (including a conviction of a minor indictable offence, or an order dismissing a complaint of a simple offence), as hereinafter provided, in every case, unless some Special Act expressly declares that such conviction, order, or adjudication shall be final, or otherwise expressly prohibits any appeal against the same: Provided that in proceedings under the Industrial Code, 1920, the appeal shall lie to the Industrial Court, and that, for the purposes of every such appeal, all references in this Part of this Act to the Supreme Court, or to the Master thereof, shall be read as references to the Industrial Court and to the Registrar thereof respectively. Cf. U.K. 23 & 24 Geo. 5 c. 38. Right of appeal to Supreme Court in every other case unless expressly taken away. Amended by 1573, 1923, s. 7. Cf. U.K. 23 & 24 Geo. 5 c. 38, s. 1 (1), s. 7.

(2) Any provision of any Special Act conferring a right of appeal to a Local Court against any such conviction, order, or adjudication as mentioned in subsection (1) hereof shall be read as conferring a right of appeal to the Supreme Court under this Act in lieu of to such Local Court.

---

s. 162. (*contd.*) tuted by a judge of the Supreme Court, and on application to the judge to state a case for the Full Court, held that as the matter in issue was of no general importance or general interest, and did not raise any important question of law, a case should not be stated. The difficulty of the case is not a ground for stating a special case.

BYRNE v. LANCASTER (1924) S.A.S.R. 359. A special magistrate sitting to determine a summons under the Inter-state Destitute Persons Relief Act, 1910, is a court of summary jurisdiction and has power to state a case.

s. 163. WILLIAMS v. MACARTHUR, 19th April, 1898. Held that there was no appeal under the Police Act, 1869-70, against an acquittal on a quasi-criminal charge.

STUART v. ALLCHURCH (1923) S.A.S.R. 333; 12 Austn. Digest 633. Where two justices disagreed as to the guilt of the accused and refused to dismiss the complaint, but adjourned the hearing, held there was no right of appeal. There is no appeal from order of justices deciding incidental matters of procedure.

THE COMMONWEALTH PLASTER COMPANY LIMITED v. MOULDEN (1925) S.A.S.R. 325. A warden exercising jurisdiction in a suit under the Mining Acts is not a court

No appeal or removal into Supreme Court to be allowed except under this Act.
6 of 1850, ss. 43, 35.
Cf. U.K. 5 Geo. 2 c. 19, s. 2.
Cf. U.K. 4 & 5 Geo. 5 c. 58, s. 37.

164. No appeal shall be allowed from any such conviction, order, determination, or adjudication as mentioned in subsection (1) of section 163, nor shall any such conviction, order, determination, or adjudication be removed into the Supreme Court by *certiorari* or otherwise, except as provided by this Act.

Power of Supreme Court to dispense with conditions precedent to appeal where compliance impracticable.
Cf. U.K. 12 & 13 Vict. c. 45, s. 8.

165. The Supreme Court may dispense with compliance with any condition precedent to the right of appeal, as prescribed by this Act, if, in its opinion, the appellant has done whatever is reasonably practicable to comply with the provisions of this Act.

Amendment of notice of appeal.
298 of 1883-4. s. 55.

166. No appeal shall be defeated merely by reason of any defect, whether of substance or of form, in any notice or statement of the grounds of appeal, but if upon the hearing thereof the Supreme Court is of opinion that any objection raised to such notice or statement is valid, it may cause the notice or statement to be forthwith amended: Provided that if the notice or statement appears to have been misleading, or to have occasioned expense, or to have prejudiced the respondent, such amendment shall be allowed only upon such terms as to costs or postponement, or both, as the Supreme Court thinks just.

Recognizances on appeal.
Cf. 298 of 1883-4. s. 41.
Cf. U.K. 20 & 21 Vict. c. 43, s. 3 (part).
Cf. U.K. 42 & 43 Vict. c. 49, s. 31 (3).

167. Every recognizance on appeal shall be entered into before the justices whose decision is appealed against, or some other justice, and shall be conditioned duly to prosecute the appeal, and to abide the order of the Supreme Court thereon, and to pay such costs as may be awarded by such court.

---

s. 163. (*contd.*) of summary jurisdiction and the appeal from a warden is not transferred to the Supreme Court by virtue of s. 163. [But see now Mining Act, 1930, s. 22.]

CHURCH, *vice* HORSEMAN v. NEWS LIMITED (1933) S.A.S.R. 70; 12 Austn. Digest 633. Where the appellant was a police officer who had laid the complaint, held that, on his death, the appeal could be continued in the name of a substituted appellant.

SEVERIN v. MANN (1933) S.A.S.R. 345; 12 Austn. Digest 633. Held that a magistrate hearing a complaint to try the validity of an election under the District Councils Act, 1929, was not *persona designata*, but was a court of summary jurisdiction, and an appeal lay from his decision to the Supreme Court.

s. 165. HOMES v. THORPE (1924) S.A.S.R. 479; 12 Austn. Digest 634. Where the appellant gave notice of appeal three days before the end of the time for appealing, but failed to serve the respondent, because during those three days there was no one at his home with whom the notice could properly be left, held that the requirement as to service of notice of appeal within one month should be dispensed with.

s. 167. *Ex parte* CRACK (1883) 17 S.A.S.R. 16; 12 Austn. Digest 630. Held, under Act 6 of 1850, that a recognizance with a condition containing the word "try" instead of "prosecute" was not a sufficient compliance with the Act.

The justice or justices taking the recognizance may in their discretion require one or more sureties to be bound by the recognizance for the due performance of the conditions thereof, in such sum or sums as the justice or justices think fit.

