



ANNO DECIMO-NONO

VICTORIÆ REGINÆ,

No. 10.



*By His Excellency SIR HENRY EDWARD FOX YOUNG, Knight,
Captain-General and Governor-in-Chief of the Island of Van
Diemen's Land and its Dependencies, with the Advice and
Consent of the Legislative Council.*

*AN ACT to regulate Appeals from Summary Convictions
and to prevent the Failure of Justice by reason of formal
Errors in such Convictions or other Proceedings by
Magistrates. [28th August, 1855.]*

WHEREAS it is expedient to make provision for the regulation of Appeals from Summary Convictions and Orders by Justices of the Peace, and for the prevention of the failure of justice by reason of Mistakes or Omissions beside the merits of the matters in question in such Convictions and Orders or other proceedings by Justices of the Peace: Be it enacted by His Excellency the Governor of Van Diemen's Land, by and with the advice and consent of the Legislative Council, as follows:—

In all cases where by any Law now or hereafter in force any person is or shall be entitled to appeal from any Conviction, Order, Appeal to be made to next Sessions

holden for the District not less than sixteen days after conviction.

Upon Notice of Appeal being given.

And payment of penalty.

Or Recognizance entered into.

Where no Sessions for District then Appeal to be to Sessions for nearest District.

Grounds of Appeal to be stated in Notice.

Form of Notice and Recognizance of Appeal.

Defects in statement of grounds of Appeal.

Amendment of grounds of Appeal.

or Judgment of any Justice or Justices of the Peace, and no other mode of proceeding is by such Law provided in that behalf, it shall be lawful for such person to appeal to the next Court of General Sessions of the Peace, to be holden not less than sixteen days after such Conviction, Order, or Judgment for the District in which the same shall have taken place, provided that such person shall give to such Justice or Justices, and to the Prosecutor or Complainant, a Notice in writing of such Appeal, signed by him or his Attorney on his behalf, within eight days after such Conviction, Order, or Judgment, and eight clear days at least before such Sessions, and also, in cases where a pecuniary penalty is awarded, pay into the hands of such Justice or Justices, or one of them, the amount of such penalty, together with the assessed costs and charges, if any, or, in other cases, either remain in custody until the Sessions, or enter into a Recognizance, with two sufficient sureties, before a Justice of the Peace within such eight days, or at any time during his custody, on giving the Prosecutor or Complainant three days notice in writing of his intention to do so, and of the names, descriptions, and residences of his proposed sureties, conditioned to appear at the said Sessions, and to try such Appeal, and to abide the judgment of the Court thereupon, and to pay such costs as shall be by the Court awarded; and upon such notice being given, and such penalty paid or Recognizance entered into, as the case may be, the Justice to whom such penalty shall be paid, or before whom such Recognizance shall be entered into, as the case may be, shall liberate such person if in custody: Provided always, that if no Court of General Sessions of the Peace shall be appointed to be holden for the District in which such Conviction, Order, or Judgment shall have taken place, then such Appeal may be made at the next Court of General Sessions of the Peace, to be holden not less than sixteen days after such Conviction, Order, or Judgment, for the nearest District in which a Court of General Sessions of the Peace shall be appointed to be holden to that in which such Conviction, Order, or Judgment shall have taken place.

2 The grounds of Appeal shall be specified in every such Notice; and it shall not be lawful for the Appellant on the trial of any such Appeal to go into or give evidence of any other ground of Appeal besides those set forth in such Notice.

3 Such Notice of Appeal and Recognizance of Appeal as aforesaid may respectively be in the form in Schedules A. and B. to this Act annexed, or to the like effect.

4 Upon the hearing of any Appeal to any Court of General Sessions of the Peace no objection on account of any defect in the form of setting forth any ground of Appeal shall be allowed, and no objection to the reception of legal evidence offered in support of any ground of Appeal shall prevail, unless the Court shall be of opinion that such ground of Appeal is so imperfectly or incorrectly set forth as to be insufficient to enable the party receiving the same to enquire into the subject of such statement, and to prepare for trial: Provided, that in all cases where the Court shall be of opinion that any objection to any ground of Appeal, or to the reception of Evidence in support thereof, ought to prevail, it shall be lawful for such Court, if it shall so think fit, to cause any such ground of Appeal to be forthwith amended, by some Officer of the Court or otherwise on such terms as to payment of costs to the other

Party, or postponing the trial to another day in the same Sessions, or to the next subsequent Sessions, or both payment of costs and postponement, at to such Court may appear just and reasonable.

