

POLICE ACT, 1936.

BEING

POLICE ACT, 1936, No. 2280 OF 1936
[ASSENTED TO 3RD SEPTEMBER, 1936.]

AS AMENDED BY

ROAD TRAFFIC ACT AMENDMENT ACT, 1936, No. 2332 OF 1936
[ASSENTED TO 3RD DECEMBER, 1936.]

An Act to consolidate certain Acts relating to the police force, and to the maintenance of law and order.

[Assented to 3rd September, 1936.]

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.

PRELIMINARY.

1. This Act may be cited as the "Police Act, 1936," and shall come into operation on a day to be fixed by proclamation. Short title.

2. The provisions of this Act are arranged as follows :—

Arrangement
of Act.
1257, 1916, s. 2

PART I.—Preliminary : ss. 1-4.

PART II.—Appointment and control of officers and constables of the police force : ss. 5-9.

PART III.—Regulation, duties, and discipline of the police force : ss. 10-21.

PART IV.—The Police Appeal Board : ss. 22-32.

PART V.—Appointment and control of special constables : ss. 33-42.

PART VI.—Establishment and maintenance of police districts : ss. 43-55.

Commencement of the Road Traffic Act Amendment Act, 1936: The Road Traffic Act Amendment Act, 1936 (with the exception of certain sections not affecting the Police Act, 1936), was proclaimed to commence on 1st April, 1937: *Gazette* 18th March, 1937, p. 585.

s. 1. This Act was proclaimed to commence on the 1st day of April, 1937: *Gazette* 25th March, 1937, p. 646.

PART I.

PART VII.—Powers of the police force: ss. 56–73.

PART VIII.—Offences generally: ss. 74–119.

PART IX.—Offences in police districts and proclaimed localities: ss. 120–138.

PART X.—Miscellaneous provisions: ss. 139–151.

Acts consolidated and repealed.

3. This Act is a consolidation of the following Acts, and those Acts are hereby repealed:—

Name of Act.	No. and Year of Act.
The Indecent Advertisements Act, 1897 ..	No. 680 of 1897
The Homing Pigeon Act, 1905	No. 883 of 1905
The Suppression of Brothels Act, 1907	No. 931 of 1907
Police Act, 1916.....	No. 1257 of 1916
Police Act Amendment Act, 1921	No. 1491 of 1921
Police Act Further Amendment Act, 1923 .	No. 1577 of 1923
Police Appeal Board Act, 1925	No. 1676 of 1925
Police Act Amendment Act, 1928	No. 1863 of 1928
Indecent Reports (Restriction) Act, 1928 ..	No. 1873 of 1928
Police Act Amendment Act, 1929	No. 1936 of 1929
Police Act Amendment Act, 1934	No. 2186 of 1934
Police Act Amendment Act, 1935	No. 2206 of 1935

Interpretation.
1257, 1916, s. 4.

4. In this Act—

“Commissioner” means the Commissioner of Police:

“public place” or “place of public resort” includes—

- (a) every place to which free access is permitted to the public, with the express or tacit consent of the owner or occupier of that place; and
- (b) every place to which the public are admitted on payment of money, the test of the admittance being the payment of money only; and
- (c) every road, street, footway, court, alley, or thoroughfare which the public are allowed to use, notwithstanding that that road, street, footway, court, alley, or thoroughfare is formed on private property: Provided that nothing in this Act shall be held to divest the owner of any such private property of any right or interest therein, or of his power to resume the property for use, occupation, or sale.

PART II.

PART II.

APPOINTMENT AND CONTROL OF OFFICERS AND
CONSTABLES OF THE POLICE FORCE.

5. (1) The Governor may appoint a fit and proper person to be Commissioner of Police.

Appointment of
Commissioner
of Police.

1257, 1916, s. 5.

(2) The Commissioner of Police shall be charged and invested with the general control and management of the police force, and of any special constables appointed under this Act.

6. (1) The Commissioner of Police shall hold office as Commissioner until the thirtieth day of June next after he attains the age of sixty-five years.

Term of
office of
Commissioner.

1257, 1916,
s. 5a.

2186, 1934,
s. 3.

(2) The Commissioner shall cease to contribute to the Police Pensions Fund on the thirtieth day of June next after he attains the age of sixty years.

7. (1) The Governor may appoint such inspectors and sub-inspectors, and other officers of police as are necessary.

Appointment
of inspectors
and other
officers.

1257, 1916, s. 6.

(2) Every such inspector, sub-inspector and officer shall hold a commission for his appointment under the hand of the Governor, and shall be subject to the control of the Commissioner, and shall be charged with the government and superintendence of such portion of the police force as the Commissioner directs.

8. (1) The Commissioner, or such other person as the Governor nominates for that purpose, may, with the approval of the Chief Secretary, appoint as many sergeants and constables of different grades as he deems necessary for the preservation of peace and order throughout the State.

Appointment of
sergeants and
constables.

1257, 1916, s. 7.

Cf. U.K.
2 & 3 Vict.
c. 93, s. 7.

(2) Such sergeants and constables shall have the same powers and privileges, and be liable to the same duties and responsibilities, as any constable duly appointed has, or is liable to, either at common law, or by virtue of any statute law in force in the State.

9. If any question arises as to the right of the Commissioner, or of any other officer or member of the police force, to hold or exercise his office, common reputation shall for all purposes be sufficient evidence of that right, and it shall not be necessary to produce any written appointment, or any oath, or other document or matter whatsoever, in proof of that right.

Evidence of
appointment.

1257, 1916, s. 8.

PART III.

PART III.

REGULATION, DUTIES, AND DISCIPLINE OF THE
POLICE FORCE.

Regulations for
government of
police.
1257, 1916, s. 9.
Of. U.K.
10 Geo. 4
c. 44, s. 5;
2 & 3 Vict.
c. 93, s. 3.

10. (1) The Governor may make rules, orders, and regulations for the general government of the members of the police force as to—

- (a) their places of residence, their classification, distribution, particular service, and inspection :
- (b) the description of the arms, accoutrements, and other necessities to be furnished to them :
- (c) which members shall be supplied with horses,

and all such other rules, orders, and regulations relative to the police force as may be necessary for rendering the members thereof efficient for the discharge of their duties, and for the purpose of preventing neglect or abuse.

(2) The Commissioner may, with the approval of the Chief Secretary, make such other orders and regulations for the general government, management, and discipline of the police force, as he deems necessary.

Police oath.
1257, 1916,
s. 10.
Of. U.K.
2 & 3 Vict.
c. 93, s. 8.

11. (1) No person appointed to be Commissioner of Police, or an inspector, sub-inspector, or other officer of police, or a sergeant or constable, shall be capable of holding his office or of acting in any way therein, until he has taken and subscribed an oath, in the following form :—

Of. U.K.
3 & 4 Vict.
c. 50, s. 1.

I, A.B., do swear that I will well and truly serve Our Sovereign Lord the King in the office of [Commissioner of Police, inspector, sub-inspector, officer, sergeant, or constable, *as the case may be*] without favour or affection, malice, or ill-will, for the period of _____ from this date, and until I am legally discharged from such office ; that I will see and cause His Majesty's peace to be kept and preserved, and that I will prevent, to the best of my power, all offences against the same or against the Police Act, 1936, and that, while I continue to hold the said office, I will, to the best of my skill and knowledge, faithfully discharge all the duties thereof according to law—So HELP ME GOD !

Taken and subscribed at
this _____ day of _____, 19 _____ }

Before me, _____ Justice of the Peace.

(2) The said oath shall be administered and subscribed by a justice.

12. Every person, on taking and subscribing the oath referred to in section 11, shall be deemed to have thereby entered into a written agreement with, and shall be thereby bound to serve, His Majesty from the day on which that oath was taken and subscribed until legally discharged, as a member of the police force in the office in respect of which he has taken that oath, at the current rate of pay for that office : Provided that—

Effect of taking
oath.
1257, 1916,
s. 11.

I. no such agreement shall be void for want of consideration :

II. any such agreement may be cancelled at any time by the lawful discharge, dismissal, or removal from office of the person bound thereby, or by the acceptance by the Commissioner of the resignation of that person.

13. (1) No member of the police force shall resign his office, or relinquish the duties of his office, whether the period of his engagement therein has expired or not, unless—

Resigning
without leave
or notice.

1257, 1916,
s. 12.
U.K. 2 & 3
Vict. c. 47,
s. 15;
2 & 3 Vict.
c. 93, s. 13;
10 & 11
Vict. c. 89,
s. 10

(a) he is expressly authorised in writing by the Commissioner to do so ; or

(b) he has given to the Commissioner one month's notice of his intention to do so.

(2) Any such member who is guilty of any contravention of this section shall be liable to a fine of not more than five pounds, or to imprisonment for any period not exceeding fourteen days, and in addition shall be liable to forfeit all arrears of pay due to him at the time of such contravention.

14. (1) Every member of the police force who has been dismissed from, or has ceased to hold office in, the police force shall forthwith deliver up to the Commissioner, or to such other person, and at such time and place, as the Commissioner directs, all the clothing, arms, ammunition, and accoutrements, horses, saddles, bridles, appointments, and other property which has been supplied to him for the execution of his duty, or which is in his custody by virtue of his office.

Duty to
deliver up
accoutrements
on retirement.

1257, 1916,
s. 13.
U.K. 2 & 3
Vict. c. 47,
s. 16;
2 & 3 Vict.
c. 93, s. 14;
10 & 11 Vict.
c. 89, s. 11.

(2) Any such member who fails or neglects to comply with this section shall be liable to imprisonment for any period not exceeding two months.

(3) Any justice may issue his warrant to search for and seize in any place all clothing, arms, ammunition, and accoutrements, horses, saddles, bridles, appointments, and other property not delivered up as required by this section.

PART III.

Neglect of
duty.
1257, 1916,
s. 14.
U.K. 2 & 3
Vict. c. 47,
s. 14;
2 & 3 Vict.
c. 93, s. 12;
10 & 11 Vict.
c. 89, s. 16.

15. (1) Every member of the police force who is guilty of any neglect or violation of duty in his office as such a member shall be liable to a fine of not more than five pounds, or to imprisonment for any period not exceeding one month.

(2) The amount of any fine imposed upon a member of the police force for an offence against this section may be deducted from any salary then due to that member.

Taking bribes,
and other
offences.
1257, 1916,
s. 15.

16. Any member of the police force who—

(a) directly or indirectly takes any bribe, pecuniary or otherwise, to forego his duty as such a member; or

(b) in any manner aids, abets, assists, or connives at the escape, or any attempt or preparation to escape, of any prisoner from any gaol or other place in which that prisoner is lawfully confined, or otherwise in lawful custody; or

(c) deserts his post; or

(d) assaults his superior officer,

shall, in addition to any other punishment for that offence to which he is liable, be liable to a fine not exceeding ten pounds, or to imprisonment for any period not exceeding three months.

Constables
subject to
duty in, or
outside the
State.
1257, 1916,
s. 16.

17. (1) Notwithstanding the establishment of any police district under this Act, the constables belonging to the police force stationed in that district shall continue to be part of the police force, and shall be subject to the same authority, and be liable, if required, to perform the same duty in any part of the State or elsewhere, as if that police district had not been established.

(2) Every member of the police force employed beyond the limits of the State, whilst so employed shall be amenable to, and shall obey in all respects, the lawful commands of his superior officers, and shall be liable to the same penalties, forfeitures, and punishments, in all respects, for any neglect or violation of duty whilst so employed, as if that neglect or violation of duty had occurred within the State.

Execution of
process.
1257, 1916,
s. 17.
Of. U.K.
2 & 3 Vict.
c. 47, ss. 12,
13.
Of. U.K.
3 & 4 Vict.
c. 88, s. 33
(part).

18. (1) Every sergeant and constable of the police force shall execute every process directed to him for levying the amount of any recognizance forfeited to His Majesty, or of any fine imposed on any juror, witness, party, or other person by any court of competent jurisdiction, or of any other fine imposed under any Act in force in the State.

(2) Any process, or any order, warrant, or command of any justice directed, delivered, or given to any sergeant or constable of the police force may be executed and enforced by any other

sergeant or constable of that force, or his assistants, and every such other sergeant or constable or his assistants shall have all the rights, powers, and authorities for and in the execution of that process, order, warrant, or command, as if it had originally been directed to him or them expressly by name.

19. If any person, not being a member of the police force—

Personating or
bribing police.

1257, 1916,
s. 18.
Cf. U.K.
2 & 3 Vict.
c. 47, s. 17;
2 & 3 Vict.
c. 93, s. 15;
10 & 11 Vict.
c. 89, s. 12.

(a) has in his possession any arms or ammunition, or any article of clothing, accoutrements or appointments, supplied to any member of the police force, and is not able satisfactorily to account for his possession thereof; or

(b) puts on the dress or takes the name, designation, or description of any member of the police force, or pretends or asserts that he is a member of the police force; or

Cf. U.K.
9 & 10
Geo. 5 c. 46,
s. 10.

(c) gives, or offers, or promises to give, any bribe, recompense, or reward to, or makes any collusive agreement with, any member of the police force, to induce him to neglect his duty, or to conceal or connive at any act whereby any rule, order, or regulation relating to the appointment and duties of the members of the police force for the time being in force may be evaded,

that person shall, in addition to any other punishment to which he may be liable for such offence, be liable to a fine not exceeding ten pounds.

20. (a) Any holder of any licence to sell fermented or spirituous liquors or any other person whosoever who, either by himself or his servant, permits any constable of the police force, knowing him to be such a constable, to become intoxicated on his premises, or to be supplied with any fermented or spirituous liquor whilst intoxicated, or whilst on duty (unless the constable is travelling on duty); or

Supplying
constables
with liquor or
harbouring
constables on
duty.
1257, 1916,
s. 19.
Cf. U.K.
2 & 3 Vict.
c. 93, s. 16;
10 & 11 Vict.
c. 89, s. 34.

(b) any person who knowingly harbours or entertains any constable of the police force, or knowingly permits any such constable to be or remain in his house, shop, room, or other place, during any part of the time appointed for such constable to be on duty elsewhere,

Cf. U.K.
10 Geo. 4
c. 44, s. 6.

shall be liable to a fine not exceeding five pounds.

PART III.

Assaulting or
obstructing
police.

1257, 1916,
s. 20.
1491, 1921,
s. 3.
Cf. U.K.
2 & 3 Vict.
c. 47, ss. 18,
62;
10 & 11 Vict.
c. 89, s. 20.

21. (1) Any person who assaults or resists any member of the police force in the execution of his duty, or aids or incites any other person so to assault or resist any such member—

(a) shall be liable to a fine not exceeding twenty pounds or to imprisonment for any period not exceeding six months; and in either case shall also forfeit and pay such sum or such further sum of money as appears to the convicting justice to be a reasonable compensation for any damage or injury caused by the offender to the uniform, clothing, accoutrements, or horse of such member, or for any medical or other expenses incurred in consequence of personal injury sustained by him in such assault or resistance as aforesaid; or

(b) may be committed for trial before any court of competent jurisdiction.

(2) Any person who disturbs or hinders any member of the police force in the execution of his duty, or aids or abets or assists any other person in so doing, shall be liable to a fine not exceeding ten pounds, or to imprisonment for any period not exceeding three months.

PART IV.

Cf. U.K.
17 & 18
Geo. 5 c. 19.

Interpretation.
1676, 1925,
s. 2.

PART IV.

THE POLICE APPEAL BOARD.

22. In this Part, unless the context otherwise requires, or some other meaning is clearly intended—

“board” means the Police Appeal Board as constituted by this Part:

“chairman” means the chairman of the board:

“Commissioner” means the Commissioner of Police:

“member” means a member of the board:

“secretary” means the person appointed by the Minister to act as secretary to the board.

s. 21. MILLER v. NOBLET (1927) S.A.S.R. 385. Where police constables, whilst carrying out their duty, unlawfully seized certain bottles (which might have been used as evidence of the commission of an offence) and were assaulted by a person endeavouring to seize and break the bottles, and had not abandoned their general duties at the time of the assault, held that the constables were assaulted while acting in the execution of their duty.

LENTHALL v. CURRAN (1933) S.A.S.R. 248. To warn persons, suspected of being engaged in illegal betting, of the approach of the police amounts to the offence of hindering the police in the execution of their duty; and it is not necessary to show that any offence (of illegal betting) had been committed.

PLUNKETT v. KROEMER (1934) S.A.S.R. 124. A constable is hindered by any obstruction or interference making his duty more difficult of performance.

23. (1) The Police Appeal Board constituted pursuant to the Police Appeal Board Act, 1925, shall, subject to this Part, continue to exist.

Constitution of Board.
1676, 1925,
s. 4.

(2) The Board shall consist of a special magistrate (hereinafter referred to as "the chairman") who shall be appointed by the Governor for a term of one year, and two other members.

(3) Each of the last mentioned members shall be appointed by the Governor for a term of one year; one shall be nominated by the Commissioner of Police and the other shall be a member of the police force nominated by the police force in manner prescribed.

24. (1) In the case of and during the absence from whatever cause of the chairman, the Governor may appoint a deputy who shall have similar qualifications to those of the chairman, and who during such absence, shall have the powers of the chairman.

Absence of chairman or member.
1676, 1925,
s. 5.

(2) In the case of and during the absence from whatever cause of any member other than the chairman, another person who has been nominated in the manner prescribed shall, during such absence, act in the place of that member.

25. The chairman together with one member of the board shall constitute a quorum thereof.

Quorum.
1676, 1925,
s. 6.