Added by 2051, 1931, s. 35.

168. If the appellant is then in custody, he shall be liberated upon the recognizance on appeal being further conditioned for his appearance before the same justices, or, if that is impracticable, before some other justice or justices, within fourteen days after the decision of the appeal, to abide the result of such decision, unless the conviction or order is reversed.

Appellant if in custody to be released on recognizance.
Cf. 298 of 1883-4, s. 41.
Cf. U.K. 20 & 21 Vict. c. 43, s. 3 (part).
Cf. U.K. 42 & 43 Vict. c. 49 s. 31 (4).
Cf. U.K. 23 & 24 Geo. 5 c. 38, s. 1 (IV).

169. (1) If any recognizance entered into as a condition of any appeal appears to the Supreme Court to have been insufficiently entered into, or to be otherwise defective or invalid, such Court may—

(*a*) permit the substitution of a new and sufficient recognizance to be entered into before such Court, in the place of the insufficient, defective, or invalid recognizance, or

(*b*) dispense with such recognizance,

and in either case upon such terms as to adjournment and costs as it thinks just.

(2) Every such substituted recognizance shall be as valid and effectual and may be enforced as if it had been duly entered into in the first instance.

Amendment of recognizances on appeal.
298 of 1883-4, s. 54.
Cf. U.K. 12 & 13 Vict. c. 45, s. 8.

170. (1) When any conviction or order has been affirmed, amended, or made upon any appeal, the justices from whose decision the appeal has been brought, or any other justice, shall have the same authority to enforce such conviction or order as if it had not been appealed against, or had been made in the first instance.

After decision on appeal justices may enforce same.
298 of 1883-4, s. 49.
Cf. U.K. 11 & 12 Vict. c. 43, s. 27.

(1A) If a person convicted and committed to gaol appeals and is liberated upon recognizance on appeal, and the Court on appeal orders that the balance or some part of the balance of his sentence be served, the justices from whose decision

Subsec. (1a) enacted by s. 36.

s. 170. R. v. SABINE; *Ex parte* LENTHALL (1929) S.A.S.R. 123; 12 Austn. Digest 417. Where the defendant has been sentenced to imprisonment, released pending appeal, and ordered by the appellate court to serve the balance of his sentence, there is jurisdiction under s. 170 (1) to issue a warrant committing the appellant to prison to serve that balance.

the appeal has been brought or any other justice may by warrant remand the appellant to his former custody, there to serve the balance of the term to be served by him.

(2) No action or proceeding whatsoever shall be commenced or had against any justice for enforcing such conviction or order by reason of any defect in the same respectively.

Appeal to be instituted within one month.
Cf. 6 of 1850, s. 30.
Cf. U.K. 23 & 24 Geo. 5 c. 38, s. 1 (iii.)

171. (1) The appeal shall be instituted by notice, and by entering into a recognizance on appeal as provided by sections 167 and 168.

(2) Every appeal shall be instituted within one calendar month from the time of the conviction, order, or adjudication appealed against.

Notice of appeal.
6 of 1850, s. 30.
Cf. U.K. 42 & 43 Vict. c. 49, s. 31 (2).
Cf. U.K. 23 & 24 Geo. 5 c. 38, s. 1 (ii.), s. 3.

172. (1) The notice of appeal shall be in writing, and shall be given to the respondent, and shall state the nature and grounds of the appeal.

(2) A copy of the notice of appeal shall be served upon one or more of the justices, or upon the clerk.

Appellant to set down appeal and give notice.

173. Forthwith after the institution of the appeal the appellant shall set the same down for hearing at the first sittings of the Supreme Court for hearing appeals under this Act to be held not less than ten days after the institution of the appeal, and shall forthwith after such setting down give notice thereof to the respondent.

Convictions, etc., to be transmitted to Supreme Court. How proved thereafter.
6 of 1850, s. 32.
Cf. U.K. 23 & 24 Geo. 5 c. 38, s. 3.

174. (1) When an appeal is instituted the justices by whom the conviction, order, or adjudication is made shall cause the same to be forthwith transmitted to the Master or other proper officer of the Supreme Court, there to be kept among the records of the said Court.

(2) In any subsequent proceeding relative thereto the conviction, order, or adjudication, or a copy thereof certified by the proper officer of the Supreme Court under his hand, shall be sufficient evidence thereof.

---

s. 171. ABERLE v. VEARS (1921) S.A.S.R. 216; 12 Austn. Digest 630. Held, under Act No. 6 of 1850, s. 30, that an appeal is not "made" until the aid of the appellate court is invoked at a sitting of the court.

s. 172. PENGILLY v. PENGILLY (1926) S.A.S.R. 344; 12 Austn. Digest 634. Where the defendant served a notice of appeal on the solicitor who acted for the complainant in the court of summary jurisdiction, and there was no evidence to show that the solicitor had authority in regard to the appeal, held that the appeal was not properly instituted.

s. 173. PHILLIPS v. PHILCOX (1923) S.A.S.R. 550; 12 Austn. Digest 633. Compliance with s. 173 is not a condition precedent to the hearing of the appeal.

Evidence given on hearing of information on conviction appealed from to be sent to the Supreme Court.
6 of 1850, s. 33.

175. The justices shall also cause the originals of the evidence given on the hearing, or true copies thereof certified by them as such, to be transmitted with the conviction, order, or adjudication as aforesaid.

No other evidence to be received on hearing without consent or order.
Cf. 6 of 1850, s. 34.

176. No evidence shall be received on the hearing of the appeal other than such originals or copies as aforesaid, except by consent of the parties or by order of the Supreme Court on appeal.

