

TASMANIA.

THE JUSTICES PROCEDURE ACT, 1919

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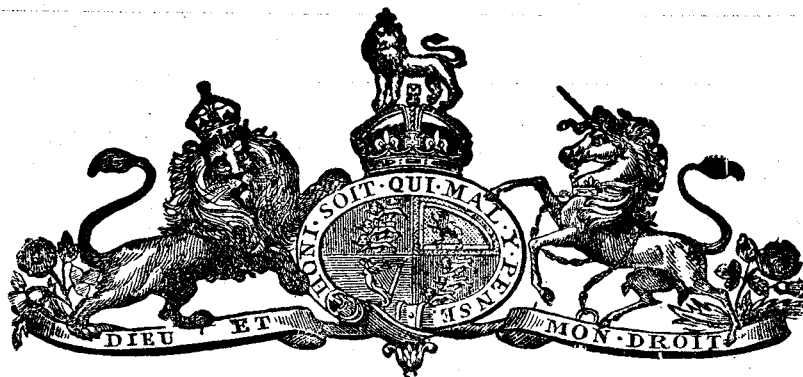
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TASMANIA



1919.

ANNO DECIMO

GEORGI V. REGIS.

No. 55.



AN ACT to consolidate and amend the Laws relating to Procedure before Justices of the Peace, and for other purposes.

A.D.
1919.

[24 December, 1919.]

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 :—

PART I.

PRELIMINARY.

- 1 This Act may be cited as "The Justices Procedure Act, 1919." Short title,
- 2 This Act is divided into parts, as follow :— Division of Act.
 - Part I.—Preliminary, ss. 1 to 9.
 - Part II.—Jurisdiction, ss. 10 to 22.
 - Part III.—General Procedure, ss. 23 to 65.
 - Part IV.—Proceedings in case of Indictable Offences, ss 66 to 95.
 - Part V.—Proceedings in case of Simple Offences and Breaches of Duty, ss. 96 to 132.
 - Part VI.—Surety of the Peace, ss. 133 to 145.
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 - Part VIII.—Protection of Justices in the execution of their office, ss. 163 to 171.

Justices Procedure.

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Repeal of existing Acts.

Saving.
60 Vict. No. 48.
34 Vict. No. 33.

Provision as to persons in custody or bound by recognisance under repealed Acts.

3 The several Acts mentioned in Schedule (1) are hereby repealed to the extent in the said schedule indicated.

4 This Act shall not apply to or affect any proceedings before justices under "The Local Courts Act, 1896," or "The Debtors Act, 1870."

5 All persons lawfully in custody or bound by recognisance, at the commencement of this Act, under the provisions of any of the said repealed Acts, shall be deemed to be in lawful custody or to be so bound as aforesaid under the provisions of this Act, and may be dealt with accordingly.

Commencement of Act.

Commencement of Act.

6 This Act shall commence and take effect on and from a day to be fixed by the Governor by Proclamation.

*Interpretation.*Interpretation.
Cf. W.A., 2 Ed.
VII. No. 11, s. 4.
Cf. Q., 50 Vict.
No. 17, s. 4.
Breach of duty.

Charge of indictable offence

Complaint.

Decision.

Defendant.
Cf. 56 Vict. No.
23, s. 3 (Q.).Gaol.
32 Vict. No. 11.

7 In the interpretation of this Act, unless the context otherwise requires—

"Breach of duty" means any act or omission (not being a simple offence) upon complaint whereof justices may make an order on any person for the payment of money or for doing or refraining from doing any other act:

"Charge of an indictable offence" means charge of an indictable offence as such and in order to a committal for trial therefor:

"Complaint" includes the terms "information," "information and complaint," "charge," and "charge of an indictable offence," when used in any Act, including this Act, and unless the contrary appears, means an information or complaint before justices:

"Decision" includes a committal for trial and an admission to bail as well as a conviction, order, order of dismissal, or other determination:

"Defendant" means a person complained against before justices for an indictable offence, simple offence, or breach of duty; and in Sections One hundred and fourteen to One hundred and sixteen inclusive of this Act includes any person against whom a warrant of execution is or may be issued:

"Gaol" means any gaol declared to be such under the provisions of "The Prison Act, 1868," and includes prison and house of correction:

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- “Hearing” includes the examination of a person charged with an indictable offence: **A.D. 1919.**
- “Indictable offence” means an offence which may be prosecuted before the Supreme Court, by information in the name of the Attorney-General or other authorised officer: **Hearing.
Indictable offence.**
- “Indictment” means an information for an indictable offence filed by the Attorney-General or other authorised officer in the Supreme Court: **Indictment.**
- “Jurisdiction,” when necessary, means the place in which jurisdiction may be lawfully exercised: **Jurisdiction.**
- “Justices” means justices of the peace or a police magistrate having jurisdiction where the act in question is or is to be performed, and includes One justice where One justice has jurisdiction to do the act in question: **Justices.**
- “Keeper of a Gaol” includes gaoler, or superintendent of a gaol or prison: **Keeper of a gaol.**
- “Minister” means the Attorney-General for the time being of this State: **Minister.**
- “Oath” includes solemn affirmation or declaration when such affirmation or declaration may by law be made instead of taking an oath, and also includes any promise or other undertaking to tell the truth that may be made under the provisions of “The Evidence Act, 1910,” or any Act relating to giving evidence in courts of justice: **Oath.
1 Geo. V. No. 20.**
- “Order” means an order made upon a complaint of a breach of duty: **Order.**
- “Part” means part of this Act: **Part.**
- “Person by law empowered to appear” includes a person authorised by or under this Act to appear for a party: **Person by law empowered to appear.**
- “Police Officer” means any constable or other member of the police force: **Police officer.**
- “Public Officer” means any person employed in any capacity in the Public Service of the State, and includes— **Public officer.**
- I. A police officer; and
 - II. A probation officer:
- “Schedule” means schedule to this Act: **Schedule.**
- “Section” means section of this Act: **Section.**
- “Simple offence” means any offence (indictable or not) punishable, on summary conviction before justices, by fine, imprisonment, or otherwise: **Simple offence.**
- “Summary conviction” or “conviction” means a conviction by justices for a simple offence: **Summary conviction.**

When one word or phrase includes another, the derivatives of the one include those of the other. **Derivatives.**

Justices Procedure.

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General saving of
powers of justices.
Cf. W.A., s. 5.
Cf. Q., s. 5.

8 Nothing in this Act shall be construed to diminish or affect any power or authority—

- I. At common law possessed by justices; or
- II. Conferred on justices by the provisions of any other Act not repealed by this Act.

Regulations, Forms, Fees.

Regulations,
forms, and fees.
Cf. 6 Geo. V.
No. 2675 (Vic.),
s. 5.

Cf. 19 Vict. No. 8
(Tas.), s. 31-33.

9—(1) The Governor may from time to time after the passing of this Act make regulations not repugnant to any provision of this Act in relation to the following matters or any of them (that is to say):—

- I. The practice and procedure before justices out of sessions and in petty sessions in cases of summary jurisdiction:
- II. The giving of security under this Act:
- III. The forms to be used under this Act, including the forms of any recognisance mentioned in this Act:
- IV. The fees, costs, and charges under this Act, or under any other Act for the time being in force, so far as the same relate to any matter or proceeding as to which justices have jurisdiction:
- V. Any other matter in relation to which regulations are authorised, or are required to be made, or contemplated under, or for the purposes of carrying into effect this Act.

Cf. *ibid.* (Vic.),
s. 6.
Cf. 9 Geo. V.
No. 2967, s. 2
(Vic.).

(2) Subject to the regulations for the time being in force under this Act, the forms in Schedule (2), or forms to the like effect varied as circumstances require, may be used, and shall be sufficient in law.

The Governor may, pursuant to Subsection (1) of this section, from time to time make regulations altering or amending all or any of the forms in Schedule (2), or substituting new forms in lieu thereof, and any form as so altered or amended, or substituted, shall have the like force and effect as if the same had been enacted in Schedule (2).

(3) The fees set forth in Schedule (3) shall be taken until other fees are prescribed.

No fees to be
charged to public
officers.

(4) No fees shall be received or demanded from any public officer for proceedings instituted by him in the execution of his duty, nor from any duly appointed officer whomsoever of any municipal council, or of any other statutory public body or board.

Defendants to pay
fees in such cases.

Provided that, when any person summarily convicted, or against whom an order for the payment of money has been made, is adjudged to pay costs, there shall be included therein the amount of fees which would have been payable by a person instituting the proceedings other than such public officer or other officer as aforesaid.

(5) Except where otherwise expressly provided by this Act, no fees shall be taken in respect of any proceedings in cases of indictable offences, whether dealt with summarily or not.

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PART II.

A.D. 1919

JURISDICTION.

Authentication of Summonses, &c.

10 All summonses, warrants, convictions, and orders (not being by law authorised to be made by word of mouth only) shall be signed by the justices issuing the same.

Authentication of acts of justices.
Cf. W.A., s. 21.
Cf. Q., s. 20.

11 A warrant or summons issued by a justice shall not be avoided by reason of such justice dying or ceasing to hold office.

Summons or warrant not avoided by death, &c., of justice.

Petty Sessions Courthouses.

12—(1) The Governor may, by proclamation, appoint places as courthouses for holding courts of petty sessions.

Cf. W.A., s. 38.
Cf. Q., s. 37.

(2) Until such places are so appointed, the places where such courts have hitherto been held shall be deemed to have been appointed under this Act to be places for holding courts of petty sessions.

Petty sessions courthouses may be appointed.

(3) If there is no such place within Five miles of a police station, then any room in such police station may be used as a courthouse.

Existing places used as courthouses to continue under this Act until altered.

Powers of One Justice.

13—(1) One justice may receive a complaint, and grant a summons or warrant thereon, and may issue his summons or warrant to compel the attendance of witnesses, and do all other necessary acts and matters preliminary to the hearing, notwithstanding that the case must be heard and determined by a police magistrate or any Two or more justices.

After decision one justice may issue warrant of execution or commitment.

(2) One justice may, after any such case has been heard and determined, issue any warrant of execution or commitment thereon.

Cf. Tas., s. 30.
Cf. W.A., s. 27.
Cf. Q., s. 25.

(3) The justice who so acts, as in the Two preceding subsections mentioned, need not be the justice or One of the justices by whom the case is heard and determined.

14 After an appeal against a conviction or order has been decided against the appellant, any justice may issue a warrant of execution or commitment for execution of the same as if no appeal had been brought.

Warrants of execution after appeal.

Cf. Tas., s. 28.
Cf. W.A., s. 28.
Cf. Q., s. 26.

Hearing and Quorum.

15 Every complaint shall be heard and determined by a police magistrate or by one or by more justices, as is directed by the Act relating to the matter, and if there is no such direction, then it may be heard and determined by any One or more justices.

Hearing of complaints. See "Interpretation Act, 1906," s. 40b.
Cf. Tas., s. 12.
Cf. W.A., s. 29.

16 Except as hereinafter provided, when Two or more justices hear any matter, and do not agree, the decision of the majority shall be the decision of the justices, and if they are equally divided in opinion, the justices present, or a majority of them may—

Cf. Q., s. 27.

Majority to decide.

Cf. W.A., s. 30.
Cf. Tas. (New).

I. Dismiss the case; or

II. Adjourn the case for a rehearing with additional justices, or by other justices, or by a police magistrate sitting alone.

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Provided that when Two justices only are present and acting at the hearing of any matter and do not agree, if One of such justices is a police magistrate, the decision of the police magistrate shall prevail.

When two justices required, must be present throughout the case.

Cf. Tas., s. 30.
Cf. W.A., s. 31.
Cf. Q., s. 29.

Special powers given to police magistrates who may in all cases act alone.

Cf. Eng., 21 and 22 Vict., 73.
Cf. W.A., s. 33.
Cf. Q., s. 30.

Duties of clerks of petty sessions to be discharged by police magistrate.
Cf. W.A., s. 34.
Cf. Q., s. 31.
Cf. Tas. (New).

Except such as may be delegated by the justices in session to police officer.

Power to order delivery of possession of goods in custody of police officer.
Cf. W.A., s. 40.
Cf. Q., s. 39.

17 Where a complaint must be heard and determined by Two or more justices, the justices making the decision must be present and act together during the whole of the hearing and determination.

Police Magistrates.

18 Every police magistrate shall have power to do alone whatever might be done by Two or more justices sitting in petty sessions, and shall have power to do alone any act which by any law is or shall be directed to be done by more than One justice.

19 In any place appointed for holding courts of petty sessions in which a clerk of petty sessions is not appointed, or from which the clerk of petty sessions is absent, the police magistrate acting in such place may discharge all or any of the duties of clerk of petty sessions, and all acts done by such police magistrate in pursuance hereof shall be as valid as if done by such clerk, and all notices required to be given to such clerk, and all other matters and things required to be done with or in reference to such clerk, may be given to or done with or in reference to such police magistrate, and shall have the like force and effect.