26. The Minister shall appoint a secretary of the board whose duty it shall be to convene all meetings of the board, and to keep a record of all proceedings and decisions of the board.

Secretary meetings, and records.
1676, 1925,
s. 7.

27. (1) Any person who, at the time of the decision of the Commissioner hereinafter in this subsection referred to, is a member of the police force, if dissatisfied with any decision of the Commissioner, made or given in regard to the granting or refusal of promotion to him or the imposition upon him of any punishment where such punishment consists of the infliction of a fine, suspension, reduction, whether in rank or pay, dismissal, or discharge, may give notice of appeal from that decision in the prescribed manner. The notice of appeal shall be given within thirty days after the decision becomes known to the appellant.

Appeal to board and procedure.
1676, 1925,
s. 8.
Cf. U.K.
17 & 18
Geo. 5 c. 19,
s. 1 (1).

(2) The secretary shall refer every such appeal to the board, and the board shall hear and consider every appeal so referred to it.

28. (1) Upon an appeal being referred to the board the chairman shall fix a date and place for the hearing thereof, and shall give at least seven days' notice to the parties of the date and place of the hearing.

Hearing of appeal.
1676, 1925,
s. 9.
Cf. U.K.
17 & 18
Geo. 5 c. 19,
s. 3.

(2) The board may, upon the application of either party, by summons under the hand of the secretary require any person to appear before the board and give evidence, or require any person to produce to the board any books, documents, or writings in his possession or under his control.

(3) Upon the hearing of any appeal the board may take evidence upon oath and the chairman may admit in evidence any statement or document which in his opinion is relevant, whether or not such statement or document is legal evidence.

(4) Any person summoned as aforesaid who without reasonable excuse fails to appear before the board or to produce to the board any books, documents, or writings, or refuses to give evidence, shall be liable to a fine not exceeding fifty pounds. Any offence against this subsection shall be dealt with summarily.

(5) The Commissioner shall be entitled to be represented before the board upon the hearing of any appeal.

(6) The appellant may appear before the board in person or may nominate any person to appear on his behalf, and any person appearing before the board may call and examine witnesses.

Decision of the Board.

1676, 1925,
s. 10.

Cf. U.K.
17 & 18

Geo. 5 c. 19,
s. 2 (2).

29. (1) The chairman shall forward to the Commissioner a copy certified under the hand of the chairman, of the evidence taken, together with a statement of the decision of the board. If the chairman or any member does not agree with such decision he may forward a separate report stating his reasons for dissenting therefrom and making such recommendations as he may think fit.

(2) The Commissioner shall transmit the decision, evidence, recommendations, and reports, together with his report and recommendations thereon, to the Minister.

(3) The decision of the board, together with the report and recommendations (if any) of any member of the board disagreeing with that decision, and the report and recommendation of the Commissioner shall be considered by the Minister, whose decision shall be final.

Trivial appeals.

1676, 1925,
s. 11.

30. The board may decline to hear or determine any appeal which appears from the notice of appeal to be merely trivial, frivolous, or vexatious.

No appeal from
Appeal Board,
&c.

1676, 1925,
s. 12.

31. Notwithstanding anything contained in any other Act, no appeal from a decision, either of the board or the Minister (or, save as hereinbefore provided, of the Commissioner), with

respect to any member of the police force shall lie or be permitted to any court or tribunal whatsoever, and no writ of prohibition or *mandamus* or *certiorari* shall lie in respect thereof.

32. The Governor may make regulations—

- (a) providing for the nomination of members :
- (b) prescribing the method of appealing and the procedure of the board :
- (c) generally to carry out the purpose and provisions of and to prescribe the procedure under this Part.

Regulations.
1676, 1925,
s. 13.
Cf. U.K.
17 & 18
Geo. 5 c. 19,
s. 14.

PART V.

PART V.

APPOINTMENT AND CONTROL OF SPECIAL
CONSTABLES.

33. (1) If—

- (a) it is made to appear to any special magistrate or any two justices, upon the oath of any credible witness, that any tumult, riot, or felony has taken place, or may be reasonably expected to take place, in any city, town, or district, and that special magistrate or those justices is or are of opinion that the ordinary constables or officers appointed for preserving the peace in that city, town, or district, are not, or will not be, sufficient for the preservation of the peace, and for the protection of the inhabitants and the security of the property therein ; or
- (b) without such oath as aforesaid, any special magistrate or any two justices are of opinion that the said constables or officers are not, or will not be, sufficient for such preservation, protection, or security as aforesaid, or for the apprehension of offenders,

that special magistrate or those justices, by precept in writing under his or their hand or hands, may appoint such householders or other persons (not being legally exempt from serving as constables) residing in such city, town, or district, as he or they think fit, to act as special constables for such time and in such manner as to the special magistrate or justices respectively seems necessary for the preservation of the peace, and for the protection of the inhabitants, and the security of the property, in that city, town, or district.

Appointment
of special
constables.
1257, 1916,
s. 21.
U.K. 1 & 2
Will. 4 c. 41,
s. 1.

(2) The special magistrate or either of the justices who appoint any special constables by virtue of this section, or any other justice, is hereby authorised to administer to every person so appointed an oath in the following form :—

I, A.B., do swear that I will well and truly serve His Majesty the King in the office of special constable for the [city, town, or district, *as the case may be*] of without favour or affection, malice or ill-will, and that I will, to the best of my power, cause the peace to be kept and preserved, and prevent all offences against the persons and property of His Majesty's subjects, and that, while I continue to hold the said office, I will, to the best of my skill and knowledge faithfully discharge all the duties thereof according to law—SO HELP ME GOD!

Taken and subscribed at
this day of , 19 . }

Before me,

Special Magistrate [*or Justice of the Peace*].

(3) Whenever any special constables have been appointed under this section, notice of that appointment, and of the circumstances which have rendered that appointment necessary, shall be forthwith forwarded to the Chief Secretary by the special magistrate or justices making the appointment.

Special constable refusing to take the oath of office, or to serve.
1257, 1916, s. 24.
Cf. U.K. 1 & 2 Will. 4 c. 41, ss. 7, 8.

34. (1) If any person appointed under section 33 to act as a special constable refuses to take the oath of his office when required to do so by the special magistrate or justices appointing him, he shall, on summary conviction thereof before that special magistrate or those justices, be liable to a fine not exceeding five pounds.

(2) If any person appointed to act as a special constable—

(a) neglects or refuses to appear at the time and place for which he is summoned for the purpose of taking the oath of his office ; or

(b) neglects or refuses, when required to do so, to serve as a special constable, or to obey such lawful orders and directions as are given him for the performance of the duties of his office,

he shall be liable to a fine not exceeding five pounds, unless he proves to the satisfaction of the special magistrate or justices appointing him that that neglect or refusal was due to sickness or such other unavoidable cause as the special magistrate or justices deems or deem sufficient.

PART V.

35. (1) Any person willing to act as a special constable under this Act in any city, town, or district may be appointed and may act as such special constable, notwithstanding that he is not resident in that city, town, or district or in the neighbourhood thereof.

Persons may be appointed as special constables in any district although not resident therein.

1257, 1916, s. 23.

Cf. U.K.

1 & 2 Will. 4

c. 41, s. 6;

5 & 6 Will. 4

c. 43, s. 1.

(2) Any person appointed and acting as a special constable by virtue of this section shall have all the powers, and be entitled to and enjoy all the privileges and benefits, and be subject to all the duties and liabilities, of a special constable appointed under section 33.

36. (1) The Commissioner may with the approval of the Chief Secretary appoint any person willing to act throughout the State as a special constable under this Act to be a special constable, and any person so appointed may act as a special constable throughout the State.

Appointment of special constables by Commissioner.

1577, 1923, s. 2.

(2) Any person appointed and acting as a special constable by virtue of this section shall have all the powers and be entitled to and enjoy all the privileges and benefits, and be subject to all the duties and liabilities, of a special constable appointed under section 33.

37. A special constable shall, whilst in the performance of his duties as a special constable, have the powers and immunities and be subject to the duties and liabilities of a member of the police force.

Powers of special constables.

1936, 1929,

s. 3.

U.K. 1 & 2

Will. 4 c. 41,

s. 5;

5 & 6 Vict.

c. 109, s. 15.

38. (1) The Commissioner may, at his discretion, suspend or determine the services of all or any of the special constables appointed under this Act.

Power to discontinue service of special constables.

1257, 1916,

s. 25.

Cf. U.K.

1 & 2 Will. 4

c. 41, s. 9.

(2) Notice of such suspension or determination shall be forthwith forwarded to the Chief Secretary.

(3) The Commissioner may remove any special constable from his office for any misconduct or neglect of duty therein.

39. (1) Every special constable shall forthwith on the expiration of his office, or after he has ceased to hold and exercise his office, deliver over to his successor (if any), or, if no successor has been appointed, to such person, and at such time and place, as are directed by the Commissioner, all arms, staves, weapons, and other articles which have been provided for him.

Special constables to deliver up weapons, etc.

1257, 1916,

s. 26.

U.K. 1 & 2

Will. 4 c. 41,

s. 10.

(2) If any special constable neglects or refuses to comply with this section, he shall be liable to a fine not exceeding ten pounds.

PART V.

Allowances to special constables.

1257, 1916, s. 27.
Cf. U.K. 41 Geo. 3 c. 78, s. 1; 1 & 2 Will. 4 c. 41, s. 13; 1 & 2 Vict. c. 80, s. 1.

40. The Chief Secretary may—

- (a) upon the recommendation of the Commissioner, order such reasonable allowances as he deems proper to be paid to any persons who have served, or are serving, as special constables, for their trouble, loss of time, and expenses ; and
- (b) order the payment of such expenses as have been incurred in providing arms, staves, weapons, and other necessary articles for those persons.

Assaulting or resisting special constables.

1257, 1916, s. 28.
U.K. 1 & 2 Will. 4 c. 41, s. 11.

41. Any person who assaults or resists any special constable in the execution of his office, or incites or encourages any other person so to do, shall be liable to a fine not exceeding ten pounds, or to such other punishment as is prescribed for assaulting or resisting any member of the police force in the execution of his duty.

Regulations for special constables.

1257, 1916, s. 22.
U.K. 4 & 5 Geo. 5 c. 61, s. 1.

42. The Commissioner may, with the approval of the Chief Secretary, make such orders or regulations as are necessary and expedient for rendering any special constables appointed under this Act efficient for the preservation of the public peace.

PART VI.

PART VI.

ESTABLISHMENT AND MAINTENANCE OF POLICE DISTRICTS.

Police districts.

1257, 1916, s. 29.
Cf. U.K. 3 & 4 Vict. c. 88, s. 27.

43. (1) The Governor may, by proclamation, establish police districts wherein members of the police force may be stationed.

(2) Whenever any members of the police force are stationed within any municipality or district council district, that municipality or district council district, either separately, or conjointly with any adjoining municipality or district council district, as directed by proclamation, shall constitute a police district.

(3) Where a police district is established in any part of the State, which is not within a municipality or district council district, the boundaries of that police district shall be defined in the proclamation by which it is established.

(4) The number and rank of the members of the police force to be stationed in any police district established under this Act shall be declared in the proclamation by which that district is established.

s. 43. The police districts in force on 24th May, 1937, were those constituted by proclamation in the *Gazette* 14th June, 1934, p. 1434.

44. (1) Whenever any foot police are stationed for a longer period than three months in the year in any police district, that police district shall pay to the Treasurer in aid of the general revenue of the State on account of the maintenance of those foot police a sum not exceeding three-eighths of the entire cost of that maintenance, and the remainder of that cost shall be paid out of the general revenue of the State.

Contributions
by police
districts.
1257, 1916,
s. 30.
2206, 1935,
s. 4.
Of. U.K.
10 Geo. 4
c. 44, ss. 23,
30.

(2) If both a municipality and a district council district are included in any such police district, the councils of that municipality and district shall contribute to the amount payable under this section by that police district proportionately to the value of the ratable property in the municipality, and the value of the ratable property in the district council district.

(3) In no case shall any police district be compelled to contribute to the cost of providing the pay, accoutrements, and arms of the commissioned officers of the police force.

45. (1) The amount payable by each police district under the last preceding section shall be annually estimated, and shall be set forth in a table in the form in the first schedule.

Amount of
contribution to
be published in
Gazette.
1257, 1916,
s. 31.

(2) The table shall contain the other particulars indicated in the said form, and shall be signed by the Commissioner and approved by the Chief Secretary.

(3) Every such table shall be published twice in the *Government Gazette* at least two weeks before the meeting of Parliament.

46. (1) Whenever any grant of money is, after the publication of the table as required by the last preceding section, payable to any municipal or district council under any Act, or in aid of any municipal or district rates, a sum equivalent to any amount payable under the last preceding section by that council, may be retained by the Treasurer out of that grant, to be devoted to the payment of that amount.

Recovery of
contribution.
1257, 1916,
s. 32.

(2) If the grant is less than the amount so payable by the council, the balance that remains due by the council over and above the amount of the grant, or the total amount payable by the council in case no grant has been made, shall be paid to the Treasurer out of the funds of the council.

(3) If that balance, or that total amount, is not paid, it may be recovered at the instance of the Attorney-General in a summary way before a special magistrate or two or more justices.

PART VI.

Police rate.
1257, 1916,
s. 33.
2206, 1935,
s. 5.
Cf. U.K.
10 Geo. 4
c. 44, s. 23.

47. (1) Whenever it is incumbent upon any council, by reason of its area being included in a police district, to pay any amount towards the cost of the maintenance of any foot police, that council shall, whenever necessary, levy a special rate for that purpose over and above any other rates lawfully levied or leviable by it.

(2) That special rate shall be recoverable in the same manner, and be enforceable by the same remedies, as are provided by law for the recovery and enforcement of general rates levied by the council.

(3) If any council has (whether before or after the commencement of the Police Act Amendment Act, 1935), levied a special rate for the purpose of paying any sum which it is by this Act required to contribute towards the maintenance of any foot police, and the produce of that special rate is or will be in excess of the sum required to be so contributed, the council may, if it thinks fit, expend the excess in any way and for any purpose in or for which it might expend any other part of its revenue.

Default by
council.
1257, 1916,
s. 34.

48. (1) If any council—

- (a) refuses or neglects to pay any amount due by it under this Part; or
- (b) refuses or neglects to levy a special rate whenever necessary, within thirty days after the payment of any such amount has been demanded in writing by the Chief Secretary,

the Governor may cause a police rate to be levied in the municipality or district of that council, for the purpose of defraying that amount together with the expenses of levying the rate.

(2) The Attorney-General may, in the stead of the council, for the purpose of recovering or enforcing the police rate, do all such acts and have all such remedies as might lawfully be done or availed of by the corporation or council for recovering or enforcing general rates.

Police rate
outside areas
of councils.
1257, 1916,
s. 35.
Cf. U.K.
3 & 4 Vict.
c. 88, s. 6.

49. The owners, inhabitants, and occupiers of all lands within any police district which is outside the boundaries of a municipality or district council district shall be liable to contribute to the expense of maintaining the foot police stationed therein as fully, and in the same manner, as if that police district were comprised within the boundaries of a municipality or district council district, and shall be in like manner ratable in respect thereof: Provided that any police

S. 49. *YELTA MINING COMPANY V. FORD* (1869) 3 S.A.L.R. 46. Held, under the Police Act, 1863, that the holder of a mineral lease was liable to payment of police rates.

rate levied in any such police district shall not exceed in the whole in any year sixpence in the pound on the full and fair annual value of the lands therein.

50. (1) The Governor may direct any special magistrate, or any justice who is resident within any such police district, or the justice who is resident nearest to any such police district, to appoint by warrant under his hand an assessor for the purpose of assessing the full and fair annual value of the lands therein, and rating them for a police rate.

Assessors.
1257, 1916,
s. 36.
2206, 1935,
s. 6.

(2) Whenever the Governor directs any special magistrate or justice to appoint an assessor for the purposes of subsection (1) hereof, he shall cause a statement to be forwarded to that special magistrate or justice informing him of the full amount of the rate which is to be collected under the proposed assessment, and that amount shall include not only the sum to be contributed by the police district towards the cost of the maintenance of the foot police stationed in the police district but also all other expenses incurred, or to be incurred, in levying that rate.

51. (1) Every assessor appointed pursuant to a direction under the last preceding section shall, within twenty-eight days after the delivery to him of the warrant of his appointment, make, sign, and return to the special magistrate or justice appointing him an assessment, for the purpose referred to in that section, of the district named in that warrant.

Mode of
assessment.
1257, 1916,
s. 37.
Of. U.K.
10 Geo. 4
c. 44, s. 30
(part).

(2) The assessment shall be clearly written in a book, and shall specify in different columns—

- (a) the names of the respective owners, inhabitants, or occupiers of all lands within the district ;
- (b) the full and fair annual value of those lands ;
- (c) the amount of the police rate charged on the owners, inhabitants, or occupiers of those lands ; and
- (d) where any such lands are unoccupied, the full and fair annual value thereof to let.

(3) Every such assessor shall be allowed for his trouble and expenses in connection with the assessment such remuneration as the Chief Secretary directs, and the remuneration shall be paid out of the amount of the police rate which is collected under his assessment.

PART VI.

Notice, inspection, and correction of assessment.
1257, 1916
s. 38.
Of. U.K.
10 Geo. 4
c. 44, s. 31.

