

(Reprint No. 1)

SOUTH AUSTRALIA

JUSTICES ACT, 1921

This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 15 August 1991.

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

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SCHEDULES

JUSTICES ACT, 1921

being

Justices Act, 1921, No. 1479 of 1921 [Assented to 7 December 1921]¹

as amended by

Justices Act Amendment Act, 1923, No. 1573 of 1923 [Assented to 21 November 1923]
Justices Act, 1931, No. 2051 of 1931 [Assented to 9 December 1931]
Criminal Law Consolidation Act, 1935, No. 2252 of 1935 [Assented to 21 December 1935]
Justices Act Amendment Act, 1936, No. 2261 of 1936 [Assented to 23 July 1936]
Justices Act Amendment Act, 1943, No. 24 of 1943 [Assented to 16 December 1943]
Justices Act Amendment Act, 1956, No. 57 of 1956 [Assented to 6 December 1956]
Justices Act Amendment Act, 1957, No. 37 of 1957 [Assented to 14 November 1957]²
Justices Act Amendment Act, 1960, No. 17 of 1960 [Assented to 8 September 1960]
Maintenance Act Amendment Act, 1965, No. 54 of 1965 [Assented to 23 December 1965]³
Juvenile Courts Act, 1966, No. 3 of 1966 [Assented to 10 February 1966]⁴
Justices Act Amendment Act, 1969, No. 39 of 1969 [Assented to 13 November 1969]⁵
Justices Act Amendment Act (No. 2), 1969, No. 75 of 1969 [Assented to 11 December 1969]⁶
Justices Act Amendment Act, 1972, No. 7 of 1972 [Assented to 23 March 1972]⁷
Local and District Criminal Courts Act Amendment Act, 1972, No. 54 of 1972 [Assented to 27 April 1972]⁸
Justices Act Amendment Act (No. 2), 1972, No. 92 of 1972 [Assented to 2 November 1972]⁹
Justices Act Amendment Act, 1974, No. 31 of 1974 [Assented to 11 April 1974]
Statute Law Revision Act, 1974, No. 42 of 1974 [Assented to 11 April 1974]
Justices Act Amendment Act, 1975, No. 8 of 1975 [Assented to 20 March 1975]
Statute Law Revision Act, 1975, No. 24 of 1975 [Assented to 27 March 1975]
Justices Act Amendment Act (No. 2), 1975, No. 29 of 1975 [Assented to 27 March 1975]¹⁰
Justices Act Amendment Act, 1976, No. 64 of 1976 [Assented to 25 November 1976]
Statutes Amendment (Capital Punishment Abolition) Act, 1976, No. 115 of 1976 [Assented to 23 December 1976]
Statutes Amendment (Narcotic and Psychotropic Drugs and Justices) Act, 1977, No. 31 of 1977 [Assented to 11 August 1977]¹¹
Children's Protection and Young Offenders Act, 1979, No. 44 of 1979 [Assented to 15 March 1979]¹²
Justices Act Amendment Act, 1980, No. 49 of 1980 [Assented to 3 July 1980]
Statutes Amendment (Administration of Courts and Tribunals) Act, 1981, No. 34 of 1981 [Assented to 19 March 1981]¹³
Statutes Amendment (Jurisdiction of Courts) Act, 1981, No. 109 of 1981 [Assented to 23 December 1981]¹⁴
Justices Act Amendment Act, 1982, No. 26 of 1982 [Assented to 25 March 1982]¹⁵ (as amended by s. 2 of Justices Act Amendment Act (No. 3), 1982)
Justices Act Amendment Act (No. 2), 1982, No. 46 of 1982 [Assented to 22 April 1982]¹⁶

¹ Came into operation 26 July 1922: *Gaz.* 29 June 1922, p. 1575.

² Came into operation 1 February 1958: *Gaz.* 19 December 1957, p. 1529.

³ Came into operation 27 January 1966: *Gaz.* 27 January 1966, p. 145.

⁴ Came into operation 7 July 1966: *Gaz.* 7 July 1966, p. 57.

⁵ Came into operation 2 January 1970: *Gaz.* 18 December 1969, p. 2019.

⁶ Came into operation 31 August 1970: *Gaz.* 20 August 1970, p. 696.

⁷ Came into operation 30 November 1972: *Gaz.* 16 November 1972, p. 2334.

⁸ Came into operation 9 November 1972: *Gaz.* 9 November 1972, p. 2252.

⁹ Came into operation 15 February 1973: *Gaz.* 15 February 1973, p. 496.

¹⁰ Came into operation 22 May 1975: *Gaz.* 22 May 1975, p. 1987.

¹¹ Came into operation 1 September 1977: *Gaz.* 1 September 1977, p. 601.

¹² Came into operation (except ss. 9(3)(b), 50(2), (3) and the part of the schedule affecting the Guardianship of Infants Act, 1940) 1 July 1979: *Gaz.* 28 June, 1979, p. 1951; s. 50(2) came into operation 19 February 1981: *Gaz.* 19 February 1981, p. 455; remainder of suspended provisions repealed by the Children's Protection and Young Offenders Act Amendment Act, 1980.

¹³ Came into operation 1 July 1981: *Gaz.* 28 June 1981, p. 1896.

¹⁴ Came into operation 1 February 1982: *Gaz.* 28 January 1982, p. 209.

¹⁵ Came into operation (except s. 4: *Gaz.* 30 July 1982, p. 335) 1 August 1982: *Gaz.* 15 July 1982, p. 168; s. 4 will not be brought into operation (the subsection it inserted was subsequently substituted by Act No. 66 of 1983, s. 4).

¹⁶ Came into operation 3 June 1982: *Gaz.* 3 June 1982, p. 1850.

Justices Act Amendment Act (No. 3), 1982, No. 68 of 1982 [Assented to 1 July 1982]¹
 Justices Act Amendment Act, 1983, No. 66 of 1983 [Assented to 13 October 1983]²
 Statutes Amendment (Magistrates) Act, 1983, No. 108 of 1983 [Assented to 22 December 1983]³
 Justices Act Amendment Act, 1984, No. 77 of 1984 [Assented to 15 November 1984]⁴
 Criminal Law Consolidation Act Amendment Act (No. 2), 1984, No. 78 of 1984 [Assented to 15 November 1984]
 Evidence Act Amendment Act (No. 3), 1984, No. 107 of 1984 [Assented to 20 December 1984]
 Statutes Amendment (Bail) Act, 1985, No. 6 of 1985 [Assented to 7 March 1985]⁵
 Justices Act Amendment Act, 1986, No. 32 of 1986 [Assented to 10 April 1986]⁶
 Statutes Amendment (Parole) Act, 1986, No. 69 of 1986 [Assented to 20 November 1986]⁷
 Criminal Law Consolidation Act Amendment Act, 1986, No. 90 of 1986 [Assented to 4 December 1986]⁸
 Local and District Criminal Courts Act Amendment Act, 1987, No. 33 of 1987 [Assented to 23 April 1987]⁹
 Criminal Law (Enforcement of Fines) Act, 1987, No. 49 of 1987 [Assented to 30 April 1987]¹⁰
 Justices Act Amendment Act, 1987, No. 60 of 1987 [Assented to 17 September 1987]¹¹
 Justices Act Amendment Act, 1988, No. 5 of 1988 [Assented to 10 March 1988]¹²
 Statutes Amendment and Repeal (Sentencing) Act, 1988, No. 51 of 1988 [Assented to 5 May 1988]¹³
 Justices Act Amendment Act (No. 2), 1988, No. 104 of 1988 [Assented to 15 December 1988]
 Statutes Amendment (Criminal Sittings) Act, 1989, No. 33 of 1989 [Assented to 4 May 1989]¹⁴
 Statutes Amendment (Attorney-General's Portfolio) Act 1991 No. 33 of 1991 [Assented to 24 April 1991]¹⁵

An Act to consolidate and amend certain statutes relating to justices of the peace, and for other purposes.

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

INTRODUCTORY

Short title

1. This Act may be cited as the *Justices Act, 1921*.

Commencement of Act

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

Arrangement of Act

3. This Act is arranged as follows:

PART I—INTRODUCTORY

PART II—JUSTICES

PART III—GENERAL PROCEDURE

PART IV—SUMMARY JURISDICTION

DIVISION I—COURTS OF SUMMARY JURISDICTION

DIVISION II—COMPLAINT AND SUBSEQUENT PROCEEDINGS

DIVISION III—THE HEARING

DIVISION IV—JUDGMENT

DIVISION V—COSTS

¹ Ss. 1 and 2 came into operation on assent; remainder of Act came into operation 1 August 1982: s. 3.

² Came into operation 14 November 1983: *Gaz.* 10 November 1983, p. 1354.

³ Came into operation 2 April 1984: *Gaz.* 22 March 1984, p. 725.

⁴ Came into operation 1 January 1985: *Gaz.* 6 December 1984, p. 1744.

⁵ Came into operation 7 July 1985: *Gaz.* 9 May 1985, p. 1398.

⁶ Came into operation 1 July 1986: *Gaz.* 1 May 1986, p. 1104.

⁷ Came into operation 8 December 1986: *Gaz.* 27 November 1986, p. 1700.

⁸ Came into operation 1 February 1987: *Gaz.* 15 January 1987, p. 52.

⁹ Came into operation 1 July 1987: *Gaz.* 28 May 1987, p. 1384.

¹⁰ Came into operation (except ss. 5, 6(4), (5) and (6)) 21 June 1987: *Gaz.* 4 June 1987, p. 1430; remainder of Act came into operation 1 November 1987: *Gaz.* 29 October 1987, p. 1449.

¹¹ Came into operation 17 September 1987: *Gaz.* 17 September 1987, p. 886.

¹² Came into operation 5 May 1988: *Gaz.* 5 May 1988, p. 1115.

¹³ Came into operation (except ss. 3-6, 12, 15-20, 22-27, 30-39, 41-68, 70-78) 12 May 1988: *Gaz.* 12 May 1988, p. 1181; ss. 3 and 4 came into operation 8 September 1988: *Gaz.* 8 September 1988, p. 994; remainder of Act came into operation 1 January 1989: *Gaz.* 15 December 1988, p. 2009.

¹⁴ Came into operation 1 January 1990: *Gaz.* 16 November 1989, p. 1501.

¹⁵ Came into operation 6 June 1991: *Gaz.* 6 June 1991, p. 1776.

DIVISION VA—PAYMENT OF FINES AND OTHER PECUNIARY SUMS
 DIVISION VII—ORDERS TO KEEP THE PEACE
 PART V—INDICTABLE OFFENCES
 DIVISION I—PROCEDURE TO COMMITTAL
 DIVISION II—MINOR INDICTABLE OFFENCES
 DIVISION III—COMMITTAL FOR SENTENCE
 DIVISION V—MISCELLANEOUS
 PART VI—APPEALS FROM COURTS OF SUMMARY JURISDICTION
 PART VII—SUPPLEMENTARY PROVISIONS.

Interpretation

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

“the Chief Magistrate” means the person for the time being holding, or acting in, the office of the Chief Magistrate under the *Magistrates Act, 1983*:

“clerk” means—

(a) a person holding office as the clerk of a court of summary jurisdiction;

(b) a deputy of the clerk of a court of summary jurisdiction;

or

(c) a person appointed to act in the office of the clerk of a court of summary jurisdiction:

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

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

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

“district” means district, as defined by subsection (3) of section 4 of the *Local and District Criminal Courts Act, 1926-1969*:

“District Criminal Court” means District Criminal Court, as defined by subsection (3) of section 4 of the *Local and District Criminal Courts Act, 1926-1969*:

* * * * *

* * * * *

“group I offence” means group I offence, as defined by subsection (3) of section 4 of the *Local and District Criminal Courts Act, 1926-1969*:

“group II offence” means group II offence, as defined by subsection (3) of section 4 of the *Local and District Criminal Courts Act, 1926-1969*:

“group III offence” means group III offence, as defined by subsection (3) of section 4 of the *Local and District Criminal Courts Act, 1926-1969*:

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

“industrial magistrate” means an Industrial Magistrate within the meaning of the *Industrial Conciliation and Arbitration Act, 1972*:

“industrial offence” means a simple offence that is for the time being declared by proclamation under section 4a of this Act to be an industrial offence for the purposes of this Act:

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

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

* * * * *

“major offence” means an indictable offence that is not a minor indictable offence:

“minor indictable offence” means—

(a) an offence declared to be, or designated or described as, a minor indictable offence by any other Act;

(b) a group III offence except—

(i) an offence against the person (other than common assault, assault occasioning actual bodily harm and unlawful and malicious wounding);

(ii) concealment of childbirth;

(iii) an offence involving interference with, damage to, or destruction of, property where the loss resulting from the commission of the offence exceeds \$2 000;

or

(iv) any other offence relating to property, the value of which exceeds \$2 000;

or

(c) an offence against section 136, 137, 138, 169, 170, 171, 173, 174, 175, 176, 177, 178, 184, 196 or 197a of the *Criminal Law Consolidation Act, 1935-1981*, not being an offence relating to property, the value of which exceeds \$2 000:

“the Registrar” means the person for the time being holding, or acting in, the office of Registrar of Magistrates’ Courts under the *Local and District Criminal Courts Act, 1926-1981*:

“personal service” of a summons or notice means service under section 27(1); and the adverb “personally” when used in relation to the verb “to serve” has a corresponding meaning:

* * * * *

* * * * *

“Senior Judge” means Senior Judge within the meaning of the *Local and District Criminal Courts Act, 1926-1969*:

“sexual offence” means—

- (a) rape;
 - (b) indecent assault;
 - (c) any offence involving unlawful sexual intercourse or an act of gross indecency;
 - (d) incest;
- or
- (e) any attempt to commit or assault with intent to commit, any of the foregoing offences:

“simple offence” means offence or act for which a person is liable by law, upon a summary conviction for the same before a justice or justices, to be imprisoned or fined or both or to be otherwise punished; but does not include a minor indictable offence:

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

“special justice” means a justice who is appointed and holding office as a special justice by virtue of this Act:

“special magistrate” includes an industrial magistrate:

* * * * *

“the Industrial Court” means the Industrial Court of South Australia continued in existence by the *Industrial Conciliation and Arbitration Act, 1972*:

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

(2) A reference in the provisions of this Act other than Part VII to a solicitor shall be deemed to include a reference to a law clerk articed to the solicitor and appearing on the solicitor’s instructions.