Provided that the justices in petty sessions assembled or the Minister may require that any of such duties, acts, matters, and things as they or he shall think convenient shall be done by, with, or in reference to some police officer, and thereupon such acts, matters, and things if so done shall be as valid as if done by, with, or in reference to a clerk of petty sessions.

20 When any property comes into the custody of a police officer by virtue of a search warrant or otherwise, either before or in the course of the prosecution of any person for an offence concerning such property, and the prosecution has terminated, whether by the conviction or discharge of the defendant or otherwise, or the defendant cannot be found, any police magistrate or any Two or more justices may make an order for the delivery of the property to the person who appears to him to be the rightful owner thereof.

But no such order shall be a bar to the right of any person to recover the property by action in a court of competent jurisdiction from the person to whom it is delivered by virtue of the order: Provided that such action as aforesaid shall be brought within Six months next after the order is made.

Punishment for Contempt.

Punishment for contempt.
Cf. 6 Geo. V.
No. 2675, ss. 206 and 207 (Vic.).

21—(1) If any person—

- i. Wilfully misbehaves himself before justices sitting in any place in the exercise of their jurisdiction under this or any other Act; or

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ii. Wilfully interrupts or obstructs any proceedings before such justices; or

iii. Is guilty of any wilful prevarication in giving evidence before such justices,

such person shall be deemed guilty of contempt of court, and such justices may, during their then sitting by oral order, direct such person to be removed from the court or place, and to be taken into custody, and at any time before the rising of such justices may, by warrant, commit such person to gaol for any period not exceeding Three days, or may fine such person any sum not exceeding Five Pounds.

(2) Where any person is guilty of such misconduct the justices may, if they think fit, accept an apology for such misconduct, and may remit any penalty or punishment for the same either wholly or in part.

A.D. 1919.
Apology may be accepted.

Accessories.

22 Every person who aids, abets, counsels, or procures the commission of any simple offence, shall be liable, on conviction, to the same punishment to which the principal offender is by law liable, and may be proceeded against and convicted, either together with the principal offender or before or after his conviction.

Accessories in simple offences
Cf. Q., s. 41.
Cf. Tas., s. 5.

PART III.

GENERAL PROCEDURE.

Complaints.

23 Proceedings before justices shall be commenced by a complaint, which may be made or laid by the complainant in person, or by his counsel or solicitor or other person authorised in that behalf.

Complaint by whom laid.
Cf. Tas., s. 10.
Cf. W.A., s. 42.
Cf. Q., s. 42.
Schedule (2),
No. 1.

24—(1) Except where otherwise expressly enacted every complaint shall be for One matter only, and not for Two or more matters:

Only one matter of complaint.
Cf. Tas., s. 10.
Cf. W.A., s. 43.
Cf. Q., s. 43.

Provided that—

i. In the case of indictable offences, if the matters of complaint are such that they may be charged in one indictment, and

ii. In other cases, if the matters of complaint are substantially of the same act or omission on the part of the defendant, although amounting in law to Two or more offences, or Two or more matters of complaint,

such matters may be joined in the same complaint.

(2) On the hearing of any complaint which does not comply with Subsection (1) of this section, the justices shall, on the application of the defendant, require the complainant to choose One matter of such complaint, and shall strike out of the complaint all other matters, without prejudice to the right of the complainant to lay a fresh complaint against the defendant in respect of any matter so struck out.

Procedure to be followed on hearing of a complaint which is not in compliance with Subsection (1).

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If the defendant does not so apply, the justices shall proceed to hear the evidence, and shall determine which matter or matters of complaint (if any) is or are proved, and may convict the defendant accordingly: Provided that if more than One matter of complaint is proved, separate convictions shall be recorded and drawn up for each such matter.

Short description of ownership of property, &c.
Cf. Tas., s. 4.
Cf. W.A., s. 44.
Cf. Q., s. 46.
Cf. N.S.W., s. 58.
Cf. Vic., s. 212.
Cf. N.Z., s. 52.

25—(1) Where in any complaint or proceeding thereon it is necessary to state the ownership of any property (either real or personal) 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 allege the property to belong to the person so named, and "another" or "others," as the case may be.

(2) Where in any complaint or proceedings thereon it is necessary to mention for any purpose any partners, joint tenants, parceners, or tenants-in-common, it shall be sufficient to describe them, by naming one of such persons, and referring to the rest as "another," or "others," as the case may be.

(3) All materials or tools provided for making or repairing any road or work, and all buildings, gates, lamps, boards, stones, posts, fences, or other things erected or provided for the purposes of any such road or work may be described as the property of the corporation, council, body, or person having the care or management of such road or work.

(4) Provided that where any special mode of describing any of the matters aforesaid is prescribed by any Act, then it shall be sufficient if such special mode is adopted.

What is sufficient description of offence.
Cf. W.A., s. 45.
Cf. Q., ss. 44 and 45.
(New).

26 The description or statement of any offence in the words of, or prescribed by the Act, order, by-law, regulation, or other instrument creating the offence, or in similar words, or in the words or form prescribed by any Statute or Criminal Code for the time being in force in this State, shall be sufficient in law.

Variance and Amendment.

Want of form or variance in warrant, &c.
Cf. Tas., s. 1-3.
and see 3 Geo. V. No. 27 (Tas.).
Cf. W.A., s. 47.
Cf. Q., s. 49.

27 No objection shall be taken or allowed to any complaint or to any summons or warrant to apprehend a defendant issued upon any complaint, for any alleged defect therein, in substance or in form, or for any variance between it and the evidence in support thereof, and the justices present, and acting at the hearing, shall at all times make any amendment necessary to determine the real question in dispute, or which may appear desirable.

Amendment.
Cf. Com. Customs Act. s. 251.
See O'Donnell v. Hitchen, vol. 27, V.L.R. p. 715.

28 If any such defect or variance appears to the justices to be such that the defendant has been thereby deceived or misled, they may, and at the request of the defendant shall, upon such terms as they think fit, adjourn the hearing of the case to some future day, and in the meantime may suffer the defendant to go at large, or may commit him to some gaol, or discharge him upon recognisance for his appearance at the time and place to which the hearing is adjourned.

*Justices Procedure.**Complaints, how made.*

29 Except where otherwise expressly enacted, every complaint shall be in writing, and be signed by the person making or laying the complaint.

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Complaint to be in writing and signed.

30 Except where otherwise expressly enacted, when it is intended to issue a summons instead of a warrant in the first instance, the complaint may be made or laid either with or without oath, according as the justice receiving such complaint sees fit.

Where summons to be issued.
Cf. Tas., s. 8.
Cf. W.A., s. 50.
Cf. Q., s. 51.
Cf. Vic., s. 18.

31 When it is intended to issue a warrant in the first instance against the party charged, the complaint must be on oath.

Complaint on oath where warrant issued.
Cf. Tas., s. 10.
Cf. W.A., s. 49.
Cf. Q., s. 51.*Limitation.*

32 In any case of a simple offence (not being an indictable offence), or of a breach of duty, unless some other time is limited for making complaint by the law relating to the particular case, complaint must be made within Six months from the time when the matter of complaint arose.

Limitation of proceedings.
Cf. W.A., s. 51.
Cf. Q., s. 52.
Cf. Tas., s. 11.*Summons.*

33 When a complaint is made before a justice that any person is guilty of, or is suspected of having committed, any indictable offence, simple offence, or breach of duty, then such justice may issue a summons.

When a justice may issue summons.
Cf. W.A., s. 52.
Cf. Q., s. 53.
Cf. Tas., s. 1.

34 The summons shall be directed to the defendant, and shall state shortly the matter of the complaint, and require him to appear at a certain time and place, before such justices as shall then be there, to answer the complaint and to be further dealt with according to law.

Summons to state matter of the complaint.
Cf. W.A., s. 54.
Cf. Q., s. 54.
Cf. Tas., s. 1.

35 Nothing herein contained shall oblige any justice to issue a summons in any case where the application for an order of justices is by law to be made *ex parte*.

Ex parte proceedings.
Cf. W.A., s. 55.
Cf. Q., s. 55.
Cf. Tas., s. 1.*Service, Indorsement, and Proof of Service.*

36 A summons must be served upon the person to whom it is directed by delivering a copy thereof to him personally, or by leaving it 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.

Service of summons.
Cf. Vic., s. 23 (1).
Cf. W.A., s. 56.
Cf. Q., s. 56.
Cf. Tas., s. 1.

37—(1) The service of any summons may be proved by an indorsement on the summons, signed by the person by whom it was served, setting forth the day, place, and mode of service; or such person may depose to the service on oath at the hearing.

Proof of service.
Cf. W.A., s. 57.
Cf. Q., s. 56.
Cf. Tas., s. 1, and 19 Vict. No. 9, s. 1 (Tas.).

(2) The signature to an indorsement of service shall be *prima facie* evidence that the indorsement was signed by the person whose signature it purports to be, and that the statements contained in the indorsement are true.

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(3) Any false statement in an indorsement of service shall render the person making the same liable, on summary conviction, to imprisonment, with or without hard labour, not exceeding Six months.

Warrants in the First Instance.

Warrant and summons, in what cases issued.
Cf. 19 Vict. No. 9 (Tas.), ss. 1-3.
Cf. W.A., s. 58.
Cf. Q., s. 57.

38 When complaint is made before a justice—

- I. That a person has committed or is suspected of having committed an indictable offence within the State; or
- II. That a person charged with having committed or with being suspected to have committed an indictable offence on the high seas, or in any creek, harbour, haven, or other place in which the Admiralty of England have, or claim to have, jurisdiction, or on land outside the State, of which offence cognisance may be taken by the Supreme Court, is suspected of being within the State,

the justice may issue his warrant to apprehend such person, and to cause him to be brought before One or more justice or justices, as the case may require, to answer the complaint, and to be further dealt with according to law.

Proviso.
Cf. Q., s. 58.
Cf. W.A., s. 58.
Cf. Tas., s. 2.

Provided that the justice, if he thinks fit, instead of issuing a warrant in the first instance to apprehend the person charged, may issue a summons against him.

Notwithstanding the issue of a summons, any justice may issue his warrant at any time before or after the time mentioned in the summons for the appearance of the defendant.

Warrant in the first instance for simple offence.
Cf. Tas., 19 Vict. No. 8, s. 2.
Cf. Q., s. 59.
Cf. W.A., s. 59.

39 When complaint is made before a justice of a simple offence, the justice may, upon oath being made before him substantiating the matter of the complaint, instead of issuing a summons, issue in the first instance his warrant to apprehend the defendant, and to cause him to be brought before justices to answer the complaint and to be further dealt with according to law.

Direction of Warrants.

Direction of warrant.
Cf. Tas., 19 Vict. No. 8, s. 2.
Cf. W.A., s. 60.
Cf. Q., ss. 60, 61.

40—(1) A warrant to apprehend a defendant that he may answer a complaint may be directed either to any police officer by name, or generally to all police officers within the State, without naming them, or to a named police officer, and all other police officers.

Any police officer may execute warrant.

(2) Where the warrant authorises or directs a named police officer to do any act, matter, or thing, and he is unable, or fails to do such act, matter, or thing, any other police officer may do such act, matter, or thing, as if he had been so authorised or directed.

Form of Warrant.

What warrants shall order.
Cf. Q., s. 62.
Cf. W.A., s. 61.
Cf. Tas., 19 Vict. No. 8, s. 3, and 19 Vict. No. 9, s. 8.

41 A warrant shall state shortly the offence or matter of the complaint on which it is founded, and shall name or otherwise

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describe the person against whom it is issued, and it shall order the police officers to whom it is directed to apprehend the defendant, and to bring him before One or more justice or justices, as the case may require, to answer the complaint and to be further dealt with according to law.

42 A warrant need not be returnable at any particular time, but may remain in force until executed, and may be executed by apprehending the defendant at any place within the State.

Sunday Warrants.

43 A justice may grant or issue any such warrant or a search warrant and it may be executed on a Sunday as on any other day.

Arrest without Warrant.

44 A person taken into custody for an offence without a warrant shall be brought before a justice as soon as practicable after he is taken into custody; and if it is not practicable to bring him before a justice within Twenty-four hours after he is so taken into custody, a clerk of petty sessions, or a police officer who is above the rank of sergeant, or who is in charge of a police station, may and shall inquire into the case, and, except where the offence appears to such clerk or police officer, to be of a serious nature, shall discharge the defendant upon his entering into a recognisance, with or without sureties, for a reasonable amount, to appear before justices at the day, time, and place named in the recognisance

Publicity.

45—(1) Subject to "The Admission to Courts Act, 1914," and any regulations thereunder, and also to Subsection (2) of this section, the room or place in which justices sit to hear and determine any complaint upon which a conviction or order may be made, shall be deemed an open and public court, to which all persons may have access so far as the same can conveniently contain them.

(2) The justices may, if they think fit, and shall, if required by any party, at any time during the hearing, order that all witnesses, other than the complainant and the defendant, and the witness under examination, except in so far as in particular cases and for special circumstances they see fit otherwise so to do, shall go and remain outside, and beyond the hearing of the court until required to give evidence, and if any witness wilfully disobeys such order, he shall be deemed guilty of a contempt of court, and may be punished in the same manner as persons guilty of other contempts are made punishable by this Act.