52. (1) When the assessment has been allowed by the special magistrate or justice by whom the assessor making it was appointed, public notice of the assessment, and of the place where it may be inspected, shall be given by that special magistrate or justice.

(2) The notice shall be given by fixing it in a conspicuous part of the district to which the assessment relates.

(3) Any person in whose custody the assessment is shall permit every owner, inhabitant, or occupier of property included in the assessment to inspect the assessment, and to make any extracts therefrom, without payment of any fee.

(4) If any such person wilfully refuses or neglects to permit any such owner, inhabitant, or occupier to inspect the assessment, or to make any extract therefrom, he shall be liable to a fine not exceeding three pounds.

(5) If at any time it appears to the special magistrate or justice—

- (a) that any property which ought to be included in any assessment has been omitted therefrom; or
- (b) that the name of any person has been inserted therein as the owner, inhabitant, or occupier of any property in respect of which some other person ought to have been assessed; or
- (c) that any other matter in the assessment, purely of error, needs rectification,

the special magistrate or justice may—

- (a) cause a description of the property omitted, and the name of the owner, inhabitant, or occupier thereof, to be inserted in the assessment, together with the annual value at which that property is assessed; and
- (b) substitute for the name of the person erroneously inserted in the assessment as the owner, inhabitant, or occupier of any property assessed, the name of the true owner, inhabitant, or occupier thereof; and
- (c) rectify any matter which, purely by error, has been omitted from or included in the assessment.

Appeal against assessment.
1257, 1916,
s. 39.
Of. U.K.
10 Geo. 4
c. 44, s. 33.

53. (1) If any person who has paid the amount of any police rate charged upon him by any assessment made under section 51 is aggrieved by the assessment on the ground—

- (a) that the assessment includes any property for which he is not ratable; or

- (b) that his ratable property is assessed beyond its full and fair annual value ; or
- (c) that the name of any person is omitted from the assessment ; or
- (d) that the property of any person is assessed below its full and fair annual value,

he may appeal to the local court of full jurisdiction at Adelaide, or to the local court within, or nearest to, the police district in question.

(2) Any person so intending to appeal shall, within thirty days after the giving of public notice of the assessment intended to be appealed against and at least ten clear days before the sitting of the court to which the appeal is to be made, give to the special magistrate or justice by whom the assessor making the assessment was appointed notice in writing of the appeal, and of the cause and matter thereof.

(3) Such appeal shall be heard at the local court held next after ten clear days from the giving of the notice of appeal.

(4) If the ground of the appeal is that the name of any person is omitted from the assessment, or that the property of any person is assessed below its full and fair annual value, the party appealing shall in addition to giving notice to the special magistrate or justice, give a like notice of appeal to the person whose name is alleged to be so omitted, or whose property is alleged to be so assessed, and that person shall, if he so desires, be heard by the court upon the appeal.

(5) The court, upon being satisfied that the necessary notice has been given, shall hear and determine the matter of the appeal, and shall make such order therein as it thinks proper, with or without costs to either party, and in particular—

- I. if the court thinks the appellant is entitled to relief, it shall order the assessment to be amended in such manner as is necessary for giving him relief, and shall also order any money paid by him which he was not liable to pay to be returned to him ; and
- II. if the ground of the appeal is that the name of any person is omitted from the assessment, the court may order the name of that person to be inserted in the assessment, and that person to be therein assessed at such amount as the court deems just ; and
- III. if the ground of the appeal is that the property of any person is assessed below its full and fair annual

value, the court may order the amount at which that property is assessed to be altered in such manner as the court deems just,

and the proper officer of the court shall in each case forthwith amend the assessment accordingly; but the assessment shall not be quashed or altered with respect to any other persons named therein.

(6) The determination of the court shall be final and conclusive.

(7) The special magistrate or justice by whom the assessor making the assessment appealed against was appointed shall not adjudicate in any matter of such appeal.

Collection of
police rate,
1257, 1916,
s. 40.
Cf. U.K.
10 Geo. 4
c. 44, ss. 25,
32.

54. (1) The special magistrate or justice by whom the assessor making any assessment was appointed shall appoint one or more persons for levying the amount of the police rate charged in such assessment.

(2) All persons so appointed shall proceed in the same manner, and shall have the same powers, remedies, and privileges, and shall be subject to the same regulations and penalties, with reference to the levying of such police rate, as if they were acting for a district council in levying a special rate of that council.

(3) Such persons shall pay over the amount of the police rate levied by them to the assessor, who shall account for and pay over the total amount of the rate to the special magistrate or justice aforesaid, and in default thereof shall be proceeded against for non-payment.

Powers and
duties of
special
magistrate or
justice levying
rate.
1257, 1916,
s. 41.
Cf. U.K.
10 Geo. 4
c. 44, s. 26.

55. (1) Every such special magistrate or justice may do or cause to be done all such acts, and shall have all such powers, for recovering and enforcing the police rate, as may be done or exercised by any district council in the levying of any general rate.

(2) Immediately upon the receipt by any such special magistrate or justice of any moneys in respect of a police rate, he shall forthwith remit the amount thereof to the Treasurer, and shall furnish at the same time a full and clear statement of all moneys received and paid and acts done by him under this Act.

(3) The Governor may direct such fair and just remuneration and allowances to be paid to every such special magistrate or justice, out of the rate, for expenses incurred or services rendered in the exercise of his duties under this Act, as he thinks proper.

PART VII.

PART VII.

POWERS OF THE POLICE FORCE.

56. (1) Notwithstanding any law or custom to the contrary, it shall be lawful for the Commissioner to issue general search warrants to such members of the police force as he thinks fit.

General search
warrants.
1257, 1916,
s. 42.
1491, 1921,
s. 4.
Of. U.K.
6 & 7 Geo. 5
c. 50, s. 42.

(2) Every such warrant shall be in the form in the second schedule, or in a form to the like effect, and shall be signed by the Commissioner.

(3) Every such warrant shall remain in force for six months from the date thereof, or for any shorter period specified therein: Provided that the Commissioner may at any time revoke any such warrant.

(4) The member of the police force named in any such warrant may, at any time in the day or night, exercise all or any of the following powers:—

(a) He may with such assistants as he thinks necessary, enter into, break open, and search any house, building, premises, or place where he has reasonable cause to suspect that—

(i.) any felony or misdemeanour has been recently committed, or is about to be committed; or

(ii.) any stolen goods are; or

(iii.) there is anything which may afford evidence as to the commission of any felony or misdemeanour; or

(iv.) there is anything which may be intended to be used for the purpose of committing any felony or misdemeanour.

(b) He may break open and search any cupboards, drawers, chests, trunks, boxes, packages, or other things, whether fixtures or not, in which he has reasonable cause to suspect that—

(i.) any stolen goods may be found; or

(ii.) any thing may be found which may afford evidence as to the commission of any felony or misdemeanour, or which may be intended to be used for the purpose of committing any felony or misdemeanour.

(c) He may seize any such goods or things, to be dealt with according to law.

(5) In this section the term “stolen goods” includes goods obtained by any felony or misdemeanour.

Warrant to
search house
used for
prostitution.
1257, 1916,
s. 43.
U.K. 61 & 62
Vict. c. 39,
s. 1 (2).

57. If it is made to appear to a special magistrate, by information on oath, that there is reason to suspect that any house, or part of a house, is used by a female person for purposes of prostitution, and that any male person residing in or frequenting such house is living wholly or in part on the earnings of the prostitute, the magistrate may issue a warrant authorising any constable to enter and search that house, and to arrest that male person.

Power to
search vehicles
and suspected
persons.
1257, 1916,
s. 44.
Cf. U.K.
2 & 3 Vict.
c. 47, ss. 67,
68.

58. Any constable may stop, search, and detain—

(a) any cart, carriage, or vehicle in or upon which there is reason to suspect that anything stolen or unlawfully obtained may be found, and

(b) any person who is reasonably suspected of having, or conveying in any manner, anything stolen or unlawfully obtained.

Meaning of
“vessel.”

59. In the next three succeeding sections “vessel” means any ship, boat, or other vessel not being a vessel for the time being actually employed in His Majesty’s Service, and not being a vessel of war, the commanding officer whereof holds a commission from any foreign Government or Power.

Power to
board vessels.
1257, 1916,
s. 45.

60. Any inspector, sub-inspector, or non-commissioned officer of the police force shall have power, by virtue of his office, to enter at all times, with such constables as he thinks necessary, as well by night as by day, into or upon any vessel lying or being in any harbour, port, river, or creek, or any dock adjacent thereto, and into every part of any vessel, for the purpose of—

(a) searching and inspecting the vessel ; and

(b) inspecting and observing the conduct of all persons who are employed on board the vessel in or about the loading or unloading thereof ; and

(c) taking all such measures as are necessary for providing against fire and other accidents , and

(d) preserving peace and good order on board the vessel ;
and

- (e) the effectual prevention or detection of any felonies or misdemeanours.

61. (1) If any inspector, sub-inspector, or non-commissioned officer of the police force having reasonable or probable cause to suspect—

Power to stop
and search
vessels.
1257, 1916,
s. 46.
Of. U.K.
3 & 4 Vict.
c. 50, s. 9.

- (a) that any felony has been, or is about to be, committed on board of any vessel, lying or being in any harbour, port, river, dock, or creek ; or

- (b) that any person who has committed an offence rendering him liable to apprehension, either with or without a warrant, or that any person against whom any warrant has been issued by any justice, is harboured, secreted, or concealed on board of any vessel—

that inspector, sub-inspector, or officer—

I. may stop and detain that vessel ; and

II. may enter at all times with such constables as he thinks necessary, as well by night as by day, into and upon that vessel, and every part thereof ; and

III. may search and inspect the vessel, and therein take all necessary measures for the effectual prevention and detection of all such suspected felonies, and for the apprehension of all such suspected persons as aforesaid ; and

IV. shall take into custody all persons suspected of being concerned in such felonies, or liable to apprehension as aforesaid ; and

V. shall also take charge of all property suspected to be stolen.

(2) If any person (whether the master of the vessel or any other person)—

- (a) resists or wilfully prevents or obstructs any officer or constable of the police force whilst stopping, detaining, or entering upon, or endeavouring to stop, detain, or enter upon any vessel, or whilst searching and inspecting any vessel for the purposes aforesaid ; or

- (b) harbours or conceals or rescues, or attempts to rescue or assist, any such suspected person,

that master or other person shall be guilty of a misdemeanour, and shall be liable to a fine not exceeding fifty pounds, and to imprisonment for any period not exceeding six months.

Power to apprehend persons disturbing the peace on board ships.
1257, 1916,
s. 49 (1).

62. Any constable, when so ordered by any officer of police, or whenever called upon by the master or chief officer of any vessel lying in any harbour, port, river, or creek, or any dock adjacent thereto, may—

- (a) enter into and upon that vessel ; and
- (b) without any warrant, apprehend any person whom he finds drunk and riotously or indecently behaving himself, or whom he finds fighting or using threatening, abusive, or insulting words, or behaving in a threatening, abusive, or insulting manner, and disturbing the peace and good order of the vessel, or with intent to provoke a breach of the peace or whereby a breach of the peace might be occasioned.

Power to visit places where games carried on, etc.
1257, 1916
s. 47,
1863, 1928,
s. 3.

63. Any member of the police force may—

- (a) whenever he thinks proper enter into any house, room, premises, or place where any public table or board is kept for playing billiards, bagatelle, bowls, fives, racket, quoits, skittles, ninepins, or any game of the like kind ; and
- (b) enter into any house, room, or place kept or used for any theatrical or any public entertainment or any concert or musical or other exhibition or any show of any kind whatsoever (whether admission thereto is obtained by payment of money or not) at any time when that house, room, or place is open for the reception of persons resorting thereto, and shall order any common prostitute or reputed thief or other loose, idle, or disorderly person who is found in that house, room, or place to leave it.
- (2) If any such person refuses to leave any such house, room, or place on being ordered by a member of the police force so to do, that member may forcibly remove him therefrom, and may take him into custody.
- (3) Every such person remaining in any such house, room, or place after having been so ordered to leave shall be liable to a fine not exceeding one pound.

(4) Without limiting the meaning of the term "public entertainment" it is declared that in this section that term includes any football match, cricket match, horse races, trotting, coursing, and any other like game, exhibition, or pastime.

64. Any constable, when called upon by any holder of a licence for the sale of fermented or spirituous liquors, may—

Power to enter licensed premises.

1257, 1916, s. 49 (2).
Of. U.K.
10 Edw. 7
and 1 Geo. 5
c. 24, s. 81.

(a) enter into the licensed premises of the holder of that licence; and

(b) without any warrant, apprehend any person whom he finds drunk and riotously or indecently behaving himself, or whom he finds fighting, or using threatening, abusive, or insulting words, or behaving in a threatening, abusive, or insulting manner, and disturbing the peace and good order of those licensed premises, or with intent to provoke a breach of the peace, or whereby a breach of the peace might be occasioned.

65. (1) Any member of the police force, without any warrant other than this Act, at any hour of the day or night, may apprehend—

Power to apprehend offenders.

1257, 1916, s. 48.
1491, 1921, s. 6.
U.K. 15 & 16
Geo. 5 c. 86,
s. 44.

(a) any person whom he finds drunk, or fighting, or using profane, indecent, or obscene language, or who uses any threatening, abusive, or insulting words, or behaves in a threatening, abusive, or insulting manner, with intent to provoke a breach of the peace or whereby a breach of the peace might be occasioned, in any road, street, thoroughfare, or public place; and

(b) any person who rides or drives through any road, street, thoroughfare, or public place so negligently, carelessly, or furiously that the safety of any other person might thereby be endangered; and

s. 65. WHITE v. KAIN (1921) S.A.S.R. 339; 8 Austn. Digest 426; 9 Austn. Digest 537; 13 Austn. Digest 1096, 1103. The expression "just cause to suspect" in s. 65 (1) (e) connotes that the constable must have a suspicion, based on grounds which would create a suspicion in the mind of a reasonable man. The plaintiff in an action for wrongful arrest need not negative justification. The defendant must prove it; but *semble*, justification may be inferred from proof that the defendant was a constable, by reason of the maxim *omnia præsumuntur rite esse acta*.

ROSEY v. REYNOLDS (1929) S.A.S.R. 408; 5 Austn. Digest 951; 9 Austn. Digest 522. S. 65 (1) (e) gives power to arrest for a suspected offence under s. 63 of the Lottery and Gaming Act, 1936 (loitering). The section operates when the constable not only suspects, but believes that a person is loitering.

JOHNS v. POWELL (1930) S.A.S.R. 230; 13 Austn. Digest 1097. The expression "just cause to suspect" in s. 65 (1) (e), means grounds for suspicion of guilt, which are such as might cause a real and not trivial suspicion in the mind of an ordinarily prudent man regarding the matter reasonably at the material time.

PART VII.

Cf. U.K.
1 & 2 Geo. 5
c. 27, s. 1.

(c) any person who cruelly beats, illtreats, overdrives, overloads, abuses, or tortures any animal, or causes any such act to be done, or who conveys or carries any animal in any road, street, thoroughfare, or public place in such a manner or position as to cause unnecessary pain or suffering to that animal ; and

(d) any loose, drunken, or riotous person whom he finds disturbing the public peace ; and

Cf. U.K.
3 & 4 Vict.
c. 50, s. 10.

(e) any person whom he has just cause to suspect of having committed, or being about to commit, any felony, misdemeanour, or offence, or of any evil designs ; and

Cf. U.K.
3 & 4 Vict.
c. 50, s. 10.

(f) any person whom he finds lying or loitering in any street, highway, yard, or other place, who does not give a satisfactory account of himself ; and

(g) any idle and disorderly person, rogue, and vagabond, or incorrigible rogue.

(2) Any such member of the police force may, whether or not he apprehends any such person, require him to give his full name and address ; and if he has reason to suspect that the name or address so given is false, may require that person to produce evidence of the correctness of the name or address given by him.

(3) If any such person refuses to comply with any such requirement, or gives a name or address which is false in any particular, or produces false evidence with respect to his name or address, he shall be guilty of an offence against this Act, and shall be liable to a fine not exceeding ten pounds, or to imprisonment for any period not exceeding three months.

Arrest of
offender whose
name and
residence is not
known.

1257, 1916,
s. 51.
U.K. 2 & 3
Vict. c. 47,
s. 63.

66. Any member of the police force, and all persons whom he calls to his assistance shall take into custody, without a warrant, any person who, within view of that member, commits any offence against this Act, if that person's name and residence is unknown to that member, and cannot be ascertained by him.

Apprehension
of known
offenders.

1257, 1916,
s. 52.
Cf. U.K.
10 Geo. 4
c. 44, s. 7 ;
2 & 3 Vict.
c. 47, s. 64.

67. (1) Any member of the police force, or any other person, with or without a warrant, may apprehend any reputed common prostitute or thief, or any loose, idle, or disorderly person, or any reputed rogue and vagabond or incorrigible rogue who, within view of that member or person, commits any offence against this Act.

(2) That member or person shall forthwith take and convey the offender before a justice to be dealt with in manner provided by this Act, or shall deliver him to any constable or other peace officer of the place where he has been apprehended, to be so taken and conveyed as aforesaid.

(3) Any constable who—

(a) refuses or wilfully neglects to take any such offender into custody, or to take and convey him before a justice ; or

(b) does not use his best endeavours to apprehend and convey any such offender before a justice,

shall be guilty of a neglect of duty, and punishable in manner provided by this Act.

