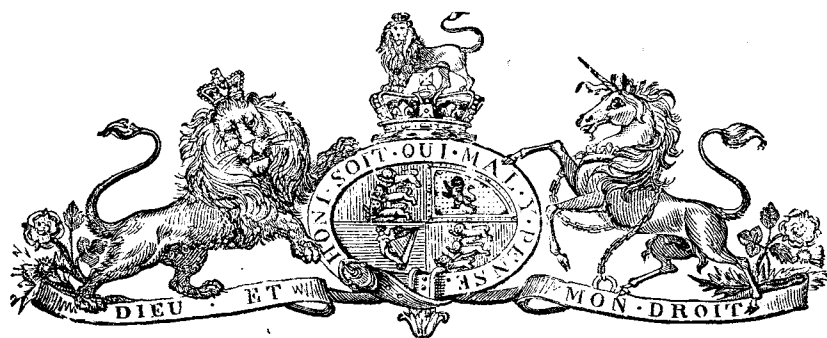


T A S M A N I A.



1860.

ANNO VICESIMO-QUARTO

VICTORIÆ REGINÆ,

No. 5.



AN ACT to improve the Administration of the Law so far as respects summary Proceedings before Justices of the Peace. [4 October, 1860.]

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

1 After the hearing and determination by a Justice or Justices of the Peace of any information or complaint which he or they have power to determine in a summary way, by any Law now in force or hereafter to be made, either party to the proceeding before the said Justice or Justices may, if dissatisfied with the said determination as being erroneous in point of Law, apply in writing within Three days after the same to the said Justice or Justices, to state and sign a Case setting forth the facts and the grounds of such determination, for the opinion thereon of the Supreme Court; and such party, hereinafter called "the Appellant," shall, within Three days after receiving such Case, transmit the same to the Clerk of the Court, first giving notice in writing of such Appeal, with a copy of the Case so stated and signed, to the other party to the proceeding in which the determination was given, hereinafter called "the Respondent."

Justices on application of a party aggrieved to state a Case for the opinion of the Supreme Court.

Security and notice to be given by the Appellant.

2 The Appellant, at the time of making such application and before a Case is stated and delivered to him by the Justice or Justices, shall in every instance enter into a Recognizance before such Justice or Justices, or any One or more of them, or any other Justice, with or without surety or sureties, and in such sum as to the Justice or Justices seems meet, conditioned to prosecute without delay such Appeal, and to submit to the Judgment of the Supreme Court, and pay such costs as may be awarded by the same; and the Appellant shall at the same time, and before he is entitled to have the Case delivered to him, pay to the Police Clerk or Clerk of Petty Sessions fees for and in respect of the Case and Recognizances, and any other fees which such Police Clerk or Clerk of Petty Sessions is entitled to demand, which fees, except such as are already provided for by Law, shall be according to the Schedule, until the same are ascertained, appointed, and regulated in the manner prescribed by Section 31 of *The Magistrates Summary Procedure Act*; and the Appellant, if then in custody, shall be liberated upon the Recognizance being further conditioned for his appearance before the same Justice or Justices, or, if that is impracticable, before some other Justice or Justices who may be then sitting, within Ten days after the Judgment of the Supreme Court has been given to abide such Judgment, unless the determination appealed against be reversed.

Justices may refuse a Case where they think the application frivolous.

3 If the Justice or Justices is or are of opinion that the application is merely frivolous, but not otherwise, he or they may refuse to state a Case, and shall, on the request of the Appellant, sign and deliver to him a certificate of such refusal: Provided, that the Justice or Justices shall not refuse to state a Case where application for that purpose is made to them by or under the direction of Her Majesty's Attorney-General for this Colony.

Where the Justices refuse, the Court may by Rule order a Case to be stated.

4 Where the Justice or Justices refuse to state a Case as aforesaid, it shall be lawful for the Appellant to apply to the Supreme Court upon an affidavit of the facts for a Rule calling upon such Justice or Justices, and also upon the Respondent, to show cause why such Case should not be stated; and the Court may make the same absolute or discharge it, with or without payment of costs, as to the Court may seem meet, and the Justice or Justices, upon being served with such Rule Absolute, shall state a Case accordingly, upon the Appellant entering into such Recognizance as is hereinbefore provided.