Procedure and power of Supreme Court on appeal.
6 of 1850, s. 31.
Cf. U.K. 12 & 13 Vict. c. 45, s. 3.
Cf. U.K. 42 & 43 Vict. c. 49, s. 31 (5).
Cf. U.K. 23 & 24 Geo. 5 c. 38, s. 1 (vii.), (viii.).

177. (1) Every appeal shall be heard and determined by the Supreme Court in a summary way, and according to the rules of practice in force with reference to the proceedings of the Court in that behalf, and the Supreme Court shall have all the powers and duties, as to amendment and otherwise, of the justices whose decision is appealed from.

(2) Upon the hearing of the appeal the Supreme Court may—

(*a*) adjourn the same from time to time;

s. 176. HUNTER v. WALSH (1928) S.A.S.R. 334; 12 Austn. Digest 636. On an appeal the judge may in a proper case and in the exercise of a judicial discretion take further evidence and order that the witnesses called in the lower court be recalled and examined before him.

LEWIS v. TONKIN (1929) S.A.S.R. 324; 12 Austn. Digest 638. An affidavit of the prosecuting officer was admitted by the appellate court to prove statements made by him to magistrate.

JAMES v. TRELOAR (1922) S.A.S.R. 536; 12 Austn. Digest 260, 631. Where certain elements of the offence were not stated in the information, and a fact necessary to support the charge was not proved, held that the court, on appeal, could allow further evidence to be called and on proof of all essentials amend the conviction.

s. 177. BARBU v. BARBU (1920) S.A.L.R. 244; 12 Austn. Digest 628. The appeal given by s. 17 of the Married Womens' Protection Act, 1896, is on both fact and law. The decision of the justices should be considered on the principle laid down in DEARMAN v. DEARMAN (1908) 7 C.L.R. 549; COGHLAN v. CUMBERLAND (1898) 1 Ch. 704; RIEKMANN v. THIERRY (1896) 14 R.P.C. 105.

ALMOND v. ALLCHURCH (1925) S.A.S.R. 53; 12 Austn. Digest 632. The appeal from justices is a full appeal on both facts and law.

POWELL v. LENTHALL (1930) 44 C.L.R. 470; 4 A.L.J. 311; 12 Austn. Digest 638; affirming LENTHALL v. POWELL (1930) S.A.S.R. 13, 185. S. 177 authorises the court to review the determination of a special magistrate under s. 105 of the Lottery and Gaming Act, 1936.

LENTHALL v. CAVENDER (1931) S.A.S.R. 164; 12 Austn. Digest 638. The Full Court does not encourage a second appeal upon questions of fact when the dismissal of a complaint by a court of summary jurisdiction has been confirmed by a judge of the Supreme Court.

BJORKLUND v. NOBLET (1932) S.A.S.R. 196; 12 Austn. Digest 635. The judge on appeal is not entitled to take the magistrate's reasons for his decision as though they were a direction to a jury and to decide on them whether the conviction should stand or not.

GHYS v. CRAFTER (1934) S.A.S.R. 28. Where the lower court gives no reasons for its decision, or inadequate reasons, the onus in the court of appeal is as it was in

(*b*) mitigate any penalty, forfeiture, or sum;

(*c*) affirm, quash, or vary the conviction, order, or adjudication appealed from, or substitute or make any conviction, order, or adjudication which ought to have been made in the first instance;

(*d*) remit the case for hearing or for further hearing before the same or any other competent court of summary jurisdiction; and

---

s. 177. (*contd.*) the lower court, in the sense that the conviction cannot stand unless the appellate tribunal is satisfied that the proper conclusion has been reached.

BENNETT v. WALSH (1935) S.A.S.R. 429. Where the justices convict without giving reasons, the question for the appellate court is whether there was sufficient evidence to support the conviction.

s. 177. (2) (*b*) HINTON v. TROTTER (1931) S.A.S.R. 123; 12 Austn. Digest 412. Penalty reduced by the appellate court, where the magistrate had taken into account the prevalence of offences at the time of the trial, which was six months after the commission of the offence.

THATCHER v. LENTHALL (1933) S.A.S.R. 322; 12 Austn. Digest 635. The general practice of the Supreme Court is to allow a magistrate to exercise his own discretion as to the amount of a fine. In betting cases the penalty depends on whether the evidence shows a regular business, and whether the business is on a large or small scale.

WADE v. TROTTER (1934) S.A.S.R. 62. Where there is a manifest departure from the customary penalties in other courts, it becomes the duty of the appellate court to consider the propriety of the particular penalty, and also of the standard suggested by the customary penalties.

s. 177. (2) (*c*) AMES v. NICHOLSON (1921) S.A.S.R. 224; 12 Austn. Digest 399. CHAMBERS v. BOURKE (1922) S.A.S.R. 4. Conviction upheld in both cases, notwithstanding the wrongful admission of evidence, where the evidence properly admitted was sufficient to support a conviction.

COLLATON v. CORRELL (1926) S.A.S.R. 87; 12 Austn. Digest 635. Where there has been an irregularity in the examination of witnesses, but it has not caused a miscarriage of justice, an appellate court will not set aside a conviction on the ground of this irregularity.

TREGILGAS v. JOHNS (1933) S.A.S.R. 88; 12 Austn. Digest 634. Appeal allowed where the magistrate's reasons for judgment showed grave reason for apprehending a substantial miscarriage of justice.

POLONI v. LENTHALL (1933) S.A.S.R. 146; 12 Austn. Digest 353. Conviction set aside where the prosecution had refused to disclose the name and address of a witness on whose evidence the conviction was partly founded.