(3) This section shall not be deemed in any way to repeal or limit the operation of the provisions of Section 36 of "The Children's Charter."

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Warrant to be in force till executed. Cf. Q., s. 63. Cf. W.A., s. 62. Cf. Tas., 19 Vict. No. 8, s. 3, and 19 Vict. No. 9, s. 8.

Sunday warrants. Cf. Tas., 19 Vict. No. 9, s. 5. Cf. Q., s. 65. Cf. W.A., s. 63. Cf. N.S.W., s. 29 (4).

Bail of persons arrested without a warrant. Cf. Q., s. 69. Cf. W.A., s. 64. Cf. No. 32, 1918, s. 2 (N.S.W.). Cf. Vic., s. 37. Tas. (New).

Open court. Cf. Tas., 19 Vict. No. 8, s. 12. Cf. Q., s. 70. Cf. W.A., s. 65. Cf. Vic., s. 88 (11). 7 Geo. No. 12.

Saving. Cf. Tas., 9 Geo. V. No. 15.

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Exclusion of
strangers.Cf. Tas., 19 Vict.
No. 9, s. 15.
Cf. W.A., s. 66.
Cf. Q., s. 71.Persons not to be
excluded.Cf. Tas., 19 Vict.
No. 9, s. 15.
Cf. W.A., s. 67.
Cf. Q., s. 70.

Conduct of case.

Cf. Tas. 19 Vict.
No. 8, s. 12.
Tas., 19 Vict.
No. 9, ss. 13 and
14.Cf. Q., s. 72.
Cf. W.A., s. 68.
Vic., s. 88 (1).Conduct of case
by officer.

Cf. Vic., s. 200.

Evidence, how
taken.Cf. W.A., s. 69.
Cf. Q., s. 73.
Cf. Tas., 19 Vict.
No. 8, s. 16.Prosecutor or
complainant a
competent
witness.Cf. W.A., s. 70.
Cf. Tas., s. 16.
Cf. Q., s. 74.Mode of taking
evidence.Cf. W.A., s. 73.
Cf. Q., s. 77.
Cf. Tas., 19 Vict
No 9, s. 11.Power of justice
to summon
witnesses to
attend and give
evidence.See Tas., 19 Vict.
No. 8, s. 6.
See Tas., 19 Vict.
No. 9, s. 9.
Cf. Q., s. 78.
Cf. W.A., s. 74.

46—(1) The room or place in which justices take the examination and statements in any case where a person is charged with an indictable offence, shall not be deemed an open court for that purpose, and the justices may, if it appears to them that the ends of justice will be thereby best answered, order that no person shall have access to, or be, or remain, in such room or place without their permission.

(2) The power to exclude any person shall not be exercised for the purpose of excluding any counsel or solicitor for the prosecution, or other person conducting the prosecution, nor the counsel or solicitor of any person then being in such place as a defendant, nor such person.

Counsel and Solicitor.

47—(1) Every complainant shall be at liberty, either by himself, his counsel, or solicitor, to conduct his case, and to examine and cross-examine witnesses.

Every defendant shall be admitted, either by himself, his counsel, or solicitor, to make his full answer and defence to the complaint, and to examine and cross-examine the witnesses.

(2) The complainant, if a public officer, shall be at liberty, either by himself, or by any other public officer, or by his counsel, or solicitor, to conduct his case, and to examine and cross-examine the witnesses.

With the consent of the justices hearing the complaint, a police officer may conduct the case of any complainant, and examine and cross-examine witnesses.

Evidence.

48 Every witness shall be examined upon oath, or in such other manner as is prescribed or allowed by the Acts in force for the time being relating to giving evidence in courts of justice, and the justice or justices before whom any such witness shall appear for the purpose of being so examined shall have full power and authority to administer to every such witness the usual oath.

49 Upon any complaint of an indictable offence, or simple offence or breach of duty, the prosecutor or complainant shall be a competent witness to support such complaint.

50 When a person is charged with an indictable offence, and not tried summarily, the depositions of the witnesses shall be reduced to writing, and shall be read over to and signed respectively by the witnesses, and shall be signed also by the justices.

Witnesses in General.

51—(1) Any justice may issue a summons to any person requiring him to be and appear as a witness at a time and place mentioned in the summons before such justices as shall then be there to testify what he knows concerning the matter of the complaint.

(2) A summons to a witness must be served, and proof of service may be given, in the same manner as hereinbefore prescribed in the case of a summons to a defendant.

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52—(1) If a person summoned as a witness neglects or refuses to appear at the time and place appointed by the summons, and no sufficient excuse is offered for such neglect or refusal, then, after proof—

- i. That a copy of the summons was duly served on such person, or has come to his knowledge; and
- ii. Except in the case of indictable offences, that a reasonable sum was paid or tendered to him for his costs and expenses of attendance,

the justices before whom such person was summoned to appear may then and there impose upon him in his absence a penalty not exceeding Twenty Pounds, which may be recovered in the same manner as penalties imposed upon a summary conviction as provided by this Act.

(2) The justices, or one of them, may also issue a warrant to bring and have such person at a time and place to be therein mentioned before such justices as shall then be there, to testify as aforesaid.

Upon such person appearing to testify before the lastmentioned justices they may, if they think fit, upon the oral application of such person, remit the whole or any part of any penalty which may have been imposed upon such person in his absence by virtue of a conviction, under Subsection (1) of this section, if he shows sufficient excuse for not having appeared to testify at the time and place appointed by the summons, and upon such remission the conviction shall cease to have effect, either wholly or partially, as the case may be.

(3) No payment or tender of expenses shall be necessary in the case of indictable offences.

53 If the justice is satisfied by evidence upon oath that it is probable that a person whose evidence is desired will not attend to give evidence without being compelled so to do, then, instead of issuing a summons, he may issue a warrant in the first instance.

54 If on the appearance of a person before justices, either voluntarily or in obedience to a summons, or upon being brought before them by virtue of a warrant, such person—

- i. Refuses to be examined upon oath concerning the matter; or
- ii. Refuses to take an oath; or
- iii. Having taken an oath refuses to answer such questions concerning the matter as are then put to him,

without offering any sufficient excuse for such refusal, any justice then present and having there jurisdiction may by warrant commit the person so refusing to some gaol, there to remain and be imprisoned for any time not exceeding Seven days, unless in the meantime he consents to be examined and to answer concerning the matter.

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Failure to attend.
Cf. Tas., *ibid.*,
s. 7.
Cf. Tas., 19 Vict.
No. 9, s. 10.
Cf. W.A., s. 75.
Cf. Q., s. 79.

After summons
warrant.

Warrant in the
first instance.
Cf. Tas., *ibid.*,
s. 6.
Cf. W.A., s. 77.
Cf. Q., s. 82.

Witness not
answering.
Cf. (Tas.), *ibid.*,
s. 6.
Cf. W.A., s. 77.
Cf. Q., s. 82.
Cf. Vic., s. 88(12).

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Production of documents before justices.

Cf. W.A., s. 78.

Cf. Q., s. 83.

55 When justices have authority to summon any person as a witness, they shall have the like authority to require and compel him to bring and produce, for the purposes of evidence, all documents and writings, or articles in his possession or power, and to proceed against him in case of neglect or refusal so to do in the same manner as in case of neglect or refusal to attend or refusal to be examined.

Provided that no person shall be bound to produce any document, writing, or article, not specified or otherwise sufficiently described in the summons, or which he would not be bound to produce upon a subpoena *duces tecum* in the Supreme Court.

Committal and Recognisance.

Place of committal or detention.

Cf. Q., s. 87.

Cf. W.A., s. 88.

56 When justices commit a defendant by way of remand or upon an adjournment, or at any time before the decision, they may commit to any gaol, or other place of security, or to such other safe custody as they think fit.

Witness may be discharged on recognisance.

57 A witness or person sought to be made a witness may be discharged upon recognisance.

Recognisances.

Cf. Q., s. 92.

Cf. W.A., s. 90.

Cf. Tas., 19 Vict.,

No. 9, s. 16.

58 When justices are authorised to discharge a defendant, witness, or other person upon recognisance, they may order his discharge upon his entering into a recognisance, with or without a surety or sureties at their discretion, conditioned for his appearance at the time and place to which the hearing is adjourned, or which is named in the recognisance.

Issue of warrant for non-appearance.

Cf. Q., s. 93.

Cf. W.A., s. 91.

59 If a defendant, witness, or other person, does not appear at the time and place mentioned in the recognisance, then the justices who are there present may adjourn the hearing, and may issue a warrant for his apprehension as hereinbefore provided.

Recognisances Generally.

Recognisances taken out of Court.

Cf. Q., s. 94.

Cf. W.A., s. 92.

60 When justices have fixed, as regards any recognisance, the amount in which the principal and sureties (if any) are to be bound, the recognisance, notwithstanding anything in this or any other Act, need not be entered into before the same justices, but may be entered into by the parties before the same or any other justice or justices, or before any clerk of petty sessions, or before a police officer who is above the rank of sergeant, or who is in charge of a police station, or where any one of the parties is in gaol, before the keeper of such gaol.

Recognisance taken by one police officer, &c., to have same force as if taken before justices.

Cf. N.Z., 1908.

Where under any of the provisions of this Act a recognisance is entered into before a clerk of petty sessions, police officer, or keeper of a gaol all the consequences of law shall ensue, and the provisions of this Act with respect to recognisances taken before justices shall apply as if the recognisances had been entered into before justices.

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61 Where a recognisance is conditioned for the appearance of a person before justices, or for his doing any other matter or thing to be done to or before justices, or in a proceeding before justices, any justice may, on any breach of such condition, declare the recognisance to be forfeited, and payment of any sum due under such recognisance may be enforced, as if the sum was a penalty adjudged by justices to be paid which the Act under which the penalty is imposed provides no mode of enforcing payment of, and was ascertained by a conviction.

Provided that at any time before the sale of goods under a warrant of execution, such justice so declaring the recognisance to be forfeited, or any police magistrate, may cancel or mitigate the forfeiture upon the person liable applying, and giving security to the satisfaction of such justice or magistrate for the future performance of the condition of the recognisance, and paying or giving security for the payment of the costs in respect of the forfeiture, or upon such other conditions as such justice or magistrate thinks just.

62 Every recognisance shall be duly acknowledged by every person who enters into it, and shall be subscribed by the justices or other person before whom it is acknowledged, and a notice thereof, signed by such justices or other person shall be given to every person bound thereby.

63 Where—

- I. Any person accused of any indictable offence has been admitted to bail; or
- II. Any person accused of any offence punishable on summary conviction has before his conviction or discharge been admitted to bail,

by any court judge, justices, or person having authority in that behalf, if any person gives information on oath to any justice of any facts which raise a probable presumption that it is the intention of such accused person not to surrender himself in accordance with the condition of the bail bond entered into by him or on his behalf, such or any other justice may issue a warrant for the apprehension of such accused person and may commit him to gaol, to be there safely kept, notwithstanding his having been admitted to bail as aforesaid, until he is thence delivered by due course of law.

64 When a recognisance is conditioned for the appearance of a person on a certain day before justices, or to take his trial before the Supreme Court, the sureties bound by such recognisance may, before the day so appointed, apprehend their principal, and bring him before justices, or deliver him into the custody of the keeper of the gaol named in the warrant of committal, as the case may be; and any police officer shall, if required by such sureties, assist them in such apprehension.

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Forfeiture of recognisance and enforcement.

Cf. Vic., s. 56.

Recognisances to be acknowledged. Notice thereof to be given to persons bound.

Cf. W.A., s. 125.

Cf. Q., s. 124.

Cf. N.Z., s. 276.

Arrest of certain persons accused of offences who are admitted to bail, and are suspected of intention to abscond.

Cf. No. 2675 of

1915, s. 59 (8)

Vic., and No.

2937 of 1918, s. 7

Vic.

Arrest of principal by sureties.

Cf. Q., s. 96.

Cf. W.A., s. 94.

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Execution of Warrants of Commitment

Conveying
prisoners to gaol.
Cf. Q., s. 97.
Cf. W.A., s. 95.
Cf. Tas., 19 Vict.
No. 9, s. 22.

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

PART IV.

PROCEEDINGS IN CASE OF INDICTABLE OFFENCES.

Information Presented.

This Part not to
affect "The
Petty Offences
Act," 31 Vict.
No. 12.

Certificate where
information is
filed in Supreme
Court.

Cf. Q., s. 99.
Cf. W.A., s. 97.
Cf. Tas., 19 Vict.
No. 9, s. 4.

Form 4, Schedule
(2).

Warrant thereon.
Cf. Q., s. 100.
Cf. W.A., s. 98.

Committal.
Cf. Q., s. 101.
Cf. W.A., s. 99.
Cf. Tas., s. 4.