Declaration of industrial offence

4a. The Governor may from time to time by proclamation declare any simple offence to be an industrial offence for the purposes of this Act and may by proclamation revoke or amend any such declaration.

Constitution of courts of summary jurisdiction

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

(2) Subject to subsection (3), a special justice shall have, when sitting alone and constituting a court of summary jurisdiction, all the powers and jurisdiction capable of being exercised under this Act by two or more justices when constituting such a court; but, except when so sitting, a special justice shall have the same powers and jurisdiction as a justice who is not a special justice.

(3) Where a special justice is sitting alone and constituting a court of summary jurisdiction, and a defendant appearing before him charged with a simple offence pleads not guilty, that defendant, or the complainant, may request that the case be heard and determined by a court of summary jurisdiction constituted by a special magistrate or by two or more justices, whereupon the special justice shall—

(a) forthwith desist from proceeding further with the hearing;

and

(b) adjourn the hearing to such time and place as he deems fit, then and there to be heard before a special magistrate, or two or more justices.

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(8) A person remanded in custody under subsection (7) shall be brought, for sentence, before a court constituted of a special magistrate as soon as reasonably practicable.

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

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

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

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

Abolition of rule relating to dispute of title to property

7a. The rule of law preventing a court of summary jurisdiction from trying an offence where a dispute of title to property exists is abolished.

Repeal and saving clause

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

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

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

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

Incorporation with past and future Acts

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

- (a) constitutes any act or omission a simple offence; or
- (b) provides that any sum may be recovered, by summary proceedings or summarily, before a court of summary jurisdiction or before a justice or justices; or
- (c) provides that any order may be made by a court of summary jurisdiction, or by a justice or justices in a summary way,

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

Meaning of expression "information" in other Acts

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

The Registrar

9a. * * * * *

(2) The Registrar shall be the principal administrative officer of the courts constituted under this Act, and shall have such functions and duties as are assigned to him—

- (a) by this Act or any other Act or by rules of court made under this Act or any other Act;

or

- (b) by the Chief Magistrate.

(3) The Registrar shall, in relation to the performance and discharge of his functions and duties (so far as they relate to the business of courts constituted under this Act), be subject to the control and direction of the Chief Magistrate.

PART II

JUSTICES

*Oaths of Office and of Allegiance***Oaths to be taken by justices**

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

(a) in open court or in chambers before a judge of the Supreme Court or a special magistrate;

(b) before a commissioner for taking affidavits in the Supreme Court.

(2) Every oath taken by any person assigned by His Majesty's Commission to act as a justice shall be subscribed by the person taking it, and attested by the person before whom it is taken.

The person taking any such oath shall forward the document containing it duly subscribed to the Attorney-General.

(3) The Attorney-General shall keep a Roll of Justices in such form and containing such information as he deems proper, and shall keep in his custody all documents containing oaths taken, whether before or after the enactment of this section, by persons assigned by His Majesty's Commission to act as justices.

(4) The Attorney-General shall keep, as part of the Roll of Justices, a roll of the special justices appointed and holding office under this Act.

*Special Justices***Appointment of special justices**

10a. (1) The Governor may, on the recommendation of the Attorney-General, from time to time by proclamation appoint as special justices persons qualified to be so appointed as provided by this section.

(2) A person shall be qualified to be appointed a special justice if—

(a) his name is on the Roll of Justices;

and

(b) he is, in the opinion of the Attorney-General, by reason of his experience and knowledge of the law, a fit and proper person to be so appointed.

(3) A special justice shall be entitled for the performance of his judicial duties to receive such remuneration as, from time to time, is fixed by the Governor.

(4) The Governor may, by proclamation, revoke or vary an appointment made under this section.

(5) The remuneration referred to in subsection (3) of this section shall be paid by the Treasurer out of moneys provided by Parliament for the purpose.

Special Magistrates

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Powers of a Special Magistrate

13. Every special magistrate shall have jurisdiction, power, and authority to do alone whatsoever any one, two, or more justices may lawfully do under this Act, or under or by virtue of any other Act conferring jurisdiction, power, or authority upon justices: Provided that nothing herein contained shall authorize any special magistrate to exercise any jurisdiction or to do any act which he is, by the express provisions of any statute, authorized to exercise or do only in conjunction with other justices.

* * * * *

*General Provisions***Authentication of acts of Justices**

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

Power to issue warrant on Sunday

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

Meaning of the letters "J.P."

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

Justices may file an explanatory affidavit in answer to *ex parte* application

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

Supreme Court to consider affidavit

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

Vacation of office of justice

18. (1) Where a justice (not being a special magistrate)—

(a) is mentally or physically incapable of carrying out satisfactorily the duties of his office;

(b) is convicted of an offence that, in the opinion of the Governor, shows him to be unfit to hold the office of a justice;

or

(c) is bankrupt, or applies to take the benefit of a law for the relief of bankrupt or insolvent debtors,

the Governor may, by notice published in the *Gazette*, remove him from office.

(1a) The name of a justice removed from office under this section shall be removed from the roll of justices.

(2) Nothing in this section shall affect any other power of the Governor to remove a justice from his office.

(3) The Governor may, if he deems it just and expedient to do so, re-appoint as a justice any person who has ceased to hold office as a justice.

Warrant or summons not avoided by death, etc., of Justice

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

PART III
GENERAL PROCEDURE
Form of Warrant and Summons

Form of warrant

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

- (a) state shortly the matter of the information or complaint upon which it is founded; and
- (b) name or otherwise describe the defendant; and
- (c) order the person or persons to whom it is directed to apprehend the defendant and bring him before the justice issuing it, or before some other justice, to answer the charge contained in the information or complaint, and to be further dealt with according to law.

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

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

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

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Form of summons

22. Subject to the provisions of section 57a every summons for the appearance of a defendant shall be in duplicate and—

- (a) be directed to the defendant charged by the information or complaint;
- (b) state shortly the matter so charged;
- (c) require the defendant to be and appear at a certain time and place therein mentioned, before such justice as shall then be there, to answer to the charge contained in the information or complaint, and to be further dealt with according to law.

Description of offence in documents under this Act

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

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

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

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

Witnesses

Summons to witness

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

On refusal warrant to issue

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

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

Warrant in first instance

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

Witness refusing to give evidence, etc., may be imprisoned

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

- (a) to be examined upon oath concerning the premises; or
- (b) to take the oath; or
- (c) to answer after having taken an oath such questions concerning the premises as are then put to him; or
- (d) to bring or produce any such article,

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

Power to require evidence from persons in court

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

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

*Service***Service**

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

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

* * * * *

(2) Subject to any other provision of this Act, where this Act authorizes service of a notice on a party to proceedings by post, service of the notice may be effected by sending the notice by ordinary prepaid post (either alone or with other documents relating to the same proceedings) in an envelope addressed to the party at—

- (a) the address appearing on the relevant complaint or summons as the address of that party;
- or
- (b) where the person by whom the notice is to be given has notice of some more recent address of the party—that address,

and the notice shall be deemed to have been served at the time when it would, in the ordinary course of post, have reached the address to which it was posted.

(3) Where a summons or notice is served otherwise than by being delivered personally to the person on whom it is to be served, a court or justice may require the summons or notice to be re-served if there is reasonable cause to believe that the summons or notice has not come to the notice of the person to be served.

*Service of Summons by Post, and other Matters***Service of summons by post**

27a. (1) Subject to this section, where a public authority or public officer as defined in section 57a of this Act makes a complaint for a simple offence, not being an offence—

- (a) punishable by imprisonment either for a first offence or for a subsequent offence;

or

- (b) in respect of which it is provided that a period of disqualification from holding or obtaining a licence to drive a motor vehicle shall be imposed,

any summons for the appearance of the defendant may, in lieu of any other mode of service provided for by this Act, be served on the defendant by posting the summons by ordinary prepaid post addressed to the defendant named in the summons at his last known or most usual place of abode or of business.

(2) Without limiting the effect of subsection (1) of this section and in the absence of circumstances making it appear to the court that the defendant resides or, as the case may be, carries on business elsewhere, the address of the defendant appearing on the summons referred to in that subsection shall be deemed to be his last known or most usual place of abode.

(3) Where—

- (a) the affidavit of service of a summons referred to in subsection (1) of this section sets out the name and address of the person to which it was addressed and the time and place of the posting of the summons;

and

(b) the time of the posting of the summons is—

- (i) not more than four months after the day on which it is alleged that the offence to which the summons relates was committed or, in the case of an alleged offence against the *Electoral Act, 1985*, not more than six months after that day;

and

- (ii) not less than twenty-eight days before the day on which the defendant is summoned to appear to answer to the charge,

that summons shall, in the absence of proof to the contrary, and notwithstanding any other enactment, be deemed to have been served on the defendant named therein at the time at which it would have been delivered in the ordinary course of post.

Hearing on a written plea of guilty

27b. Where a complaint and summons in the form and bearing the endorsements referred to in section 57a of this Act is, pursuant to subsection (3) of section 27a of this Act, deemed to have been served on the defendant named therein and that defendant fails to appear in obedience to that summons but has, pursuant to section 57a of this Act, pleaded guilty to the offence to which that summons relates, the court may proceed in the manner provided by section 62b and section 62c of this Act as if the summons had been served on the defendant in the manner provided for in section 27 of this Act.

Hearing where defendant fails to appear

27c. (1) Subject to this section, where a summons is, pursuant to subsection (3) of section 27a of this Act, deemed to have been served on the defendant named therein and the defendant fails to appear in obedience to that summons and, where the summons was in the nature of a complaint and summons in the form and bearing the endorsements referred to in section 57a of this Act, fails to plead guilty in the manner provided in that section to the offence to which the summons relates, the court may—

- (a) proceed in the absence of the defendant to the hearing of the complaint, to which the summons relates, and, notwithstanding anything in section 62c of this Act, adjudicate thereon as fully and effectually as if the defendant had personally appeared in obedience to the summons;

or

- (b) order that the complaint may be heard in the absence of the defendant and adjourn the hearing and on the adjourned hearing proceed in the manner provided for in paragraph (a) of this subsection.

(2) If pursuant to paragraph (b) of subsection (1) of this section a hearing is adjourned and on that adjourned hearing it is impracticable for the special magistrate or justices who so adjourned the hearing to continue the hearing the clerk of the court shall, with the approval of a special magistrate, convene another court which may notwithstanding the provisions of section 45 of this Act but subject to this section, complete the hearing and determination of the complaint.

(3) Upon conviction after a hearing, pursuant to subsection (1) of this section, the court shall not—

- (a) impose any penalty other than a fine;
- (b) disqualify the defendant from holding or obtaining a licence to drive a motor vehicle;
- (c) treat the offence as other than a first offence unless the complainant proves that the defendant has previously been convicted of such an offence;

or

- (d) fail to allow the defendant a reasonable time for the payment of any fine or other sum adjudged to be paid,

unless—

- (e) the court has first adjourned the hearing of the complaint to a time and place appointed;
- (f) the defendant is personally served, not less than fourteen days before the time to which the hearing has been adjourned, with a notice informing him of—
- (i) the conviction;
- (ii) the time and place to which the hearing has been adjourned;
- and
- (iii) the provisions of section 76a;

and

- (g) the defendant does not, within fourteen days after the date of service of the notice upon him, apply in accordance with section 76a, for an order setting aside the conviction.

(4) Where a defendant, not being a defendant who has been personally served with a notice pursuant to paragraph (f) of subsection (3) of this section, is convicted after a hearing pursuant to subsection (1) of this section, the clerk of the court which so convicted the defendant shall, within seven days of that conviction, serve by post on the defendant a notice setting out the particulars of that conviction the penalty imposed, and of the provisions of section 76a.

(5) Where a defendant, who has been personally served with a notice pursuant to paragraph (f) of subsection (3) of this section, is convicted after a hearing pursuant to subsection (1) of this section, the clerk of the court which so convicted the defendant shall within seven days after the imposition of a penalty in respect of that conviction serve by post on the defendant a notice setting out the particulars of that conviction and the penalty imposed.

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Proof of service, and other matters

Proof by affidavit of service of process, hand-writing, etc.

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

- (a) the service on any person of any summons, notice, process, or document required or authorized to be served;
- (b) the handwriting of any justice or other officer or person on any warrant, summons, notice, process, or document; or
- (c) the payment or tender, to any person summoned to attend as a witness, of any sum in respect of the costs or expenses of such attendance,

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

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

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

Assistance of counsel

Parties to have assistance of counsel

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

- (a) to dispense with the personal attendance before the justice of any defendant who is charged with an indictable offence; or
- (b) to authorize justices to proceed to hear or to hear and determine any charge of an indictable offence in the absence of the defendant.

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PART IV

SUMMARY JURISDICTION

DIVISION I—COURTS OF SUMMARY JURISDICTION

Clerks of Court

42. (1) The Governor may appoint a suitable person to be clerk of a court of summary jurisdiction.

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

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

(4) The Registrar may appoint any suitable person to act, on a temporary basis, in the office of the clerk of a court of summary jurisdiction if the office is vacant, or the clerk is or will for any reason be unavailable to carry out the duties of his office.

Courts of summary jurisdiction to be constituted by S.M. if any available, and if not by two or more Justices unless the Special Act otherwise requires or by consent of parties

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

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

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

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

Special provisions relating to industrial offences

43a. (1) Where a form of complaint being a complaint alleging the commission of an industrial offence is endorsed, by or on behalf of the complainant, with the words "Set down before an Industrial Magistrate" the clerk to whom the complaint is referred shall set down or cause to be set down the matter of complaint for hearing and determination by a court constituted of an Industrial Magistrate.