5 If in any Notice of Appeal the Appellant shall have included any ground or grounds of Appeal which shall in the opinion of the Court determining the Appeal be frivolous or vexatious, such Appellant shall be liable, if the Court shall so think fit, to pay the whole or any part of the costs incurred by the Respondent in disputing any such ground or grounds of Appeal; such costs to be recoverable in the manner herein-after directed as to the other costs incurred by reason of such Appeal.

Frivolous grounds of Appeal.

6 The Court of General Sessions of the Peace before which any Appeal shall be brought shall hear and determine the matter of such Appeal in a summary way, and shall have power to adjourn the hearing of the Appeal, upon such terms as to payment of costs by either party, and otherwise, as to such Court shall appear just, and shall have power on the hearing of such Appeal to affirm or quash the Conviction, Order, or Judgment, or to vary the same, by mitigating any penalty or punishment awarded, or otherwise as to the Court shall appear just; and in case the Court shall make an Order varying the Conviction, Order, or Judgment, the Conviction, Order, or Judgment so varied shall be enforced in the same manner as if it had so stood originally; and, in cases where a pecuniary penalty has been awarded, if the Appeal shall be allowed, and the Conviction, Order, or Judgment quashed or mitigated, then the amount of such penalty, or a portion thereof, according to the decision of the Court, shall be forthwith on demand returned to the Appellant, together (in the event of the Conviction, Order, or Judgment being quashed) with the costs and charges so paid into the hands of such Justice or Justices as aforesaid.

Appeal to be determined summarily.
Power to adjourn.

To affirm, quash, or vary Convictions.

If Conviction quashed penalty to be returned.

7 Upon any Appeal to any Court of General Sessions of the Peace, the Court before which the same shall be brought may, if it think fit, order and direct the party against whom the same shall be decided to pay to the other party such costs and charges as may to such Court appear just and reasonable, such costs to be recoverable in the manner provided by "*The Magistrates Summary Procedure Act*" for the recovery of costs upon an Appeal against an Order or Conviction.

Costs upon Appeal.

How recoverable.

8 Any Court of General Sessions of the Peace, upon proof of Notice of any Appeal to the same Court having been given to the party entitled to receive the same, though such Appeal was not afterwards prosecuted or entered, may, if it so think fit, at the same Sessions for which such Notice was given, order to the party receiving the same such costs and charges as by the said Court shall be thought reasonable and just to be paid by the party giving such Notice, such costs to be recoverable in the manner last aforesaid.

Costs where Appeal not prosecuted.

How recoverable.

9 Where any Recognizance of Appeal which shall have been entered into within the time by Law required in that behalf before any Justice or Justices of the Peace shall appear to the Court before which such Appeal is brought to have been insufficiently entered into, or to be otherwise defective or invalid, it shall be lawful for such Court, if it shall so think fit, to permit the substitution of a new and sufficient Recognizance to be entered into before such Court in the place of such insufficient, defective, or invalid Recognizance, and for that purpose to

Amendment of Recognizances of Appeal.

allow such time, and make such examination, and impose such terms as to payment of costs to the Respondent, as to such Court shall appear just and reasonable; and such substituted Recognizance shall be as valid and effectual to all intents and purposes as if the same had been duly entered into at an earlier time.

Forfeited Recognizances of Appeal to be enforced under 12 Vict. No. 13.

10 In case of any breach of the condition of any Recognizance of Appeal, it shall be lawful for the Court of General Sessions at which such breach shall be made to appear to order and adjudge such Recognizance to be forfeited, and thereupon the same shall be enforced as a forfeited Recognizance in like manner as any Recognizance ordered and adjudged to be forfeited by a Court of General or Quarter Sessions under the Act of Council passed in the twelfth year of the reign of Her Majesty, No. 13, may be enforced.

Witnesses—penalty for not obeying Summons.

11 If any person shall be summoned to appear as a Witness to give evidence before any Court of General Sessions touching any Appeal, and shall fail or neglect to appear at the time and place for that purpose appointed without a reasonable excuse for such failure or neglect, every such person shall for every such offence forfeit a penalty not exceeding Fifty Pounds, which said penalty may be recovered in a summary way before any Justice of the Peace; and any person aggrieved by any such proceeding shall be at liberty to appeal therefrom: Provided that no person who has paid any such penalty shall be liable to any other punishment for not obeying such Summons.