Detainer of
prisoner in gaol.
Cf. Q., s. 102.
Cf. W.A., s. 100.
Cf. Tas., s. 4.

66 This part shall not be deemed in any way to affect or limit the operation of "The Petty Offences Act."

67 Where an information for an indictable offence is filed in the Supreme Court by the Attorney-General of this State, or other authorised officer, against any person then at large, whether such person is bound by any recognisance to appear to answer to the same or is not so bound, the clerk of the Supreme Court shall, at any time thereafter, if such person has not already appeared and pleaded to the information, grant to the officer filing the information, upon his application, a certificate of the information having been filed.

68 Upon production of such certificate to any justice, such justice shall issue his warrant to apprehend such person, and to cause him to be brought before justices, to be dealt with according to law.

69 If such person is thereupon apprehended and brought before justices, then, upon it being proved upon oath before them that the person so apprehended is the same person who is so informed against, he shall, without further inquiry or examination be committed for trial.

70 If the person so informed against is, at the time of such application and production of the certificate to the justice, confined in any gaol for any other offence than that charged in the information, the justice, upon proof upon oath that the person so informed against and the person so confined are one and the same, shall issue his warrant directed to the keeper of the gaol in which the person so informed against is then confined, commanding him to detain such person in his custody until he is lawfully removed therefrom for the purpose of being tried upon the information, or until he is otherwise removed or discharged out of his custody by due course of law.

*Justices Procedure.**Remand and Adjournment.*

71 In any case of a charge of an indictable offence, if from the absence of witnesses, or from any other reasonable cause, it becomes necessary or advisable to defer the hearing of the case, the justices before whom the defendant appears or is brought may adjourn such hearing to the same or some other place, and may suffer the defendant to go at large or may, by warrant, from time to time remand the defendant to some gaol for such period as they may in their discretion deem reasonable (but not exceeding Eight clear days at any one time), to be there kept, and to be brought before the same or such other justices as shall be acting at the time or place appointed for continuing the hearing.

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Remand of defendant.
Cf. Q., s. 84.
Cf. W.A., s. 79.
Cf. Tas., 19 Vict. No. 9, s. 18.

72 If the remand is for a time not exceeding Three clear days the justices may verbally order the person in whose custody the defendant then is or any other person named by the justices in that behalf, to keep the defendant in his custody, and to bring him before the same or such other justices as shall be acting at the time and place appointed for continuing the hearing.

Verbal remand.
Cf. Q., s. 85.
Cf. W.A., s. 80.
Cf. Tas., *ibid.*

73 Any justices may order the defendant to be brought before them at any time before the expiration of the time for which he was so remanded, and the officer in whose custody he then is shall duly obey such order.

Bringing up during remand.
Cf. Q., s. 86.
Cf. W.A., s. 81.
Cf. Tas., *ibid.*

74 Instead of detaining the defendant in custody during the period for which he is remanded, any One justice before whom he appears or is brought may, subject to the provisions hereinbefore contained, order his discharge upon recognisance, with or without sureties, to appear at the time and place named in the recognisance.

Bail of defendant during examination.
Cf. Tas., *ibid.*
Cf. W.A., s. 81.
Cf. Q., s. 86.

Warrant—Committal.

75 When a person charged with having committed any indictable offence, and against whom a summons has been issued, does not appear before the justices at the time and place mentioned in the summons, and it is made to appear to the justices that the summons was duly served in accordance with Section Thirty-six a reasonable time before the time therein appointed for appearing to it, then such justices, or One of them, may issue their warrant to apprehend the defendant and bring him before justices to answer the complaint and be further dealt with according to law.

Disobedience of summons.
Cf. Q., s. 103.
Cf. W.A., s. 101.
Cf. Tas., 19 Vict. No. 9, ss. 1, 7.

76 After the examination of all the witnesses on the part of the prosecution is completed, the justice or One of the justices before whom the examination has been completed shall say to the defendant these words, or words to the like effect :—

Statement of defendant.
Cf. Q., s. 104.
Cf. W.A., s. 102.
Cf. Tas., 19 Vict. No. 9, s. 12.

“ Having heard the evidence, do you wish to say anything in answer to the Charge? You are not obliged to say anything unless you desire to do so; 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

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make any admission or confession of your guilt; but that whatever you now say will be taken down in writing, and may be given in evidence against you upon your trial, notwithstanding such promise or threat."

And whatever the defendant shall then say in answer thereto shall be taken down in writing and read to him, and shall be signed by the justices, and by the defendant, if he so desires, and shall be kept with the depositions of the witnesses, and shall be transmitted with them to the proper officer as hereinafter provided.

Provided that if all or any of the depositions of the witnesses have been previously read in the hearing of the defendant, either at one time or at several times, it shall not be necessary to read them again to the defendant, unless he desires that they be again read to him.

Statement may be put in evidence at trial.

Cf. Q., s. 105.
Cf. W.A., s. 103.
Cf. Tas., s. 12.

77 Afterwards, upon the trial of the defendant, any such statement made by him may, if necessary, be given in evidence against him without further proof thereof, if the same purports to be signed by the justice or justices by or before whom it purports to have been taken, unless it is proved that it was not in fact signed by the justice or justices by whom it purports to be signed.

Saving.

Cf. Q., s. 106.
Cf. W.A., s. 104.
Cf. Tas., s. 12.

78 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 such person.

Evidence for defence.

Cf. Q., s. 112.
Cf. W.A., s. 105.
Cf. Tas., 19 Vict. No. 9, s. 13.
34 Vict. No. 3, s. 2.
Cf. *ibid.*, Vict., s. 48(3).

79 After addressing the defendant as required by Section Seventy-six of this Act, and after taking the statement (if any) of the defendant, the justice or One of the justices shall ask the defendant whether he desires to give evidence or to call any witnesses; and if he gives evidence or calls any witnesses, the justices shall, in the presence of the defendant, take the statement on oath, whether on examination, cross-examination, or re-examination of the defendant if he shall elect to give evidence, and of the witnesses so called who know anything relating to the facts and circumstances of the case or anything tending to prove the innocence of the accused.

Discharge of defendant.

Cf. Q., s. 107.
Cf. W.A., s. 106.
Cf. Tas., 19 Vict. No. 9, s. 21.

80 When all the evidence offered upon the part of the prosecution against a person charged with an indictable offence, as such, has been heard, if the justices then present are of opinion that it is not sufficient to put the defendant upon his trial for any indictable offence, the justices shall forthwith order the defendant, if he is in custody, to be discharged as to the complaint then under inquiry.

Committal of defendant.

Cf. Q., s. 108.
Cf. W.A., s. 107.
Cf. Tas., *ibid.*

81 If, in the opinion of the justices the evidence is sufficient to put the defendant upon his trial for an indictable offence, or raises a strong or probable presumption of the guilt of the defendant, then they shall order him to be committed to take his trial for the offence before the Supreme Court, and in the meantime shall by

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their warrant, commit him to some gaol, to be there safely kept until the sittings of the court before which he is to be tried, or until he is delivered by due course of law or admitted to bail as hereinafter mentioned.

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82 Whenever a prisoner in actual custody has served or received notice of an intention to take a statement as mentioned in Section One hundred and Thirty-five of "The Evidence Act, 1910," a judge of the Supreme Court or the justice by whom the prisoner was committed, or a police magistrate, or one of the visiting justices of the gaol in which he is confined may, by an order in writing, direct the keeper of the gaol having the custody of the prisoner to convey him to the place mentioned in the said notice for the purpose of being present at the taking of the statement, and such keeper shall convey the prisoner or cause him to be conveyed accordingly, and the expenses of such conveyance shall be paid out of the funds applicable to the other expenses of the gaol.

Prisoner to be present when statement taken.
Cf. W.A., s. 113.
Cf. Tas. (New).
1 Geo. V. No. 20.

Defendant admitting Guilt.

83—(1) Notwithstanding anything contained elsewhere in this Act, it is hereby declared that if the defendant, upon the charge being read to him, or during, or at the close of the inquiry or proceedings (whether on being questioned as provided in Section Seventy-six of this Act or not), admits that he is guilty of an indictable offence, not punishable by death, the justices, instead of committing the defendant for trial as hereinbefore provided, may take his plea of "guilty," if he so desires to plead, and order him to be committed to the Supreme Court for sentence.

If defendant admits guilt, he may be committed for sentence.
Cf. Q., s. 113.
Cf. W.A., s. 114.
Cf. N.Z., s. 176.
Cf. Vic., s. 46.
Cf. W.A., 1 and 2 Ed. VII., No. 14, s. 551 (Crim. Code).

(2) If the justices commit the defendant to the Supreme Court for sentence, the following consequences shall ensue:—

Proceedings if accused pleads guilty.

- i. The defendant shall, so soon as practicable, be brought before the Supreme Court or some judge thereof sitting in open court for sentence:
- ii. Any judge of the Supreme Court before whom any defendant so committed shall be brought shall have the same powers of sentencing or otherwise dealing with the defendant, and of finally disposing of the charge and of all incidental matters, as he would have had if the defendant on arraignment at any criminal sessions of the Supreme Court had pleaded guilty to the offence on an information filed in that Court by the Attorney-General †
- iii. If the defendant is sentenced to imprisonment or to imprisonment with hard labour, the Judge of the Supreme Court by whom the defendant has been so sentenced may issue a warrant of commitment directing that the defendant shall be conveyed to some convenient gaol, to be in such warrant named, and be there detained for such time as the warrant shall direct; and the sentence shall take effect from the date of the signing of such warrant:

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iv. All proceedings relating to a commitment for trial shall apply, as nearly as may be, to a commitment for sentence, and bail may be similarly granted; but no person shall be bound over to give evidence on any commitment for sentence unless the committing justices otherwise order:

Who may commit accused person for sentence.

Form of plea of "guilty."

(3) The power created by this Act of committing the defendant to the Supreme Court for sentence shall be exercised only by a police magistrate or by Two or more justices.

(4) A plea of "Guilty" for the purposes of this Section shall be indorsed on the complaint, and shall be in the following form:—

"I plead guilty to the offence of [*here state the indictable offence to which the defendant pleads guilty.*]

"Dated this day of ."

And the defendant shall either sign the same, or shall affix his mark thereto, and such mark shall be certified to by the police magistrate or justices.

Plea not to be withdrawn except on appearance for sentence.

(5) No defendant who has so pleaded guilty to an indictable offence shall afterwards be allowed to withdraw such plea, unless before sentence he does so at the time he appears before the Supreme Court or a judge thereof for sentence.

Procedure if plea of guilty withdrawn.

(6) If upon being brought up for sentence the defendant withdraws his plea of guilty, the Supreme Court or a judge thereof may, on application, on behalf of the Attorney-General, direct the defendant to be tried at some criminal sessions of the Supreme Court, and in the meantime may commit him to gaol, or admit him to bail, or the Supreme Court or judge may make such other order in the matter as the court or judge deems right or just.

Bail.

Bail in capital crimes.

Cf. Q., s. 114.

Cf. W.A., s. 115.

Cf. Tas., 19 Vict.

No. 9, s. 19.

Bailing persons charged with indictable offences.

Cf. Q., s. 115.

Cf. W.A., s. 116.

Cf. Tas., s. 19.

Cf. No. 2675

(1915), s. 58 Vic.

Bail after commitment for trial.

Cf. Q., s. 116.

Cf. W.A., s. 117.

Cf. Tas., s. 19.

84 No person above the age of Seventeen years charged with a capital offence shall be admitted to bail except by order of the Supreme Court or a judge thereof.

85 When any person is charged before justices with any indictable offence, other than a capital offence, such justices may, except where the contrary is expressly enacted, in their discretion, admit the person charged to bail upon his entering into a recognisance with such surety or sureties as in the opinion of the justices will be sufficient to ensure his appearance at the time and place when and where he is to be tried for the offence.

86 When a person charged with any such indictable offence, other than a capital offence, is committed to gaol to take his trial for the same, then at any time before the first day of the sitting or session at which he is to be tried or before the day to which such sitting or session is adjourned, any justice who has signed the warrant for his commitment or a police magistrate may, in his discretion, admit such defendant to bail in manner aforesaid.

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87 When the committing justices are of opinion that for any alleged indictable offence, other than a capital offence, the defendant ought to be admitted to bail, they shall certify on the warrant of commitment, or on a separate paper, their consent to the defendant being bailed, stating also the amount of bail which ought to be required.

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Certificate.
Cf. Q., s. 117.
Cf. W.A., s. 118.
Cf. Tas., s. 19.

88 If it is inconvenient for the surety or sureties to attend to join with the defendant in the recognisance of bail, the committing justices, or any justice who has signed the warrant for his commitment, or a police magistrate may make a duplicate of such certificate; and upon the same being produced to any person authorised by this Act in that behalf, such lastmentioned person may thereupon take the recognisance of the surety or sureties in conformity with such certificate.

Duplicate certificate of consent to bail.
Cf. Q., s. 118.
Cf. W.A., s. 119.
Cf. Tas., s. 19.