68. Any person found committing any offence punishable as a misdemeanour upon summary conviction—

(a) may be taken into custody without a warrant by any member of the police force ; or

(b) may be apprehended by the owner of the property on or with respect to which the offence is committed, or by his servant or any person authorised by him, and may be detained until he can be delivered into the custody of a constable, to be dealt with according to law.

Apprehension
of offenders
committing
certain mis-
demeanours.
1257, 1916,
s. 53.
Cf. U.K.
2 & 3 Vict.
c. 47, s. 66;
10 & 11 Vict.
c. 89, s. 15.

69. Any person to whom any property is offered to be sold, pawned, or delivered, if he has reasonable cause to suspect—

(a) that any offence punishable as a misdemeanour upon summary conviction has been committed with respect to that property ; or

(b) that that property or any part thereof, has been stolen or otherwise unlawfully obtained,

Apprehension
of persons
pawning or
selling stolen
goods.
1257, 1916,
s. 54.
Cf. U.K.
3 & 4 Vict.
c. 50, s. 12.

may apprehend and detain the person so offering the property, and as soon as may be deliver him into the custody of a constable, together with the property, to be dealt with according to law.

70. (1) Any person apprehended without a warrant under any of the preceding sections of this Act shall be forthwith delivered into the custody of the constable who is in charge of the nearest police station, in order that that person may be secured until he can be brought before a justice to be dealt with according to law, or, if that person has been apprehended for any offence against this Act or for any petty misdemeanour

Proceedings on
arrest without
warrant.
1257, 1916,
s. 55.
1491, 1921,
s. 7.
Cf. U.K.
2 & 3 Vict.
c. 47, s. 69;
42 & 43 Vict.
c. 49, s. 38;
4 & 5 Geo. 5
c. 58, s. 22.

or if in any other case such constable deems it prudent to take bail, until he has given bail for his appearance before a justice.

Cf. U.K.
10 Geo. 4
c. 44, s. 9;
2 & 3 Vict.
c. 47, s. 70.

(2) When any person apprehended under this Act, or charged with any petty misdemeanour, is brought without the warrant of a justice into the custody of any constable in charge of any police station, that constable may, if he deems it prudent, take bail by recognizance, with or without sureties, as he thinks fit, without any fee or reward, from that person, the condition of the recognizance being that that person shall appear for examination before a justice at the place specified in the recognizance at the hour of ten o'clock in the forenoon next after the recognizance is taken, unless that hour falls on a Sunday or Christmas Day or Good Friday, or any public holiday, and in that case at the like hour on the succeeding day.

(3) Every recognizance so taken shall be of equal obligation on the parties entering into it, and the same proceedings shall be for enforcing it as if it had been taken before a justice.

(4) The constable shall enter in a book, to be kept for that purpose in every police station, the name, residence, and occupation of the party and his surety or sureties (if any) entering into the recognizance, together with the condition thereof and the sums respectively acknowledged, and shall lay the book before the justice who is present at the time and place when and where the party is required to appear.

(5) If the party fails to appear at the time and place required, the justice shall cause a record of the recognizance to be drawn up and signed by the constable.

(6) If the party fails to appear, but applies by any person on his behalf to postpone the hearing of the charge against him, and the justice consents thereto, the justice may enlarge the recognizance to such further time as he appoints.

(7) When the matter has been heard and determined, either by the dismissal of the case or by binding the party over to answer the matter thereof or otherwise, the recognizance for the appearance of the party before a justice shall be discharged without fee or reward.

Apprehension
without
warrant.
1257, 1916,
s. 50.
1936, 1929
ss. 5 and 6.
Cf. U.K.
24 & 25 Vict.
c. 96, ss. 103,
104.

71. (1) Any member of the police force may, without a warrant, take into custody—

(a) any person whom he has reasonable or probable cause for believing or suspecting to be a person for whose apprehension or committal a warrant has been issued by any justice ; and

s. 71. *BULL v. LAING* (1929) S.A.S.R. 65; 12 Austn. Digest 450. Prior to the amendment made by 1936, 1929, s. 71 did not affect the rule that when an officer executes a warrant of commitment for non-payment of a fine imposed by a court of summary jurisdiction he must have the warrant in his possession.

(b) any person who is charged by any other person with committing any felonious assault, if that member has good reason to believe that that assault has been committed, although not within view of that member, and that by reason of the recent commission of the offence a warrant could not have been obtained for the apprehension of the offender.

(2) If any member of the police force, without a warrant, takes into custody any person whom he has reasonable or probable cause for believing or suspecting to be a person for whose committal a warrant has been issued by a justice, that member shall forthwith deliver that person into the custody of the member of the police force in charge of the nearest police station, and shall as soon as conveniently may be, produce or cause to be produced to the person taken in custody the warrant of commitment (if any); whereupon the said person shall be dealt with as required by the warrant.

72. (1) When a person is in lawful custody upon a charge of committing any felony, misdemeanour, or offence, any member of the police force may search his person and take from him anything found upon his person, and may use such force as is reasonably necessary for that purpose.

Power to search, examine, and take particulars of persons in custody.

1257, 1916, s. 55A, 1863, 1928, s. 4.

Gr. U.K. 40 & 41 Vict. c. 21, s. 42; 54 & 55 Vict. c. 69, s. 8.

(2) When a person is in lawful custody upon a charge of committing any felony, misdemeanour, or offence which is of such a nature and is alleged to have been committed under such circumstances that there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of the felony, misdemeanour, or offence, any legally qualified medical practitioner acting at the request of any member of the police force of or above the rank of sergeant, and any person acting in good faith in his aid and under his direction, may make such an examination of the person so in custody as is reasonable in order to ascertain the facts which may afford such evidence, and may use such force as is reasonably necessary for that purpose.

(3) When a person is in lawful custody on a charge of committing any felony, misdemeanour, or offence the officer in charge of police at the station where he is so in custody, or any member of the police force of or above the rank of sergeant, may take or cause to be taken all such particulars as he deems necessary for the identification of that person, including his photograph and finger-prints, and may use or cause to be used such reasonable force as may be necessary to secure those particulars.

(4) The powers given by this section are in addition to and shall not derogate from any other powers of members of the police force.

PART VII.

Power of
Commissioner
to close roads.

1257, 1916,
s. 42A.
1936, 1929,
s. 4.
Of. U.K.
10 & 11 Vict.
c. 89, s. 21;
7 Edw. 7
c. 53, s. 78.

73. (1) On any occasion of riot or public disorder, the Commissioner may close and keep closed to the public any street, road, wharf, or public place during such time as the Commissioner thinks proper.

(2) Any person who is in or upon any street, road, wharf, or public place which is closed to the public as aforesaid and who does not forthwith leave that street, road, wharf, or public place upon being requested so to do by a member of the police force, may be removed therefrom by any member of the police force, and shall, in addition, be liable to a fine not exceeding five pounds.

PART VIII.

PART VIII.

OFFENCES GENERALLY.

Drunkenness, disorderly conduct, and other offences against public order.

Drunkenness
in public
place.

1257, 1916,
s. 56.
1491, 1921,
s. 8.
2186, 1934,
s. 4.
Of. U.K.
10 & 11 Vict.
c. 89, s. 29;
2 Edw. 7
c. 28, s. 1.

74. (1) Any person found drunk in any road, street, thoroughfare, or public place shall be liable to a fine not exceeding five pounds, or to imprisonment, with or without hard labour, for any period not exceeding fourteen days.

(2) The court by which any person is convicted under this section on the complaint of a member of the police force may whether it imposes a fine or not order on the application of the complainant that the defendant pay to the complainant a reasonable sum to cover the expenses of any of the following things :—

- (a) Apprehending the defendant :
- (b) Conveying him to any police station :
- (c) Keeping him in custody until trial :
- (d) Medically examining him.

(3) Any amounts received by the complainant under this section shall be paid by him into the general revenue of the State.

75. Every person who is guilty—

- (a) of any riotous, offensive, disorderly, or indecent behaviour, or of fighting, or of using obscene language, in any road, street, thoroughfare, or public place ; or
- (b) of disturbing the public peace ; or
- (c) of any riotous, offensive, disorderly, or indecent behaviour in any police station,

Fighting or riotous or indecent conduct.
1257, 1916, s. 57.
1491, 1921, s. 9.
2186, 1934, s. 5.
Cf. U.K. 10 & 11 Vict. c. 89, s. 29.

shall be liable to a fine not exceeding five pounds, or to imprisonment for any period not exceeding two months.

76. Every person who—

- (a) on board any vessel (not being then actually engaged in His Majesty's service, and not being a vessel of war, the commanding officer whereof holds a commission from any foreign government or power), lying or being in any harbour, port, river, or creek, or in any dock adjacent thereto, is guilty of riotous or indecent behaviour while drunk, or of fighting or using threatening, abusive, or insulting words, or of behaving in a threatening, abusive, or insulting manner, and disturbing the peace and good order of that vessel, or with intent to commit a breach of the peace or whereby a breach of the peace might have been occasioned ; or
- (b) in any premises licensed for the sale of fermented or spirituous liquors, is guilty of riotous or indecent behaviour while drunk, or of fighting, or using threatening or abusive words, or insulting behaviour, and disturbing the peace of those licensed premises, or with intent to commit a breach of the peace whereby a breach of the peace might have been occasioned,

Disturbing good order in ship or public house.
1257, 1916, s. 58.

shall be liable to a fine not exceeding two pounds, or to imprisonment for any period not exceeding seven days.

77. Any person who rides or drives negligently, carelessly, or furiously through any road, street, or public place shall be liable to a fine not exceeding two pounds.

Furious driving.
1257, 1916, s. 59.
Cf. U.K. 10 & 11 Vict. c. 89, s. 28 (part).

S. 75. BRADY v. LENTHALL (1930) S.A.S.R. 314. Offensive words spoken in a public place, frequented by a large number of people, may without any other act be offensive behaviour under s. 75 (a).

S. 77. BENNETT v. WALSH (1935) S.A.S.R. 429. S. 59 of the Police Act, 1916 (similar to s. 77 of the Police Act, 1936), was not impliedly repealed by s. 21 of the Motor

PART VIII.

Using vehicles
or animals
without con-
sent of owner.
1491, 1921,
s. 14.

78. Any person who—

(a) drives or uses any vehicle (other than a motor vehicle within the meaning of Part II. of the Road Traffic Act, 1934) ; or

(b) works or uses any horse or other beast of burden,

without first obtaining the consent of the owner thereof, shall be liable to a fine not exceeding twenty pounds.

Indecent
exposure.
1257, 1916,
s. 60.
Cf. U.K.
10 & 11 Vict.
c. 89, s. 28
(part).

79. Any person who offends against decency by the exposure of his person in any street or public place, or in the view thereof, shall be liable to a fine not exceeding ten pounds, or to imprisonment, with hard labour, for any period not exceeding one month.

Unlawfully
ringing house
bells.
1257, 1916,
s. 61.
Cf. U.K.
10 & 11 Vict.
c. 89, s. 28
(part).

80. Any person who wilfully and wantonly disturbs the occupant of, or any other person in, any house, by pulling or ringing any door bell, or knocking at any house, without lawful excuse, shall be liable to a fine not exceeding two pounds.

Using artificial
light for
shooting.
1257, 1916,
s. 61A.
1936, 1929,
s. 7.

81. If any artificial light is used in connection with or for the purpose of the discharge of any firearm in any public street, public road, public thoroughfare, or public place or in any place situated so near a public street, public road, public thoroughfare, or public place that the discharge of firearms therefrom is likely to endanger persons passing by in the said street, road, thoroughfare, or public place, the person using that artificial light and the person discharging that firearm shall be liable to a fine not exceeding two pounds.

Injuring or
extinguishing
street lamps.
1257, 1916,
s. 62.
Cf. U.K.
3 & 4 Will. 4
c. 90, s. 55.

82. Any person who wantonly or maliciously breaks or injures any pane of glass, lamp, or lamp post, or extinguishes any lamp set up for public convenience, shall be liable to a fine not exceeding five pounds, and in addition shall defray the necessary expense of repairing the damage done, to be estimated by the convicting justice.

Obscenity.
1257, 1916,
s. 63.
2186, 1934, s. 6.
Cf. U.K.
10 & 11 Vict.
c. 89, s. 28
(part).

83. If—

(a) in any public street, road, thoroughfare, or place, or within the view or hearing of any person, any person sings any obscene song or ballad, or writes or draws any indecent or obscene word, figure, or

s. 77. Vehicles Act, 1921 (now embodied in ss. 120, 121 of the Road Traffic Act, 1934-1936.)

HOGAN v. WALSH (1936) S.A.S.R. 273. S. 77 applies to motor vehicles.

s. 83. MITCHELL v. FRANKHAM (1889) 23 S.A.L.R. 114. Held that the words "you went down the country to get a kid," were not indecent.

RICHARDS v. WEBSTER (1919) S.A.L.R. 298. Held that a licensed billiard saloon was

representation, or uses any profane, indecent, or obscene language ; or

(b) in any such street, road, thoroughfare, or place, or within the view or hearing of any person any common prostitute solicits, importunes, or accosts any person for the purposes of prostitution, or loiters about for the purpose of prostitution ; or

(c) in any public street, road, thoroughfare, or place, any person uses any threatening, abusive, or insulting words, or behaves in a threatening, abusive, or insulting manner,

he or she shall be liable to a fine not exceeding five pounds or to imprisonment for any period not exceeding two months.

84. (1) Any person who sends or accepts, either by word or letter, any challenge to fight for money, or engages in any prize fight, shall be liable to a fine of not less than two pounds or more than twenty pounds, or to imprisonment, with or without hard labour, for any period not exceeding three months.

Challenge to
fight.
1257, 1916,
s. 65.

(2) The justice before whom any person is convicted of an offence against this section may, if he thinks fit, in addition to imposing a penalty, also require such person to find sureties for keeping the peace.

Vagrancy and other like Offences.

85. (1) Any person shall be deemed an idle and disorderly person within the meaning of this Act, and shall be liable to imprisonment, with or without hard labour, for any period not exceeding three months—

Idle and dis-
orderly
persons.
1257, 1916,
s. 66.
1491, 1921,
s. 10.
1863, 1928,
s. 5.
Of. U.K.
5 Geo. 4
c. 82, ss. 3, 4;
25 Geo. 5,
c. 20, s. 1.

(a) who, having no visible lawful means of support or insufficient lawful means of support, on being required by any justice to give an account of his

s. 83. not a public place within the meaning of s. 83 (a). (But see *NICHOLSON v. MORGAN*, *infra*.)

NICHOLSON v. MORGAN (1920) S.A.L.R. 142. The definition of public place in s. 4 applies in the construction of s. 83 (a).

CARROLL v. WOODS (1922) S.A.S.R. 458. Held, on the particular facts, that the office of a district council was not a public place within the meaning of s. 83 (a).

THOMPSON v. HIGGS (1924) S.A.S.R. 243; 12 Austn. Digest 320. Before the amending Act, 2186 of 1934, it was necessary, in order to constitute an offence under s. 83 (a) that some person should have been passing in the street and should have heard what was said.

NORLEY v. MALTHOUSE (1924) S.A.S.R. 268. "Indecent" is not equivalent to lewd or obscene, but means "highly offensive to the recognised standards of common propriety."

s. 85. (1) (a) *CLENDINNEN v. MITCHELL* (1910) S.A.L.R. 96; 5 Austn. Digest 951; 13 Austn. Digest 1096. Held that a police constable was justified in arresting as an idle and

means of support or having been duly summoned or brought before any justice for the purpose of giving such an account, does not give a good account of his means of support to the satisfaction of that justice ;

(b) who, not being an aboriginal native of Australia or the child of an aboriginal native of Australia, being found lodging or wandering in company with any of the aboriginal natives of Australia and being required to do so by any justice, fails to give a good account, to the satisfaction of such justice—

(i.) that he has a lawful fixed place of residence and lawful means of support ; and

(ii.) that such lodging or wandering has been for some temporary and lawful occasion only ;

Cf. U.K.
5 Geo. 4
c. 83, s. 3.

(c) who wanders abroad, or from house to house, or places himself in any public place, street, highway, court, or passage, to beg or gather alms, or causes or procures or encourages any child so to do ;

(d) who, being found by night armed with any gan, pistol, sword, bludgeon, or any offensive weapon or instrument, and being required to do so does not give a good account of his means of support and assign a valid and satisfactory reason for his being so armed ;

(e) who has on or about his person, without lawful excuse (the proof of which excuse shall be on him), any deleterious drug, or any article of disguise ;

(f) who has been thrice convicted of drunkenness within the preceding twelve months ;

s. 85. (1) disorderly person a minor who for 18 months had made a living by investing on the totalizator (such investments being illegal). S. 85 (1) (a) considered.

VALLENDER V. SLATER (1926) S.A.S.R. 28. The onus of proving insufficient lawful means of support under s. 85 (1) (a) is on the prosecutor. S. 85 (2) only applies after the prosecution has made out a *prima facie* case and does not aid the prosecution to make out a *prima facie* case. Money obtained by betting and card-playing should not be presumed in the absence of evidence to have been dishonestly obtained.

TAYLOR V. LENTHALL (1930) S.A.S.R. 413. To make out a *prima facie* case of an offence against s. 85 (1) (a) the prosecution must show that the defendant had insufficient lawful means of support. This need not be proved beyond reasonable doubt in the first instance, since defendant's failure to give a good account may convert a *prima facie* case into proof beyond reasonable doubt. The defendant may escape if, by reason of the failure of the case for the prosecution it appears on the preponderance of evidence that he had sufficient lawful means of support, or if he proves his means of support and that they were lawful.