Amendment of formal errors in Convictions upon Appeal or *Certiorari*.

12 If upon the trial of any Appeal to any Court of General Sessions of the Peace against any Conviction, Order, or Judgment made or given by any Justice or Justices of the Peace, or if upon the return to any Writ of *Certiorari* any objection shall be made on account of any omission or mistake in the drawing up of such Conviction, Order, or Judgment, and it shall be shown to the satisfaction of the Court that sufficient grounds were in proof before the Justice or Justices by or before whom such Conviction, Order, or Judgment was had, made, or given, to have authorised the drawing up thereof free from the said omission or mistake, the Court shall, upon such terms as to payment of costs as it shall think fit, amend such Conviction, Order, or Judgment, and adjudicate thereupon as if no such omission or mistake had existed: Provided always, that no objection on account of any omission or mistake in any such Conviction, Order, or Judgment brought up upon a return to a Writ of *Certiorari* shall be allowed unless such omission or mistake shall have been specified in the rule for issuing such *Certiorari*.

Proviso as to objections upon *Certiorari*.

Decision of Courts of General Sessions final.

13 The decision of the Court of General Sessions of the Peace upon the hearing of any Appeal as to the sufficiency of the statement of any ground or grounds of Appeal, and as to the amending or refusing to amend the statement of any ground or grounds of Appeal, and as to the substitution of any new Recognizance as aforesaid, and the Judgment or Order of such Court upon the matter of the Appeal, or as to Costs, shall be final, and shall not be liable to be reviewed in any Court by means of a Writ of *Certiorari* or *Mandamus*, or otherwise.

No discharge on *Habeas corpus* without notice to Justices, &c.

14 No person brought before the Supreme Court or any Judge thereof on *Habeas corpus* shall be discharged from custody by reason of any defect or error whatsoever in the Warrant of Commitment of any

Justice or Justices until he or they, or one of them where more than one, or the Prosecutor or party interested in supporting such Warrant, shall have had notice of the intention to apply for such discharge, and have been required to transmit, and have had the opportunity of transmitting, or causing to be transmitted, to the Court or Judge the Conviction or Order, if any, on which the commitment shall have been founded, together with the depositions and information, if any, intended to be relied on in support of such Conviction or Order, or certified copies thereof; and if any such Conviction or Order and depositions shall be so transmitted, and the offence charged or intended in point of fact to have been charged shall thereby appear to have been established, and the judgment of the Justice or Justices thereupon to have been in substance warranted, the Court or Judge shall allow the Warrant of Commitment and the Conviction or Order also, if such Court or Judge shall think fit, to be forthwith amended in all necessary particulars in accordance with the facts; and the person committed shall thereupon be remanded to his former custody.

Amendment of Warrant of Commitment, &c.

15 In every such case of *Habeas corpus* the required Notice may be given either after the issue of the Writ or before; and where copies of the Conviction or Order and depositions shall be produced at the time of applying for the Writ, it shall be lawful for the Court or Judge to dispense with such Notice if such Court or Judge shall think fit.

When notice on *Habeas corpus* to be given, and when dispensed with.

16 Whenever any person shall feel aggrieved by the summary Conviction, Order, or Judgment of any Justice or Justices, it shall be lawful for him, within twelve days after such Conviction, Order, or Judgment, to apply to the Supreme Court for a Rule, or in vacation to one of the Judges thereof for an Order, calling on the Justice or Justices and the party prosecuting or otherwise interested in maintaining the Conviction, Order, or Judgment, to show cause to the Court or to a Judge in vacation why a Prohibition should not issue to restrain them from proceeding, or from further proceeding, as the case may be, upon or in respect of such Conviction, Order, or Judgment, which Rule or Order may be made returnable at such time as the Court or Judge shall think fit to direct; and if then, or on some day to which the case shall be adjourned, no cause be shown, or the Court or Judge, after enquiring into the matter and consideration of the evidence adduced before the Justice or Justices, shall think that the Conviction, Order, or Judgment cannot be supported, it shall be lawful for the Court or Judge, as the case may be, to direct that the Writ applied for be issued, and may make such further order in the premises as shall be just and the circumstances appear to require: Provided always, that no such Rule or Order to show cause shall be granted or made except on showing a *prima facie* case of mistake or error on the part of the Justice or Justices; and that where on cause being shown the mistake or error shall appear to be amendable, the Court or Judge shall allow the Conviction or Order to be forthwith amended accordingly; and from and after such amendment the Conviction or Order may be enforced or dealt with in all respects as if the same had so stood originally: Provided also, that in all proceedings under this Section the costs shall be in the discretion of the Court or Judge, and be payable by, and to whom, and as, and when the Court or Judge shall direct.