Court to determine the questions on the Case.

5 The Supreme Court shall hear and determine the questions of Law arising upon any Case transmitted to it under this Act, and shall thereupon reverse, affirm, or amend the determination in respect of which the Case has been stated, or remit the matter to the Justice or Justices, with the opinion of the Court thereon, or may make such other order in relation to the matter, and may make such orders as to costs, as to the Court may seem fit; and all such orders shall be final and conclusive on all parties: Provided always, that no Justice or Justices of the Peace who may state and deliver a Case in pursuance of this Act shall be liable to any costs in respect or by reason of such Appeal against his or their determination.

Its decision to be final.

Case may be sent back for amendment.

6 The Supreme Court shall have power, if it thinks fit, to cause the Case to be sent back for amendment, and thereupon the same shall be amended accordingly, and Judgment shall be delivered after it has been amended.

7 The authority and jurisdiction vested in the Supreme Court under this Act may, subject to any Rules and Orders of such Court in relation thereto, be exercised by a Judge of such Court sitting in Chambers, and as well in Vacation as in Term Time.

Powers of Court may be exercised by a Judge at Chambers.

8 After the decision of the Supreme Court in relation to any Case stated for its opinion under this Act, the Justice or Justices in relation to whose determination the Case has been stated, or any other Justice or Justices of the Peace, shall have the same authority to enforce any conviction or order, which may have been affirmed, amended, or made by the Supreme Court, as the Justice or Justices who originally decided the case would have had to enforce his or their determination if the same had not been appealed against; and no action or proceeding whatsoever shall be commenced or had against the Justice or Justices for enforcing such conviction or order by reason of any defect in the same respectively.

After the decision of Court, Justices may issue Warrants.

9 No writ of *certiorari* or other writ shall be required for the removal of any conviction, order, or other determination in relation to which a Case is stated under this Act, or otherwise, for obtaining the Judgment or determination of the Supreme Court on such Case under this Act.

Certiorari not to be required for proceedings under this Act.

10 The Judges of the Supreme Court may, from time to time, and as often as they see occasion, make and alter Rules and Orders to regulate the practice and proceedings in reference to the Cases herein-before mentioned.

Court may make Rules for proceedings.

11 In all cases where the conditions, or any of them, in the said Recognizance mentioned have not been complied with, the Justice or Justices who have taken the same, or any other Justice or Justices, shall certify upon the back of the Recognizance in what respect the conditions thereof have not been observed, and transmit the same to the Clerk or Deputy Clerk of the Peace for the District within which such Recognizance has been taken if any Court of General Sessions of the Peace is holden therein, or if there is none such, to the Clerk or Deputy Clerk of the Peace for the nearest District within which any such Court is holden, to be proceeded on as a forfeited Recognizance under the provisions of the Act of Council of the 12th *Victoria*, No. 13, in like manner as any forfeited Recognizance to be of good behaviour is thereby directed to be proceeded upon; and the Certificate endorsed on any such Recognizance shall be deemed sufficient *prima facie* evidence of the said Recognizance having been forfeited.

Recognizances how to be enforced.

12 Any person who appeals under the provisions of this Act against any determination of a Justice or Justices of the Peace from which he is by Law entitled to appeal to the General Sessions shall be taken to have abandoned such last-mentioned right of Appeal, finally and conclusively, and to all intents and purposes.

Appellants under this Act not allowed to appeal to Sessions.

13 All fees received by any Police Clerk or Clerk of Petty Sessions, by virtue of this Act, shall be applied to the use of Her Majesty, Her Heirs and Successors.

Appropriation of fees.

SCHEDULE.

FEEs to be taken by Police Clerks or Clerks of Petty Sessions.

	<i>s.</i>	<i>d.</i>
For drawing Case and copy, where the Case does not exceed Five folios of Ninety words each	10	0
Where the Case exceeds Five folios, then for every additional folio	1	0
For the Recognizance.....	5	0
For every enlargement or renewal thereof	2	6
For certificate of refusal of Case	2	0