WATTS v. GOODE (1933) S.A.S.R. 324; 12 Austn. Digest 461. The court on appeal should not amend a complaint which does not disclose an offence so as to make it disclose an offence, unless it is shown that there is no possibility of prejudice to the defendant.

s. 177. (2) (*d*) THOMPSON v. HIGGS (1924) S.A.S.R. 243; 12 Austn. Digest 320. The appellate court cannot remit a complaint for further hearing in order that it may be amended so as to disclose a different offence based on the same facts

CRAFTER v. DE LUCIA (1935) S.A.S.R. 45. When a complaint is remitted by the appellate court for completion of the hearing, the justices who heard the case originally should leave the case to be re-heard by another court if that course is desirable in the interests of justice. Where objection is made to their hearing the case they should not proceed unless satisfied that they are unprejudiced and have no preconceived view of the case.

LE POIDEVIN v. HUDSON (1935) S.A.S.R. 223. Where counsel has submitted all the material points on appeal, there is no need to remit the case for re-hearing, on the ground that counsel was not heard by the justices on all the points he desired to submit.

DAYMAN v. SIMPSON (1935) S.A.S.R. 320. Where a witness for the defence suggested that an expert witness called by prosecutor gave an unsound opinion, but this was not suggested to the witness at the trial, the complaint was referred for re-hearing.

(*e*) make such further or other order as to costs or otherwise as the case requires. Cf. U.K. 23 & 24 Geo. 5 c. 38, s. 5.

178. (1) When the Supreme Court makes any order as to the costs of the appeal it shall direct the same to be paid to the Master or other proper officer of the said Court, to be by him paid over to the party entitled thereto, and may state a time within which the costs are to be paid. If costs not paid according to order of Supreme Court, certificate to be granted. 6 of 1850, s. 26. Cf. U.K. 11 & 12 Vict. c. 43, s. 27.

(2) If the costs are not paid within the time so limited (or if no time is so limited, then within seven days) the Master, or other proper officer of the Court, upon application of the party entitled to the costs, or of any person on his behalf, and on payment of the fee of one shilling, shall grant to the party so applying a certificate that the costs have not been paid.

179. (1) Upon production of such certificate to any justice the payment of the costs may be enforced in the same manner as is provided by this Act for enforcing the payment of costs awarded by justices, or by putting the recognizances (if any) in suit, or in both of such modes. Enforcement of payment of costs of appeal. Cf. 6 of 1850, s. 26. Cf. U.K. 11 & 12 Vict. c. 43, s. 27.

(2) The payment of the costs may be enforced under the same warrant as any penalty or sum adjudged to be paid by any conviction or order affirmed or made upon the appeal.

180. (1) Rules of court may be made under the Supreme Court Act, 1878, for regulating the practice and procedure under this Part of this Act. Supreme Court may make rules for proceedings. Cf. 298 of 1883-4, s. 51.

(2) The provisions of Part V. of the Supreme Court Act, 1878, shall, so far as the same are applicable, apply to rules made by virtue of the powers hereby conferred.

---

s. 177. (2) (*e*) HARRIS v. HARRIS (1924) S.A.S.R. 126. On a successful appeal by a husband against an order under the Married Women's Protection Act, 1896 (now Division III. of Part III. of the Maintenance Act, 1926), the court has a discretion to order the husband to pay the wife's costs.

TIPPING v. HEINEMANN (1922) S.A.S.R. 424; 12 Austn. Digst 633. Ordered that the notice of appeal should be amended by inserting a ground not originally raised.

s. 180. The Supreme Court Act, 1878, has been repealed and superseded by the Supreme Court Act, 1935; Part V. of the Act of 1878 is now contained in s. 72 of the Act of 1935.

PART VII.

PART VII.

SUPPLEMENTARY PROVISIONS.

Irregularities and Amendment.

Form of information or complaint.
Cf. 1133 of 1913, s. 12.

181. It shall be sufficient in any information or complaint, if the same gives the defendant a reasonably clear and intelligible statement of the offence or matter with which he is charged.

Information or complaint not to be objected to for irregularity.
Cf. 15 of 1849, ss. 4, 5, 6.
6 of 1850, ss. 1, 38.
Cf. U.K. 11 & 12 Vict. c. 43, s. 9.

182. (1) No objection shall be taken or allowed to any information or complaint in respect of—

(*a*) any alleged defect therein, in substance or in form; or

(*b*) any variance between it and the evidence adduced in its support at the preliminary examination or at the hearing (as the case may be):

Provided that the justice or the court shall dismiss the information or complaint, unless it is amended as provided by section 183, if it appears to him or to it—

(*a*) that the defendant has been prejudiced by such defect or variance; or

(*b*) that the information or complaint fails to disclose any offence or matter of complaint.

---

s. 181. O'NEILL v. LENTHALL (1929) S.A.S.R. 35; 12 Austn. Digest 366. Held that an obvious error in the complaint as to the year in which the offence took place, did not vitiate the complaint.

FRAZER v. BARCLAY (1920) S.A.L.R. 157; 12 Austn. Digest 284. An information for failing to make a return of income, which did not state that returns had been called for by notice in the *Gazette*, does not give fair information and reasonable particularity as to the offence charged.

COLLATON v. CORRELL (1926) S.A.S.R. 87; 12 Austn. Digest 302. A complaint for an act in the nature of a strike in that the defendant, between the 9th and 19th January, 1926, encouraged one B to cease work in certain circumstances, is a complaint for a continuing offence; but it is sufficient to prove an offence committed on any one of the days mentioned in the complaint. Such a complaint gives fair information and reasonable particulars of the matter charged, and even if it contains duplicity the court must proceed with the hearing unless the defence is embarrassed.