(2) Where a defendant is charged before a court, not constituted of an Industrial Magistrate, with an industrial offence the defendant may, before any plea is taken, request that the matter be heard and determined by an Industrial Magistrate and thereupon the court shall—

(a) forthwith desist from proceeding further with the hearing of the matter;

and

(b) adjourn the hearing to such time and place as it thinks fit, then and there to be heard and determined by a court constituted of an Industrial Magistrate.

Powers of a single Justice

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

- (a) receive the complaint;
- (b) grant a summons or warrant thereon;
- (c) issue his summons or warrant to compel the attendance of any witness;
- (d) by consent of the parties expedite the date of hearing;
- (e) either upon the return of the summons, or at any other time before the completion of the hearing, adjourn the hearing as hereinafter provided;
- (f) do all other acts and matters preliminary to the hearing; and
- (g) issue any warrant of distress or commitment upon any conviction or order.

Interlocutory proceedings need not be before same Justice

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

Contempt of Court

46. (1) Any person who—

- (a) wilfully interrupts the proceedings of any Court;
- (b) conducts himself disrespectfully to the justice or justices during the sittings thereof;
- (c) obstructs or assaults any person in attendance, or any officer thereof, in the execution of his duty, in view of the court; or
- (d) wilfully disobeys any order made by the court under subsection (2) of section 61—

shall be guilty of an offence.

Punishment: Imprisonment for one calendar month; or,

Penalty: Twenty dollars.

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

Punishment: Imprisonment for one calendar month; or,

Penalty: Twenty dollars.

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

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

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

Proceedings to be brought in most convenient Court

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

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

Compensation in certain vexatious cases

48. Whenever any objection under section 47 is established to the satisfaction of the court, and the person making the objection complains at once to the court that he has been brought to the place where the court is held vexatiously and oppressively, the court shall forthwith, and without any further summons or notice, proceed to hear and determine the matter of the objection in a summary way, and if the court is of opinion that such is the fact it may order the complainant or the applicant to pay to the person making the objection, by way of compensation or amends, such sum, not exceeding \$500, as the court thinks fit.

DIVISION II—COMPLAINT AND SUBSEQUENT PROCEEDINGS

The Complaint

Complaint

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

- (a) any person has committed, or is suspected to have committed, any simple offence; or
- (b) a justice or justices has, or have or shall have, authority by law to make any order for the payment of money or otherwise.

How laid

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

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

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

- (a) where some Special Act otherwise requires; or
- (b) where the justice issues his warrant in the first instance.

Joinder of charges

51. (1) Charges for any number of offences may be joined in the same complaint, if the charges arise out of the same set of circumstances.

(2) Where an enactment constituting an offence states the offence to be the doing or the omission to do any act in any one of different capacities, or with any one of any different intentions, or states any part of the offence in the alternative, the acts, omissions, capacities, or intentions, or other matters stated in the alternative in the enactment, may be stated in the alternative in the complaint.

(3) The court may, if it thinks just, deal with any charge so joined, separately.

(4) This section shall apply notwithstanding anything inconsistent therewith contained in the Special Act.

Limitation of time for laying information, etc.

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

Accessories

Punishment of aiders and abettors in the commission of offences

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

Allegations and Descriptions in Complaints and Proceedings thereon

Allegations as to ownership

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

Parties

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

Property in public works

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

Description of offence

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

*Exceptions and Exemptions***Exceptions or exemptions need not be specified or disproved by the complainant**

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

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

*Summons to Defendant***Upon complaint summons to issue**

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

Procedure to enable plea of guilty to be entered in writing

57a. (1) Where a public authority or public officer makes a complaint for a simple offence not punishable by imprisonment either for a first or subsequent offence, he may, by using a form of complaint and summons bearing the endorsements prescribed by rules made by the Governor under section 203 of this Act, and causing two copies thereof to be served on the defendant, initiate a procedure whereby the defendant may plead guilty without appearing in court in obedience to the summons.

(2) A defendant upon whom forms of complaint and summons are served pursuant to this section may plead guilty to the charge specified therein by completing the form on one copy thereof and signing his name thereto before a justice of the peace for any State or Territory of the Commonwealth or a solicitor duly admitted and entitled to practise as such in any State or Territory of the Commonwealth or a police officer of any such State or Territory, and by serving the completed form as provided by subsection (4) hereof not less than three clear days before the date of hearing specified therein.

(3) A defendant may, if he wishes, complete that part of the form relating to submissions on the question of penalty, but his failure to complete that part of the form shall not be construed as a failure to comply with this section.

(4) (a) The completed form shall be served either personally or by post on the complainant or the clerk of the court of summary jurisdiction specified in the summons as the place of hearing of the complaint:

(b) Service by post shall be deemed to be effected at the time at which the document would in the ordinary course of post be delivered at the address of such complainant or clerk:

(c) If the complainant specified in the complaint is a member of the police force, service on a member of the police force at the police station at which the complainant is stationed shall be deemed to be service on the complainant, but if the complainant so specified is a public authority, or any other public officer, service at an office of that public authority or public officer on a person apparently employed therein shall be deemed to be service on the complainant:

(d) Service at the office of the clerk of the court of summary jurisdiction specified in the summons on a person apparently employed therein, shall be deemed to be service on the clerk.

(5) A complainant who is served with a completed form pursuant to this section shall forthwith deliver it to the clerk of the court of summary jurisdiction specified in the summons as the place of hearing of the complaint. Forthwith after receipt of the form the clerk shall file it with the court records, and both he and the complainant shall, by the exercise of reasonable diligence, endeavour to prevent the attendance of any witnesses who have been summoned or warned to attend the hearing.

(6) Any defendant who serves a form pleading guilty which complies with this section need not attend the court as directed by the summons.

(7) Where a defendant who has been served with forms of complaint and summons pursuant to this section fails to serve a form pleading guilty which complies with this section and fails to appear in obedience to the summons, the court may, subject to subsection (7) of section 62b, proceed to exercise its powers under paragraph (a) or (b) of section 62.

(7a) Where—

(a) the defendant named in a complaint and summons bearing the endorsements mentioned in subsection (1) gives written notice to the clerk of the court specified in the summons of his intention to plead not guilty to the charge;

and

(b) the clerk, by notice served personally or by post on the defendant, notifies him of a time and place at which the court will proceed with the hearing of the charge, the summons shall have effect as if the time and place notified by the clerk were substituted for the time and place fixed in the summons for the hearing of the complaint.

(8) Where a complainant uses the form of complaint and summons prescribed by rules made by the Governor under section 203 of this Act he shall be deemed to be a public authority or a public officer lawfully acting pursuant to subsection (1) hereof unless the defendant satisfies the court to the contrary.

(9) Any defendant who has been charged upon complaint with a simple offence not punishable by imprisonment either for a first or subsequent offence, and who has been served with a summons issued pursuant to section 57, may plead guilty without appearing in court in obedience to the summons by completing and serving the form prescribed by subsection (1) of this section, whereupon the provisions of this section and sections 62b and 62c shall apply.

(10) This section shall not apply in relation to a defendant who is a child within the meaning of the *Children's Protection and Young Offenders Act, 1979*, except where the defendant—

(a) is of or above the age of sixteen years;

and

(b) is charged with an offence under the *Road Traffic Act, 1961-1979*.

(11) In this section—

“public authority” means—

(a) any instrumentality or agency of the Crown in right of the State or the Commonwealth;

- (b) the Corporate Affairs Commission;
- (c) a municipal or district council;
- (d) any county board or local board of health;
- or
- (e) any body declared by proclamation to be a public authority:

“public officer” means—

- (a) any member of the Police Force of the State or the Commonwealth or any other officer or employee of the State or the Commonwealth;
- or
- (b) any officer or employee of a public authority.

(12) The Governor may, by proclamation, declare a body to be a public authority for the purposes of this section and may, by subsequent proclamation, vary or revoke any such declaration.

Warrant to Apprehend a Defendant

Issue of warrant

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

(2) When the matter of any complaint—

- (a) charging the defendant with the commission of a simple offence; or
- (b) made for the purpose of having the defendant bound over to keep the peace or be of good behaviour; or
- (c) under any Special Act which authorizes the issue of a warrant in the first instance,

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

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

- (a) that the matter of the complaint is substantiated as aforesaid; and
- (b) that it is proved to the satisfaction of the justice that the summons was duly served (what he deems) a reasonable time before the time appointed for the hearing.

Return of Warrant and Remand

Defendant on apprehension to be brought before Justice

59. When a defendant is apprehended under a warrant he shall be brought before a justice, who shall thereupon commit him into custody or release him on bail.

Remand or discharge on recognizance

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

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

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

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

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

(2) In any such case, the justice may, instead of committing the defendant to prison or some other form of custody, release him on bail.

DIVISION III—THE HEARING

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

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

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

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

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

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

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

(b) upon proof that the summons was served a reasonable time before the time thereby appointed for his appearance, proceed *ex parte* to the hearing of the complaint and subject to section 62c to adjudicate thereon as fully and effectually, to all intents and purposes, as if the defendant had personally appeared before it in obedience to the summons; or

(ba) upon proof that the summons was served a reasonable time before the time thereby appointed for the defendant's appearance, order that the complaint may be heard *ex parte* and adjourn the hearing; or

(c) if the defendant has pleaded guilty in writing pursuant to section 57a proceed in the manner provided by sections 62b and 62c.

(2) At a hearing adjourned pursuant to paragraph (ba) of subsection (1) of this section, the court may proceed *ex parte* to the hearing of the complaint and subject to section 62c of this Act adjudicate thereon as fully and effectually, to all intents and purposes, as if the defendant had personally appeared before it in obedience to the summons.

(3) If pursuant to paragraph (ba) of subsection (1) of this section a hearing is adjourned and on that adjourned hearing it is impracticable for the special magistrate or justices who so adjourned the hearing to continue the hearing the clerk of the court shall, with the approval of a special magistrate, convene another court which may, notwithstanding the provisions of section 45 of this Act, complete the hearing and determination of the complaint.

Power to proceed *ex parte*

62a. (1) If a person who has been apprehended (whether under a warrant or without a warrant), and released on bail fails to appear at the time and place appointed for the hearing of a complaint laid or to be laid against him, the court may in its discretion hear the complaint *ex parte*, and may adjudicate thereon as fully and effectually, to all intents and purposes, as if the defendant had appeared at that time and place.

(2) This section shall apply whether the defendant is discharged pursuant to powers granted by this or any other Act.

Powers of court where plea of guilty entered in writing

62b. (1) Where a defendant fails to appear in obedience to the summons but serves a form pleading guilty which complies with section 57a, the court shall not have power to issue a warrant for the apprehension of the defendant, on the ground of non-appearance, but may upon proof of service of the complaint and summons and upon production of the form duly completed, convict, and subject to this section, adjudicate thereon as fully and effectually to all intents and purposes as if the defendant had personally appeared before it in obedience to the summons and had pleaded guilty and made the same submissions as to penalty as are set out in the form.

(2) Where the completed form is apparently a genuine document purporting to be signed by the defendant before a justice of the peace, or a solicitor, or a police officer, proof of any of the signatures, or of the official capacity of any witness of the defendant's signature, shall not be required and the court may receive and act upon such document.

(3) The prosecutor may recite to the court any relevant matters alleged against the defendant in the same way as if the defendant had personally appeared and pleaded guilty.

(4) Nothing herein contained shall prejudice any application by a defendant to withdraw his plea of guilty at any time prior to the hearing and determination of the complaint made against him and the court before whom the defendant appears to answer the complaint may permit a withdrawal of the plea upon such terms as may be just.

(5) Where a defendant in a form under section 57a states matters which, if true, would indicate that he has a valid defence to the complaint, or which differ substantially in relevant particulars from the matters recited to the court by the prosecutor, the court may strike out the plea of guilty, adjourn the hearing of the complaint to a time and place appointed and order that the defendant be served with a summons as provided by section 57. Thereupon the complaint shall be dealt with as though the previous summons had not been issued, and the provisions of this section and section 57a shall no longer apply.

(6) Where a defendant who has served a form pleading guilty which complies with section 57a, is convicted, the court shall not—

- (a) impose any sentence of imprisonment on the defendant; or
- (b) disqualify the defendant from holding or obtaining a licence to drive a motor vehicle, unless the procedure prescribed in section 62c is followed; or
- (c) treat the offence as other than a first offence unless the complainant proves that the defendant has been previously convicted; or
- (d) fail to allow the defendant a reasonable time for payment of any fine or other pecuniary sum; or
- (e) subject to subsection (7) hereof, order the defendant to pay witness fees.

(7) Where a defendant serves a form pleading guilty which complies with the provisions of section 57a with one exception, namely that the form is served less than three clear days before the date of hearing, the form shall be deemed to comply with section 57a, and the provisions of this section shall apply, except that the court may order the defendant to pay witness fees.

(8) The clerk of the court of summary jurisdiction before which a defendant is convicted under this section shall forthwith, either personally or by post, give written notice to the defendant informing him of the conviction and order as to penalty and of any fine or other pecuniary sum to be paid and of the time allowed for payment of such sum. Service by post under this section may be effected by notice addressed to the defendant at the address shown on the form pleading guilty and shall be deemed to be effected at the time at which such notice would in the ordinary course of post be delivered at the address of the defendant.

* * * * *

***Ex parte* proceedings where defendant neither appears nor returns written plea of guilty**

62ba. (1) Where in any proceedings under this Act—

(a) a complaint has been made by a public authority or public officer within the meaning of section 57a of this Act;

and

(b) the defendant has been duly served with a summons but does not appear at the time and place appointed for the hearing or determination of the complaint or at a time and place at which the complaint is subsequently heard or determined, or, in the case of a complaint and summons served under section 57a of this Act, he neither so appears nor pleads guilty in the manner provided by that section,

the court may proceed *ex parte* to adjudicate upon the complaint in the manner provided by, and subject to the conditions in, section 62 of this Act, but may in so doing regard any allegation contained in the summons, or complaint and summons, (as served upon the defendant) as sufficient evidence of the matter alleged.