89 Upon the recognisance being duly taken and produced, together with the said certificate of consent to bail, to the keeper of the gaol in which the defendant is detained, the defendant shall be discharged out of custody as to the commitment to which the said recognisance relates.

Procedure.
Cf. Q., s. 119.
Cf. W.A., s. 120.
Cf. Tas., s. 19.

Transmission of Recognisances of Bail.

90 When a defendant in custody is admitted to bail by any justice, he shall forthwith transmit the recognisance of bail to the clerk of petty sessions, to be by him transmitted with the depositions to the proper officer.

Recognisances, how transmitted.
Cf. Q., s. 124.
Cf. W.A., s. 122.
Cf. Tas., s. 19.

Warrant of Deliverance.

91 When justices admit to bail any person then in any gaol charged with an offence for which he is so admitted to bail, such justices shall send to or cause to be lodged with the keeper of the gaol a warrant of deliverance, requiring the keeper to discharge the person so admitted to bail if he is detained for no other lawful cause, and upon such warrant of deliverance being delivered to or lodged with the keeper, he shall forthwith obey the same.

Warrant of deliverance.
Cf. Q., s. 122.
Cf. W.A., s. 123.
Cf. Tas., s. 20.

Witnesses where Committal for Trial.

92—(1) The justices before whom any witnesses are examined may bind every such witness by recognisance, with or without sureties, in such sum as they may think fit, to appear at the court at which the defendant is to be tried, then and there to give evidence against or for the defendant.

Recognisance of witnesses, &c.
Cf. W.A., s. 124.
Cf. Q., s. 123.
Cf. Tas., 19 Vict. No. 9, s. 16.

(2) The recognisances in respect of all or any Two or more witnesses who are bound in the same sum or penalty may be included in one form or document, and in respect of each such witness every such recognisance shall be as valid and effectual as if it had been entered into by a separate form or document.

Where several recognisances may be in one form.
Cf. Vic., s. 50 (3).

93 If a witness refuses to enter into such recognisance, the justices may, by warrant, commit him to gaol, there to be safely kept until after the trial of the defendant, unless in the meantime such witness duly enters into such recognisance before a justice.

Justices may commit refractory witness.
Cf. Q., s. 125.
Cf. W.A., s. 126.
Cf. Tas., 19 Vict. No. 9, s. 16.

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Discharge of refractory witness.

Provided that, if afterwards, from want of sufficient evidence, in that behalf or other cause, the justices before whom the defendant has been brought do not commit him or admit him to bail for the offence with which he is charged, or if the Attorney-General or other officer appointed to file informations in the Supreme Court declines to file an information against the defendant for the offence, any justice, upon being duly informed of the fact, may, by his order in that behalf, order and direct the keeper of the gaol where such witness is in custody to discharge him from the same, and such keeper shall thereupon forthwith discharge him accordingly as to that warrant.

Transmission of Depositions, &c.

Transmission of depositions, &c.
Cf. Q., s. 126.
Cf. W.A., s. 127.
Cf. Tas., 19 Vict. No. 9, s. 16.

94 When a defendant is committed for trial or for sentence, all complaints, depositions, exhibits, statements, and recognisances shall be transmitted by the justices, as soon as possible after the conclusion of the case before them, to the Attorney-General, or the said officer appointed to file informations as aforesaid.

Right to Copies of Depositions.

Defendant may have copies of the depositions.
Cf. Q., s. 154.
Cf. W.A., s. 148.
Cf. Tas., 19 Vict. No. 9, s. 23.

95—(1) At any time after all the depositions have been taken the defendant, whether he has been committed to gaol or admitted to bail or has been discharged, may require, and shall be entitled to receive copies of the complaint, depositions, and statements (if any) of the defendant, and of the conviction or order from the officer or person having the custody thereof on payment for the same at the rate of Fourpence for each folio of Seventy-two words.

Copies of depositions.
Cf. Q., s. 131.

(2) Any party committed to gaol or admitted to bail by any coroner, shall be entitled to copies of the inquisition, depositions, and statements (if any) of any accused person from the officer or person having the custody thereof on payment for the same at the rate mentioned in Subsection (1) of this section.

PART V.

PROCEEDINGS IN CASE OF SIMPLE OFFENCES AND BREACHES OF DUTY.

Complainant's Default.

Dismissal or adjournment in absence of complainant.
Cf. Q., s. 141.
Cf. W.A., s. 134.
Cf. Tas., 19 Vict. No. 8, s. 13.

96 If, upon the day and at the time and place appointed by a summons for hearing and determining a complaint of a simple offence or breach of duty, the defendant attends voluntarily in obedience to the summons, or is brought before the justices by virtue of a warrant, and the complainant does not appear by himself, or by a person by law empowered to appear, the justices shall dismiss the complaint, unless for some reason they think proper to adjourn the hearing of the same to some other day, in which case they may adjourn the hearing accordingly, upon such terms as they think fit, and may suffer the defendant to go at large, or may commit him in the meantime, or may discharge him upon recognisances conditioned for his appearance at the time and place to which the hearing is so adjourned.

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97 If, at the time and place so appointed the defendant does not appear when called, and proof is made to the justices, in manner hereinbefore prescribed, of due service of the summons upon the defendant a reasonable time before the time appointed for his appearance, the justices may either—

- I. Proceed, *ex parte*, to hear and determine the case in the absence of the defendant: or
- II. Issue a warrant under the hand of any justice then sitting, to apprehend the defendant, and to bring him before justices to answer the complaint, and to be further dealt with according to law.

98 When the justices, upon the non-appearance of the defendant, issue a warrant, they shall adjourn the hearing of the complaint until the defendant is apprehended, and if the defendant is afterwards apprehended under such warrant, he shall be detained in safe custody or admitted to bail by recognisance, with or without sureties, until he can be brought up before justices at a convenient time and place, of which the complainant shall have due notice.

Ex parte order, &c., may be set aside.

99 Any conviction or order made when one party does not appear may be set aside on such terms as to costs or otherwise as any two or more justices, or a police magistrate, to whom application to set aside the same is made shall think just, and in such case such justices or magistrate—

- I. May upon service of such reasonable notice as they or he may direct upon the other party, proceed to hear and determine the complaint in respect of which such conviction or order was made; or
- II. May adjourn the hearing and determination thereof to such time and place as they or he may think fit, and may direct such notice as they or he may think fit of such adjourned hearing to be given to any party.

Hearing.

100 If both parties appear, either personally or by a person by law empowered to appear, then the justices shall proceed to hear and determine the complaint.

101 When the defendant is present at the hearing, the substance of the complaint shall be stated to him, and he shall be asked either how he pleads to the complaint or if he has any cause to show why he should not be convicted, or why an order should not be made against him; and if he pleads guilty or has no cause to show, then the justices present at the hearing may convict him, or make an order against him accordingly.

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Ex parte hearing in absence of defendant.

Cf. Q., s. 142.
Cf. W.A., s. 135.
Cf. Tas., *ibid.*, s. 12.
Cf. Vic., s. 88 (8).

Or justices may adjourn the case

Ex parte order may be set aside on terms.
Cf. Vic., s. 66.

Both parties appearing.
Cf. Q., s. 144.
Cf. W.A., s. 137.
Cf. Tas., 19 Vict. No. 8, s. 13.

Proceedings at the hearing on defendant's confession.
Cf. Q., s. 145.
Cf. W.A., s. 138.
Cf. Tas., *ibid.*, s. 14.

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Where defendant does not admit the case.

Cf. Q., s. 146.
Cf. W.A., s. 139.
Cf. Tas., *ibid.*, s. 14.

102 But if he does not plead guilty or if he wishes to show cause, then the justices shall proceed to hear the complainant and his witnesses, and also the defendant and his witnesses, and also such witnesses as the complainant may examine in reply if the defendant has given any evidence other than as to his general character; and the justices, having heard the evidence so adduced, shall consider the whole matter and determine the same, and shall convict or make an order upon the defendant or dismiss the complaint, as justice may require.

Adjournment of the hearing.
Cf. Tas., 19 Vict. No. 8., s. 17.
Cf. W.A., s. 86.
Cf. Q., s. 88.
Cf. Vic., s. 89 (2).

103—(1) In any case of a charge of a simple offence or breach of duty, the justices present, or, if only One justice is present, such One justice, may adjourn the hearing either—

- I. To a certain time and place to be then appointed and stated, in the presence and hearing of the party or parties, or their respective counsel or solicitors, or other persons appearing for them, then present; or
- II. To such time and place as a justice shall thereafter appoint, and in the meantime may suffer the defendant to go at large, or may commit him, or may order his discharge upon his entering into a recognisance conditioned for his appearance at the time and place then or thereafter appointed for continuing the hearing.

(2) Whenever the hearing of a charge is adjourned without a certain time and place being then appointed for the further hearing any justice may, by notice in writing, to the party or parties, or their respective counsel, or solicitors, or other the persons lawfully appearing for the party or parties, appoint and state a certain time and place for the further hearing.

Such notice shall—

- I. Be served in the manner a summons must be served; and
- II. Be deemed to be a summons requiring the person to whom it is directed, to appear at the time and place therein stated.

In case of non-appearance the same proceedings may be had and taken as may be had and taken upon non-appearance to a summons.

Justices may proceed to hearing in absence of both or either of the parties.

Cf. Q., s. 147.
Cf. W.A., s. 140.
Cf. Tas., *ibid.*, s. 17.

104 If at the time or place to which a hearing or further hearing is adjourned, either or both of the parties do not appear personally or by a person by law empowered to appear, the justices then present may proceed to such hearing or further hearing as if such party or parties were present; or if the complainant does not appear, the justices may dismiss the complaint with or without costs.

Practice.

Conduct of summary proceedings regulated.

Cf. Q., s. 148.
Cf. W.A., s. 141.
Cf. Tas., *ibid.*, s. 14.

105 The practice before justices upon the hearing of a complaint of a simple offence or breach of duty shall, in respect of the examination and cross-examination of witnesses be in accordance as nearly as may be with the practice for the time being of the Supreme Court upon the trial of an issue of fact in an action at law. But the complainant or a person by law empowered to

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appear for him shall not, without the leave of the justices, be entitled to make any observations in reply upon the evidence given by the defendant; nor shall the defendant or a person by law empowered to appear for him without such leave be entitled to make any observations in reply upon any evidence given by the complainant in reply.

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Dismissal.

106 If the justices dismiss a complaint upon the merits, they shall, if requested so to do by the defendant or a person by law empowered to appear for him, make an order of dismissal, and give the defendant a certificate thereof, which certificate shall, upon production and without further proof, be a bar to any subsequent complaint for the same matter against the same person.

Dismissal of complaint.
Cf. Q., s. 144.
Cf. W.A., s. 142.
Cf. Tas., *ibid.*, s. 14.

107 When, by a conviction or order, any sum of money, with or without costs or for costs alone, is adjudged to be paid, the justices may do all or any of the following things, namely:—

Payment by instalments of, or security taken for payment of, money.
Cf. Q., s. 164.
Cf. W.A., s. 144.
Cf. Tas. (New), 42 and 43 Vic, ch. 49, s. 7 (Eng.).
Cf. Vic., s. 90.

- I. Allow time for the payment of such sum; and
- II. Direct payment of the sum to be made by instalments; and
- III. Direct that the person liable to pay the sum shall be at liberty to give, to the satisfaction of the justices or such person, as shall be specified by the justices security, with or without a surety or sureties, for the payment of the sum, or of any instalment thereof; and such security may be given and enforced in manner provided by this Act.

When any such sum is directed to be paid by instalments, and default is made in the the payment of any one instalment, the same proceedings may be taken, and warrants issued by any justice without further notice to the person making default as if the original conviction or order had adjudged the immediate payment of all the instalments then remaining unpaid and default had been made therein.

The justices directing the payment of any such sum or instalment as aforesaid, may direct such payment to be made at such time or times and in such place and to such person as may be specified by the justices; and every person to whom any such sum or instalment is paid, if he is not the clerk of petty sessions or person entitled to receive the payment shall, as soon as may be, pay over or account for the same to the clerk of petty sessions.

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108—(1) On the summary conviction of any person of an assault, the justices may award that the fine or part thereof shall be paid to the person assaulted.

(2) The order of the justices shall be a sufficient authority to the clerk of petty sessions receiving such fine for payment thereof to the person assaulted.

Fine inflicted for assault may be awarded to person assaulted.
Cf. W.A., s. 145.
Cf. Tas., 27 Vict. No. 8, s. 93.

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Formal record of conviction not necessary, except for special purposes.

Cf. W.A., s. 146.
Cf. Q., secs. 151 and 152.

See Tas., 19 Vict. No. 8, s. 14.

Warrants not to be void for form only.

Cf. Vic., s. 104.

Copies of proceedings in summary cases.

Cf. W.A., s. 148.
Cf. Q., s. 154.

Cf. Tas., 19 Vict. No. 9, s. 23.

Imprisonment in first instance.

Cf. W.A., s. 149.
Cf. Q., s. 155.

Imprisonment for a subsequent offence.