CATFORD v. KEARNEY (1920) S.A.L.R. 294; 8 Austn. Digest 175; 12 Austn. Digest 230. If the name, residence and occupation of a defendant as inserted in the information or complaint secure the attendance of the right person, it is immaterial that they may have been incorrect.

s. 182. COLLATON v. CORRELL (1926) S.A.S.R. 87; 12 Austn. Digest 302. Duplicity in a complaint is a defect in substance, and notwithstanding this defect the court must proceed unless the defence is prejudiced.

Amendment of information or complaint.

183. If it appears to the justice, or to the court before whom any defendant comes or is brought to answer any information or complaint that the information or complaint—

(*a*) fails to disclose any offence or matter of complaint, or is otherwise defective; and

(*b*) ought to be amended so as to disclose an offence or matter of complaint, or otherwise to cure such defect—

the justice or the court may amend the information or complaint upon such terms as may be just.

Warrant or summons not to be objected to for irregularity.

Cf. 15, 1849, ss. 4, 5, 6; 6, 1850, ss. 1, 38.

Cf. U.K. 11 & 12 Vict. c. 43, s. 1 (part), s. 3 (part).

184. No objection shall be taken or allowed to any warrant or summons in respect of—

(*a*) any alleged defect therein, in substance or in form; or

(*b*) any variance between it and the evidence adduced in support of the information or complaint at the preliminary examination or at the hearing (as the case may be):

Provided that the justice or the court may adjourn the hearing, if it appears to him or to it that the defendant has been prejudiced by such defect or variance.

Amendment of convictions, warrants, &c.

1133 of 1913, s. 12.

185. Any—

(*a*) conviction or order made by a court of summary jurisdiction; or

(*b*) warrant of committal, or other warrant or proceeding issued or had by or before any justice,

---

s. 183. HARMSTORF v. JAMES (1922) S.A.S.R. 266; 12 Austn. Digest 319. There is no power to amend an information so as to convert it into an information for a different offence.

THOMPSON v. HIGGS (1924) S.A.S.R. 243; 12 Austn. Digest 320. Where a complaint is not defective a court cannot amend it so as to make it disclose a different offence from that which it charges.

AMESBURY v. COPELAND (1928) S.A.S.R. 485; 12 Austn. Digest 370. Where a complaint under section 168 of the Licensing Act, 1937, charged the defendant with an unlawful supply of liquor to a half-caste, and the evidence proved that the person supplied was an aboriginal native, held that it was the duty of the court to amend the complaint as the defendant could not possibly be prejudiced by such an amendment.

ALMOND v. LENTHALL (1929) S.A.S.R. 267. Held that a magistrate was justified in amending a complaint by inserting in it the date on which it was taken.

ARNOLD v. HUGHES (1936) S.A.S.R. 360; 12 Austn. Digest 405. Where a complaint failed to state an essential element in the offence and the conviction followed the complaint, and no application for amendment was made, the conviction was quashed.

s. 185. PIERCE v. KENNEDY (1923) S.A.S.R. 476; 12 Austn. Digest 406. Where a conviction was so worded that it might have applied to either of two offences proved in evidence, held, that the proper course was to call on the complainant to elect for

may be amended, according to the evidence, by the justices or justice by or before whom the same was made, issued, or had, or by any court before which it comes, on appeal or otherwise, at any time after the same has been signed, and before it has been executed, upon such (if any) terms as to costs, or otherwise, as to such justices or justice or such court seems fit.

Convictions, etc., not voidable for want of form, etc.
6 of 1850, s. 38.
Cf. U.K. 2 & 3 Vict. c. 71, s. 49.

186. (1) No conviction or order of a court, or other proceeding before justices, shall be void or voidable, or liable to be quashed, annulled, or set aside in any manner, by reason of any deficiency in the statement of the offence therein described, if the offence is stated in the words of the Special Act, or if it appears that the offence was one against the true intent and meaning of the Special Act.

(2) No judgment, conviction, or order of a court, or other proceeding before justices, shall be quashed or set aside for any mere matter of form or technical error, or mistake in any name, 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.

Parties not to be discharged upon defects in warrants provided conviction took place upon good grounds.
6, 1850, s. 39.
Cf. U.K. 42 & 43 Vict. c. 49, s. 39 (3).

187. No warrant of commitment issued upon any conviction of a court of summary jurisdiction shall be held void or invalid, or be quashed, for any defect in substance or in form, nor shall any party be entitled to be discharged out of custody on account of any such defect, provided—

(*a*) it is alleged in the warrant that such party has been convicted of an offence; and

(*b*) it appears to the court or Judge before whom the warrant is returned that such conviction proceeded on good and valid grounds.

Proof of Convictions and Orders.

Proof of conviction by minute on complaint.
Enacted by 2051, 1931, s. 37.

187a. (1) Any conviction or order whatsoever made by a court of summary jurisdiction may be proved by a copy of the information or complaint on which the conviction or order was made, and of the minute or memorandum thereof

---

S. 185. (*contd.*) which of the offences proved he desired the conviction to be drawn up, and if he refused to elect to quash the conviction. [But see TUCKER v. NOBLET, SARA v. LENTHALL, p. 165.]

YOUNG v. ALLCHURCH (1927) S.A.S.R. 185; 12 Austn. Digest 604. Where a conviction failed to distinguish the particular transaction to which it related, held that the conviction should be amended so as to show the particular transaction.