(1a) If the court finds the charge proved, the prosecutor may recite to the court any relevant matters alleged against the defendant in the same way as if the defendant had personally appeared and pleaded guilty.

(2) Allegations are contained in a summons, or complaint and summons, for the purposes of subsection (1) of this section if they are contained in, annexed to, or accompany, the summons or complaint and summons.

(3) The allegations referred to in subsection (1) of this section may include particulars of the alleged offence and of the circumstances in which it is alleged to have been committed.

(4) Where a complaint purports to have been made by a public authority or public officer within the meaning of section 57a of this Act, it shall be presumed to have been so made in the absence of proof to the contrary.

(5) The provisions of this section are supplementary to, and do not derogate from, any other statutory provisions regulating the hearing and determination of a complaint.

Ex parte proceedings

62c. (1) Where a defendant fails to appear in obedience to a summons and is convicted (whether upon a plea of guilty under section 57a of this Act or after an *ex parte* hearing) the court shall not impose upon the defendant—

(a) any disqualification from holding or obtaining a licence to drive a motor vehicle;

or

(b) any sentence of imprisonment,

unless the court has first adjourned the hearing of the complaint to a time and place appointed and stated by the court in order to enable the defendant to appear for the purpose of making submissions on the question of penalty.

(2) The clerk of the court shall forthwith after such adjournment either personally or by post give written notice to the defendant on the form prescribed by rules made by the Governor under section 203 of this Act, informing him of the purpose for which the hearing of the complaint was adjourned and of his right to be heard at the adjourned hearing.

(3) If at the time and place so appointed—

(a) the defendant appears; or

(b) the defendant fails to appear and it is proved that the notice in writing was served on him either personally or by post,

the court may, according to the circumstances, order that he be imprisoned or disqualified from holding or obtaining a licence to drive a motor vehicle, or both.

(3a) If it appears to the court that, after making due inquiry and exercising reasonable diligence, the clerk of the court was unable to give a defendant the notice referred to in subsection (2) of this section, the court may, notwithstanding any other provision of this section, proceed to determine the question of penalty and make its order thereon as fully and effectually as if the defendant had been duly given the notice.

(4) Service by post under this section may be effected by notice addressed to the defendant at the address shown on the summons or the form pleading guilty under section 57a and shall be deemed to be effected at the time at which such notice would in the ordinary course of post be delivered at the address of the defendant.

(5) The contents of a notice, including the date of postage and service, may be proved by the production of a document purporting to be a copy of the notice and having endorsed thereon a certificate purporting to be signed by the clerk of the court to the effect that the document is a true copy of the notice served on or posted to the defendant named therein at the address and on the day stated therein, and that in the ordinary course of post the notice would be delivered at the defendant's address on the day stated therein.

(6) If on the adjourned hearing it is impracticable for the special magistrate or justices who adjourned the complaint under subsection (1) hereof to continue the hearing of the complaint, the clerk of the court shall, with the approval of a special magistrate, convene another court which may, notwithstanding the provisions of sections 43 and 45, complete the hearing and determination of the complaint.

Proof of previous convictions

62d. (1) Where a defendant is served, at least three days before the hearing of the complaint, with a notice signed by the complainant and—

(a) stating particulars of any previous convictions of the defendant;

and

(b) stating that those particulars may be alleged against him at the hearing of the complaint,

the prosecutor may, after the court has convicted the defendant of the offence alleged in the complaint, tender a copy of the notice in evidence before the court.

(2) The court may regard an allegation contained in any such notice as sufficient evidence of the matter alleged.

(3) A notice under this section may be served personally or by post.

(4) If the prosecution tenders a copy of a notice under this section as evidence of convictions, it is not precluded from tendering other evidence of the same or other convictions.

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

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

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

If both parties appear, court to hear and determine the case

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

Power to adjourn

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

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

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

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

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

(4) The court or any justice may, in any case where the defendant has been remanded into custody, order the defendant to be brought before the court or justice or any other court or justice for the hearing or the continuation of the hearing at any time before the expiration of the period for which the hearing has been adjourned.

(5) If a defendant, who has been suffered to go at large, or released on bail, does not appear at the time and place appointed under subsection (2) the court then sitting to hear the adjourned complaint or any justice may issue a warrant for his arrest and further adjourn the case until the defendant is apprehended.

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

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

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

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

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

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

(8) If the complainant does not appear at the time and place appointed under subsection (2) of this section, the court then sitting for the purpose of hearing or continuing the hearing of the complaint may dismiss the complaint with or without costs.

(9) A court of summary jurisdiction, or a justice, on being satisfied that a defendant who has been remanded into custody, is by reason of illness or accident unable at the expiration of the period for which he was remanded to appear personally before the court, may in the absence of the defendant order him to be kept in custody for such further period as the court or justice deems reasonable, but not exceeding fifteen clear days at any one time, unless both parties consent to a longer period.

The warrant for keeping the defendant in custody pursuant to any such order may be issued by the justice who made the order, or any other justice.

(10) For the purposes of this section the "hearing" of a complaint means all proceedings in a court of summary jurisdiction arising out of the complaint, including the hearing, determination, judgment, conviction and any adjudication as to penalty or other order.

Postponement of hearing where no competent court available

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

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

When defendant pleads guilty, court to convict or make an order

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

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

If defendant pleads not guilty court to hear parties and their evidence

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

- (a) the complainant and his witnesses and any other evidence which he adduces in support of his complaint;
- (b) the defendant and his witnesses and any other evidence which he adduces in his defence; and
- (c) any evidence which the complainant adduces in reply if the defendant adduces any evidence other than as to his, the defendant's, general character.

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

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

After hearing the parties court to convict or dismiss

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

Examination of defendant

69a. (1) Where a court of summary jurisdiction finds proved any matter alleged in a complaint (not being a charge of an offence), the court may order that the defendant be examined by a physician, psychiatrist or psychologist directed by the court to conduct the examination and that the defendant submit to the examination.

(2) Before making any other order in respect of the defendant, the court may consider and act upon a report on the defendant prepared by the person who conducted the examination: Provided that before the order is made—

- (a) the contents of the report shall be made known to the defendant, or his counsel or solicitor, if the defendant or his counsel or solicitor so requests;
- (b) the defendant, or his counsel or solicitor shall, if he so desires, be given an opportunity of cross-examining the person who prepared the report on the matters therein dealt with;
- (c) the court shall, if so required by the defendant, or his counsel or solicitor, procure the attendance of that person before the court for cross-examination.

(3) For the purpose of enabling the defendant to be examined as mentioned in this section, the court may order that the defendant be taken to a suitable place for the examination.

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

DIVISION IV—JUDGMENT

The Conviction or order

Conviction to be minuted

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

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

Convictions where charges joined in the complaint

70a. (1) Where charges for more than one offence have been joined in the same complaint, pursuant to this Act, the court may—

- (a) convict the defendant of such one or more of those offences as it finds proved:
- (b) include any number of offences in a minute or memorandum of conviction or in any formal conviction.

(2) This section shall apply notwithstanding anything contained in the Special Act.

* * * * *

Conviction for attempt where full offence charged

70b. If upon the trial of a person charged with an offence (whether a simple offence or a minor indictable offence) it appears to the court upon the evidence that the defendant did not complete the offence charged, but that he was guilty only of an attempt to commit that offence, the court may convict him of an attempt to commit the offence charged and thereupon he shall be liable to be punished in the same manner as if he had been convicted upon a complaint for such an attempt.

Order and certificate of dismissal

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

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

DIVISION V—COSTS

Power to award costs

77. (1) Where a court dismisses a complaint, the court may, in its order, direct that the complainant pay to the defendant such amount by way of costs as the court thinks just and reasonable.

(2) Where a court or a justice has authority under this Act to grant any relief or indulgence to any party to any proceeding before justices, and such authority includes a discretion as to the terms upon which such relief or indulgence may be granted, the court or justice may, in the exercise of its or his discretion, make an order for the payment of such costs by such party to any other party as it or he thinks just and reasonable, and such order shall be deemed to be, and be enforceable as, an order of a court of summary jurisdiction.

(3) An order for costs made under this section is enforceable as if it were a fine imposed by the court.

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DIVISION VA—PAYMENT OF FINES AND OTHER PECUNIARY SUMS

Payment to clerk of fines and other pecuniary sums

79a. (1) Where a fine or other pecuniary sum is to be paid to a person other than the clerk, the fine or sum shall not be paid directly to that person but to the clerk for payment to that person.

(2) Upon receipt of a fine or other pecuniary sum, or of any part thereof, the clerk shall pay the amount received as follows:

(a) firstly, if any costs are payable to a party to the proceedings, then in or towards satisfaction of those costs;

and

(b) secondly—

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

or

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

* * * * *

DIVISION VII—ORDERS TO KEEP THE PEACE

Orders to keep the peace

99. (1) Where, upon a complaint made in accordance with subsection (2), a court of summary jurisdiction is satisfied on the balance of probabilities—

(a) that—

(i) the defendant has caused personal injury, or damage to property;

and

(ii) that the defendant is, unless restrained, likely again to cause personal injury or damage to property;

(b) that—

(i) the defendant has threatened to cause personal injury or damage to property;

and

(ii) the defendant is, unless restrained, likely to carry out that threat;

or

(c) that—

(i) the defendant has behaved in a provocative or offensive manner;

(ii) the behaviour is such as is likely to lead to a breach of the peace;

and

(iii) the defendant is, unless restrained, likely again to behave in the same or a similar manner,

the court may make an order imposing such restraints upon the defendant as are necessary or desirable to prevent him from acting in the apprehended manner.

(2) A complaint under this section may be made—

(a) by a member of the police force;

or

(b) by a person against whom, or against whose property, the behaviour that forms the subject matter of the complaint was directed.

(3) An order under this section may be made in the absence of the defendant if the defendant was summoned to appear at the hearing of the complaint and failed to appear in obedience to the summons.

(4) An order under this section may be made in the absence of the defendant and notwithstanding that he was not summoned to appear at the hearing of the complaint, but in that case the court shall summon the defendant to appear before the court to show cause why the order should not be confirmed and the order shall not be effective after the conclusion of the hearing to which the defendant is summoned unless the defendant does not appear at that hearing in obedience to the summons or the court having considered the evidence of the defendant and any other evidence adduced by him confirms the order.

(5) A court of summary jurisdiction may make an order under this section restraining the defendant from entering premises, or limiting his access to premises, whether or not the defendant has a legal or equitable interest in the premises, but before making such an order the court shall consider—

(a) the effect of making or declining to make the order on the accommodation of the persons affected by the proceedings;

and

(b) the effect of making or declining to make the order on any children of, or in the care of, the persons affected by the proceedings.

(6) Where a person, having been served personally with an order under this section, contravenes or fails to comply with the order, he shall be guilty of an offence and liable to be imprisoned for a term not exceeding six months.

(7) Where a member of the police force has reasonable cause to suspect that a person has committed an offence under subsection (6), he may, without warrant, arrest and detain that person.

(8) Where a suspected offender is arrested and detained under subsection (7), he shall be brought as soon as practicable (and in any event not later than twenty-four hours after the time of the arrest) before a court of summary jurisdiction to be dealt with for the offence.

(9) In calculating whether, for the purposes of subsection (8), twenty-four hours has elapsed since the time of an arrest, no period falling on a Saturday, Sunday or public holiday shall be taken into account.

(10) A party to proceedings in which an order has been made under this section may at any time apply to the court by which the order was made for variation or revocation of the order and the court may, after all parties have had an opportunity to be heard on the matter, vary or revoke the order.

(11) Where an order under this section is made by a court of summary jurisdiction, the clerk of the court shall forward a copy of the order to the Commissioner of Police and, where the complainant is not a member of the police force, the complainant.

(12) Where an order under this section is varied or revoked by a court of summary jurisdiction, the clerk of the court shall notify the Commissioner of Police and, where the complainant is not a member of the police force, the complainant, of the variation or revocation.

PART V
INDICTABLE OFFENCES
DIVISION I—PROCEDURE TO COMMITTAL

The information

Information of indictable offence

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

- (a) any person is suspected to have committed any treason, felony, or indictable misdemeanour, or other indictable offence whatsoever, within the State:
- (b) any person suspected to be guilty of having committed any such offence out of the State (of which offence cognizance may be taken by the courts of the State) is or is suspected to be within the State.

Joinder of charges

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

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

If warrant to issue information to be upon oath; otherwise oath not necessary

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

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

Issue of Warrants and Summonses

Issue of warrant in first instance

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

Issue of summons

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

On disobedience to summons warrant may issue

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

Warrant may issue at any time, notwithstanding issue of summons

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

Manner in which charges are to be dealt with

105a. (1) Where a person is charged, upon information, with a minor indictable offence but with no major offence—

(a) the charge shall be dealt with by a court of summary jurisdiction in the manner prescribed by Division II;

and

(b) where he appears before a justice (not being a special magistrate), the justice shall remand him in custody or on bail to appear before a court of summary jurisdiction constituted of a special magistrate.

(2) Where a person is charged, upon information, with a major offence (whether or not he is also charged with a minor indictable offence in the same information) there shall be a preliminary examination in relation to all the charges contained in the information.

*Preliminary examination***Receipt of evidence of prosecution witnesses**

106. (1) Where a person appears before a justice charged with an indictable offence, the justice will, before deciding whether to commit the defendant for trial, take the statements of the witnesses for the prosecution in the presence of the defendant.

(2) The statement of a witness for the prosecution may be taken—

(a) in the form of oral evidence;

(b) in the form of a written statement verified by a declaration in or to the effect of the following form:

This statement, consisting of pages signed by me, is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Dated the day of, 19 .. .

Signed

Signature witnessed by ;

(c) where the witness is a child—

(i) in the form of a written statement taken down by a member of the police force at an interview with the child and verified by affidavit of the member of the police force as an accurate record of the child's oral statements at the interview insofar as they are relevant to the subject matter of the charge;

or

(ii) in the form of a videotape or audiotape record of an interview with the child that is accompanied by a written transcript verified by affidavit of a member of the police force who was present at the interview as a complete record of the interview.