Prohibition. Supreme Court or Judge authorised to issue Writ of Prohibition in certain cases of summary Conviction.

Proviso, no rule for Prohibition to issue unless *prima facie* case of error. Where error to be amended.

Costs in discretion of Court.

17 In all cases in which any such Rule or Order to show cause shall have been granted no action shall be maintainable or commenced

No action to be brought after rule for Prohibition.

against the Justice or Justices before or by whom the Conviction, Order, or Judgment in question shall have been had or made in respect of any proceeding arising out of such Conviction, Order, or Judgment; and if any action shall be commenced in violation of this enactment, the same may summarily be stayed by order of the Court or any Judge thereof, with costs to be paid by the Plaintiff to be taxed as between attorney and client.

Appeals in manner prescribed by *Summary Proceedings Act* to be in manner prescribed by this Act.

18 Wherever by any Act of Council any person is authorised to appeal from any summary Conviction, Order, or Judgment of any Justice or Justices of the Peace in the manner prescribed by the Act of Council passed in the Ninth year of King George the Fourth, intituled *An Act to regulate Summary Proceedings before Justices of the Peace*, such Appeal shall be made on the terms and in the manner prescribed by this Act.

Commencement of Act.

19 This Act shall commence and take effect on the First day of *October* next.

Short title.

20 In referring to this Act it shall be sufficient to use the expression "*The Appeals Regulation Act.*"

SCHEDULE A.

General Form of Notice of Appeal.

VAN DIEMEN'S LAND } To _____ of
TO WIT. }

THIS is to give you notice, that I *A.B.* do intend at the [next] Court of General Sessions of the Peace to be holden for the District of _____ at _____ on or about the _____ day of _____ next, to appeal against [a certain Conviction of me the said *A.B.* by [*J.P.*, *Esquire*, *one*] of Her Majesty's Justices of the Peace for this Colony for having, as is therein and thereby alleged, &c., *stating the offence*], and the ground of Appeal is [*here state ground of Appeal*], of all which premises I hereby desire you to take notice.

Dated this _____ day of _____ 1855.

A.B.

SCHEDULE B.

General Form of Recognizance of Appeal.

VAN DIEMEN'S LAND } BE it remembered, that on the _____ day of
TO WIT. } 1855, *A.B.* of _____ [*Labourer*], *L.M.* of
[*Grocer*], and *J.K.* of _____ [*Butcher*], personally came before [*me one*] of Her Majesty's Justices of the Peace for this Colony, and severally acknowledged themselves to owe to Our Lady the Queen the several sums following; (that is to say), the said *A.B.* the sum of _____ pounds, and the said *L.M.* and *J.K.* the sum of _____ pounds each, to be made and levied of their several goods, chattels, and lands respectively to the use of Our said Lady the Queen, Her Heirs and Successors, if he the said *A.B.* fail in the condition hereunder written.

The condition of the above-written Recognizance is such, that whereas by a certain [Conviction under the hand of [*J.P. Esquire, one*] of Her Majesty's Justices of the Peace for this Colony, the said *A.B.* was convicted, for that he *&c.*, *stating the offence*]: And whereas the said *A.B.* hath given notice unto _____ within eight days after such [Conviction], and eight clear days before the [next] Court of General Sessions of the Peace, to be holden for the District of _____, at _____, on or about the day of _____ next, of his intention to appeal to the said Sessions against the said [Conviction.] If therefore he the said *A.B.* shall personally appear at the said Court of General Sessions of the Peace, and shall then and there try such Appeal, and abide the judgment of the said Court of General Sessions thereupon, and pay such Costs as shall be by the said Court awarded, then the said Recognizance is to be void, or else to stand in full force and virtue.

Taken and acknowledged the day and year first above mentioned, at
before [*me*].

Q.R.

MICHAEL FENTON, *Speaker.*

Passed the Legislative Council this twenty-first day of August, one thousand eight hundred and fifty-five.

FR. HARTWELL HENSLOWE,
Clerk of the Council.

In the name and on the behalf of Her Majesty I assent to this Act.

H. E. F. YOUNG,
Governor.

*Government House, Hobart Town,
28th August, 1855.*