TOTHILL v. BUTTFIELD (1921) S.A.S.R. 264; 12 Austn. Digest 295. Conviction for unlawful supply of liquor amended on appeal where the person supplied was not specified.

S. 186. MARTIN v. SHAKESPEARE (1920) S.A.L.R. 257. *Semble*, it is necessary to set out in the conviction the facts which are the necessary ingredients in the offence.

made by the court and indorsed on the complaint. The copy must purport to be certified by the person or one of the persons constituting the court by which the conviction or order was made, or by the clerk of that court or by the deputy of the clerk.

(2) No proof shall be required of the signature or judicial or official character of the person appearing to have signed any such copy as aforesaid.

(3) This section shall apply to any conviction or order whether made before or after the commencement of this Act, and shall be in addition to and not in substitution for any other enactment providing a mode of proving convictions and orders.

Habeas Corpus.

After summary conviction or order habeas not to be issued except on an affidavit. Writ to be returnable at least four days after issue, and notice to be given thereof. 6 of 1850, ss. 40, 41.

188. (1) No writ of *habeas corpus* shall issue to bring up the body of any person who has been convicted by a court of summary jurisdiction, or adjudged by any such court to pay any sum or perform any duty, unless such person or his solicitor or agent states in an affidavit, in writing and duly sworn, the ground of objection to the conviction or proceedings.

(2) Upon the return to the writ, no objection shall be taken or considered unless it has been so stated.

(3) There shall be an interval of at least four clear days between the day upon which any such writ issues and the day upon which it is returnable, and no such writ shall issue without notice to the committing justice, or to the Crown Solicitor, and to the opposite party or his solicitor.

(4) Such notice shall be in writing, and shall be given to them or left at their respective dwelling-places or offices at least four clear days before the return of the writ.

(5) No return to any such writ shall be considered by any court or Judge unless it is proved by affidavit that such notice has been given.

(6) Any writ issuing without such notice, or not being in conformity to the directions herein contained, shall be void to all intents and purposes whatsoever.

Proceedings Against and Protection to Justices.

Proceeding in nature of mandamus. 9, 1849, s. 5.

189. (1) If any justice refuses to do any act relating to the duties of his office as such justice, the person requiring such act to be done may apply to the Supreme Court upon

s. 189. KEARNEY v. RAW (1918) S.A.L.R. 270; 12 Austn. Digest 640. A court does not decline jurisdiction by refusing to hear evidence, on the ground that such evidence would not prove any matter being inquired into; *aliter*, where a court refuses

an affidavit of the facts for a rule, calling upon such justice, and any person to be affected by such act, to show cause why such act should not be done.

(2) If after due service of such rule good cause is not shown against it, the said Court may make the same absolute with, or without, or upon payment of, costs.

(3) Upon being served with the rule absolute the justice shall obey the same and do the act by it required to be done.

(4) No action or proceeding shall be maintainable against any justice for obeying any such rule, or doing the act thereby required.

Action for act done within jurisdiction as a justice.
9, 1849, s. 1. Cf. U.K. 11 & 12 Vict. c. 44, s. 1.

190. (1) Every action brought against a justice for any act done by him in the execution of his duty as such, with respect to a matter within his jurisdiction as a justice, shall be in the nature of an action on the case as for a tort.

(2) No such action shall be maintainable unless it is alleged and proved that the act was done maliciously, and without reasonable and probable cause.

Action for act done without or in excess of jurisdiction.
9, 1849, s. 2. Cf. U.K. 11 & 12 Vict. c. 44, s. 2.

191. (1) Any person injured by any act done—

(*a*) by a justice in a matter of which by law he has not jurisdiction, or in which he has exceeded his jurisdiction; or

(*b*) under any conviction or order made, or any warrant issued, by a justice in any such matter,

may maintain an action against such justice without alleging that the act complained of was done maliciously, or without reasonable and probable cause.

Not maintainable till conviction quashed if plaintiff did not appear on summons.
Ibid.

(2) No such action shall be maintainable for anything done under any conviction or order until after such conviction or order has been set aside upon appeal, or quashed.

(3) No such action shall be maintainable for anything done under any warrant issued by the justice to procure the appearance of such person, if the warrant has been followed by a conviction or order in the same matter, until after the conviction or order has been set aside on appeal, or quashed.

---

s. 189. (*contd.*) to hear evidence on the ground that it has no jurisdiction to inquire into the matter brought before it.

In *re* JANE MORRISON (1916) S.A.L.R. 237; 9 Austn. Digest 1026; 12 Austn. Digest 639. S. 189 does not apply in the case of a refusal by a justice to do any act which he is required by Commonwealth law to do in the capacity of a special magistrate.

DRUMMOND v. HOWELL (1923) S.A.S.R. 124; 12 Austn. Digest 640. *Mandamus* granted where a magistrate refused to hear a practitioner unless he apologised for his conduct when appearing on a previous occasion.

R. v. SCOTT; *Ex parte* CHURCH (1924) S.A.S.R. 220; 12 Austn. Digest 640. *Mandamus* issued directing a magistrate to take and determine an information, but not to sign it.

(4) No such action shall be maintainable for anything done under any warrant issued by the justice to procure the appearance of such person, if a summons has been issued previously to the warrant and duly served, and such person has not appeared according to the exigency thereof, and the warrant—

(*a*) has not been followed by a conviction or order in the same matter; or

(*b*) was upon an information for an alleged indictable offence.

No action maintainable for exercise of discretion. 9, 1849, s. 4. Cf. U.K. 11 & 12 Vict. c. 44, s. 4.

192. No action shall be maintainable against a justice—

(*a*) for or by reason of the manner in which he exercises his discretion in the execution of any discretionary power conferred upon him by statute:

Or where conviction affirmed on appeal. 9, 1849, s. 6.