(3) Where a statement in the form of a written statement, or a videotape or audiotape accompanied by a written transcript is submitted to the justice, and the justice accepts it as being relevant to, and admissible in, the proceedings, the statement will be regarded as having been duly taken by the justice.

(4) The relevance to the proceedings of any object tendered as an exhibit by the prosecutor may be proved by affidavit.

(5) No written statement, videotape, audiotape or transcript may be submitted under subsection (2) and no affidavit may be submitted under subsection (4) unless—

(a) not less than 14 days before submission of the statement or affidavit the informant gives personally or by post to the defendant or the defendant's counsel—

(i) —

(A) in the case of a written statement or affidavit—a copy of the statement or affidavit;

(B) in the case of a videotape or audiotape—a copy of the tape and of the transcript or a copy of the transcript together with a statement of a time and place at which the tape and facilities to play it back will be made available to the defendant and his or her legal representatives;

and

(ii) a notice drawing the attention of the defendant or the defendant's legal representative to the provisions of this section under which the personal attendance of the witness at the preliminary examination may be secured;

or

(b) the defendant consents to the submission of the statement, videotape, audiotape, transcript or affidavit notwithstanding non-compliance with paragraph (a).

(6) Where—

(a) a written statement, affidavit, videotape, audiotape or transcript has been submitted to the justice;

(b) the defendant, before completion of the case for the prosecution, requests that the witness appear for the purpose of oral examination;

and

(c) either—

(i) the defendant has, at least seven days before making the request, notified the informant in writing of his or her intention to seek the personal attendance of the witness;

or

(ii) the justice is satisfied that there is good reason for excusing the defendant for failure to give notice in accordance with subparagraph (i),

then, subject to subsection (7), the witness will be called or summoned to appear for oral examination.

(7) The alleged victim of a sexual offence will not be called or summoned to appear under subsection (6) unless the justice is satisfied that there are special reasons for the oral examination of the alleged victim.

(8) Where a witness is called or summoned to appear for the purpose of oral examination, the witness may be examined, cross-examined and re-examined in the usual manner.

(9) Where—

(a) a statement, or a record of a statement is submitted under subsection (2);

(b) a material part of the statement is to the knowledge of the person who made it false or misleading,

that person is guilty of a misdemeanour.

Penalty: Imprisonment for two years.

(10) In this section—

(a) "child" means a person under the age of 10 years;

and

(b) a reference to a witness extends to any person by whom a statement or affidavit is made for the purposes of this section.

* * * * *
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Examination of witnesses

108. (1) Where a witness is to be examined orally, the usual oath shall be administered to him.

(2) Where a witness is examined orally, his deposition—

(a) shall be recorded in writing;

(b) shall be read over by, or read over to, the witness;

and

(c) shall be signed by the witness and the justice.

(3) The deposition of a witness may, if the justice so directs, be read over to the witness elsewhere than in the room in which the examination is conducted.

Contemptuous behaviour on preliminary examination

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

Procedure on completion of evidence for prosecution

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

(2) If the justice, after completing his consideration of the evidence, is of the opinion that the evidence is not sufficient to put the defendant upon his trial for any indictable offence, he shall—

(a) dismiss the information;

and

(b) if the defendant is in custody upon the charges contained in the information and upon no other lawful warrant or authority—order that he be discharged from custody.

(3) If, after completing his consideration of the evidence, the justice is of the opinion that the evidence is sufficient to put the defendant on trial for an indictable offence, the justice shall review the charges, as laid in the information, in order to ensure that they properly correspond to the offences for which there is, in the opinion of the justice, sufficient evidence to put the defendant on trial and, in carrying out the review, shall observe the following provisions:

(a) if the justice is of the opinion that the evidence is not sufficient to put the defendant on trial for the indictable offence with which he is charged in the information but is sufficient to put him on trial for some other indictable offence that has not been so charged, the justice shall amend the information by substituting a charge relating to that other indictable offence;

(b) if the justice is of the opinion that the evidence is sufficient to put the defendant on trial for some, but not all, the indictable offences with which he is charged in the information, the justice shall amend the information so that it relates only to the indictable offences for which there is sufficient evidence to put the defendant on trial;

(c) if the justice is of the opinion that the evidence is sufficient to put the defendant on trial for an indictable offence with which he has not been charged in the information, he may (whether or not the information has been, or is to be, amended under any of the preceding paragraphs of this subsection) amend the information by including a charge relating to that offence.

(4) Upon completing the review of the charges, the justice shall proceed as follows:

(a) if the defendant is charged with a major offence and with no minor indictable offence, the justice—

(i) may, in a case not involving a charge of murder, manslaughter or treason, ask the defendant whether he wishes to plead to the charge as provided in Division III and then proceed in accordance with that Division;

or

(ii) shall proceed with the preliminary examination as provided in this Division;

(b) if the defendant is charged with a minor indictable offence and with no major offence, the charge shall be dealt with under the provisions of Division II;

(c) if the defendant is charged with both a major offence and a minor indictable offence (either cumulatively or in the alternative)—

(i) the justice may deal with the matter as if both charges related to major offences;

or

(ii) where the justice is of the opinion that it is just and expedient to do so, he may divide the information into separate informations, one relating to the major offence and the other to the minor indictable offence, and in that event the charge contained in each of the separate informations shall be separately dealt with under whichever of the foregoing provisions is appropriate to the charge.

(5) Where a charge is, in pursuance of this section, to be dealt with under Division II by a court constituted of a special magistrate who also conducted the preliminary examination, a witness for the prosecution who appeared personally to give evidence at the preliminary examination need not be recalled for examination but shall, if the defendant so requests, be recalled for cross-examination or further cross-examination and re-examination.

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

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

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

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

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

The statement or evidence of the defendant may, if the justice so directs, be read over to the defendant elsewhere than in the room in which the examination is taken.

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

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

Defendant may call witnesses

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

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

Committal for trial

112. (1) If at the completion of the evidence the justice is of the opinion that the evidence is not sufficient to put the defendant on trial for an indictable offence, he shall—

(a) dismiss the information;

and

(b) if the defendant is in custody on the charges contained in the information and on no other lawful warrant or authority—order that he be discharged from custody.

(2) If at the completion of the evidence the justice is of the opinion that the evidence is sufficient to put the defendant on trial for an indictable offence, he shall—

(a) inform the defendant of his intention to commit him for trial;

(b) inform the defendant of his obligation to give notice of any evidence of alibi that he may desire to give or adduce at his trial, and provide him with a written memorandum explaining the nature of that obligation;

(c) commit him for trial.

* * * * *

(3) In determining to which court a defendant should be committed for trial, a justice shall observe the following principles:

(a) if the charge, or one of the charges, on which the defendant is to be committed for trial is a charge of a Group I offence, he shall be committed for trial in the Supreme Court;

(b) if the defendant is to be committed for trial on a charge of a Group II offence (there being, in a case where the defendant is committed for trial on a number of charges, no charge of a Group I offence), the justice shall determine whether, in his discretion, the defendant should be committed to the Supreme Court or a District Criminal Court for trial and, in exercising that discretion, shall have regard to—

(i) the gravity of the offence or offences;

(ii) the complexity or otherwise of the evidence tendered;

(iii) the difficulty or uncertainty of the law involved or likely to be involved;

(iv) the respective requests (if any) of the defendant and the informant;

and

(v) any other relevant factor;

(c) if the defendant is to be committed for trial on a charge of a Group III offence (there being, in a case where the defendant is committed for trial on a number of charges, no charge of a Group I or Group II offence), he shall be committed for trial in a District Criminal Court.

* * * * *

(4) Where a defendant is committed for trial—

(a) the defendant shall, if bail has already been granted and the bail agreement is subsisting, or if the justice then grants an application for bail, be released on bail;

or

(b) in any other case, the justice shall, by his warrant, commit him to prison, or to some other place to which he may be lawfully committed, to await his trial.

(5) If the question arises, in any legal proceedings, whether a justice who has committed a defendant for trial has provided the defendant with the information and memorandum as required by subsection (2)(b), it will be presumed that the justice has done so in the absence of proof to the contrary.

*Adjournment of Preliminary Examination***Adjournment of preliminary examination**

113. (1) Where—

(a) a preliminary examination is adjourned;

and

(b) the defendant is not entitled to be released in pursuance of a bail agreement entered into by the defendant before the adjournment,

the justice may remand the defendant in custody or release him on bail.

(2) The period of a remand under subsection (1) must not, unless the prosecutor and the defendant consent to a longer period, exceed fifteen days.

(3) If, during the period for which a defendant has been remanded in custody, it appears that the defendant will, by reason of illness or accident, be unable to appear at the expiration of that period, a justice may, in the absence of the defendant, extend the period of remand by not more than fifteen days.

(4) A justice may, by warrant, require that a defendant who has been remanded in custody under this section be brought before him for any proper reason.

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Custody of Depositions, Etc.

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*Recognizances of prosecutor and witnesses to appear on trial***Binding prosecutor and witnesses by recognizances**

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

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

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

Form of recognizance of witness

118. (1) The recognizance shall specify—

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

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

(c) his occupation.

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

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

Witness refusing to enter into recognizance may be committed to prison

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

DIVISION II—MINOR INDICTABLE OFFENCES

Jurisdiction of courts of summary jurisdiction in relation to minor indictable offences

120. A court of summary jurisdiction constituted of a special magistrate has, subject to this Act, jurisdiction to hear and determine, in a summary way, a charge in respect of a minor indictable offence.

* * * * *

Procedure and powers of court in relation to charges of minor indictable offences

122. (1) Subject to this Act, the procedure and powers of a court of summary jurisdiction in relation to the hearing and determination of a charge of a minor indictable offence shall be the same as if the charge were a complaint of a simple offence.

(2) At any time in the course of proceedings in respect of a minor indictable offence up to and including the completion of the case for the prosecution, the defendant may elect to be tried upon indictment and upon the making of that election the court shall not proceed to convict the defendant but may commit him for trial upon indictment.

(3) If it appears to the court that the offence, by reason of its seriousness, the intricacy of the facts in issue, the difficulty of any questions of law likely to arise at the trial, or for any other reason, ought to be tried upon indictment, it shall not proceed to convict the defendant but may commit him for trial upon indictment.

(4) Where a defendant appears before a court of summary jurisdiction charged with a minor indictable offence, the court shall, if the defendant does not elect to be tried upon indictment, inform him, at the completion of the case for the prosecution, whether or not it proposes to deal with the case in a summary way.

(5) If the defendant elects to be tried on indictment, or the court determines not to deal with the case in a summary way, the proceedings shall continue as a preliminary examination.

(6) In proceedings before a court of summary jurisdiction relating to a minor indictable offence, the deposition of any witness for the prosecution—

(a) shall be recorded in writing;

(b) shall be read over by, or read over to, the witness;

and

(c) shall be signed by the witness and the special magistrate.

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Costs not to be adjudged upon dismissal

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

Defendant entitled to certificate of dismissal

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

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Application of Criminal Law Consolidation Act to minor offences

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

* * * * *

Effect of conviction

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

Proceedings to be a bar to further prosecution

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

DIVISION III—COMMITTAL FOR SENTENCE

Defendant may be asked to plead to the charge

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

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

On plea of not guilty examination to proceed

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

Committal for sentence

136. (1) If the defendant pleads guilty, the justice must commit the defendant for sentence.

(2) In determining to which court a defendant should be committed for sentence, a justice shall observe the following principles:

- (a) if the charge, or one of the charges, to which the defendant has pleaded guilty is a charge of a Group I offence—he shall be committed to the Supreme Court for sentence;
- (b) if the charge, or one of the charges, to which the defendant has pleaded guilty is a charge of a Group II offence (there being, in a case where the defendant is committed for sentence for a number of offences, no charge of a Group I offence to which he has pleaded guilty), the justice shall determine whether, in his discretion, the defendant should be committed to the Supreme Court or a District Criminal Court for sentence and, in exercising that discretion, shall have regard to—
 - (i) the gravity of the offence or offences;
 - (ii) the respective requests (if any) of the defendant and the informant;
 - and
 - (iii) any other relevant factor;
- (c) if the charge or charges to which the defendant has pleaded guilty is or are charges of Group III offences (there being, in a case where the defendant is committed for sentence for a number of offences, no charge of a Group I or Group II offence to which he has pleaded guilty), the defendant shall be committed to a District Criminal Court for sentence.

* * * * *

(3) Where a defendant is committed for sentence—

- (a) the defendant shall, if bail has already been granted and the bail agreement is subsisting, or if the justice then grants an application for bail, be released on bail;
- or
- (b) in any other case, the justice shall, by his warrant, commit him to prison, or to some other place to which he may be lawfully committed, to await sentence.

Defendant may call witnesses as to character

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

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

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

Attendance of witnesses at the appropriate court

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

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

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Withdrawal of plea and substitution of plea of not guilty

141. (1) A defendant who is committed for sentence may, by notice in writing given to the Attorney-General not less than 7 clear days before the day on which he or she is to appear for sentence, withdraw the plea of guilty and substitute a plea of not guilty.

(2) A defendant who withdraws a plea of guilty in pursuance of subsection (1) will be taken to have been committed for trial instead of sentence.

(3) Upon receipt of a notice under this section it shall be the duty of the Attorney-General to cause the same to be delivered to the proper officer of the court to which the defendant has been committed for sentence.

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

Court to sentence accordingly unless the Judge advises withdrawal of the plea

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

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DIVISION V—MISCELLANEOUS

The Warrant of Committal

Delivery of persons to prison

151. Any constable or other person to whom a warrant of commitment is directed shall convey the person therein named or described to the prison mentioned in the warrant, and there deliver him, together with the warrant, to the manager of the prison,

who shall thereupon give such constable or other person so delivering such prisoner into his custody a receipt for such prisoner, setting forth the state and condition in which such prisoner was when he was so delivered.