Cf. W.A., s. 150.
Cf. Q., s. 156.

See Tas., 19 Vict. No. 8, s. 26.

Costs on conviction or order.

Cf. Q., s. 157.
Cf. W.A., s. 151.

Cf. Tas., 19 Vict. No. 8, s. 19.

Cf. Vic., s. 102.

Costs on dismissal.

Cf. W.A., s. 152.

Cf. Q., s. 158.

See Tas., *ibid.*, s. 19.

The sum allowed for costs to be specified in the conviction or order.

109 It shall not be necessary for justices formally to draw up a conviction or order or any other record of a decision, except on summary conviction for an indictable offence, unless the same is required by a party to the proceedings for the purpose of an appeal against the decision, or is required for the purpose of a return to a writ of *habeas corpus* or other writ from the Supreme Court.

110 A warrant of commitment or of execution shall not be held void by reason only of any defect or error therein if there is a conviction or order which is good and valid or which may be amended, and made good and valid under this Act to sustain the same.

Copies of Depositions, &c.

111 When a conviction or order is made, or a complaint is dismissed by justices, all parties interested therein shall be entitled to demand and have copies of the complaint and depositions (if any), and of the conviction or order, from the officer or person having the custody thereof, on payment of a reasonable sum for the same, not exceeding Fourpence for each folio of Seventy-two words, or at such other rate as may be prescribed by regulation.

Imprisonments.

112 When the justices, upon a conviction, adjudge the defendant to be imprisoned with or without hard labour, they shall issue their warrant of commitment accordingly.

113 When justices, upon making a conviction or order for a simple offence or breach of duty, adjudge the defendant to be imprisoned, and the defendant is already under sentence of imprisonment, the justices may, if they think fit (whether the defendant is actually undergoing imprisonment or not) adjudge that the imprisonment for such subsequent offence shall commence at the expiration of the term of imprisonment which the defendant is already undergoing or liable to undergo.

Subject as aforesaid, every term of imprisonment imposed by justices under this Act shall commence to run from the time when the defendant is first imprisoned under the warrant of commitment.

Costs.

114—(1) Where justices make any conviction or any order in favour of the complainant they may, in their discretion, award and order that the defendant shall pay to the complainant such costs as to them seem just and reasonable.

(2) Where justices dismiss the complaint or make any order in favour of the defendant they may, in their discretion, award and order that the complainant shall pay to the defendant such costs as to them seem just and reasonable.

(3) The sums so allowed for costs shall, in all cases, be specified in the conviction or order or order of dismissal.

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(4) The sum allowed for costs in a conviction or order by which a penalty or sum of money is adjudged to be paid shall be recoverable in the same manner and under the same warrants as the penalty or sum of money adjudged to be paid by the conviction or order is recoverable.

(5) Any sum adjudged awarded or ordered to be paid, whether to a complainant or defendant for costs alone may be raised and levied by execution under the provisions of this Act.

(6) When any case is adjourned the justices may, in their discretion, order that the costs of, or occasioned by the adjournment, be paid by any party to any other party.

(7) No costs shall be allowed against a public officer or any duly appointed officer whomsoever of any municipal council or of any other statutory public body or board, if he acts *bonâ fide* in his official capacity.

Execution.

115 Where a summary conviction or order adjudges the payment of a sum of money, with or without costs, or for costs alone, and by this Act or the Act authorising the decision—

I. The amount of such sum is to be levied on the goods and chattels of the defendant or person liable to make such payment by distress and sale thereof, or by execution;

or

II. No mode of raising or levying any such sum or of enforcing payment thereof is provided,

such sum shall (notwithstanding the decision contained no direction or incomplete directions as to the recovery or enforcing payment thereof), be recoverable by execution against the goods and chattels of the defendant, and a warrant of execution may be issued by any adjudicating or other justice for the purpose of levying the same.

Provided that if it appears to the justice to whom application is made for any such warrant of execution—

III. That an execution against the goods and chattels of the defendant would be more injurious to the defendant or his family than imprisonment; or

IV. By the confession of the defendant or otherwise that he has no goods or chattels whereon to levy such sum,

the justice may, instead of issuing a warrant of execution, commit such defendant to gaol, there to be imprisoned, with or without hard labour, for such period (not exceeding the limit fixed by the scale set forth in Section One hundred and twenty-nine), as the justice shall think fit to order, or as shall have been adjudged by the decision unless the sum adjudged to be paid, and also, if the justice think fit so to order, the cost and charges of taking and conveying the defendant to gaol (the amount thereof being ascertained and stated in the warrant of commitment) are sooner paid.

116 When a justice issues a warrant of execution, he may suffer the person against whom the warrant is issued to go at large, or he may verbally, or by writing, order such person to be kept and detained in safe custody until return is made to the warrant of execution, unless such person gives sufficient security, by recogni-

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Costs, how recoverable.

Cf. W.A., s. 154.

Cf. Q. secs. 159.

160.

Cf. Tas., *ibid.*, s.

19.

Summary conviction for a penalty, &c.

Cf. Q., ss. 161,

163A.

Cf. W.A., s. 143.

Cf. Tas., *ibid.* s.

20.

Cf. Vic., s. 110.

Discharge or detainer of person against whom warrant is issued.

Cf. W.A., s. 156.

Cf. Q., s. 162.

Cf. Tas., *ibid.*,

s. 21.

Cf. Vic. s. 116

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Committal in
default of
execution.

Cf. W.A., s. 157.
Cf. Q., s. 163.
Cf. Tas., s. 122.
Cf. Vic., s. 115.

sance or otherwise, to the satisfaction of the justice for his appearance at the time and place appointed for the return of the warrant of execution.

117 In any case in which a warrant of execution may be issued under the provisions hereinbefore contained, if at the time and place appointed for the return of the warrant the officer who has the execution of the same returns that he could find no goods or chattels, or no sufficient goods or chattels, whereon he could levy the sum therein mentioned, together with the costs of or occasioned by levying the same, the justice before whom the same is returned may issue his warrant of commitment of the person, against whom the warrant of execution is issued, to gaol, there to be imprisoned, with or without hard labour, for such period (not exceeding the limit fixed by the scale set forth in Section One hundred and twenty-nine), as such justice shall think fit to order, or as shall have been adjudged by the conviction, unless the sum adjudged to be paid, and all costs and charges of the execution, and also, if the justice thinks fit so to order, the costs and charges of taking and conveying such person to gaol (the amount thereof being ascertained and stated in the warrant of commitment) are sooner paid.

Commitment for
non-payment of
a penalty or a
sum ordered to be
paid.

Cf. W.A., s. 158.
Cf. Q., s. 165.
Cf. Tas., 19 Vict
No. 8, s. 24.
Cf. Vic., s. 117.

118 When the Act by virtue of which a conviction or order adjudging the payment of a sum of money, with or without costs, or for costs alone, is made, makes no provision for such sum being levied by distress or execution, but provides in effect that, if the same is not paid forthwith or within a certain time therein mentioned, or to be mentioned in the conviction or order, the defendant shall be imprisoned, with or without hard labour, for a certain time, unless such sum is sooner paid, then such sum shall not be levied by execution; but if the defendant does not pay the same forthwith, or at the time and in the manner specified in the conviction or order for payment thereof, the justices making the conviction or order, or any other justice, may issue his warrant of commitment of the defendant to gaol, there to be imprisoned, with or without hard labour, for such period as shall have been adjudged by the conviction, unless the sum adjudged to be paid, and also, if the justices think fit so to order, the costs and charges of taking and conveying the defendant to gaol (the amount thereof being ascertained and stated in the warrant of commitment) are sooner paid.

Issue of warrant
of commitment
for non-payment
may be post-
poned.

Cf. N.S.W., s. 90.

The justices to whom application is made to issue a warrant of commitment for non-payment of any sum of money may, if they deem it expedient so to do, postpone the issue of such warrant until such time, and on such conditions (if any) as to them may seem just.

Notice of order to
be served before
warrant of com-
mitment issued.

119 In all cases where a justice has authority to commit a person to gaol for not obeying an order of justices, and the defendant is not present at the time of the making of the order, the defendant shall be served with a copy of the minute of such order before any warrant of commitment is issued in that behalf; and such order or minute shall not form any part of such warrant of commitment.

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A copy of a minute of such order must be served, and proof of service may be given, in the same manner as by this Act prescribed in the case of a summons to a defendant.

120 When an order is not for the payment of money, but for the doing of some other act, and directs that in case of the defendant's neglect or refusal to do such act he shall be imprisoned with or without hard labour, then, if the defendant neglects or refuses to do such act, the justices making such order, or some other justice, may issue his warrant of commitment of the defendant to gaol, there to be imprisoned, with or without hard labour as the case may be, for such time as the justices making the order directed.

121 Where, on application to any justice for the issue of a warrant of commitment—

- I. For non-payment of any sum of money (whether including costs or not, or for costs alone); or
- II. In default of sufficient goods and chattels whereon to levy any such sum adjudged to be paid under any conviction or order of justices or a justice against any person—

it appears to the justice to whom the application is made that either—

- III. By payment of part of the said sum, whether in the shape of instalments or otherwise; or
- IV. By the net proceeds of the distress—

the amount of the fine or sum originally payable has been reduced, then the term of imprisonment for which the person liable may be committed shall be reduced by a number of days bearing as nearly as practicable the same proportion to the total number of days in such term as the amount paid or realised bears to the whole amount due.

122—(1) Where any person is imprisoned for non-payment of any sum of money (whether including costs or not, or for costs alone), or where, in default of sufficient goods or chattels, any person is imprisoned in respect of any such sum, he may pay or cause to be paid to the keeper of the gaol in which he is imprisoned—

- I. In full satisfaction, the whole amount due; or
- II. In part satisfaction, any amount which having regard to the proportion in Subsection (3) mentioned is an aliquot part of the whole amount due,

and in either of such cases such keeper shall receive such payment.

(2) In the case mentioned in Subsection (1) I. such keeper shall thereupon discharge such person if he is in custody for no other matter.

(3) In the case mentioned in Subsection (1) II., the term of imprisonment in respect of the matter in connection with which such payment is made shall be reduced by the number of days bearing the same proportion to the total number of days in such term as the amount paid bears to the whole amount due, and on the expiration of the term so reduced the person so imprisoned shall, if in custody for no other matter, be discharged.

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Commitment in other cases.
Cf. W.A., s. 159.
Cf. Q., s. 166.
Cf. Tas., *ibid.*, s. 25.

Power of justice, &c., on application for warrant of commitment to reduce imprisonment on payment of portion of penalty, &c.
Comp. (Q.), 9 Edw. VII. No. 11, s. 5.
9 Geo. V. No. 2967, s. 8 (Vic.).
Cf. N.S.W., s. 90.

Person committed in default of payment or of sufficient effects to be liberated on full payment, and to have term reduced on partial payment.
Cf. Vic., s. 118.
Cf. Q., s. 174, proviso (b)

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(4) In this section "the whole amount due" means the amount (so far as unsatisfied) of any such sum as aforesaid, together with the costs and charges (if any) of execution and of commitment, and conveying to gaol mentioned in the warrant of commitment.

(5) Except where the contrary is expressly enacted this section shall apply notwithstanding that the Act (whether passed before or after this Act), by or under which such imprisonment is imposed, or any conviction or order, or warrant, by which such imprisonment is imposed provides in effect that such imprisonment is to continue until any such sum, together with costs and charges (if any) are fully paid.

(6) Nothing in this section shall affect any term of imprisonment, except that imposed in respect of the matter in connection with which such total or partial payment is made, or shall, except to the extent expressly hereinbefore provided, affect the provisions of any Act or of any regulation, or of any conviction or order of justices providing for cumulative terms of imprisonment.

Payment under Execution.

To whom payments to be made.
Cf. W.A., s. 161.
Cf. Q., s. 169.
Cf. Tas., *ibid.*,
s. 36.

123 In every warrant of execution, the person to whom it is directed shall be thereby ordered to pay the amount of the sum and costs to be levied thereunder to the clerk of petty sessions, and if any person convicted of any penalty, or ordered by justices to pay any sum of money or costs, pays the same to any other person, such other person shall forthwith pay the same to such clerk of petty sessions.

Warrants of Execution.

Warrant may be executed throughout State.
Cf. W.A., s. 162.
See Tas., 19 Vict. No. 8, s. 6, and 19 Vict. No. 9, s. 8.

124 When any justice issues a warrant of execution, such warrant may be executed within any part or parts of the State, and, if necessary, from time to time until satisfaction thereof.

Mode of Execution.

Procedure on execution.
Cf. W.A., s. 163.
Cf. Q., s. 172.
See Tas., 19 Vict. No. 8, secs. 21 and 22.

125 With respect to warrants of execution issued by justices, the following provisions shall have effect—

Goods that may not be levied upon.

Sale to be by auction, except with consent.

Time of sale.