(*b*) for anything done under any warrant of distress or commitment, on the ground of any defect in the conviction or order on which it is founded, if, either before or after the granting of such warrant, the conviction or order is affirmed upon appeal.

Action for warrant founded upon a defective conviction to be brought against convicting justice. 9, 1849, s. 3. Cf. U.K. 11 & 12 Vict. c. 44, s. 3.

193. No action shall be maintainable against a justice who, *bona fide* and without collusion, grants a warrant of distress or commitment upon any conviction or order made by any other justice, by reason of any defect in the conviction or order, or by reason of any want of jurisdiction in such other justice; but the action shall be maintainable (if at all) against the justice who made the conviction or order.

Limitation and notice of action. 9, 1849, ss. 8 and 9. Cf. U.K. 56 & 57 Vict. c. 61, s. 1 (a).

194. (1) No action shall be brought against any justice for anything done by him in the execution of his office, unless the same is commenced within six months after the act complained of was committed.

(2) No such action shall be commenced until one month after a notice in writing of the intended action has been delivered to the justice, or left for him at his usual place of abode, by the party intending to commence the same, or by his solicitor or agent.

(3) Such notice shall—

(*a*) state clearly and explicitly the cause of action and the court in which it is intended to bring the action; and

s. 194. (3) Proviso: "Section 60 of the Evidence Act, 1929," substituted for "section 8 of the Evidence Further Amendment Act, 1888," pursuant to Acts Republication Act, 1934.

(*b*) set out or be indorsed with the name and place of abode of the party intending to bring the action, and, if it is served by his solicitor or agent, the name and place of abode or of business of such solicitor or agent:

Provided that nothing herein contained shall restrict the operation of section 60 of the Evidence Act, 1929.

Tender of amends and payment into court.
9 of 1849, s. 11.
Cf. U.K. 56 & 57 Vict. c. 61, s. 1 (c).

195. (1) When any notice of action has been given, and before the action is commenced, the justice may tender to the party intending to commence the same, or to his solicitor or agent, such sum as he thinks fit, as amends for the injury complained of in the notice.

(2) After the action has been commenced and at any time before issue joined the justice may, if he has not made any tender as aforesaid, or in addition to such tender, pay into court such sum as he thinks fit.

(3) If at the trial of the action the plaintiff does not recover damages beyond the sum tendered as aforesaid, and if such sum has been paid into court, the defendant shall be entitled to an order that the plaintiff pay his costs; and the sum paid into court shall in such case (notwithstanding any amount which the plaintiff has recovered in such action) be available for the payment of such costs.

9, 1849, s. 11.

(4) Subject to the provisions of this and the next succeeding section, the practice and procedure for the time being of the court in which the action is had, in relation to the payment of money into court and the consequences thereof, shall apply to every such action as aforesaid.

Plea of general issue and evidence thereunder.
9, 1849, ss. 10 and 11.

196. (1) Any justice against whom any action is brought for anything done by him in the execution of his office may plead the general issue.

(2) Evidence of any tender or payment into court as aforesaid and of any special matter of defence, excuse, or justification, may be given at the trial under such plea.

Justice may require the action to be brought in the Supreme Court.
Cf. 9, 1849, s. 10.
Cf. U.K. 11 & 12 Vict. c. 44, s. 10.

197. (1) Any justice against whom any such action is brought, or intended to be brought, in any court of inferior jurisdiction may, at any time not later than six days after the service of the summons in such action, give or cause to be given to the plaintiff or intended plaintiff notice in writing that he objects to being sued in such court for such cause of action.

(2) Thereupon the proceedings in such inferior court, if already commenced, may, upon the application of the plaintiff, be removed into the Supreme Court, and thereafter, whether the proceedings have been commenced or not, the plaintiff may commence and maintain his action in the Supreme Court as if the notice of action had specified the Supreme Court instead of such court of inferior jurisdiction.

(3) All proceedings had in such court of inferior jurisdiction after the giving of such notice as aforesaid shall be null and void.

What damages may be recovered where plaintiff proved guilty of the offence of which he was convicted, etc. 9, 1849, s. 13. Cf. U.K. 11 & 12 Vict. c. 44, s. 13.

198. If the plaintiff in any such action (in which malice is not alleged and proved as aforesaid) is entitled to recover, and—

(*a*) proves the levying or payment of any penalty or sum of money under the conviction or order as part of the damages he seeks to recover; or

(*b*) proves that he was imprisoned under the conviction or order and seeks to recover damages for such imprisonment,

and it is further proved—

(*c*) that he was actually guilty of the offence of which he was convicted; or

(*d*) that he was liable by law to pay the sum he was ordered to pay; and

(*e*) that he has undergone no greater punishment in the way of imprisonment than that assigned by law for the offence of which he was convicted, or for non-payment of the sum he was ordered to pay,

he shall not be entitled to recover the amount of the penalty or sum so paid by him, or any sum beyond the sum of two pence as damages for such imprisonment, nor to recover any costs of suit.

Costs. Cf. 9, 1849, s. 15.

199. In any action against a justice for anything done by such justice in the execution of his office, costs, as between solicitor and client, may be awarded to a successful defendant, or to a plaintiff who has successfully alleged that the act complained of was done maliciously, and without reasonable and probable cause.

Protection to justices in the exercise of duties under Commonwealth law.