Use of Depositions at Trial

Deposition of witness for prosecution taken at preliminary examination may be used if witness dead or unable to travel

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

- (a) that the witness is dead, or so ill as not to be able to travel, or so ill as not to be able to attend at the trial or to give evidence thereat without danger to his health; and
- (b) in the case of a witness for the prosecution, that the deposition was taken in the presence of the defendant, and that he, or his counsel or solicitor, had a full opportunity of cross-examining the witness,

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

Justice may take deposition of person dangerously ill and unable to attend preliminary examination

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

- (a) any person is dangerously ill and is, in the opinion of some legally qualified medical practitioner, not likely to recover from such illness; and
- (b) such person is able and willing to give material information relating to any indictable offence, or to any defendant accused of any such offence; and
- (c) it is not practicable for any justice to take the deposition of such person at the preliminary examination of such defendant,

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

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

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

Use of such deposition at trial

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

- (a) the statement purports to be signed by the justice by or before whom it purports to be taken;
- (b) it is proved that the person who made the same is dead, or that there is no reasonable probability that such person will ever be able to travel or give evidence; and

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

Committal of Defendant for Trial or Sentence

Committal of defendant for trial or sentence

155. (1) Where a defendant is committed for trial or sentence, the order for committal must fix the date and time at which the defendant is to appear for trial or sentence before the court to which he or she is committed.

(2) The date must be the first business day of a week, being the first such day to fall after the expiration of the prescribed period from the date of the committal, unless the justice is satisfied that there is good reason for fixing some other date.

(3) If a preliminary examination is conducted in a circuit district of the Supreme Court, and the defendant is to be committed for trial or sentence in the Supreme Court, the defendant must be committed for trial or sentence at a circuit sitting of the Court in the relevant circuit district.

(4) A defendant who is to be committed for trial or sentence in a District Court must be so committed to the District Court for the District Court district in which the preliminary examination is conducted.

(5) Where a defendant is committed for trial or sentence, the justice must forward to the Attorney-General—

- (a) a note of the terms of the order of committal;
- (b) a copy of the information on which the preliminary examination was conducted showing any amendments made by the justice;
- (c) a transcript of the evidence taken at the preliminary examination;
- (d) a list of the exhibits tendered indicating by whom they were tendered and who has possession of them;
- (e) a copy of any subsisting bail agreement under which the defendant has been released from custody;
- (f) any recognizances of witnesses.

(6) The Attorney-General must forward the documents to the proper officer of the court to which the defendant has been committed for trial or sentence.

(7) In this section—

“business day” means any day of the week except Saturday, Sunday or a public holiday and, in relation to a committal for trial or sentence in a circuit district or a District Court district (other than the Adelaide district) the expression does not include any day on which the Court is not to sit for the hearing of criminal matters in that district:

“the prescribed period” means the period prescribed in the rules of the court to which the defendant is committed.

PART VI

APPEALS FROM COURTS OF SUMMARY JURISDICTION

*Special Case***Points of law may be reserved for the consideration of the Supreme Court or Industrial Court**

162. (1) Subject to subsection (5) of this section any court of summary jurisdiction may, at discretion, reserve any question of law arising on or out of the hearing or determination of any information or complaint for the consideration of the Supreme Court, and state a special case or cases for the opinion of the said court.

(1a) Any such question may be so reserved at any time during the hearing of the information or complaint, or at any time within one month after the court of summary jurisdiction has finally determined the information or complaint.

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

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

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

(5) In the application of the preceding provisions of this section to or in relation to proceedings in respect of an industrial offence a reference in those provisions to the Supreme Court shall be read as a reference to the Industrial Court.

*Appeals generally***Appeals**

163. (1) Except as provided in subsection (1aa) of this section, there shall be an appeal to the Supreme Court from every conviction, order, and adjudication of a court of summary jurisdiction (including an order dismissing a charge of a simple offence or a minor indictable offence), as hereinafter provided, in every case, unless some Special Act expressly declares that such conviction, order, or adjudication shall be final, or otherwise expressly prohibits any appeal against the same.

(1aa) In the case of a conviction, order or adjudication of a court of summary jurisdiction in respect of an industrial offence an appeal from that conviction, order or adjudication shall lie to the Industrial Court and for the purposes of every such appeal all references in this Part to—

(a) the Supreme Court shall be read as a reference to the Industrial Court;

and

(b) the Master of the Supreme Court shall be read as references to the Registrar as defined for the purposes of the *Industrial Conciliation and Arbitration Act, 1972*.

* * * * *

(1b) An appeal to the Supreme Court from any conviction, sentence or order recorded, imposed or made upon the hearing of proceedings relating to a minor indictable offence shall be heard and determined by the Full Court unless the notice of appeal contains a request that the appeal be heard and determined by a single judge of the Supreme Court.

(1c) A request that an appeal be heard by a single judge of the Supreme Court under subsection (1b) of this section, shall not derogate from the power of a judge to refer an appeal to the Full Court for hearing and determination.

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

No appeal or removal into Supreme Court to be allowed except under this Act

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

Dispensation with requirements of this Act relating to institution of appeal

165. (1) The Supreme Court may dispense with compliance with any provision of this Act relating to the institution of an appeal.

(2) A dispensation may be granted under subsection (1) unconditionally or upon such conditions as the Supreme Court thinks fit.

Amendment of notice of appeal

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

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Enforcement of decision after appeal

170. (1) When any conviction or order has been affirmed, amended, or made upon any appeal, the justices from whose decision the appeal has been brought, or any other justice, shall have the same authority to enforce such conviction or order as if it had not been appealed against, or had been made in the first instance.

(1a) If a person convicted and committed to prison appeals and, on appeal, is released on bail, and the Court on appeal orders that the balance or some part of the balance of his sentence be served, the justices from whose decision the appeal has been brought or any other justice may by warrant remand the appellant to his former custody, there to serve the balance of the term to be served by him.

(1b) A person will not, while on bail pending an appeal, be taken to be serving the sentence of imprisonment from which he or she has been released.

(2) No action or proceeding whatsoever shall be commenced or had against any justice for enforcing such conviction or order by reason of any defect in the same respectively.

Manner in which appeal is to be instituted

171. (1) An appeal is instituted by serving a notice of appeal upon the clerk of the court of summary jurisdiction by which the conviction, order or adjudication subject to the appeal was made.

(2) The notice of appeal must—

(a) identify the conviction, order or adjudication against which the appeal is made; and

(b) set out in detail the grounds of appeal.

(3) Before the expiration of seven days from the day on which the notice of appeal is served upon the clerk of the court of summary jurisdiction, copies of the notice must be served upon—

(a) the respondent;

and

(b) the Registrar of the Supreme Court.

(4) Upon receipt by the clerk of a court of summary jurisdiction of a notice of appeal, the clerk shall transmit to the Registrar of the Supreme Court—

(a) a copy of the transcript of the evidence taken in proceedings to which the appeal relates;

(b) a certified copy of the conviction, order or adjudication to which the appeal relates;

and

(c) any other documents or exhibits relevant to the proceedings.

Time for instituting appeal and hearing thereof

172. (1) An appeal must be instituted within one month after the date of the conviction, order or adjudication subject to appeal.

(2) An appeal shall be heard by the Supreme Court in accordance with the appropriate rules of the Supreme Court.

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No other evidence to be received on hearing without consent or order

176. No evidence shall be received on the hearing of the appeal other than such originals or copies as aforesaid, except by consent of the parties or by order of the Supreme Court on appeal.

Procedure and power of Supreme Court on appeal

177. (1) Every appeal shall be heard and determined by the Supreme Court in a summary way, and according to the rules of practice in force with reference to the proceedings of the Court in that behalf, and the Supreme Court shall have all the powers and duties, as to amendment and otherwise, of the justices whose decision is appealed from.

(2) Upon the hearing of the appeal the Supreme Court may—

- (a) adjourn the same from time to time;
- (b) mitigate any penalty, forfeiture, or sum;
- (c) affirm, quash, or vary the conviction, order, or adjudication appealed from, or substitute or make any conviction, order, or adjudication which ought to have been made in the first instance;
- (d) remit the case for hearing or for further hearing before the same or any other competent court of summary jurisdiction; and
- (e) make such further or other order as to costs or otherwise as the case requires.

(2a) In determining any question raised upon the hearing of an appeal relating to any penalty, forfeiture or disqualification awarded against, or imposed upon, the appellant or respondent, the Supreme Court may, if it considers that it is in the interests of justice to do so, take into account, and exercise any of its powers under subsection (2) of this section in relation to, any penalty, order or adjudication awarded or made in respect of the appellant or respondent by justices—

- (a) in the proceedings from which the appeal arises;
- (b) in proceedings heard concurrently with those proceedings;

or

- (c) in proceedings arising from the same circumstances as those proceedings, or from circumstances that together with those circumstances constitute or form part of a series of offences of the same or similar character,

notwithstanding that no appeal has been instituted in relation to that penalty, order or adjudication.

(2b) The Supreme Court may make any ancillary order or direction that is preliminary to or incidental to, or consequent upon, the exercise of the powers conferred by subsection (2a) of this section.

(3) The Supreme Court may upon such terms as it thinks fit at any time before the order of dismissal is drawn up and sealed re-instate any appeal dismissed for want of prosecution.

If costs not paid according to order of Supreme Court, certificate to be granted

178. (1) When the Supreme Court makes any order as to the costs of the appeal it shall direct the same to be paid to the Master or other proper officer of the said Court, to be by him paid over to the party entitled thereto, and may state a time within which the costs are to be paid.

(2) If the costs are not paid within the time so limited (or if no time is so limited, then within seven days) the Master, or other proper officer of the Court, upon application of the party entitled to the costs, or of any person on his behalf, and on payment of the fee of ten cents, shall grant to the party so applying a certificate that the costs have not been paid.

Enforcement of payment of costs of appeal

179. (1) Upon production of such certificate to any justice the payment of the costs may be enforced in the same manner as is provided by this Act for enforcing the payment of costs awarded by justices.

(2) The payment of the costs may be enforced under the same warrant as any penalty or other pecuniary sum payable under any conviction or order affirmed or made upon the appeal.

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PART VII

SUPPLEMENTARY PROVISIONS

*Irregularities and Amendment***Form of information or complaint**

181. It shall be sufficient in any information or complaint, if the same gives the defendant a reasonably clear and intelligible statement of the offence or matter with which he is charged.

Information or complaint not to be objected to for irregularity

182. (1) No objection shall be taken or allowed to any information or complaint in respect of—

- (a) any alleged defect therein, in substance or in form; or
- (b) any variance between it and the evidence adduced in its support at the preliminary examination or at the hearing (as the case may be):

Provided that the justice or the court shall dismiss the information or complaint, unless it is amended as provided by section 183, if it appears to him or to it—

- (a) that the defendant has been prejudiced by such defect or variance; or
- (b) that the information or complaint fails to disclose any offence or matter of complaint.

Amendment of information or complaint

183. If it appears to the justice, or to the court before whom any defendant comes or is brought to answer any information or complaint that the information or complaint—

- (a) fails to disclose any offence or matter of complaint, or is otherwise defective; and
- (b) ought to be amended so as to disclose an offence or matter of complaint, or otherwise to cure such defect—

the justice or the court may amend the information or complaint upon such terms as may be just.

Warrant or summons not to be objected to for irregularity

184. No objection shall be taken or allowed to any warrant or summons in respect of—

- (a) any alleged defect therein, in substance or in form; or
- (b) any variance between it and the evidence adduced in support of the information or complaint at the preliminary examination or at the hearing (as the case may be):

Provided that the justice or the court may adjourn the hearing, if it appears to him or to it that the defendant has been prejudiced by such defect or variance.

Amendment of convictions, warrants, etc.

185. Any—

- (a) conviction or order made by a court of summary jurisdiction; or

(b) warrant of committal, or other warrant or proceeding issued or had by or before any justice,

may be amended, according to the evidence, by the justices or justice by or before whom the same was made, issued, or had, or by any court before which it comes, on appeal or otherwise, at any time after the same has been signed, and before it has been executed, upon such (if any) terms as to costs, or otherwise, as to such justices or justice or such court seems fit.

Convictions, etc., not voidable for want of form, etc.

186. (1) No conviction or order of a court, or other proceeding before justices, shall be void or voidable, or liable to be quashed, annulled, or set aside in any manner, by reason of any deficiency in the statement of the offence therein described, if the offence is stated in the words of the Special Act, or if it appears that the offence was one against the true intent and meaning of the Special Act.

(2) No judgment, conviction, or order of a court, or other proceeding before justices, shall be quashed or set aside for any mere matter of form or technical error, or mistake in any name, date, or title, or in any matter of description only; but in all cases regard shall be had alone to the substantial merits and justice of the case.

Parties not to be discharged upon defects in warrants provided conviction took place upon good grounds

187. No warrant of commitment issued upon any conviction of a court of summary jurisdiction shall be held void or invalid, or be quashed, for any defect in substance or in form, nor shall any party be entitled to be discharged out of custody on account of any such defect, provided—

- (a) it is alleged in the warrant that such party has been convicted of an offence; and
- (b) it appears to the court or Judge before whom the warrant is returned that such conviction proceeded on good and valid grounds.

Unexecuted Warrants

Cancellation of unexecuted warrants

187aa. (1) The Governor may cancel—

- (a) a warrant for the apprehension of a person if it has not been executed within 15 years from the day on which it was issued;

and

- (b) any other warrant if it has not been executed within 7 years from the day on which it was issued.

(2) A warrant that is cancelled pursuant to subsection (1) ceases to have any force or effect and must be destroyed.

Proof of Convictions and Orders

Proof of convictions or orders

187a. (1) Any conviction or order whatsoever made by a court of summary jurisdiction may be proved by a copy of the information or complaint on which the conviction or order was made, and of the minute or memorandum thereof made by the court and endorsed on the complaint.