(g) who is the occupier of any house which is frequented by reputed thieves, prostitutes, or persons who have no visible means of support; or

(h) who, being a common prostitute, wanders in the public streets or highways, or is in any thoroughfare or place of public resort and behaves in a riotous or indecent manner;

Cf. U.K.
5 Geo. 4
c. 83, s. 43.

(i) who is found in any house which is frequented by reputed thieves, prostitutes, or persons having no lawful visible means of support, and who being summoned or brought before any justice does not satisfy the justice that he has lawful means of support, and that he was in such house upon some lawful business;

(j) who habitually consorts with reputed thieves or prostitutes or persons having no lawful visible means of support.

(2) Where any person is accused, under paragraph (a) of subsection (1) of this section, of having no visible lawful means of support, or of having insufficient lawful means of support, proof that he possesses money or other property shall be no defence unless it is also proved that such money or property was honestly obtained.

715, 1898-9,
s. 3.

(3) When any person is convicted under paragraph (d) of subsection (1) of this section, any gun, pistol, sword, bludgeon, or other offensive weapon or instrument with which such person was armed contrary to that paragraph shall be forfeited to His Majesty.

86. (1) Any person shall be deemed a rogue and vagabond within the meaning of this Act, and shall be liable to imprisonment for any period not exceeding six months—

Rogues and
vagabonds.

1257, 1916,
s. 67.

1491, 1921,
s. 11.

1863, 1923,
s. 6.

1936, 1929,
s. 8.

Cf. U.K.
5 Geo. 4
c. 83, s. 4.

(a) who, after having been convicted as an idle and disorderly person, commits any of the offences mentioned in the last preceding section;

s. 85. (1) (j) GABRIEL v. LENTHALL (1930) S.A.S.R. 318; 5 Austr. Digest 172. On a charge under s. 85 (1) (j) it must be shown that the thieves in question are thieves with the reputation of being thieves. The evidence necessary to establish the reputation of being thieves, and the nature of the *mens rea* required to establish an offence against s. 85 (1) (j) discussed. Imprisonment is more appropriate than a fine as the penalty for an offence under s. 85 (1) (j).

s. 85. (2) LENTHALL v. CAVENDER (1931) S.A.S.R. 164; affirming LENTHALL v. CAVENDER (1930) S.A.S.R. 432. Money owned by the defendant, being savings derived from an illegal business which has been discontinued, is money honestly obtained within the meaning of s. 85 (2); *semble*, money earned in a current illegal business is not; *semble*, also, money may be honestly obtained if it is intentionally and voluntarily paid to a man even though the payment for the consideration be illegal. [See also VALLENDER v. SLATER on previous page.]

(b) who solicits, gathers, or collects alms, subscriptions, or contributions under any false pretence, or wanders abroad and endeavours by the exposure of wounds or deformities to obtain or gather alms ;

(c) who imposes, or endeavours to impose, upon any charitable institution or private individual, by any false or fraudulent representation, either verbally or in writing, with a view to obtaining money or any other benefit or advantage ;

Cf. U.K.
5 Geo. 4
c. 83, s. 4.

(d) who pretends to tell fortunes, or uses any subtle craft, means or device, by palmistry or otherwise, to deceive and impose upon any of His Majesty's subjects ;

Ibid.

(e) who has in his custody or possession, without lawful excuse (the proof of which excuse shall be on him), any picklock, key, crow, jack, bit, or other implement of housebreaking ;

Cf. U.K.
1 & 2 Vict.
c. 38, s. 2.
Cf. U.K.
10 & 11 Vict.
c. 89, s. 28
(part).

(f) who—

I. wilfully exposes to view in any street, road, thoroughfare, highway, or public place ; or

II. exposes, or causes to be exposed, in any window or other part of any shop or other building situated in any street, road, thoroughfare, highway, or public place ; or

s. 86. (1) (c) *NORRIS v. CRAFTER* (1935) S.A.S.R. 170. S. 86 (1) (c) is not limited to frauds on charity and benevolence, but applies to any case where money is obtained by fraudulent representation. It does not apply where money is paid under a contract procured by fraud. Held, on the facts, that money was obtained as the direct result of fraud, and not under a contract procured by fraud.

s. 86. (1) (d) *SMITH v. O'SULLIVAN* (1921) S.A.S.R. 349. An intention to deceive is not an essential ingredient in the offence of pretending to tell fortunes.

s. 86. (1) (i) *WILKINS v. LENTHALL* (1931) S.A.S.R. 90. Evidence by a police officer that he suspected the defendant and had been told by other police officers that defendant was a reputed thief is sufficient to prove defendant was a suspected person under s. 86 (1) (i). Prior to the enactment of s. 86 (5) no inference of guilt could be drawn from the bad character of the accused.

MURPHY v. LENTHALL (1931) S.A.S.R. 260; 5 Austn. Digest 335. The defendant may be properly convicted under s. 86 (1) (i), although the evidence also discloses that he was guilty of assault with intent to rob.

s. 86. (1) (n) *CRAFTER v. O'REILLY* (1934) S.A.S.R. 20. The following circumstances may be a lawful excuse:—(a) A licence from the occupier, or if there is no occupier, the owner of the premises. (b) A lawful authority such as a search warrant, warrant of execution or a warrant to distrain. (c) Honest and reasonable belief that facts existed which if true would make the act charged an innocent one.

FERGUSON v. DAYMAN (1935) S.A.S.R. 4. A person on premises by leave of the recognised tenant cannot be convicted of being found on the premises without lawful excuse.

DROGEMULLER v. JAMES (1936) S.A.S.R. 12. Held that a partially-enclosed rubble pit was not an "area" within the meaning of this provision.

III. offers for sale, or attempts to dispose of,

any obscene book, print, picture, drawing, or representation ;

- (g) who being in any public place or being visible from any public place wilfully and obscenely exposes his person or wilfully does any grossly indecent act whether alone or with any other person ;

*Cf. U.K.
5 Geo. 4.
c. 83, s. 4.*

- (h) who, being a male person—

*U.K. 61 & 62
Vict. c. 39,
s. 1 (1).*

I. knowingly lives wholly or in part on the earnings of prostitution ; or

II. in any public place persistently solicits or importunes for immoral purposes ;

- (i) who plays or bets at thimble-rig or the purse trick, the three-card trick, or any other game played in the same way, or of a kindred nature ;

- (j) who plays or bets at or with any table or instrument of gaming at any game or pretended game of chance, in any street, road, highway, or other public place, or in any railway carriage, or at, on, or near any racecourse, fair, exhibition, or show building or grounds ;

*Cf. U.K.
36 & 37 Vict.
c. 38, s. 3.*

- (k) who—

I. in or near any public place or place of public resort, or in or near any house or premises licensed for the sale of liquor, engages in betting, or solicits or encourages any other person to bet, upon—

(i.) any confidence game or trick of sleight of hand ; or

(ii.) any game or trick played with any instrument which, in the opinion of the justice hearing the case, is constructed or used as a means of cheating ; or

II. being a known or reputed cheat, loiters in or near any public place or place of public resort, or in or near any premises licensed for the sale of liquor, and has in his possession any instrument of gaming, or any instrument which, in the opinion of the justice hearing the case, is constructed or used as a means of cheating, and does not account for his having such instrument in his possession to the satisfaction of that justice ;

PART VIII.

U.K. 5 Geo. 4
c. 83, s. 4.

(l) who, being a suspected person or reputed thief, is in, on, or near any river, canal, navigable stream, dock, or basin, or any quay, wharf, or warehouse near or adjacent thereto, or any street, highway, or avenue leading thereto, or any place of public resort, or any avenue leading thereto, or any street, highway, or place adjacent, with intent to commit any offence triable on information in the Supreme Court ;

Ibid.

(m) who, being apprehended as an idle and disorderly person, violently resists any constable or other officer so apprehending him and is subsequently convicted of the offence for which he was so apprehended ;

U.K. 5 Geo. 4
c. 83, s. 4 ;
25 Geo. 5
c. 20, s. 1.

(n) who is found in or upon any dwelling, lands, warehouse, shop, office, coachhouse, stable, dressing room, training shed, club house, tent, or outhouse, or any other building, structure, or erection, or in any enclosed yard, garden, or area, for any unlawful purpose or without lawful excuse ;

U.K. 5 Geo. 4
c. 83, s. 4.

(o) who wanders about and lodges in any outhouse or deserted or unoccupied building, or in the open air, or in any cart or waggon, and who has no visible means of support and does not give a good account of himself ; or

Ibid.

(p) who leaves his wife or child—

I. chargeable, or whereby either of them becomes chargeable, to the public ; or

II. without means of support other than public charity.

Ibid.

(2) When any person is convicted under paragraph (e) of subsection (1) of this section, any picklock, key, crow, jack, bit, or other implement of housebreaking in the custody or possession of such person shall be forfeited to His Majesty.

(3) Where a male person is proved to live with, or to be habitually in the company of, a prostitute, and has no visible means of support, he shall, unless he satisfies the justice hearing the case to the contrary, be deemed to be knowingly living on the earnings of prostitution.

(4) Where any person is convicted under paragraph (j) of subsection (1) of this section any table or instrument of gaming at or with which he has played or betted contrary to that paragraph shall be forfeited to His Majesty.

(5) In proving under paragraph (1) of subsection (1) of this section, the intent to commit any such offence, it shall not be necessary to show that the person charged was guilty of any particular act or acts tending to show his intent but he may be convicted if from the circumstances of the case and his known character as proved to the court it appears to the court that his intent was to commit that offence.

87. (1) Any person shall be deemed an incorrigible rogue, and shall, on conviction before a special magistrate, or two or more justices, be liable to imprisonment for any period not exceeding one year with hard labour—

Incorrigible
rogues.
1257, 1916,
s. 68.
U.K. 5 Geo. 4
c. 83, s. 5.

(a) who breaks or escapes out of any place of legal confinement before the expiration of the period for which he was committed or ordered to be confined by virtue of this Act ;

(b) who commits any offence which subjects him to be dealt with under the last preceding section as a rogue and vagabond, after having been previously convicted under that section ; or

(c) who, being apprehended as a rogue and vagabond, violently resists any constable or other peace officer so apprehending him and is subsequently convicted of the offence for which he has been so apprehended.

(2) Nothing shall prevent any person guilty of any such offence as mentioned in this section from being committed to the nearest gaol, there to remain until the next criminal sittings of the Supreme Court held in the State, or held nearest to where the offence has been committed.

(3) Every offender who is committed to a gaol as aforesaid shall be there kept to hard labour during the period of his commitment.

88. (1) Any constable or other person apprehending any person charged with being an idle and disorderly person, or a rogue and vagabond, or an incorrigible rogue, may seize any horse or other cattle, or any goods or vehicle, in the possession or use of the person so apprehended and charged.

Seizure of
property in
possession of
idle and dis-
orderly
persons, &c.
1257, 1916,
s. 69.
U.K. 5 Geo. 4
c. 83, s. 8.

(2) Every justice by whom any person is adjudged to be an idle and disorderly person, or a rogue and vagabond, or an incorrigible rogue, shall order—

(a) that that person be searched ; and

(b) that his trunks, boxes, bundles, parcels, packages, and any cart or other vehicle found in his possession or use, be searched ; and

- (c) that any money which may then be found with or upon him be paid and applied for or towards the expenses of apprehending and conveying him to gaol, and maintaining him during the period for which he is committed, and towards the expense of the keep of any horse or other cattle seized under this section, during the time such horse or cattle is or are detained.

(3) If, upon the search, money sufficient for the expenses mentioned in subsection (2) of this section is not found, the justice may order—

- (a) that any horse or other cattle seized under this section and so much as is necessary of any other property so seized, be sold ; and
- (b) that the produce of the sale be paid and applied as provided by subsection (2) of this section ; and
- (c) that the balance of the produce of the sale and of any property seized, after deducting the charges for the sale, be returned to the offender.

Person lying or loitering and failing to give a satisfactory account of himself guilty of an offence.
1257, 1916, s. 48 (4).
1577, 1923, s. 3.
Cf. U.K.
3 & 4 Vict.
c. 50, s. 10.

89. Any person lying or loitering in any street, highway, yard, or other place, who does not give a satisfactory account of himself when requested so to do by a member of the police force, shall be guilty of an offence against this Act, and shall be liable to a penalty not exceeding ten pounds, or to imprisonment for any period not exceeding three months.

Fraud.

Valueless cheques.
1257, 1916, s. 70.

90. Any person who obtains any chattel, money, or valuable security by passing any cheque which is not paid on presentation shall, unless he proves—

- (a) that he had reasonable grounds for believing that that cheque would be paid in full on presentation ; and
- (b) that he had no intent to defraud,

be liable on summary conviction to imprisonment for any term not exceeding one year, notwithstanding that there may have been some funds to the credit of the account on which the cheque was drawn at the time it was passed.

Fraud other than false pretences.
1257, 1916, s. 70A.
2186, 1934, s. 9.
Cf. U.K.
32 & 33 Vict.
c. 62, s. 13 (part).

91. Any person who obtains any chattel, money, valuable security, or credit by fraud other than false pretences shall be liable on summary conviction to imprisonment for one year.

92. Any person who, by any fraud or unlawful device or ill-practice—

Cheating at play.
1257, 1916,
s. 78.
U.K. 8 & 9
Viet. c. 109,
s. 17.

- (a) in playing at or with cards, dice, or tables, or at any other game ; or
- (b) in bearing a part in the stakes, wagers, or adventures ;
or
- (c) in betting on the sides or hands of the players ; or
- (d) in wagering on the event of any game, sport, pastime,
or exercise,

wins from any other person for himself or any other or others any sum of money or valuable thing, shall be deemed guilty of obtaining that money or valuable thing from that other person by a false pretence, with intent to defraud or cheat that person of that money or thing, and shall be punishable accordingly.

Unlawful possession of goods.

93. (1) Any person having in his possession or conveying in any manner any personal property whatsoever which in the opinion of the special magistrate or the justices before whom he is charged may at any time prior to the making of such charge have been reasonably suspected of having been stolen

Unlawful possession of goods.
1257, 1916,
s. 71.
1577, 1923,
s. 4.

s. 93. *ORR v. FRAZER* (1921) S.A.S.R. 176. Held (before the enactment of 1577, 1923, s. 4) that reasonable suspicion and possession must co-exist. A conviction under s. 93 should recite that the defendant failed to give a satisfactory account of how he came into possession of the goods.

HOWIE v. NOBLET (1923) S.A.S.R. 277. Held (before the enactment of 1577, 1923, s. 4) that reasonable suspicion and possession must co-exist. Possession means complete personal physical control either by manual custody, or by having the property where the "possessor" alone has the exclusive right or power to place his hands on it.

MOORE v. ALLCHURCH (1924) S.A.S.R. 111. S. 93 requires the prosecution to prove an actual suspicion reasonably entertained before the making of the charge. Suspicion and possession need not co-exist. "Stolen" includes "embezzled."

R. v. SCOTT; Ex parte CHURCH (1924) S.A.S.R. 220; 5 Austn. Digest 1086. A dismissal of a complaint for unlawful possession will not support a plea of *autrefois acquit* on a charge of larceny.

HOMES v. THORPE (1925) S.A.S.R. 286. Held that s. 93 does not apply where the property in question was not *suspected*, but *believed* to have been stolen.

HENDERSON v. SURFIELD AND CARTER (1927) S.A.S.R. 192; 12 Austn. Digest 369; affirming *HENDERSON v. SURFIELD* (1927) S.A.S.R. 31. Held that s. 93 does not apply where the evidence of the supposed suspecter shows he had such a knowledge of events as more probably to *convince* him that he saw actual stealing, than to lead him to *suspect* stealing.

CORSTEN v. NOBLET (1927) S.A.S.R. 421. Where no witness swore that he had entertained a suspicion, and the evidence merely made it probable that such a suspicion existed, held that the defendant could not be convicted.

ALMOND v. LENTHALL (1929) S.A.S.R. 267. On proof by the prosecution of the possession of property by the defendant, and of an actual and reasonable suspicion in the mind of some person that the property was stolen or unlawfully obtained, the defendant must show that he came by the property lawfully; it is not enough for the defence to prove that the property was not stolen on one occasion if the

or unlawfully obtained at the time of being in his possession or being conveyed by him shall, if he does not give an account to the satisfaction of that special magistrate or those justices as to how he came by that personal property, be deemed to be guilty of a misdemeanour, and shall be liable to a fine of not more than one hundred pounds, or to imprisonment for any period not exceeding two years.

(2) Any charge made under subsection (1) hereof shall be heard before a special magistrate or two justices.

(3) The said personal property, if proved to be or to have been in the possession of such person, whether in a building or otherwise, and whether the possession thereof had been parted with by such person before being brought before the special magistrate or justices or not, shall, for the purpose of this section, be deemed to be in the possession of such person.

(4) If the true owner of any personal property suspected of having been stolen or unlawfully obtained is not discovered within one month from the conviction under this section of any person for an offence with respect to that personal property, that personal property may be sold by public auction, and the proceeds of the sale, if not claimed by the true owner within twelve months, shall be paid to the Treasurer for the purposes of the general revenue of the State.

s. 93. witnesses might have suspected, had they known all the facts, that it was stolen
(*contd.*) on another occasion.