200. The provisions of sections 190 to 200 inclusive shall apply to any special magistrate or other justice, when acting or required to act in the exercise of any power or jurisdiction conferred upon him by any Act of Parliament of the

Commonwealth relating to the summary conviction, or to the examination and commitment for trial, of persons charged with offences against the law of the Commonwealth, and the exercise of any such power or jurisdiction as aforesaid shall, for the purposes of the said sections, be deemed to pertain to his duty and office as a justice within the meaning of this Act.

Fees and Rules.

Fees.

201. (1) Subject to any rules for the time being in force under this Act, the fees set out in the second schedule hereto shall be payable in respect of the matters therein mentioned.

(2) The fees and exemptions mentioned in the said schedule may be repealed or altered by the said rules, and new fees may be provided for, either in substitution for, or in addition to, the said fees.

Remission of fees.
Cf. 4 of 1843, s. 1.

(3) A justice may, in his discretion, and at any time, remit any fee in whole or in part if it appears to him that, on account of the poverty of the party liable to pay the same, or for any other reason, such remission should be made.

Penalty for extortion.
Cf. 298 of 1883-4, s. 18.
Cf. U.K. 57 Geo. 3 c. 91, s. 2.

202. No clerk shall take, accept, or receive from any person any fee, gratuity, or reward not allowed by law, or greater in amount than is so allowed.

Penalty—Twenty-five pounds.

Rules.
Cf. U.K. 4 & 5 Geo. 5 c. 58, s. 40.
Cf. U.K. 15 & 16 Geo. 5 c. 86, s. 17.

203. The Governor may make rules not repugnant to any provision of this Act in relation to the following matters or any of them:—

(*a*) The places at which courts of summary jurisdiction shall or may sit, and the constitution and holding of courts thereat:

(*b*) The practice and procedure before justices and courts of summary jurisdiction:

(*c*) The fees which shall be payable under this Act or under any other Act for the time being in force, so far as the same relates to any matter or proceeding as to which a court of summary jurisdiction has jurisdiction:

(*d*) The forms to be used under this Act, including the form of any recognizance mentioned in this Act:

(*e*) The duties of clerks and the form of any record or account required to be kept by them, and providing for the discontinuance of any existing record or account rendered unnecessary by such rules.

SCHEDULES.

FIRST SCHEDULE.

Number and year of Act.	Title or Short Title.	Extent of Repeal.
4 of 1843	An ordinance appointing the fees to be taken by Magistrates in South Australia	The whole
15 of 1849	To facilitate the performance of the duties of Justices of the Peace out of Sessions with respect to Persons charged with Indictable Offences	The whole
6 of 1850	To facilitate the performance of the duties of Justices of the Peace out of Sessions with respect to Summary Convictions and Orders	The whole
10 of 1854	An Act to amend the Criminal Law	Section 14
8 of 1869-70 ..	Minor Offences Procedure Act, 1869	The whole
166 of 1880	An Act to amend the "Minor Offences Procedure Act, 1869," and "The Criminal Law Consolidation Act, 1876"	The whole
245 of 1882	An Act to enable Persons accused of Offences to give Evidence on Oath	Section 2
298 of 1883-4 ..	The Justices Procedure Amendment Act, 1883-4	The whole
926 of 1907	The Magistrates' Fees Amendment Act, 1907	The whole
1127 of 1913 ..	The Minor Offences Procedure Act Amendment Act, 1913	The whole
1133 of 1913 ..	The Justices Procedure (Indictable Offences) Amendment Act, 1913	The whole

SECOND SCHEDULE.

[As amended by regulations dated 28th April, 1937, and published in the *Gazette* 29th April, 1937, p. 947.]

FEES.

Summary Adjudications, and Non-indictable Offences.

	s.	d.
For every complaint	2	6
For every summons (except a summons to witness), warrant, commitment, conviction, and order, each step	2	6
For every summons to witness (for each person intended to be summoned)	1	0
For every hearing	5	0
For every recognisance upon appeal to the Supreme Court	10	0
For every other recognisance (except a recognisance to appear and prosecute or to appear and give evidence, upon which no fee shall be charged)	5	0
For carbon copy of depositions if typewritten in court at the hearing, after a request therefor, for each foolscap page, or part thereof	0	6
For copy of any other document, per folio of 72 words	0	6

Minor Indictable Offences, and Indictable Offences.

Same fees as in non-indictable offences, except as follows:—		
For every information	5	0
For every summons (except a summons to witness), warrant, commitment, and conviction, each step	5	0

Rules and Regulations.

The following rules and regulations were in force under this Act on the 30th April, 1937:—

RULES OF THE SUPREME COURT AS TO APPEALS UNDER PART VI.—

Gazette—28th September, 1922, p. 736.
17th June, 1926, p. 1513.

RULES MADE BY THE GOVERNOR UNDER S. 203—

Gazette—29th June, 1922, p. 1579.
27th July, 1922, p. 165.
27th February, 1930, p. 443.
3rd April, 1930, p. 650.
22nd October, 1931, p. 777.
24th December, 1931, p. 1168.
6th April, 1933, p. 552.
22nd June, 1933, p. 1056.
29th April, 1937, p. 947.

REGULATIONS (REFERRED TO IN SECTIONS 158, 159) AS TO PAYMENT TO WITNESSES AND OTHERS FOR ATTENDANCE AT CRIMINAL PROSECUTIONS—

Gazette—13th January, 1931, p. 53.
22nd October, 1931, p. 776.

RULES UNDER MAINTENANCE ORDERS (FACILITIES FOR ENFORCEMENT) ACT, 1922, AND THE JUSTICES ACT, 1921—

Gazette—25th October, 1923, p. 953.
26th February, 1931, p. 374.

LABOUR EXCHANGE

see Government Labour Exchange.