(1a) The copy must be certified by—

- (a) the person, or one of the persons, constituting the court by which the conviction or order was made;
 - (b) the clerk of that court, or, if that court no longer exists, the clerk of a court of summary jurisdiction to which the records of that court have been transferred;
- or
- (c) the Registrar.

(2) No proof shall be required of the signature or judicial or official character of the person appearing to have signed any such copy as aforesaid.

(3) This section shall apply to any conviction or order whether made before or after the commencement of this Act, and shall be in addition to and not in substitution for any other enactment providing a mode of proving convictions and orders.

Proof of Recognizance

Evidence of recognizance

187ab. An apparently genuine document purporting to be a recognizance under this Act, or a copy of such a recognizance, shall be accepted in any court as evidence of the recognizance and of its terms and conditions.

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Habeas Corpus

After summary conviction or order *habeas corpus* not to be issued except on an affidavit. Writ to be returnable at least four days after issue, and notice to be given thereof

188. (1) No writ of *habeas corpus* shall issue to bring up the body of any person who has been convicted by a court of summary jurisdiction, or adjudged by any such court to pay any sum or perform any duty, unless such person or his solicitor or agent states in an affidavit, in writing and duly sworn, the ground of objection to the conviction or proceedings.

(2) Upon the return to the writ, no objection shall be taken or considered unless it has been so stated.

(3) There shall be an interval of at least four clear days between the day upon which any such writ issues and the day upon which it is returnable, and no such writ shall issue without notice to the committing justice, or to the Crown Solicitor, and to the opposite party or his solicitor.

(4) Such notice shall be in writing, and shall be given to them or left at their respective dwelling-places or offices at least four clear days before the return of the writ.

(5) No return to any such writ shall be considered by any court or Judge unless it is proved by affidavit that such notice has been given.

(6) Any writ issuing without such notice, or not being in conformity to the directions herein contained, shall be void to all intents and purposes whatsoever.

*Proceedings Against and Protection to Justices***Proceeding in nature of *mandamus***

189. (1) If any justice refuses to do any act relating to the duties of his office as such justice, the person requiring such act to be done may apply to the Supreme Court upon an affidavit of the facts for a rule, calling upon such justice, and any person to be affected by such act, to show cause why such act should not be done.

(2) If after due service of such rule good cause is not shown against it, the said Court may make the same absolute with, or without, or upon payment of, costs.

(3) Upon being served with the rule absolute the justice shall obey the same and do the act by it required to be done.

(4) No action or proceeding shall be maintainable against any justice for obeying any such rule, or doing the act thereby required.

Action for act done within jurisdiction as a justice

190. (1) Every action brought against a justice for any act done by him in the execution of his duty as such, with respect to a matter within his jurisdiction as a justice, shall be in the nature of an action on the case as for a tort.

(2) No such action shall be maintainable unless it is alleged and proved that the act was done maliciously, and without reasonable and probable cause.

Action for act done without or in excess of jurisdiction

191. (1) Any person injured by any act done—

- (a) by a justice in a matter of which by law he has not jurisdiction, or in which he has exceeded his jurisdiction; or
- (b) under any conviction or order made, or any warrant issued, by a justice in any such matter,

may maintain an action against such justice without alleging that the act complained of was done maliciously, or without reasonable and probable cause.

(2) No such action shall be maintainable for anything done under any conviction or order until after such conviction or order has been set aside upon appeal, or quashed.

(3) No such action shall be maintainable for anything done under any warrant issued by the justice to procure the appearance of such person, if the warrant has been followed by a conviction or order in the same matter, until after the conviction or order has been set aside on appeal, or quashed.

(4) No such action shall be maintainable for anything done under any warrant issued by the justice to procure the appearance of such person, if a summons has been issued previously to the warrant and duly served, and such person has not appeared according to the exigency thereof, and the warrant—

- (a) has not been followed by a conviction or order in the same matter; or
- (b) was upon an information for an alleged indictable offence.

No action maintainable for exercise of discretion

192. No action shall be maintainable against a justice—

- (a) for or by reason of the manner in which he exercises his discretion in the execution of any discretionary power conferred upon him by statute:

Or where conviction affirmed on appeal

- (b) for anything done under any warrant of distress or commitment, on the ground of any defect in the conviction or order on which it is founded, if, either before or after the granting of such warrant, the conviction or order is affirmed upon appeal.

Action for warrant founded upon a defective conviction to be brought against convicting justice

193. No action shall be maintainable against a justice who, *bona fide* and without collusion, grants a warrant of distress or commitment upon any conviction or order made by any other justice, by reason of any defect in the conviction or order, or by reason of any want of jurisdiction in such other justice; but the action shall be maintainable (if at all) against the justice who made the conviction or order.

Limitation and notice of action

194. (1) No action shall be brought against any justice for anything done by him in the execution of his office, unless the same is commenced within six months after the act complained of was committed.

(2) No such action shall be commenced until one month after a notice in writing of the intended action has been delivered to the justice, or left for him at his usual place of abode, by the party intending to commence the same, or by his solicitor or agent.

(3) Such notice shall—

- (a) state clearly and explicitly the cause of action and the court in which it is intended to bring the action; and
- (b) set out or be endorsed with the name and place of abode of the party intending to bring the action, and, if it is served by his solicitor or agent, the name and place of abode or of business of such solicitor or agent:

Provided that nothing herein contained shall restrict the operation of section 60 of the *Evidence Act, 1929*.

Tender of amends and payment into court

195. (1) When any notice of action has been given, and before the action is commenced, the justice may tender to the party intending to commence the same, or to his solicitor or agent, such sum as he thinks fit, as amends for the injury complained of in the notice.

(2) After the action has been commenced and at any time before issue joined the justice may, if he has not made any tender as aforesaid, or in addition to such tender, pay into court such sum as he thinks fit.

(3) If at the trial of the action the plaintiff does not recover damages beyond the sum tendered as aforesaid, and if such sum has been paid into court, the defendant shall be entitled to an order that the plaintiff pay his costs; and the sum paid into court shall in such case (notwithstanding any amount which the plaintiff has recovered in such action) be available for the payment of such costs.

(4) Subject to the provisions of this and the next succeeding section, the practice and procedure for the time being of the court in which the action is had, in relation to the payment of money into court and the consequences thereof, shall apply to every such action as aforesaid.

Plea of general issue and evidence thereunder

196. (1) Any justice against whom any action is brought for anything done by him in the execution of his office may plead the general issue.

(2) Evidence of any tender or payment into court as aforesaid and of any special matter of defence, excuse, or justification, may be given at the trial under such plea.

Justice may require the action to be brought in the Supreme Court

197. (1) Any justice against whom any such action is brought, or intended to be brought, in any court of inferior jurisdiction may, at any time not later than six days after the service of the summons in such action, give or cause to be given to the plaintiff or intended plaintiff notice in writing that he objects to being sued in such court for such cause of action.

(2) Thereupon the proceedings in such inferior court, if already commenced, may, upon the application of the plaintiff, be removed into the Supreme Court, and thereafter, whether the proceedings have been commenced or not, the plaintiff may commence and maintain his action in the Supreme Court as if the notice of action had specified the Supreme Court instead of such court of inferior jurisdiction.

(3) All proceedings had in such court of inferior jurisdiction after the giving of such notice as aforesaid shall be null and void.

What damages may be recovered where plaintiff proved guilty of the offence of which he was convicted, etc.

198. If the plaintiff in any such action (in which malice is not alleged and proved as aforesaid) is entitled to recover, and—

(a) proves the levying or payment of any penalty or sum of money under the conviction or order as part of the damages he seeks to recover; or

(b) proves that he was imprisoned under the conviction or order and seeks to recover damages for such imprisonment,

and it is further proved—

(c) that he was actually guilty of the offence of which he was convicted; or

(d) that he was liable by law to pay the sum he was ordered to pay; and

(e) that he has undergone no greater punishment in the way of imprisonment than that assigned by law for the offence of which he was convicted, or for non-payment of the sum he was ordered to pay,

he shall not be entitled to recover the amount of the penalty or sum so paid by him, or any sum beyond the sum of two cents as damages for such imprisonment, nor to recover any costs of suit.

Costs

199. In any action against a justice for anything done by such justice in the execution of his office, costs, as between solicitor and client, may be awarded to a successful defendant, or to a plaintiff who has successfully alleged that the act complained of was done maliciously, and without reasonable and probable cause.

Protection to justices in the exercise of duties under Commonwealth law

200. The provisions of sections 190 to 200 inclusive shall apply to any special magistrate or other justice, when acting or required to act in the exercise of any power or jurisdiction conferred upon him by any Act of Parliament of the Commonwealth relating to the summary conviction, or to the examination and commitment for trial, of persons charged with offences against the law of the Commonwealth, and the exercise of any such power or jurisdiction as aforesaid shall, for the purposes of the said sections, be deemed to pertain to his duty and office as a justice within the meaning of this Act.

Certificate of compensation

200a. (1) At the conclusion, or in the course, of any proceedings under this Act, the justices, at the request of the prosecutor or any witness for the prosecution, may, if they think fit, subject to this Act and any other Act or regulations, grant a certificate of compensation in favour of that person for any expense, trouble or loss of time reasonably incurred by him in connection with the proceedings.

(2) A certificate under subsection (1) of this section may be granted in respect of the expenses of apprehending the defendant and of detaining him in custody and of such other expenses incurred prior to commitment for trial or sentence as are by law certifiable under this section.

(3) Where the proceedings in which the certificate is granted are in the nature of a preliminary examination, the certificate under this section shall be forwarded to the sheriff for payment.

(4) The amount of any certificate of compensation shall—

(a) where the proceedings in which the certificate is granted are proceedings in the nature of a preliminary examination be paid by the sheriff to a person apparently entitled to payment in accordance with the certificate;

or

(b) in any other case, be paid by the clerk to a person apparently entitled to the payment in accordance with the certificate,

and a payment made under this subsection shall effectually discharge the sheriff or the clerk from any claim made by the person named in the certificate or any person claiming under him.

(5) Any payment by the sheriff or the clerk under this section shall be made out of moneys provided by Parliament for the purpose.

*Reciprocal Enforcement of Fines, etc., against Bodies Corporate***Reciprocal Enforcement of Fines, etc., against Bodies Corporate**

200b. (1) In this section—

“fine” includes a pecuniary penalty, pecuniary forfeiture, pecuniary compensation and fees, charges and costs payable under a conviction or order of a court in the exercise of summary jurisdiction:

“reciprocating court” means a court of a reciprocating State or Territory declared by proclamation under this section to be a reciprocating court:

“reciprocating State or Territory” means another State or a Territory of the Commonwealth declared by proclamation under this section to be a reciprocating State or Territory.

(2) The Governor may by proclamation declare another State or a Territory of the Commonwealth (being a State or Territory having laws providing for enforcement in that State or Territory of a fine payable under a conviction or order of a court of summary jurisdiction in this State against a body corporate) to be a reciprocating State or Territory.

(3) The Governor may by proclamation declare a court having summary jurisdiction in a reciprocating State or Territory to be a reciprocating court.

(4) The Governor may, by subsequent proclamation, vary or revoke a proclamation under this section.

(5) Where, under a conviction or order of a reciprocating court made in the exercise of its summary jurisdiction, a fine is payable by a body corporate having or appearing to have property in this State and the clerk of a court of summary jurisdiction at or near to a place where the body corporate has or appears to have property receives a request in writing from the clerk or other corresponding officer of that reciprocating court for the enforcement of the conviction or order accompanied by—

(a) a certified copy of the conviction or order;

and

(b) a certificate under the hand of the clerk or corresponding officer making the request certifying the amount of the fine outstanding under the conviction or order,

he shall register the conviction or order by filing in the court a certified copy of the conviction or order and shall note the date of registration on the copy.

(6) Upon the registration of a conviction or order under subsection (5)—

(a) the conviction or order shall for the purposes of this section be deemed to be a conviction or order of the court in which it is registered requiring payment by the body corporate of the amount of the fine stated in the certificate referred to in subsection (5) as outstanding;

(b) the clerk shall for the purposes of this section issue a warrant of distress for the purpose of recovering the amount of the fine required to be paid by levying against the goods and chattels of the body corporate;

and

(c) the warrant so issued shall be deemed to be a warrant of distress issued by a justice under this Act and the provisions of this Act shall, with all necessary adaptations, apply and extend accordingly with respect to the enforcement of that warrant.

(7) Where the clerk receives, after the request for the enforcement of the conviction or order, a notification from the clerk or other corresponding officer of the reciprocating court of payment by or on behalf of the body corporate of an amount in satisfaction in whole or in part of the amount of the fine outstanding, he shall—

(a) note the particulars of the payment on the certified copy of the conviction or order filed in the court;

and

(b) arrange for the return of the warrant issued under subsection (6) if it is unexecuted, and—

(i) withdraw it if the amount of the fine has been paid in full;

or

- (ii) if part of the amount of the fine remains outstanding, amend the amount stated in the warrant to show the amount still outstanding, and the warrant shall then be enforced in respect of the altered amount.

(8) A sum of money paid to or received by a clerk of court of summary jurisdiction in satisfaction in whole or in part of a fine payable under a conviction or order enforced under subsection (6) shall be remitted forthwith to the clerk or other corresponding officer of the reciprocating court by which the conviction or order was made.

(9) A sum of money paid to or received by a clerk of a court of summary jurisdiction from a reciprocating court in satisfaction in whole or in part of a fine payable under a conviction or order of the court of summary jurisdiction enforced by the reciprocating court shall be applied by the clerk of the court of summary jurisdiction as if the sum had been paid to the clerk by the body corporate by which the fine was payable in satisfaction in whole or in part of the fine.

Fees and Rules

Fees

201. (1) Subject to any rules for the time being in force under this Act, the fees set out in the second schedule hereto shall be payable in respect of the matters therein mentioned.

(2) The fees and exemptions mentioned in the said schedule may be repealed or altered by the said rules, and new fees may be provided for, either in substitution for, or in addition to, the said fees.