- I. The warrant shall be executed by seizure and sale of the goods and chattels of the person against whom the warrant is issued, and shall be executed by or under the direction of a police officer :
- II. The wearing apparel, bedding, and household furniture, of a person and his household to the value of Ten Pounds, and the tools and implements of his trade, shall not be taken in execution :
- III. Except so far as the person against whom the execution is issued otherwise consents in writing, the goods and chattels seized shall be sold by public auction, and except in the case of perishable goods Forty-eight hours, at the least, shall intervene between the making of the levy and the sale :
- IV. Subject as aforesaid, the goods and chattels seized shall be sold within the period fixed by the warrant, and if no period is so fixed, then within the period of Four-

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teen days from the date of making the levy, unless the sum for which the warrant was issued, together with the charges of the execution, are sooner paid :

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v. Where a person charged with the execution of a warrant of execution wilfully retains from the produce of any goods and chattels sold to satisfy the execution, or otherwise exacts any greater costs and charges than those to which he is for the time being entitled by law, or makes any improper charge, he shall be liable, on conviction, in a summary way, to a penalty of not more than Ten Pounds :

Punishment for improperly retaining proceeds.

vi. A written account of the costs and charges incurred in respect of the execution of any warrant of execution shall be sent by the police officer charged with the execution of the warrant as soon as practicable to the clerk of petty sessions; and the person against whom the warrant was issued may at any time within One month after the levy, inspect such account, without fee or reward, at any reasonable time, and take a copy of such account.

Account of costs of execution to be sent to clerk of petty sessions.

vii. The police officer charged with the execution of a warrant of execution shall cause the goods and chattels levied upon or sufficient of the same to be sold, and shall pay the proceeds of such sale to the clerk of petty sessions, and such clerk may deduct out of the amount realised by such sale all costs and charges actually incurred in effecting such sale, and shall render to the owner the surplus (if any) after retaining the amount of the sum for which the warrant was issued, and the proper costs and charges of the execution of the warrant :

Charges of execution may be deducted from proceeds of sale.

viii. Any police officer by whom a warrant of execution is executed shall, after making the levy, be at liberty to leave the house or place in which any goods or chattels on which he has levied then are, and at all reasonable times to re-enter therein. And any police officer leaving and subsequently returning to any such house or place under the provisions of this section shall not be deemed thereby to have abandoned the execution or levy.

Temporarily leaving place where levy made not to be deemed abandonment.

126 When a person pays or tenders to the police officer charged with the execution of a warrant of execution the sum mentioned in such warrant, or produces the receipt for the same of the clerk of petty sessions, and also pays the amount of the costs and charges of the execution up to the time of such payment or tender, the officer shall not execute the warrant.

Satisfaction of execution by payment.
Cf. W.A., s. 164.
Cf. Q., s. 173 (s).
Cf. Tas., *ibid.*, s. 29.

127 No execution made under the authority of this Act shall be deemed unlawful, nor shall any person making the same be deemed a trespasser by reason of any defect or want of form in the conviction order or warrant of execution, no such person shall be deemed a trespasser from the beginning by reason of any

No person executing defective warrant to be deemed a trespasser.
Cf. W.A., s. 165.
Cf. Tas. (New).

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irregularity which may afterwards be committed by him, but any person aggrieved by such irregularity may recover satisfaction for every special damage by action at law.

Mitigation.

Mitigation of punishment by justices.
Cf. W.A., s. 166.
See 42 and 43 Vict., c. 49 (Eng.), s. 4.
Tas. (New).

128 Where justices have authority under an Act to impose imprisonment for an offence punishable on summary conviction, and have not authority to impose a penalty for that offence, they may notwithstanding, when adjudicating on that offence, if they think that the justice of the case will be better met by a fine than by imprisonment, impose a penalty not exceeding Twenty-five Pounds, and not being of such an amount as will subject the offender under the provisions of this Act, in default of payment of the penalty, to any greater term of imprisonment than that to which he is liable under the Act authorising the imprisonment.

Scale of Imprisonment.

Scale of imprisonment for non-payment of money.
Cf. W.A., s. 167.
Cf. Q., s. 174.
Cf. Tas., 32 Vict. No. 25, s. 4.
Cf. 42 and 43 Vict., c. 49, s. 5.

129—(1) The period of imprisonment imposed by justices exercising summary jurisdiction under this Act, or under any other Act, upon the non-payment of a sum of money (whether including costs or not, or for costs alone), adjudged to be paid by a conviction or order, or upon default of sufficient goods and chattels whereon to levy to satisfy an execution for such sum shall, notwithstanding any enactment to the contrary in any Act, be such period (subject to the provisions hereinafter contained) as in the opinion of the justices shall satisfy the justice of the case, but not exceeding in any case the maximum fixed by the following scale, that is to say—

Where the amount of the sum or sums of money adjudged to be paid—	The said period shall not exceed—
Does not exceed Ten Shillings... ..	Seven days
Exceeds Ten Shillings, but does not exceed One Pound	Fourteen days
Exceeds One Pound, but does not exceed Five Pounds	One month
Exceeds Five Pounds, but does not exceed Ten Pounds	Three months
Exceeds Ten Pounds... ..	Six months

And such imprisonment may be with or without hard labour, although hard labour may not be expressly authorised by the Act on which the conviction or order is founded.

Imprisonment for non-payment of costs.
Tas. (New).

(2) When a conviction or order adjudges the payment of a sum of money for costs alone, the period of imprisonment imposed upon non-payment of such costs shall not exceed One month.

(3) This section shall not apply to any penalty imposed by or under any Act regulating the sale of liquor.

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130 A copy of the Table of Fees in force for the time being shall be conspicuously exhibited in the justice-room at every police office or place of holding petty sessions, and at the foot of each such copy there shall be printed Subsections (4) and (5) of Section Nine.

Any justice or clerk of petty sessions may refuse to do any act or thing in respect of which any such fee is payable unless such fee is first duly paid.

If any such act or thing is done, and the fee due thereon is not paid, the clerk to whom such fee should have been paid may recover the same in a summary way before any justice.

Where it appears to be conducive to the ends of justice that any such fee should be remitted or paid back, or that the person by whom the same is payable is unable to pay the same, any justice may remit such fee or direct the same to be paid back, or direct that it shall not be payable, and thereupon such fee shall be remitted or paid back or not be payable, as the case may be.

In every case where it is not otherwise expressly appointed every such fee shall, in the first instance, be payable, and paid by the party (whether prosecutor or otherwise) on whose behalf or at whose instance the particular act or thing is done, or required to be done, but shall be eventually repaid to him by the defendant or adverse party if the justices deciding the case think fit so to order.

131 Every clerk of petty sessions and every keeper of a gaol—

- i. Shall keep a true and exact account of all moneys received by him under or by virtue of any conviction or order, showing the persons from whom and the time when the sums were received, and to whom and when the sums were paid, in such form and manner as the Auditor-General may from time to time determine; and
- ii. Shall, once in every month, render a fair copy of every such account to the Treasury.

Appropriation.

132—(1) Subject to the provisions of the Act, intituled "An Act to provide for the Remission of Penalties," and of "The Repayment of Remitted Penalties Act, 1889," all fines and penalties whatsoever imposed upon summary conviction before justices, and the fees incidental thereto, in respect of offences committed—

- i. Within a municipality proclaimed under "The Local Government Act, 1906," shall be paid into, and form part of the municipal fund of such municipality:
- ii. Within any part of Tasmania, other than any such municipality, shall be paid into the Treasury, and form part of the Consolidated Revenue,

except in cases where the same are specially made payable by any Act to any person or local governing body, other than His Majesty, or the Government of the State.

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Table of fees to be exhibited.

Act not to be done until fee paid.
Cf. Tas., s. 32.By whom fees payable.
Cf. Tas., s. 33.Accounts to be kept.
Cf. W.A., s. 162.
Cf. Q., s. 176.
Cf. Tas., *ibid.*, s. 33.
Cf. Audit Act, 1918, s. 33.Appropriation of penalties, &c.
29 Vict. No. 18.
53 Vict. No. 4.
Cf. 1 Edw. VII. No. 41.

6 Edw. VII. No. 31.

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(2) Notwithstanding anything to the contrary hereinbefore contained, all fines and penalties imposed upon the municipal council or the corporation of any such municipality, and the fees incidental thereto, shall be paid into the Treasury, and form part of the Consolidated Revenue.

(3) This section shall not deprive any informer of any moiety or share of any fine or penalty inflicted for any breach of law relating to the Consolidated Revenue to which he may be entitled under any law now in force.

PART VI.

SURETY OF THE PEACE.

In what cases justices may require sureties of the peace. Cf. No. 91 of 1908, s. 12 (N.Z.).

133 Any justice may call upon any person to enter into recognisance to the King, either with or without sureties as he thinks fit, for keeping the peace in any of the following cases:—

- I. When he shall be required so to do by any person who deposes on oath that he has just cause to fear that the person from whom surety is sought—
 - (a) Will do him or his wife or child or any person under his care or charge bodily harm;
 - (b) Or will cause him or his wife or child or any such person to be unlawfully imprisoned;
 - (c) Or will burn or injure his house;
 - (d) Or will procure any other person to do any such thing as aforesaid;

And that he does not require it out of malice or for vexation; and who satisfies the justice by the evidence of himself or of others that he hath just cause for such fear by reason of the person from whom surety is sought having threatened so to do, or lain in wait for that purpose:

- II. When the justice is required so to do by any person who gives him satisfactory evidence on oath that the person from whom surety is sought has—
 - (a) Used provoking or insulting language; or
 - (b) Exhibited any offensive writing or object; or
 - (c) Done any offensive act to or in the presence of the party complaining, for the purpose of annoyance and provocation, or publicly and to the common annoyance of His Majesty's subjects;

And the justice is of opinion that such conduct is likely to be repeated, and may tend to provoke a breach of the peace;

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- iii. When the justice is satisfied by evidence that the person from whom surety is sought has threatened to do, or to procure some other person to do, any act which would, if done, be punishable as an offence under any of the Acts or parts of Acts following:—

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An Act to consolidate and amend the Legislative Enactments relating to Malicious Injuries to Property (27 Victoria No. 7), and every amendment thereof;

An Act to consolidate and amend the Legislative Enactments relating to Offences against the Person (27 Victoria No. 5), and every amendment thereof; and

Section One hundred and seventy-two, and Sections One hundred and eighty-two to One hundred and eighty-four inclusive of "The Marine Boards Act, 1889";

53 Vict. No. 34.

and the justice is of opinion that there is just cause for fear that the person so threatening will, if not prevented, carry such threat into execution:

- iv. When such justice is satisfied by evidence that the person from whom surety is sought—
- (a) Has, either by word of mouth or letter, challenged any other person to fight; or
 - (b) Has knowingly been the messenger of any such challenge from another; or
 - (c) Has accepted or intends to accept any such challenge; or
 - (d) Intends to fight or to be present aiding or abetting at any such fight or breach of the peace:
- v. Where the person from whom surety is sought has, either by word or writing, incited or attempted to incite any other person to take part in a riot, or to commit any other breach of the peace.

134—(1) Where any person applies to a justice to have any other person bound over to keep the peace, the application shall be by way of complaint, to be verified by the oath of the applicant.

How application for sureties of the peace is to be made.

Cf. N.Z., s. 13.

(2) In such complaint the facts upon which the complainant relies in support of his application shall be fully set forth; and, if any of such facts be not within the personal knowledge of such complainant, they shall, if the justice so require, be verified by the corroborative oath of some other person or persons.

(3) If the justice receiving such complaint, and considering the matter thereof, sees sufficient cause so to do, he shall thereupon issue his warrant, requiring that the person against whom such complaint is made be apprehended and brought before him or some other justice or justices, to answer to the complaint, and to be further dealt with according to law.

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(4) Or if the justice is of opinion that the complainant has cause for his application, but that no person or property is in immediate danger by reason of the person complained against, he may, if he think fit, issue his summons in the first instance to compel the appearance of the person complained against, in like manner as in other complaints.

How application is to be heard.
Cf. N.Z., s. 14.

135—(1) Such application shall be heard and determined in open court.

(2) Upon the appearance of the person from whom surety is sought, the complaint shall be read over to him, and, if he has no cause to allege why he should not be bound over to keep the peace, the justice then present may thereupon require him to enter into recognisance accordingly.

(3) If he has any such cause to allege, he may require the complainant or his witnesses to be examined upon oath, and cross-examine them, and may by way of defence adduce evidence to explain, or controvert the truth of, the facts relied upon by the complainant in support of his application, or to show that the complaint is made for malice only or vexation.

(4) The hearing of such complaint shall be conducted in manner provided by this Act in the case of other complaints.

Complaint to be dismissed if preferred from malice only and without just cause of fear.
Cf. N.Z., s. 15.

136 If the justice hearing the complaint is of opinion that the complainant has no just cause of fear, or that the complaint has been made out of malice or for vexation, and without just cause of fear, he shall dismiss the case, and may order the complainant to pay to the defendant such costs as to him shall seem just and reasonable in that behalf.

If complaint reasonable, defendant to be required to enter into recognisance to keep the peace.
Cf. N.Z., s. 16.