DEANE v. TELFORD (1930) S.A.S.R. 86. Where one witness *suspected* and another *believed* goods to have been stolen, held that the court should examine what the witnesses knew of the facts and if their knowledge most probably led to the conclusion of actual larceny s. 93 would not apply.

MURPHY v. LENTHALL (1931) S.A.S.R. 260. Decisions in HOMES v. THORPE (1925) S.A.S.R. 286; NOBLET v. JOHNSON (1929) S.A.S.R. 385; HENDERSON v. SURFIELD AND CARTER (1927) S.A.S.R. 192 discussed.

LENTHALL v. C. A. NEWMAN (1932) S.A.S.R. 126; LENTHALL v. M. J. NEWMAN (1932) S.A.S.R. 126. Where a witness can testify of his own knowledge to a specific larceny of the property in question, he cannot be said to "suspect" and s. 93 does not apply. But a witness may be held to "suspect" if he "thinks" or "believes" the property was stolen. In straightforward cases of larceny s. 93 should not be used.

LENTHALL v. FIMERI (1933) S.A.S.R. 22; 5 Austn. Digest 1088. An acquittal for larceny is no bar to a prosecution for unlawful possession of the same goods. *Seem* that while s. 93 should not be used "as a cloak for the exercise of summary jurisdiction over cases of larceny generally" the court should not assume that the prosecution is so using the section.

LE POIDEVIN v. HUDSON (1935) S.A.S.R. 223. It is not necessary for anyone to depose expressly to suspicion. It is sufficient if circumstances reasonably justify suspicion, and a person acts as if he suspected.

BROAD v. MOORE (1935) S.A.S.R. 297. Where the evidence does not clearly show larceny, unlawful possession may properly be charged. A betting ticket is personal property within the meaning of s. 93.

94. (1) Whenever any credible witness proves upon oath before any justice that there is reasonable cause to suspect that any such property as mentioned in this section has been taken or stolen, and is to be found in any house or other place, that justice may issue a warrant to search that house or place for that property, and any person in whose possession or on whose premises, any of that property is found by virtue of any such warrant, or by any member of the police force when executing any general search warrant or any other warrant, or otherwise acting in the discharge of his duty, who does not satisfy the special magistrate or justices before whom he is brought that he came lawfully by the property or that the property was on his premises without his knowledge or consent, shall—

Property
improperly
taken or
stolen not
satisfactorily
accounted for.
1257, 1916,
s. 72.
U.K. 6 & 7
Geo. 5 c. 50,
s. 42 (2).

- (a) if the property so found consists of any goods, merchandise, or other articles belonging to any ship or vessel in distress, or wrecked, stranded, or cast on shore, be liable to a fine not exceeding twenty-five pounds or to imprisonment for any period not exceeding twelve months :
 - (b) if the property so found consists of the carcass, or the head, skin, hide, fleece, feet, or other part of any cattle, be liable to a fine not exceeding twenty-five pounds, or to imprisonment for any period not exceeding twelve months :
 - (c) if the property so found consists of the whole or any part of any tree, sapling, or shrub, or any underwood, or any part of any live or dead fence, or any post, picket, rail, stile, or gate, or any part thereof (being of the value of not less than one shilling), be liable to a fine not exceeding ten pounds, or to imprisonment for any period not exceeding six months, and in addition shall pay to the party aggrieved the value of the property so found.
- (2) Any person who—
- (a) offers or exposes for sale any goods, merchandise, or articles (whether found by virtue of a search warrant or not) which have been unlawfully taken, or are reasonably suspected of having been unlawfully taken, from any ship or vessel in distress, or wrecked, stranded, or cast on shore ; and
 - (b) does not satisfy the special magistrate or justices before whom he is brought that he came lawfully by those goods, merchandise, or articles, or that

they were on his premises without his knowledge or consent,

shall be liable to a fine not exceeding twenty-five pounds, or to imprisonment, for any period not exceeding twelve months, and in addition shall pay such sum as the special magistrate or justices fix as a reasonable reward to the person who seized those goods, merchandise, or articles.

(3) In every case to which this section applies, any person to whom any such property as is mentioned in this section is offered for sale or any officer of the Customs or member of the police force, may lawfully seize the property so offered, and shall with all convenient speed cause it to be removed to a special magistrate or two or more justices, and in every such case the special magistrate or justices by whom the case is heard may direct that that property be delivered over to the rightful owner, if known, or, if the rightful owner is not known, that the property be sold, and the proceeds thereof applied in the same manner as any fines under this Act.

(4) If any person charged with any offence against this section is not convicted thereof, the special magistrate or justices hearing the case may, at his or their discretion, compel the attendance before him or them of any person through whose hands any such property as mentioned in this section, or any part thereof, appears to have passed, and if the person from whom the property was first received, or any person who has had possession of that property does not satisfy the special magistrate or justices that he came lawfully by the property, he shall be liable to the appropriate punishment provided by this section.

Recovery of Goods Stolen or Unlawfully Obtained.

Recovery of
stolen goods,
from brokers.
1257, 1916,
s. 104.
Cf. U.K.
42 & 43 Vict.
c. 49, s. 44.

95. (1) If any goods are stolen or unlawfully obtained from any person, or being lawfully obtained are unlawfully deposited, pawned, pledged, sold, or exchanged, and complaint is made to a justice that those goods are in the possession of any broker, marine store dealer, or other dealer in secondhand property, or of any person who has advanced money upon the security of those goods, that justice may—

(a) issue a summons or warrant for the appearance of that broker or dealer, and for the production of those goods; and

(b) order those goods to be delivered up to the owner thereof, either without any payment, or upon payment of such sum, and at such time, as the justice thinks fit.

(2) Every broker or dealer who, being so ordered, refuses or neglects to deliver up any goods, or who disposes of or makes away with any goods, after notice that they were stolen or unlawfully obtained, shall pay to the owner of the goods their full value, to be determined by the justice: Provided that no such order shall bar any such broker or dealer from recovering possession of the goods from the person into whose possession they come by virtue of that order, by proceedings in any court of competent jurisdiction commenced within six months after that order was made.

96. (1) If—

- (a) any goods or money (in this section called “property”) which any person is charged with having stolen or fraudulently obtained are or is in the custody of any constable by virtue of any warrant of a justice, or in prosecution of any charge of felony or misdemeanour with regard to the obtaining thereof; and
- (b) the person charged with stealing or fraudulently obtaining the property is not found, or has been summarily convicted or discharged, or has been tried and acquitted, or has been tried and found guilty, but the property so in custody has not been included in any indictment upon which he has been found guilty,

Recovery of property stolen or fraudulently obtained.
1257, 1916, s. 105.
Cf. U.K. 6 & 7 Geo. 5 c. 50, s. 45.

any justice may make an order for the delivery of the property to the person who appears to be its rightful owner, or, in case the rightful owner cannot be ascertained, may make such order with respect to the property as to him seems just.

(2) Such an order shall not be a bar to the right of any person to sue the person to whom the property is delivered and recover it from him by action: Provided that that action is commenced within six months after the order is made.

Injuries to Property.

97. (1) Any person who wilfully and maliciously commits any damage, injury, or spoil to or upon any real or personal property whatsoever, whether public or private, shall be liable to a fine not exceeding five pounds, or to imprisonment for any period not exceeding two months, and shall also pay to the party aggrieved such further sum of money (not exceeding ten pounds) as appears to the justice hearing the case to be a reasonable compensation for the damage, injury, or spoil so committed.

Malicious injury to property.
1257, 1916, s. 73.
Cf. U.K. 4 & 5 Geo. 5 c. 58, s. 14.

(2) Nothing herein contained shall extend to—

- (a) any act done in the course of a trespass, where the party trespassing acted under a fair and reasonable supposition that he had a right to do that act; nor
- (b) any trespass, not being unlawful or malicious, committed in hunting or fishing, or in the pursuit of game.

(3) Every such trespass shall be punishable in the same manner as if this Act had not been passed.

Destroying
property with
intent to steal,
or unlawfully
retaining or
disposing of
property.
1257, 1916,
s. 74.
Of. U.K.
24 & 25 Vict.
c. 96, s. 34.

98. (1) Any person who—

- (a) steals, or damages with intent to steal, any part of any live or dead fence, or any post, picket, or rail set up or used as a fence, or any stile or gate, or any part thereof respectively, or receives the same, knowing it to have been stolen or unlawfully come by, shall pay to the party aggrieved the value of the property stolen or the amount of the damage done, and shall also be liable for a first offence to a fine not exceeding five pounds, or to imprisonment for any period not exceeding one month, and for any subsequent offence to double the amount of the said punishment;

Of. U.K.
24 & 25 Vict.
c. 96, s. 36.

- (b) steals, or cuts, breaks, roots up, or otherwise destroys or damages, with intent to steal, the whole or any part of any growing tree, sapling, shrub, or under-wood, or any growing fruit or vegetable production or any growing cultivated root or plant, or receives the same, knowing it to have been stolen or unlawfully come by, shall, if the value of the property stolen or the amount of the damage done does not exceed five pounds, pay to the party aggrieved that value or amount, and shall also be liable for a first offence to a fine not exceeding five pounds, or to imprisonment for any period not exceeding one month, and for any subsequent offence to double the amount of the said punishment; or

- (c) being an artificer, workman, journeyman, apprentice, or other person, unlawfully disposes of, or retains in his possession, without the consent of the person by whom he is hired, retained, or employed, any goods, wares, work, or materials (not exceeding ten pounds in value) committed to his care or charge, shall pay to the party aggrieved such compensation as the convicting justice thinks

reasonable, and shall also be liable for the first offence to a fine not exceeding ten pounds, or to imprisonment for any period not exceeding three months, and for any subsequent offence to double the amount of the said punishment.

(2) Any person to whom any such property as mentioned in this section is offered to be sold, pawned, or delivered, who has reasonable cause to suspect that any offence mentioned in this section has been committed with respect to that property, is hereby authorised to arrest without a warrant, and with all convenient speed to carry before a neighbouring justice, the person offering the property together with that property, to be dealt with according to law.

(3) In every such case that property shall, by order of the justice by whom the charge against the person offering it is heard and determined, be delivered over to the rightful owner, if known, or, if the rightful owner is not known, the property shall be sold, and the proceeds of the sale applied in the same manner as fines under this Act.

Homing Pigeons.

99. (1) In this and the next succeeding sections "homing pigeon" means all pigeons used as bearers of messages or as racing pigeons, and which have affixed or attached to either or both legs a rubber or metal ring.

Destruction,
etc., of homing
pigeon.
883, 1905,
ss. 2-5.

(2) Except as provided in subsection 4 of this section, it shall be unlawful for any person but the owner to shoot, kill, wound, or in anywise injure or destroy, ensnare, catch, or take any homing pigeon; and any person acting in contravention of this section shall be liable to a fine of not more than five pounds.

Cf. U.K.
11 & 12
Geo. 5 c. 13.

(3) In addition to the penalty imposed under the last preceding subsection, the offender shall, on conviction, pay to the owner of the homing pigeon its full value.

(4) This section shall not extend to the owner or occupier of any improved or cultivated land, killing or destroying any homing pigeon while that pigeon is actually upon that land or any building thereon.

100. Any person entering upon any enclosed land or premises for the purposes of killing, wounding, disabling, ensnaring, catching, taking, or in anywise injuring or destroying any homing pigeon of which he is not the owner shall be liable to a fine not exceeding five pounds, in addition to the value of such homing pigeon so killed, wounded, disabled, ensnared, caught, taken, or in any way injured or destroyed.

Unlawful entry
with intent to
kill pigeons.
883, 1905, s. 6.

Brothels.

Definition of
brothel.

931, 1907, s. 2.

101. In the six next succeeding sections of this Act, "brothel" means any house or premises, or part of any house or premises, or any place to which people of opposite sexes resort for the purposes of prostitution, and includes any house or premises, or part of any house or premises, or any place occupied by a woman or women who is or are accustomed to receive men, or where men are received, for sexual purposes.

Prohibition
against brothel-
keeper.

U.K. 48 & 49,
Vict., c. 69,
Part II.;
12 & 13
Geo. 5 c. 56,
s. 3.
931, 1907, s. 3.

102. (1) Any person who—

- (a) keeps or manages, or acts or assists in keeping or managing a brothel, or is in receipt of the whole or part of the moneys received therein; or
- (b) being the tenant, lessee, or occupier of any premises, knowingly permits such premises or any part thereof to be used as a brothel or for the purposes of prostitution; or
- (c) being the lessor or landlord of any premises, or the agent of such lessor or landlord, lets the same or any part thereof with the knowledge that such premises or some part thereof are or is to be used as a brothel or for the purposes of prostitution, or is wilfully a party to the use of such premises or any part thereof as a brothel or for the purposes of prostitution,

shall be liable—

- (a) for a first offence to a fine not exceeding twenty pounds, or to imprisonment for any term not exceeding three months;
- (b) for a second offence to a fine not exceeding forty pounds, or to imprisonment for any term not exceeding four months;
- (c) for a third or any subsequent offence to a fine not exceeding forty pounds, and, in addition, to be required by the Court to enter into a recognizance (with or without sureties, as to the Court seems meet) to commit no offence under this Act for any period not exceeding twelve months; and in default of entering into such recognizance (with or without sureties, as the case may be), to be imprisoned for any period not exceeding six months with hard labour:

s. 102. SCIEGHI v. HOMES (1923) S.A.S.R. 464; 12 Austn. Digest 265. An authority to prosecute under s. 102 (2) may relate to more than one offence, and need not specify any particular offence with the detail required in a complaint. Held, that a woman kept a brothel, although her husband resided in and owned the premises.

(2) No prosecution shall be instituted under this section unless it is authorised in writing by the Commissioner or any superintendent, inspector, sub-inspector, or sergeant of police, who shall in such authority certify that he has reason to believe that the house or premises in respect to which any person is to be prosecuted is a brothel, or used for the purposes of prostitution.

103. On refusal or failure by any woman found in any brothel to disclose the manager thereof, that woman shall be deemed to be the keeper or manager or one of the keepers or managers thereof; and any male person resident therein, or being the husband of any woman residing, managing, or assisting therein, unless he is judicially separated and *bona fide* living apart from his wife, shall be *prima facie* deemed to be the recipient of the whole or part of the moneys taken therein.

Woman refusing to disclose name of keeper deemed to be herself the keeper of a brothel.

931, 1907, s. 7.

104. Any agreement to let any premises is hereby declared to be null and void if by its terms the agreement appears to the court to raise the presumption that the lessor, landlord, or owner knew or ought to have known that those premises would be used as a brothel or for the purposes of prostitution, and no action for rent, or other legal proceedings in respect of rent, shall be maintainable in respect of such agreement or premises.

Contract to let premises as a brothel null and void.

931, 1907, s. 8

105. Any agreement to let any premises which, subsequently to the making of the agreement, become or are used as a brothel or for the purposes of prostitution, shall thereupon be determined and rendered null and void, and thereupon the lessor, landlord, or owner shall be entitled to recover possession thereof; and the provisions in the preceding section with regard to rent shall apply in such case also, except that on proof by the lessor, landlord, or owner of his ignorance of the fact that the premises had become or were used as a brothel, or for the purposes of prostitution, he shall be entitled to recover from his tenant such sum by way of rent as the court deems equitable in respect of the period during which the lessor was so ignorant.

Contract to let rendered null and void when premises become a brothel.

931, 1907, s. 9.

Of. U.K.
2 & 3 Geo. 5
c. 20, s. 5.

106. (1) Any police constable, authorised in writing by the Commissioner of Police or any superintendent, inspector, sub-inspector, or sergeant of police, may demand entrance at any time by day or night into any house which is, or is reported to be, or is *bona fide* believed to be, a brothel or place used for the purposes of prostitution: Provided that such constable shall, at the time of making such demand, or upon entering the said house or place, produce such written authority as aforesaid.

Power to police to enter.

931, 1907, s. 10.

Of. U.K.
55 & 56 Vict.
c. 55, s. 401.

(2) If admittance be refused or delayed for such time as shall make it appear that wilful delay was intended, that constable may break into and employ force to enter any such house or place as aforesaid, and into any inner room thereof.

Saving of
other liability.
931, 1907, s. 4.

107. Nothing in the last preceding six sections shall relieve any person from any proceedings to which he is liable under any other Act or any rule of the common law.

Indecent publications.

Indecent ad-
vertisements.
680, 1897,
ss. 2-9.
U.K. 10 & 11
Vict. c. 89,
s. 28 (part);
52 & 53 Vict.
c. 18, s. 3.

108. (1) In this section—

(a) “indecent advertisement” includes any drawing, picture, or written or printed matter of an indecent, immoral, or obscene nature, or which relates to venereal or contagious diseases affecting the generative organs or functions, or to any complaint or infirmity arising from or relating to sexual intercourse, or which relates to female irregularities :

(b) general words are not limited or controlled in their meaning by particular words preceding them.

(2) No person shall—

(a) affix or inscribe on anything whatsoever, so as to be visible to persons being in or passing along any street, road, highway, pathway, or public place :

(b) deliver, or attempt to deliver, or exhibit, to any person being in or passing along any street, road, highway, pathway, or public place :

(c) throw down the area, or into the yard, garden, or enclosure of any house :

(d) exhibit to public view in any house, shop, or place :

(e) print or publish in any newspaper :

(f) sell, offer, distribute, or show,

any indecent advertisement.

(3) No person shall give or deliver to any other person any indecent advertisement with intent that that advertisement, or some parts thereof, shall be affixed, inscribed, delivered, thrown down, thrown into any place, exhibited, published, sold, offered, distributed, or shown as in the preceding subsection mentioned.