Remission of fees

(3) A justice may, in his discretion, and at any time, remit any fee in whole or in part if it appears to him that, on account of the poverty of the party liable to pay the same, or for any other reason, such remission should be made.

Penalty for extortion

202. No clerk shall take, accept, or receive from any person any fee, gratuity, or reward not allowed by law, or greater in amount than is so allowed.

Penalty—Fifty dollars

Rules

203. The Governor may make rules not repugnant to any provision of this Act in relation to the following matters or any of them:—

- (a) The places at which courts of summary jurisdiction shall or may sit, and the constitution and holding of courts thereat:
- (b) The practice and procedure before justices and courts of summary jurisdiction:
- (c) The fees which shall be payable under this Act or under any other Act for the time being in force, so far as the same relates to any matter or proceeding as to which a court of summary jurisdiction has jurisdiction:
- (d) The forms to be used under this Act, including the form of any recognizance mentioned in this Act:
- (e) The duties of clerks and the form of any record or account required to be kept by them, and providing for the discontinuance of any existing record or account rendered unnecessary by such rules.

SCHEDULES
FIRST SCHEDULE

Number and year of Act	Title or Short Title	Extent of Repeal
4 of 1843	An ordinance appointing the fees to be taken by Magistrates in South Australia	The whole
15 of 1849	To facilitate the performance of the duties of Justices of the Peace out of Sessions with respect to Persons charged with Indictable Offences	The whole
6 of 1850	To facilitate the performance of the duties of Justices of the Peace out of Sessions with respect to Summary Convictions and Orders	The whole
10 of 1854	An Act to amend the Criminal Law	Section 14
8 of 1869-70	<i>Minor Offences Procedure Act, 1869</i>	The whole
166 of 1880	An Act to amend the <i>Minor Offences Procedure Act, 1869</i> , and <i>The Criminal Law Consolidation Act, 1876</i>	The whole
245 of 1882	An Act to enable Persons Accused of Offences to give Evidence on Oath	Section 2
298 of 1883-4	<i>The Justices Procedure Amendment Act, 1883-4</i>	The whole
926 of 1907	<i>The Magistrates' Fees Amendment Act, 1907</i>	The whole
1127 of 1913	<i>The Minor Offences Procedure Act Amendment Act, 1913</i>	The whole
1133 of 1913	<i>The Justices Procedure (Indictable Offences) Amendment Act, 1913</i>	The whole

SECOND SCHEDULE

Summary Adjudications and Non-indictable Offences

	\$ c.
For every complaint or application of any kind	1.00
For every summons (except a summons to witness), warrant, commitment, conviction and order, each step	1.00
For every summons to witness (for each person intended to be summoned)25
For every hearing	2.00
For every recognizance upon appeal to the Supreme Court	1.00
For every other recognizance (except a recognizance to appear and prosecute or to appear and give evidence, upon which no fee shall be charged)50
For a copy of evidence or depositions, reasons for judgment or any other document, for each foolscap page, or part thereof30

Minor Indictable Offences and Indictable Offences

Same fees as in non-indictable offences, except as follows:—

For every information	1.00
For every summons (except a summons to witness), warrant, commitment and conviction, each step	1.00

APPENDIX

Legislative History

Legislative history prior to 3 February 1976 appears in marginal notes and footnotes included in the consolidation of this Act contained in Volume 5 of The Public General Acts of South Australia 1837-1975 at page 316.

Section 3:	amended by 46, 1982, s. 3; 68, 1982, s. 4; substituted by 51, 1988, s. 42
Section 4(1):	definition of "clerk" substituted by 26, 1982, s. 3(a) definition of "the Chief Magistrate" inserted by 108, 1983, s. 4(a) definition of "fine" repealed by 51, 1988, s. 43(a) definition of "gaol" repealed by 51, 1988, s. 43(b) definition of "keeper of a gaol" repealed by 51, 1988, s. 43(c) definition of "major offence" inserted by 66, 1983, s. 3 definition of "minor indictable offence" substituted by 109, 1981, s. 44(a) definition of "the Registrar" inserted by 68, 1982, s. 5; amended by 33, 1987, s. 5 definition of "personal service" inserted by 26, 1982, s. 3(b) definition of "the senior magistrate" inserted by 34, 1981, s. 38; repealed by 108, 1983, s. 4(b) definition of "sexual offence" inserted by 60, 1987, s. 4 definition of "simple offence" amended by 109, 1981, s. 44(b) definition of "special magistrate" inserted by 108, 1983, s. 4(c) definition of "sum adjudged to be paid by a conviction" and "sum adjudged to be paid by an order" repealed by 51, 1988, s. 43(d)
Section 5(2):	amended by 109, 1981, s. 45(a)
Section 5(4) and (5):	repealed by 109, 1981, s. 45(b)
Section 5(6):	inserted by 26, 1982, s. 4 (s. 4 not brought into operation); substituted by 66, 1983, s. 4; repealed by 51, 1988, s. 44
Section 5(7):	inserted by 66, 1983, s. 4; repealed by 51, 1988, s. 44
Section 5(8):	inserted by 66, 1983, s. 4
Section 7a:	inserted by 90, 1986, s. 10(1) (Sched. Pt. I)
Section 9a:	inserted by 34, 1981, s. 39
Section 9a(1):	repealed by 68, 1982, s. 6
Section 9a(2) and (3):	amended by 108, 1983, s. 4(d)
Sections 11 and 12:	repealed by 108, 1983, s. 4(e)
Section 13:	amended by 108, 1983, s. 4(f)
Section 13a and heading:	repealed by 108, 1983, s. 4(g)
Section 18(1):	substituted by 66, 1983, s. 5
Section 18(1a):	inserted by 66, 1983, s. 5
Section 21:	repealed by 6, 1985, s. 4(a)
Section 26:	amended by 51, 1988, s. 45
Section 27:	redesignated to read as s. 27(1) by 26, 1982, s. 5(b)
Section 27 proviso:	repealed by 26, 1982, s. 5(a)
Section 27(2) and (3):	inserted by 26, 1982, s. 5(b)
Section 27a(1):	amended by 49, 1980, s. 2
Section 27a(3):	amended by 32, 1986, s. 3; 5, 1988, s. 3
Section 27c(3):	amended by 26, 1982, s. 6(a); 51, 1988, s. 46(a)
Section 27c(4):	amended by 26, 1982, s. 6(b)
Section 27c(6):	amended by 26, 1982, s. 6(c); repealed by 51, 1988, s. 46(b)
Section 27d:	repealed by 26, 1982, s. 7
Sections 30 - 41 and headings:	repealed by 6, 1985, s. 4(b)
Section 42(1):	substituted by 26, 1982, s. 8(a)
Section 42(4):	inserted by 26, 1982, s. 8(b); amended by 68, 1982, s. 7
Section 48:	amended by 51, 1988, s. 47
Heading preceding section 49:	amended by 51, 1988, s. 48
Section 57a(1):	amended by 49, 1980, s. 3(a)
Section 57a(4):	amended by 49, 1980, s. 3(b)
Section 57a(7a):	inserted by 26, 1982, s. 9
Section 57a(8):	amended by 49, 1980, s. 3(c)
Section 57a(10):	substituted by 44, 1979, s. 5(2) (Sched.)
Section 57a(11) and (12):	substituted by 49, 1980, s. 3(d)
Section 59:	amended by 6, 1985, s. 4(c)
Section 60(2):	substituted by 6, 1985, s. 4(d)
Section 62a:	amended by 6, 1985, s. 4(e)
Section 62b(6):	amended by 51, 1988, s. 49(a), (b)
Section 62b(8):	amended by 51, 1988, s. 49(c)
Section 62ba(1):	amended by 49, 1980, s. 4(a)
Section 62ba(4):	amended by 49, 1980, s. 4(b)
Section 62c(1):	amended by 51, 1988, s. 50
Section 62d(3) and (4):	inserted by 26, 1982, s. 10
Section 65(3):	amended by 6, 1985, s. 4(f)
Section 65(4):	amended by 51, 1988, s. 51
Section 65(5):	amended by 6, 1985, s. 4(g)
Section 65(7):	amended by 6, 1985, s. 4(h)
Section 69a(1):	amended by 51, 1988, s. 52
Section 70ab and heading:	repealed by 51, 1988, s. 53
Section 72(1):	amended by 26, 1982, s. 11
Section 73 and heading:	repealed by 51, 1988, s. 54
Section 74 and heading:	repealed by 51, 1988, s. 55
Section 75:	amended by 109, 1981, s. 46; repealed by 51, 1988, s. 55
Section 76:	amended by 68, 1982, s. 8; repealed by 51, 1988, s. 55
Section 76a and heading:	inserted by 26, 1982, s. 12
Section 76b:	inserted by 68, 1982, s. 9; repealed by 6, 1985, s. 4(i)

Section 77(1):	substituted by 51, 1988, s. 56(a)
Section 77(3):	substituted by 51, 1988, s. 56(b)
Sections 78 and 79:	repealed by 51, 1988, s. 57
	Division VA of Part IV comprising s. 79a and heading inserted by 68, 1982, s. 10
Heading preceding section 79a:	amended by 51, 1988, s. 58
Section 79a(1):	amended by 51, 1988, s. 59(a)
Section 79a(2):	amended by 51, 1988, s. 59(b)
	Division VI of Part IV comprising ss. 80 - 98 and headings amended by 109, 1981, s. 47; 26, 1982, s. 13, 68, 1982, s. 11, 77, 1984, s. 3; 69, 1986, s. 21, 49, 1987, Sched. 2; repealed by 51, 1988, s. 60
	Division VII of Part IV comprising ss. 99 - 100 and heading repealed and s. 99 and heading inserted in its place by 46, 1982, s. 4
Section 105a:	inserted by 66, 1983, s. 6
Section 106:	amended by 64, 1976, s. 2; 109, 1981, s. 48; 77, 1984, s. 4; substituted by 60, 1987, s. 5
Section 106(2):	amended by 33, 1991, s. 12(a)
Section 106(3):	amended by 33, 1991, s. 12(b)
Section 106(5):	amended by 33, 1991, s. 12(c)-(e)
Section 106(6):	amended by 33, 1991, s. 12(f)
Section 106a:	repealed by 109, 1981, s. 49
Section 107:	repealed by 107, 1984, s. 10
Section 108(2):	substituted by 109, 1981, s. 50
Section 109(2):	substituted by 66, 1983, s. 7
Section 109(3):	amended by 115, 1976, s. 19; 109, 1981, s. 51; substituted by 66, 1983, s. 7
Section 109(4) and (5):	inserted by 66, 1983, s. 7
Section 111(1):	amended by 6, 1985, s. 4(j)
Section 112:	amended by 78, 1984, s. 3; substituted by 6, 1985, s. 4(k)
Section 112(2):	amended by 33, 1989, s. 4(a)
Section 112(2)(d):	repealed by 33, 1989, s. 4(a)
Section 112(3)(d) and (e):	repealed by 33, 1989, s. 4(b)
Section 112(5):	substituted by 33, 1989, s. 4(c)
Section 113:	substituted by 6, 1985, s. 4(k)
Sections 114 and 115:	repealed by 6, 1985, s. 4(k)
Section 116:	amended by 6, 1985, s. 4(l); repealed by 33, 1989, s. 5
Section 119:	amended by 51, 1988, s. 61
Heading preceding section 120:	amended by 51, 1988, s. 62
Section 120:	amended by 31, 1977, s. 14; substituted by 109, 1981, s. 52
Section 121:	repealed by 109, 1981, s. 53
Section 122:	substituted by 109, 1981, s. 54
Section 124:	substituted by 109, 1981, s. 55; repealed by 66, 1983, s. 8
Sections 125 and 126:	repealed by 109, 1981, s. 56
Section 129:	amended by 109, 1981, s. 57; repealed by 51, 1988, s. 63
Section 130:	repealed by 51, 1988, s. 63
Section 134(1):	amended by 115, 1976, s. 20
Section 136:	substituted by 6, 1985, s. 4(m)
Section 136(1):	substituted by 33, 1989, s. 6(a)
Section 136(2)(d) and (e):	repealed by 33, 1989, s. 6(b)
Section 139:	substituted by 6, 1985, s. 4(n); repealed by 33, 1989, s. 7
Section 140:	repealed by 6, 1985, s. 4(o)
Section 141(1) and (2):	substituted by 6, 1985, s. 4(p); 33, 1989, s. 8(a)
Section 141(3):	amended by 33, 1989, s. 8(b)
Section 142:	amended by 6, 1985, s. 4(q)
	Division IV of Part V comprising ss. 143 - 150a and headings repealed by 6, 1985, s. 4(r)
Section 151:	amended by 51, 1988, s. 64
Heading preceding section 155:	inserted by 33, 1989, s. 9
Section 155:	repealed by 51, 1988, s. 65; inserted by 33, 1989, s. 9
Section 156:	inserted by 33, 1989, s. 9
Section 163(1):	amended by 26, 1982, s. 14(a)
Section 163(1a):	repealed by 26, 1982, s. 14(b)
Section 165:	substituted by 26, 1982, s. 15
Section 168:	repealed by 6, 1985, s. 4(s)
Section 170(1a):	amended by 6, 1985, s. 4(t); 51, 1988, s. 66(a)
Section 170(1b):	inserted by 51, 1988, s. 66(b)
Section 171:	substituted by 26, 1982, s. 16
Section 171(1):	substituted by 68, 1982, s. 12(a)
Section 171(3):	substituted by 68, 1982, s. 12(b)
Sections 174 and 175:	repealed by 26, 1982, s. 17
Section 179(2):	amended by 51, 1988, s. 67
Section 187aa and heading:	substituted by 104, 1988, s. 2
Section 187a(1):	amended by 26, 1982, s. 18(a)
Section 187a(1a):	inserted by 26, 1982, s. 18(b)
Section 187ab and heading:	inserted by 6, 1985, s. 4(u)
Section 187b and heading:	repealed by 51, 1988, s. 68
Section 200b and heading:	inserted by 26, 1982, s. 19