(4) If any person commits any breach of this section he shall be guilty of an offence, and shall be liable to a fine not exceeding ten pounds for the first offence, and not less than fifty pounds for any subsequent offence.

(5) *Bona fide* medical works, and written or printed matter, *bona fide* published for the advancement of medical science, are exempt from this section.

109. (1) No person shall—

- (a) print or cause to be printed ; or
- (b) offer for sale, sell, or cause to be offered for sale or sold to any person ; or
- (c) have in his possession for sale or distribution,

Restriction on publication of reports of judicial proceedings.

Cf. U.K. 16 & 17 Geo. 5 c. 61, s. 1.
1873, 1928, s. 2.

any book, paper, or document containing any particulars relating to any judicial proceedings for dissolution of marriage, for nullity of marriage, for judicial separation, for an order relieving a woman from the obligation to cohabit with her husband, or for restitution of conjugal rights, other than the following particulars, that is to say—

- (i.) the names, addresses, and occupations of the parties and witnesses :
- (ii.) a concise statement of the charges, defences, and countercharges in support of which evidence has been given :
- (iii.) submissions on any point of law arising in the course of the proceedings, and the decision of the court thereon :
- (iv.) the summing-up of the judge or magistrate and the finding of the jury (if any) and the judgment of the court and observations made by the judge or magistrate in giving judgment.

110. (1) No person shall—

- (a) print or cause to be printed ; or
- (b) offer for sale, sell, or cause to be offered for sale or sold to any person ; or
- (c) have in his possession for sale or distribution,

Prohibition of printing and sale of certain newspapers.

1873, 1928, s. 3.
Cf. U.K. 16 & 17 Geo. 5 c. 61, s. 1.

any newspaper in which any one report—

- (i.) relating to any legal proceedings involving questions of sexual immorality, unnatural vice, or indecent conduct ; or
- (ii.) containing any other news, account, or story descriptive of or relative to sexual immorality, unnatural vice, or indecent conduct,

occupies more than fifty lines of thirteen ems wide or the equivalent thereof, in any kind of type, or carries a heading composed of type larger than ten point capitals.

(2) In this section—

“legal proceedings” includes Coroner’s inquests and sittings of Royal and other Commissions of Inquiry and of Select Committees :

“newspaper” means any copy of a periodical publication which is published at intervals not exceeding three months or any part of such a copy.

(3) For the purpose of this section separate articles in the same newspaper relating to the same matter shall be deemed to form one report, and all photographs illustrative of or connected with any report shall be deemed to form part thereof.

(4) Paragraphs (b) and (c) of subsection (1) of this section shall be construed as prohibiting within the State the sale, offering for sale, causing to be offered for sale or sold, or having in possession for sale or distribution of any newspaper whether printed or published within or outside the State, and whether the reports therein relate to legal proceedings and other matters taking place within or outside the State.

Exemption
from Act of
pleadings,
scientific works,
etc.
1873, 1928, s. 4.
Of. U.K.
16 & 17
Geo. 5 c. 61,
s. 1 (4).

111. Nothing in the last two preceding sections shall apply to the printing, offering, selling, or having in possession of any pleading, transcript of evidence or other document for use in connection with any judicial proceedings or the communication thereof to persons concerned in the proceedings or to the publishing of any notice or report in pursuance of the directions of the Court; or to the printing, offering, selling or having in possession of any separate volume or part of any *bona fide* series of law reports which does not form part of any other publication and consists solely of reports of proceedings in Courts of law, or in any publication of a technical character *bona fide* intended for circulation among members of the legal or medical professions: Provided that in any proceedings under this Act it shall lie on the defendant to prove that the matter complained of falls within the provisions of this section.

Saving of other
Acts.
1873, 1928,
s. 5.

112. Nothing in sections 109 and 110 shall affect the liability under any other Act or at common law of any person in respect of any action done by him in relation to any obscene or indecent matter.

Penalty.
1873, 1928,
s. 6.
Of. U.K.
16 & 17
Geo. 5 c. 61,
s. 1 (2).

113. If any person acts in contravention of section 109 or 110, he shall be liable, on summary conviction, for a first offence to a fine not exceeding two hundred pounds, and for a second or any subsequent offence to a fine not exceeding five hundred pounds or to imprisonment for any term not exceeding six months, or to both such imprisonment and fine.

114. (1) In any proceedings for an offence against section 109 or 110, if it is proved that any newspaper, book, paper, or document was in the possession of the defendant and that the business of the defendant was or included the selling of newspapers, books, papers, or documents, that newspaper, book, paper, or document shall be deemed to have been in the possession of the defendant for sale unless he satisfies the Court to the contrary.

Evidentiary provision.
1873, 1928,
s. 7.

(2) In any proceedings for an offence under section 110, any document alleged in the complaint to be a newspaper shall be deemed to be a newspaper unless the defendant satisfies the Court to the contrary.

115. (1) No prosecution for an offence against section 109 or 110 shall be commenced by any person without the sanction of the Commissioner.

Consent of Commissioner of Police.
1873, 1928,
s. 8.
Of. U.K.
16 & 17
Geo. 5 c. 61,
s. 1 (3).

(2) The consent of the Commissioner may be proved by a document purporting to be signed by the said Commissioner and purporting to give his consent to the prosecution.

Unwholesome food.

116. (1) Any person who—

(a) sells, or offers for sale, as food for human consumption, any grain, flour, meat, or vegetable which in whole or in part is spoiled or in any manner adulterated; or

Selling adulterated or unwholesome food.
1257, 1916,
s. 75.
Of. U.K.
18 & 19
Geo. 5 c. 31,
s. 1.

(b) exhibits for sale any unwholesome or fraudulently prepared provisions, meat, or other food of any kind for man or beast, or practises any deceit or fraud in respect of the quality of any such provisions, meat, or food,

shall be liable to a fine not exceeding ten pounds, or to imprisonment for any period not exceeding two months.

(2) Any justice may seize, or cause to be seized, any such provisions, meat, or food as mentioned in subdivision (b) of subsection (1) hereof as to which any such offence as herein mentioned has been committed.

(3) Upon the conviction of any person for an offence against this section, any grain, flour, meat, or vegetable, or any provisions, meat, or food, with respect to which that offence was committed, shall be forfeited by the offender, and shall be disposed of in such manner as the convicting justice directs.

Places of public resort.

Regulation of
places of
public resort.
1257, 916,
s. 76.

117. (1) Every person who has or keeps any house, shop, room, or place of public resort wherein provisions, liquor, or refreshments of any kind are sold or consumed (whether the same are kept or retailed therein or procured elsewhere), who—

- (a) wilfully and knowingly permits drunkenness or other disorderly conduct in such house, shop, room, or place ; or
- (b) knowingly suffers any unlawful games or any gaming whatsoever therein ; or
- (c) knowingly permits or suffers youths under the age of sixteen years to enter and remain therein ; or
- (d) knowingly permits or suffers prostitutes or persons of notoriously bad character to meet together and remain therein,

shall be liable to a fine not exceeding five pounds.

(2) If any person who is convicted of any contravention of this section is the holder of a publican's licence under the Licensing Act, 1932, the fact that he has been so convicted shall not be construed to exempt him from any penalties or penal consequences to which he may be liable under the said Act for committing an offence against the said Act.

False reports to police.

False reports
to police.
1257, 1916,
s. 78A,
2186, 1984,
s. 10.

118. (1) Any person who falsely and with knowledge of the falsity of his statements represents to any member of the police force that any act has been done or that any circumstances have occurred, which act or circumstances as so represented are such as reasonably call for investigation by the police, shall be guilty of an offence punishable summarily and liable to a fine not exceeding fifty pounds.

(2) In addition to or without imposing a fine on any defendant convicted under this section the court may order that the defendant pay to the complainant a reasonable sum for the expenses of or incidental to any investigation made by any member of the police force as a result of the false statement.

(3) Any amount received by the complainant under this section shall be paid by him into the general revenue of the State.

(4) This section shall not be held to restrict the operation of any other enactment or rule of law.

Compounding informations.

119. (1) If any person lays any information before any justice for any offence alleged to have been committed, by which he was not personally aggrieved, and afterwards directly or indirectly receives, without the permission of that justice, any sum of money or other reward for compounding, delaying, or withdrawing that information, any justice may issue his warrant or summons, as he thinks best, for bringing that person before him.

Compounding
informations.
1257, 1916,
s. 80.

(2) If the facts mentioned in subsection (1) hereof are proved by the confession of the person charged, or by the oath of any credible witness, that person shall be liable to a fine of not more than ten pounds.

PART IX.

PART IX.

OFFENCES IN POLICE DISTRICTS AND
PROCLAIMED LOCALITIES.

120. The provisions of this Part shall apply only—

Application
of this Part.
1257, 1916,
s. 83.

- (a) in police districts under this Act ; and
- (b) in such part or parts of the State as are declared by proclamation, and in any such part only to the extent specified in the proclamation.

121. (1) The Commissioner and (within any municipality or district council district) also the mayor or, as the case may be, the chairman of the district council, may, as occasion arises, give directions either in writing, verbally, or by any agency which he may think fit—

Regulation of
traffic in
certain cases.
1257, 1916,
s. 84.
1936, 1929,
s. 9.
Of. U.K.
10 & 11 Vict.
c. 89, s. 21;
7 Edw. 7
c. 58, s. 78.

- (a) prescribing the route to be observed by motor vehicles, vehicles of any other kind, horses, and persons, and for preventing the obstruction of the streets and thoroughfares on any occasion of public procession, public rejoicings, or public illuminations ;
- (b) for keeping order, or for preventing any obstruction of the streets or thoroughfares in the immediate neighbourhood of any public building, public office, theatre, or place of public resort ;

(c) for keeping order or for preventing any obstruction of the streets or thoroughfares on any occasion when the streets or thoroughfares are thronged or are liable to be obstructed.

(2) In any case where the Commissioner gives any direction pursuant to this section and the direction so given is in conflict with any direction given pursuant to this section by a mayor or chairman, the direction of the Commissioner shall prevail.

(3) The Commissioner may in any particular case delegate his powers under this section to any inspector of police.

(4) If any person on being requested by any member of the police force to comply with any direction given pursuant to this section, fails to comply forthwith with that direction, he shall be liable to a fine not exceeding five pounds.

Nuisances in
thoroughfares.
1257, 1916,
s. 85.
1863, 1928,
s. 7.
Of. U.K.
10 & 11 Vict.
c. 89, s. 28.

122. (1) Any person shall be liable to a fine not exceeding two pounds who, in any street, road, thoroughfare, or public place—

(a) to the annoyance of the inhabitants or passengers, exposes for show or sale (except in a market lawfully appointed for that purpose) any horse or other animal, or feeds or fodders any horse or other animal (horses attached to vehicles standing for hire on any public stand excepted), or shows any caravan containing any animal, or any other show or public entertainment, or shoes, bleeds, or farries any horse or other animal (except in case of accident), or cleans, dresses, exercises, trains, or breaks any horse or animal, or cleans, makes, or repairs any part of any carriage or cart (except in cases of accident where repair on the spot is necessary); or

(b) turns loose any horse or any cattle, or suffers to be at large any unmuzzled ferocious dog, or sets on or urges any dog or other animal to attack, worry, or put in fear any person, horse, or other animal; or

(c) by negligence or ill-usage in driving cattle causes any mischief to be done by those cattle, or in any way misbehaves himself in the driving, care, or management of those cattle; or wantonly and unlawfully pelts, hurts, or drives any cattle which he is not hired or employed to drive;

Para. (d)
repealed by
2332, 1936,
s. 36.

* * * * *

s. 122. *RENFREY v. KELLEHER* (1935) S.A.S.R. 1. Persons may be "passing by" within the meaning of s. 122 (2) though standing still.

- (e) i. causes any cart or vehicle (except a vehicle standing for hire in any place not forbidden by law), or any truck or barrow, with or without horses, to stand longer than is necessary for loading or unloading, or for taking up or setting down passengers ; or
 - ii. by means of any cart or carriage, or any truck or barrow, or any horse or other animal, wilfully interrupts any public crossing, or wilfully causes any obstruction in any thoroughfare ; or
 - (f) without the consent of the owner or occupier, affixes any posting bill or other paper against or upon any building, wall, or fence, or writes upon, soils, defaces, or marks any building, wall, or fence with chalk or paint, or in any other manner whatsoever ; or
 - (g) wantonly discharges any firearm, or burns any shavings or other thing, or throws or discharges any stone or other missile, to the damage or danger of any person, or, within any municipality or district council district, makes any bonfire, or throws or sets fire to any firework, without the consent of the council of such municipality or district ; or
 - (h) wilfully and unlawfully extinguishes the light of any lamp ; or
 - (i) flies any kite, or plays any game, to the annoyance of the inhabitants or passengers in any street, road, thoroughfare, or public place, or to the common danger of the passengers therein ; or
 - (j) turns loose, or suffers any kind of swine or goats belonging to him or under his charge to stray or go about or to be tethered or depastured, in any street, road, thoroughfare, or public place ; or
 - (k) wilfully injures or destroys, or attempts to injure or destroy, any native or acclimatized birds on any park lands or public road or reserve (not being a public road or reserve on the banks or shores of any navigable or tidal water), without the authority of the person having the care and management of such park lands, or public road or reserve, as the case may be.
- (2) Any person shall be liable to a penalty not exceeding two pounds who—
- (a) without reasonable cause discharges any firearm ; or

(b) throws or sets fire to any firework or explosive material, in any place situated so near a public street, road, thoroughfare, or public place that the discharge of firearms or throwing or setting fire to fireworks or explosive material endangers, annoys, or frightens, or is likely to endanger, annoy, or frighten persons passing by in the said street, road, thoroughfare, or public place.

(3) It shall be lawful for any constable to take into custody, without warrant, any person who commits any such offence as mentioned in this section within view of that constable.

Ss. 123
repealed by
2332, 1936,
s. 36.

* * * * *

Playing
musical
instruments
so as to annoy.
1257, 1916,
s. 86.
Of. U.K.
27 & 28 Vict.
c. 55, s. 1.

124. (1) Every householder personally, or by his servant, or by any police constable, may require any street musician to depart from the neighbourhood of his house, on account of the illness of any inmate of such house, or for any reasonable cause.

(2) Every person who sounds or plays upon any musical instrument in any thoroughfare near to and so as to be heard at such house, after being so required to depart, shall be liable to a fine not exceeding two pounds.

(3) Every person who sounds or plays upon any musical instrument, and against whom a complaint has been laid by any inhabitant who is annoyed by the sounding or playing of such musical instrument, or by any constable upon the written complaint of such inhabitant, shall be liable to a fine not exceeding two pounds.

Removal of
nuisances.
1257, 1916,
s. 87.
Of. U.K.
54 & 55 Vict.
c. 76, ss. 4, 5.
Of. U.K.
26 Geo. 5 & 1
Edw. 8 c. 49,
s. 93.
Of. U.K.
26 Geo. 5 & 1
Edw. 8 c. 50,
s. 119.

125. (1) If any privy, pig-sty, or any other matter or thing in any place is or becomes a nuisance to any of the inhabitants of that place, any special magistrate or any two justices, upon complaint on oath made to him or them by any such inhabitant and after due investigation of that complaint, may, by notice in writing, order that that privy, pig-sty, or other matter or thing, being a nuisance, shall be remedied or removed within seven days after that notice has been given to the owner or occupier of the premises wherein that nuisance exists, or has been left for that owner or occupier at his last or usual place of abode, or on the said premises.

(2) Every such owner or occupier who neglects to remedy or remove the nuisance pursuant to the notice, and to the satisfaction of the special magistrate or justices, shall be liable to a fine of ten pounds.

(3) The special magistrate or justices may lay or cause to be laid an information for that nuisance against the person so neglecting to remedy or remove it, and that information shall be heard at the next sitting of the court of competent jurisdiction nearest to the place where the nuisance is.

(4) If that person is found guilty, he shall be deemed to be guilty of a misdemeanour, and shall be subject to such punishment therefor as the court directs, and the nuisance in question shall be taken down, removed, or abated, according to the law with regard to common or public nuisances.

126. Any owner or occupier of any premises or place who neglects to keep clean all private avenues, passages, yards, and ways within such premises or place, so as by such neglect to cause a nuisance by offensive smell or otherwise, shall be liable to a fine of not more than two pounds nor less than ten shillings.

Keeping yards
and ways
clean.
1257, 1916,
s. 88.
Cf. U.K.
26 Geo. 5 & 1
Edw. 8 c. 50,
s. 41.

127. Any person who damages any public building, wall, parapet, sluice, bridge, road, street, sewer, watercourse, or other public property shall pay the cost of repairing the property and, if the damage is done wilfully, shall, in addition to paying that cost, be liable to a penalty of not more than ten pounds nor less than two pounds.

Damaging
public
property.
1257, 1916,
s. 90.
Cf. U.K.
26 Geo. 5 & 1
Edw. 8 c. 50,
s. 275.

128. Any person who casts any filth or rubbish into any watercourse or canal, or obstructs or diverts from its channel any public sewer or watercourse, shall be liable to a fine of not more than ten pounds nor less than one pound, and shall pay the cost of removing that filth, rubbish, or obstruction, or of restoring the sewer or watercourse to its proper channel.

Polluting or
obstructing
watercourses.
1257, 1916,
s. 91.
Cf. U.K.
26 Geo. 5 & 1
Edw. 8 c. 49,
s. 259 (2).

129. (1) Any person who damages any public fountain, pump, cock, or water-pipe, or any part thereof, shall pay the cost of repairing it, and, if the damage is done wilfully, shall, in addition to paying that cost, be liable to a penalty of not more than ten pounds nor less than one pound.

Public
fountains.
1257, 1916,
s. 92.
Cf. U.K.
26 Geo. 5 & 1
Edw. 8 c. 50,
s. 102.

(2) Any person who has in his possession any private key for the purpose of opening any public cock, or who in any manner clandestinely or unlawfully appropriates to his use any water from any public fountain or pipe, shall be liable to a fine of not more than ten pounds nor less than two pounds.

(3) Any person who opens, or leaves open, any cock on any public fountain or pump, so that the water runs or may run to waste, shall be liable to a fine of not more than two pounds nor less than five shillings.

(4) Any person who washes any clothes at any public fountain or pump shall be liable to a fine of not more than one pound nor less than five shillings.

Conveying
slops, night-
soil, &c.,
through the
streets.
1257, 1916
s. 93.

130. (1) If any person—

- (a) drives, or causes to be driven, any cart or other carriage containing any night-soil or ammoniacal liquor or other such offensive matter through or in any street, thoroughfare, or public place between the hours of five o'clock in the morning and eleven o'clock at night ; or
- (b) at any time uses for any such purpose any cask, tank, cart, or carriage not having a proper covering ; or
- (c) fills any cart or other carriage so as to overturn or cast any night-soil, ammoniacal liquor, or other offensive matter in or upon any street, thoroughfare, or public place,

it shall be lawful for any person whomsoever, without any authority or warrant other than this Act, to seize and apprehend, or to assist in seizing and apprehending the offender, and to convey him before any justice.

(2) That justice is hereby authorised and required to hear evidence and determine whether any such offence has been committed by the person brought before him.

(3) If that person is found guilty of any such offence, he shall be liable to a fine not exceeding five pounds.

(4) If the actual offender cannot be apprehended, the owner of the cart or carriage containing such night-soil or ammoniacal liquor or other offensive matter, and also the employer of the actual offender, shall be liable to a fine not exceeding five pounds.

Offences as to
disposition of
night-soil.
1257, 1916,
s. 94.

131. (1) If any person—

- (a) empties or begins to empty any privy, or takes away any night-soil, or goes with carts or carriages for that purpose, except between the hours of eleven o'clock at night and five o'clock in the morning ; or
- (b) puts in or casts out of any cart or tub, or otherwise, any night-soil, in or near any street, thoroughfare, or public place,

any justice may commit that person to gaol for any period not exceeding thirty days, to be computed from the day of commitment.

(2) The owner of any carts, carriages, horses, or beasts employed in and about emptying any privy or taking away any night-soil contrary to this section, or going for that purpose, or the employer of any person who puts in or casts out any night-soil contrary to this section, shall be liable to a fine of five pounds.

132. Any person who—

Leaving dead
animals in
public place.
1257, 1916,
s. 95.

- (a) throws or leaves, or causes to be thrown or left, any dead animal, or any part thereof, upon any street, lane, road, or other public place, or into any river, creek, or other stream which flows through, by, or along any street, lane, road, or public place ; or
- (b) leaves, or causes to be left, any dead animal, or any part thereof, upon the shores of any such river, creek, or other stream ; or
- (c) leaves or causes to be left, any dead animal, or any part thereof, on any private property abutting upon any street, or on or near to any other public place,

to the annoyance of the inhabitants or of persons passing along or resorting to such street, lane, road, or public place, or of the occupiers of any dwelling-house, shall be liable to a fine of not more than one pound nor less than five shillings.

133. Any person who—

Removing
material from
streets without
permission.
1257, 1916
s. 96.

- (a) forms, digs, or opens any drain or sewer in, or removes, or causes to be removed, any turf, clay, sand, soil, gravel, stone, or other material used in the formation of streets, roads, or other public highways from—
 - i. any part of any road or footpath within any municipality or district council district without the written permission of the council of that municipality or district ; or
 - ii. any part of any road or footpath not within a municipality or district council district, without the written permission of a special magistrate or two justices ; or
- (b) wantonly breaks up or otherwise damages any such road or footpath,

shall be liable to a fine of not more than five pounds nor less than one pound.

PART IX.

Drawing or
trailing
timber or
stone in streets.
1257, 1916,
s. 97.

134. Any person who—

- (a) hauls or draws, or causes to be hauled or drawn, upon any street, road, or public place, any timber, stone, or other thing, otherwise than upon wheeled carriages ; or
- (b) suffers any timber, stone, or other thing which is carried principally or in part upon wheeled carriages, to drag or trail upon any street, road, or public place, to the injury thereof, or to hang over any part of the carriage bearing the same so to occupy or obstruct any street, road, or public place beyond the breadth of such carriage,

shall be liable to a fine not exceeding two pounds over and above the amount of the damage occasioned thereby.

Entrances to
cellars, coal
holes, &c., to
be covered
and secured.
1257, 1916,
s. 98.

135. Any owner or occupier of any house, building, or premises having any iron or wooden rails or bars over any area or opening to any kitchen, cellar, or other part of the said house, building, or premises below the level of the footpath of any street or public place, or having any doorway or entrance into the cellar or basement storey thereof, who—

- (a) does not either keep such doorway or entrance, or the rails or bars of such kitchen or cellar, in good and sufficient repair, or safely and securely guard such area or opening, or doorway or entrance, and constantly keep the same securely guarded, by a rail, or cover the same over with a strong flap or trap-door, according to the nature of the case, so as to prevent danger to any persons passing and repassing ; or
- (b) leaves open, or does not sufficiently and substantially cover and keep covered and secured, any coal-hole or other hole, or any funnel, or any trap-door or cellar-flap, belonging to or connected with the cellar or basement storey of such house, building, or premises (except only during such reasonable times as any coal, wood, cask, or other thing is being put down or taken up out of such cellar or basement storey, or during such reasonable times as the flap, trap-door, or covering thereof is being altered or repaired) ; or
- (c) does not repair, and from time to time keep in good and substantial repair, to the satisfaction of the council of the municipality or district council district, if

the house, building, or premises is situated within a municipality or district council district, and if not, to the satisfaction of a special magistrate or any two justices, any such iron or wooden rail, or guard-rail, or flap, trap-door, or other covering,

shall be liable to a fine of not more than five pounds nor less than two pounds.

136. Any person who makes any cellar, or any opening, door, or window, in or beneath the surface of the footpath of any street or public place, shall be liable to a penalty of five pounds over and above the expense of remedying or removing such cellar, opening, door, or window, such expense to be assessed and be allowed by the convicting justice.

Cellars or openings beneath the surface of footpaths prohibited.
1257, 1916,
s. 99.

137. Every person having a well situated between his dwelling-house or the appurtenances thereof and any street or footpath, or at the side of any street or footpath, or in any yard or place open and exposed to any street or footpath, who does not cause that well to be securely and permanently covered over or otherwise secured, shall be liable to a penalty of two shillings and sixpence for every day during which that well remains open or uncovered contrary to this section.

Wells adjacent to streets to be covered over.
1257, 1916,
s. 100.

138. Any person who, being the owner or occupier of any vacant land, or of any house, tenement, or building erected or being erected or about to be erected, on which land, or in front of, adjoining, or at the side of which house, tenement, or building, and adjoining any road, street, thoroughfare, or public place formed or to be formed or in course of formation, any person digs or makes, or causes to be dug or made, any hole, or causes to be left any open hole or area or space, for the purpose of making any vault or area, or the foundation of such house, tenement, or building, or for any other purpose whatsoever—

Holes made for foundations, &c., to be enclosed.
1257, 1916,
s. 101.

- (a) does not forthwith enclose the same in a good and sufficient manner ; or
- (b) keeps up, or causes to be kept up and continued, any such enclosure for any time longer than is absolutely necessary ; or
- (c) does not, when thereunto required by any justice, or by the surveyor or clerk of any municipal corporation or district council, well and sufficiently fence or enclose any such hole or area or space within twenty-four hours after he is required so to do by any

justice, or by any such surveyor or clerk as aforesaid, and in the manner and with such materials as he directs and to his satisfaction, and does not place a light upon the said enclosure, and keep such light constantly burning from sunset to sunrise during the continuance of such enclosure,

shall be liable to a penalty of not more than five pounds nor less than two pounds.

PART X.

PART X.

MISCELLANEOUS PROVISIONS.

Warrants to
apprehend
offenders,
1257, 1916,
s. 102.
Of. U.K.
15 & 16
Geo. 5 c. 86,
s. 44.

139. Any justice, upon oath being made before him that any person has committed, or is suspected of having committed, any offence against this Act, may issue his warrant to apprehend and bring before him or some other justice the person in question, to be dealt with as directed by this Act.

Search of
lodging-houses.
1257, 1916,
s. 103.
Of. U.K.
5 Geo. 4
c. 83, s. 8.

140. Any justice, upon information on oath that—

- (a) any person who is an idle and disorderly person, or a rogue and vagabond, or an incorrigible rogue, is, or is suspected to be, in any house, tent, or place kept, or purporting to be kept, for the reception, lodging, or entertainment of travellers or others ; or
- (b) that any tent, house, or place is a disorderly house, house of ill-fame, or bawdy house,

may enter that house, tent, or place at any time in the day or night, or may issue his warrant authorising any constable or other person in like manner to enter it, and to apprehend and bring before him, or any other justice, every idle and disorderly person, rogue and vagabond, or incorrigible rogue, found therein, to be dealt with as directed by this Act.

Saving of
proceedings
not under this
Act.
1257, 1916,
s. 106.

141. Nothing in this Act shall save any person from an information for any indictable offence made punishable on summary conviction, or prevent any person from being liable to any higher or other penalty or punishment than is provided for such offence by this Act: Provided that no person shall be punished twice for the same offence.

PART X.

142. Where any person is charged before any justice with an offence cognizable by a court of superior jurisdiction, and in the opinion of that justice the case is proper to be disposed of by such a court, that justice may commit that person for trial before any court of competent jurisdiction.

Committal for trial by superior court.
1257, 1916, s. 107.
U.K. 2 & 3 Vict. c. 47, s. 74.

143. If—

Amends for frivolous informations.
1257, 1916, s. 109.

(a) any information or complaint for any offence is laid or made before any justice, and is not further prosecuted; or

(b) such an information or complaint is further prosecuted, and it appears to the justice hearing it that there is no sufficient ground for making the charge,

that justice may award such amends, not being more than the sum of five pounds, to be paid by the informer to the party informed or complained against, for his loss of time and expenses in the matter, as to the justice seems just.

144. Every misdemeanour or other offence against this Act for which no special penalty is provided shall render the offender liable to a fine of not more than five pounds, or to imprisonment for any period not exceeding one month.

General penalty.
1257, 1916, s. 79.
U.K. 2 & 3 Vict. c. 47, s. 73.

145. In any proceedings for an offence against this Act, the allegation in the complaint that any place is within a police district or within a part of the State to which a proclamation under section 120 applies shall, in the absence of proof to the contrary, be sufficient proof that the said place is within a police district or such a part of the State.

Facilitation of proof.
1257, 1916, s. 110A.
1936, 1929, s. 10.
Amended by S.L.R. Act, 1937.

146. All proceedings under this Act, in so far as not otherwise expressly provided, may be had and taken in a summary way in accordance with the Justices Act, 1921.

Summary proceedings.
1257, 1916, s. 112.

147. All fines imposed, and all sums of money ordered to be paid, under this Act, may be recovered before any one Justice, and shall, unless awarded to an informer or person who has contributed to a conviction under this Act be paid into the General Revenue of the State.

Recovery of fines.
1257, 1916, ss. 82, 113.
1577, 1923, s. 5.

148. Where any distress is made for levying any money by virtue of this Act, the distress itself shall not be deemed unlawful, nor the party making the same be deemed a trespasser, on account of any defect or want of form in the summons,

Certain proceedings not challengeable for irregularity.
1257, 1916, s. 115 (3).

conviction, warrant of distress, or other proceeding relating thereto, nor shall the person distraining be deemed a trespasser *ab initio* on account of any irregularity afterwards committed by him, but the person aggrieved by such irregularity may recover full satisfaction for the special damage, if any, in an action.

Non-payment
of penalties.
1257, 1916,
s. 81.

149. If any person makes default in paying any money (whether a fine, amends or money payable under any recognizances) ordered under this Act to be paid, any justice may commit the person making default to prison for any period not exceeding three months, the imprisonment to cease on payment of the sum due and the costs of such proceedings as have been taken for the recovery thereof.

Proceedings
against persons
acting under
the Act.
1257, 1916,
s. 118.
Cf. U.K.
24 Geo. 2
c. 44, s. 8;
56 & 57 Vict.
c. 61.

150. (1) All actions and prosecutions against any person for anything done in pursuance of this Act shall be commenced within two months after the act complained of was committed, and not otherwise.

(2) Notice in writing of every such action, and of the cause thereof, shall be given to the defendant ten days at least before the commencement of the action.

(3) In any such action the defendant may plead the general issue, and give this Act and the special matter in evidence, at any trial to be had thereon.

(4) No plaintiff shall succeed in any such action if tender of sufficient amends has been made before action brought, or if a sufficient sum of money has been paid into Court after action brought by or on behalf of the defendant, together with the costs incurred up to that time.

(5) If a verdict is given for the defendant, or the plaintiff becomes non-suited or discontinues any such action after issue joined, or if judgment is given against the plaintiff, the defendant shall recover his full costs as between solicitor and

s. 150. *HODGSON v. ORR* (1874) 8 S.A.L.R. 273; 13 Austn. Digest 77. Where a South Australian constable arrested a person out of South Australia for an offence committed in South Australia, held that, for the purposes of section 111 of the Police Act, 1869-70 (similar in substance to s. 150 of the Police Act, 1936), he was in the same position as a private person and not entitled to notice.

COBB v. DUFFY AND ANOTHER (1887) 21 S.A.L.R. 142; 13 Austn. Digest 90. The notice of action must state the place where the circumstances complained of occurred.

KYLOH v. WILSEN (1923) S.A.S.R. 501; 13 Austn. Digest 76. Where a constable making an arrest uses more force than is reasonably necessary, and the excess of force was not used in the honest belief that it was justified, no notice of action is necessary.

client, and have the like remedy for the same as any defendant has by law in other cases.

(6) Notwithstanding that a verdict has been given for the plaintiff in any such action, the plaintiff shall not have costs against the defendant unless the judge before whom the trial takes place certifies his approbation of the action and the verdict obtained thereon.

151. A copy of the *Government Gazette* containing a notification of any matter by this Act required to be published in such *Gazette* shall be *prima facie* evidence of the matters contained in such notification.

Gazette to be evidence.
1257, 1916,
s. 110.

SCHEDULES.

THE FIRST SCHEDULE.

Section 45.

FORM OF TABLE SHOWING CONTRIBUTION DUE BY EACH POLICE DISTRICT.

Particulars of boundaries of district.	Number of foot police stationed therein.	Length of time foot police stationed therein.	Cost of maintenance of such foot police therein.	Amount of contribution payable by such district in respect of such foot police.

Dated the day of , 19 .

Commissioner of Police.

Approved,

.....Chief Secretary.

THE SECOND SCHEDULE.

Section 56.

South [Royal Arms] Australia.

GENERAL SEARCH WARRANT.

To
You are hereby authorised at any time in the day or night, with such assistants as you think necessary, to enter into and search any house, building, premises, or place where you have reasonable cause to suspect that—

- (a) any felony or misdemeanour has been recently committed, or is about to be committed; or
- (b) any goods obtained by any felony or misdemeanour are; or

(c) there is anything which may afford evidence as to the commission of any felony or misdemeanour; or
 (d) there is anything which may be intended to be used for the purpose of committing any felony or misdemeanour,
 and to break open such house, building, premises, or place, and to break open and search any cupboards, drawers, chests, trunks, boxes, packages, or other things, whether fixtures or not, in which you have reasonable cause to suspect that—
 I. any goods obtained by any felony or misdemeanour may be found; or
 II. any thing may be found which may afford evidence as to the commission of any felony or misdemeanour, or which may be intended to be used for the purpose of committing any felony or misdemeanour,
 and to seize any such goods or things, to be dealt with according to law. This warrant shall remain in force for six months from the date hereof. [*If for a shorter period state how long.*]

Dated this day of , 19 .

Commissioner of Police.

Rules and Regulations.

The following rules and regulations were in force under this Act on 24th May, 1937:—

REGULATIONS MADE BY THE COMMISSIONER OF POLICE FOR THE GENERAL GOVERNMENT OF THE POLICE FORCE—

Gazette—30th September, 1920, p. 907.
 23rd July, 1931, p. 100.

Regulations made by the Commissioner of Police relating to appointments, transfers, and promotions to plain clothes and detective police were approved by the Hon. the Chief Secretary on 13th April, 1921, but not published in the *Gazette*.

REGULATIONS BY THE GOVERNOR AS TO PROMOTIONS—

Gazette—10th November, 1921, p. 1105.

REGULATIONS MADE BY THE GOVERNOR AS TO POLICE OFFICERS ENGAGING IN BUSINESS—

Gazette—29th August, 1935, p. 514.

REGULATIONS MADE BY THE GOVERNOR AS TO APPEALS TO THE APPEAL BOARD—

Gazette—11th February, 1926, p. 265.

POLICE APPEAL BOARD

see Police.