137—(1) If, upon the hearing of any such complaint, the justice considers that there is good grounds so to do, he may order the defendant to enter with one or more sureties as to him shall seem meet into a recognisance to the King in such sum or sums as the justice deems sufficient, conditioned that that defendant do keep the peace—

- I. Towards the complainant; or
- II. Towards His Majesty and all his liege people; or
- III. Towards His Majesty and all his liege people, and especially towards the complainant,

for a time to be fixed by such order not exceeding One year from the date of such recognisance.

(2) Such recognisance may be entered into by the principal or any sureties thereto before any justice, and it shall not be necessary for all the parties to the recognisance to be present at the same time.

Defendant may be ordered to pay costs
Cf. N.Z., s. 17.

138—(1) The costs of the proceedings for any such recognisance of the peace shall be paid in the first instance by the complainant; but the justice, in and by his said order may, if he thinks fit, adjudge that the defendant do pay to the complainant such costs as he deems reasonable.

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(2) Payment of all costs which the said justice may order to be paid by either party to the other shall be enforced in like manner as is by this Act provided in other cases of complaint.

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139 If the defendant refuses or neglects to enter into such recognisance or is unable to find sufficient surety or sureties to the satisfaction of the justice requiring the same, the said justice may issue his warrant under his hand, commanding that the defendant be taken to some convenient gaol, there to be kept until he enters into such recognisance.

Defendant may be committed until he enters into the required recognisances. Cf. N.Z., s. 18.

Provided that no person shall be detained in prison under any such warrant for any longer period than he would have been bound under recognisance of the peace if he had entered into such recognisance upon the day of the making of the order.

140 Where a complaint is laid against any person for an assault punishable in a summary way, the complainant may in the same complaint require that the defendant be bound over to keep the peace.

In assaults persons may be bound over to keep the peace Cf. N.Z., s. 19.

141 Wherever, upon the hearing of any complaint for an offence punishable in a summary way, it appears to the justice hearing the same, by the evidence, that the defendant has used any threats, or done any act for which he might be required to enter into recognisance of the peace, such justice may, if he thinks fit, require the defendant to enter into such a recognisance, either in addition to or in lieu of the punishment to which he is liable upon conviction of the said offence, and whether the complainant has required sureties of the peace against the defendant or not.

Justices may require convicted persons to give sureties of the peace in addition to or in lieu of punishment. Cf. N.Z., s. 20.

142 Whenever any person within the view or hearing of any justice uses any threat or other language, or does any act on proof of which he might on complaint made be required to enter into recognisances of the peace, the justice may forthwith, and without further proof, require such person to enter into such recognisance of the peace as such justice deems sufficient, and in default of his so doing may commit him to prison in like manner as herebefore provided.

Justices may upon sufficient cause require persons to give sureties of the peace where no complaint is made. Cf. N.Z., s. 21.

143 If the person upon whose complaint a justice has required the defendant to find sureties of the peace dies, and the defendant is then in prison in default of giving such sureties, the justice who made the order, if he thinks fit, may order the defendant to be released from custody without giving such sureties.

Persons imprisoned in default of finding sureties may be released if complainant die. Cf. N.Z., s. 22

144 No person who shall have been required to enter into recognisances of the peace shall be discharged therefrom by any release from the complainant, nor, if in custody in default of entering into such recognisance, shall he be entitled to be liberated in consequence of any such release.

Recognisances not to be discharged by release from complainant.

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How recognisance
of the peace may
be forfeited.

145—(1) Where any recognisance to keep the peace is entered into before a justice by any person as principal or surety, a police magistrate or any Two or more justices, upon application made to him or them, may adjudge such recognisance to be forfeited upon proof—

- I. Of conviction of the party bound as principal by such recognisance of any offence which is in law a breach of the condition of the same; or
- II. That the party so bound as principal has done or threatened to do any act the doing or threatening whereof would, if proved against him, have been a ground for calling upon him to enter into such recognisance;

and upon further proof that a notice in writing, signed by the person seeking to put such recognisance in force, has, Seven clear days before such application is made, been personally served upon or left at the usual place of abode of the party or each of the parties (if more than one) against whom it is sought to put such recognisance in force, that an application will be made, at a time and place to be stated in any such notice that the said recognisance may be adjudged to be forfeited.

Upon adjudging such recognisance to be forfeited, the said magistrate or justices may adjudge and order the persons bound thereby, whether as principal or sureties, or any of such persons to pay the sums for which they are respectively bound.

(2) If the sum of money which any such person is ordered to pay under such recognisance is not paid either immediately, or within such time as the said magistrate or justices appoint, any justice may, without further notice to such person, cause the same, with the costs of all proceedings rendered necessary by such non-payment, to be levied and recovered by execution against the goods and chattels of such person, and in default of sufficient goods and chattels such person may be imprisoned for any term not exceeding Three months unless the sum adjudged to be paid, and all costs and charges of the execution, and also if the justice thinks fit so to order, of taking and conveying the said person to gaol, are sooner paid.

PART VII.

APPEALS FROM THE DECISIONS OF JUSTICES.

DIVISION I.—*Order to Review.*

146—(1) Where any person—

- I. Who feels aggrieved by any conviction, or by any dismissal of a complaint by justices; or
- II. Who feels aggrieved by any final order, adjudication, or determination of justices—
 - (a) Respecting an offence or breach of duty; or

Order to review.
Cf. 6 Geo. V.
No. 2675, s. 1:0
(Vic.).

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(b) Respecting any other matter which justices have A. D. 1919
power or authority to adjudicate upon or
determine; or

III. Against whom any warrant has been issued by any
justices—
shews by affidavit to a judge of the Supreme Court sitting in court
or chambers :

IV. A *primâ facie* case of error or mistake on the part of such
justices on a matter or question of fact alone, or of law
alone, or of both fact and law ; or

v. That such justices had no jurisdiction or authority to
convict, or dismiss, or make such order, adjudication,
or determination, or issue such warrant; or

VI. That the conviction, dismissal, order, adjudication, deter-
mination, or warrant, ought not to have been made or
issued,

he may, within Fourteen days from the conviction, or dismissal, or
making of the order, adjudication, or determination, or the issuing
of the warrant, as the case may be, apply to a judge of the Supreme
Court sitting in court or in chambers for an order (hereinafter
called an order to review) calling upon the complainant, defend-
ant, or other party interested in maintaining the conviction, dis-
missal, order, adjudication, determination, or warrant (as the
case may be), and also if the judge thinks fit, calling upon the said
justices to show cause why the conviction, dismissal, order, adjudi-
cation, determination, or warrant, should not be reviewed.

No order to review shall be granted for the purpose of reviewing
any order of justices committing a defendant for trial or which
is of a ministerial nature.

No order to review shall be granted for the purpose of reviewing
a conviction or order made when one party does not appear, unless
an application to set aside the conviction or order shall have been
made to justices or a police magistrate pursuant to Section Ninety-
nine and shall have been refused.

(2) Such order to review may be made returnable before the
Supreme Court sitting as the Full Court or before a single judge
sitting in court or in chambers.

(3) On the return of any order to review, any single judge, if
he thinks it desirable, may refer such order to review for hearing
and determination by the Full Court on the request of any of the
parties thereto.

(4) Any determination of a single judge (including a refusal
by him to grant an order to review) shall be subject to an appeal
to the Full Court, and may be discharged, varied, or set aside by
the Full Court on application made thereto by any party dissatis-
fied with such determination. The Full Court may make such
further order thereupon, as the case may require, and shall have
all the powers exercisable by the Full Court upon an order to
review made returnable before the Full Court.

(5) In this section the expression "any person who feels
aggrieved" includes as well as a defendant any complainant to a
complaint charging an indictable offence or one punishable upon

May be made
returnable before
Full Court or
judge.

Single judge may
refer order to
Full Court.

Appeal to Full
Court from
determination
of judge
Cf. No. 3 of 1862,
s. 4 (S.A.).

Meaning of "any
person who feels
aggrieved."

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summary conviction who is dissatisfied in respect of an order, adjudication, decision, grant, or refusal of any application or determination of whatsoever kind relating or incidental to such charge (including a refusal to hear or determine such complaint, or to entertain any application) made, given, or come to, by any justices.

Time to return to order to review.
Cf. *ibid.*, s. 152 (Vic.).

147 Such order to review shall be returnable within such time as the judge may direct, provided that such time may be enlarged by any judge of the Supreme Court.

Grounds to be stated.
Cf. *ibid.*, s. 153 (Vic.).

148 The order to review shall state the grounds upon which it is sought to review the conviction, dismissal, order, adjudication, determination, or warrant, but on the return day of the order the said court or judge shall have power to amend any of such grounds as it or he deems just.

Terms on which order to review granted.
Cf. *ibid.*, s. 154 (Vic.).

149 Subject to Section One hundred and fifty-one, the judge in granting such order to review—

- I. May grant it on such terms as to costs and security; and
- II. May provide for stay of proceedings or for admitting any person to bail—

as to him seems fit.

Powers of Full Court or judge on return of order to review.
Cf. *ibid.*, s. 155 (Vic.).

150—(1) On the return of the order to review, the court or judge, on a consideration of the evidence and materials adduced and brought before the justices, and if the court or judge thinks fit, of any further evidence either oral or by affidavit, may—

- I. Discharge such order to review; or
- II. Confirm, vary, amend, rescind, set aside, or quash the conviction, dismissal, order, adjudication, determination, or warrant; or
- III. Rehear the case, or matter, or any issue; or
- IV. Remit the case, or matter, or any issue for hearing or rehearing to the said justices with or without any direction in law; or
- V. Order that the case, or matter, or any issue be retried by a police magistrate; or
- VI. Prohibit the said justices or any other persons from proceeding or further proceeding in respect of the said conviction, order, adjudication, determination, or warrant; or
- VII. Make all such other orders, and cause all such proceedings to be had or taken, as such court or judge thinks just or necessary.

Cf. Com. High Court Procedure Act, 1903, s. 13.

(2) The court or judge may also for such purposes or any of them, and without prejudice to the generality of the powers hereinbefore conferred, exercise all or any of the powers or jurisdiction which the court possesses or might exercise upon *certiorari*, *mandamus*, prohibition or *habeas corpus*, or which immediately previously to the commencement of "The Appeals Regulation Act" the court possessed or might have exercised.

19 Vict. No. 10.

Justices Procedure.

151 The court or judge may make such order as to the costs of the appeal, and, notwithstanding the provisions of Subsection Seven of Section One hundred and fourteen, of the proceedings appealed from as to the court or judge shall seem proper, and the court or judge shall fix and determine the amount of such costs. Provided that in no case shall costs exceeding Twenty Pounds be allowed to any party, unless the court or judge for special reasons determines otherwise.

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Order as to costs.
Cf. 6 Geo. V.
No. 7, s. 4.
Cf. *ibid.*, s. 156
(Vic.).

152 On the return of any order to review, the court or judge shall have power—

Power of court
or judge.
Cf. 6 Geo. V.
No. 7, s. 3 and 7.
To determine real
questions in
controversy.
To amend,
Cf. High Court
Procedure Act,
1903 (Com.),
s. 23 and 24,
and to do final
justice.

I. To determine, or cause to be determined the real questions in controversy or otherwise, depending on the proceeding; and

II. On such terms as are just, to amend, or cause to be amended any defect or error in any proceedings in any court or before justices; and all necessary amendments shall be made for the purpose of determining or providing for the trial of the real questions in controversy, or otherwise depending on the proceedings; and

III. To do, or cause to be done final justice in the whole case or matter on the merits.

153 Upon the rehearing or retrial of any case, matter, or issue by the Full Court, judge, or other person, such court, judge, or person shall have, and may exercise all the powers and authorities exercisable by justices of the peace having full jurisdiction in respect of such case, matter, or issue, and make such order as to the costs of such re-hearing or re-trial as such court, judge, or other person notwithstanding Subsection Seven of Section One hundred and fourteen, deems fit and proper.

Upon re-hearing
Full Court, &c.,
may exercise
powers of
justices.
Cf. 6 Geo. V.
No. 7, s. 5.
Cf. No. 91, 1908,
s. 314 (N.Z.).

154—(1) Whenever an order to review is applied for the justices may make and file in the said court an affidavit setting forth the grounds of the conviction, dismissal, order, adjudication, or determination called in question, and also any facts which the justices 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 justice of the peace, and may be forwarded by post to the Registrar of the Supreme Court for the purpose of being so filed.

Justices when
decision is
questioned may
file explanatory
affidavits.
6 Geo. V. No.
2675, s. 162 (Vic.).
Cf. 38 Vict., No.
11, s. 2 (Tas.).

(2) Where any such affidavit has been filed as aforesaid, the Full Court or judge shall, before making the order absolute against the justices or otherwise determining the matter so as to overrule, set aside, or vary the acts, conviction, dismissal, order, adjudication, or determination of the justices to which the application relates, take into consideration the matters set forth in such affidavit, notwithstanding that no counsel appears on behalf of the justices.

Full court or
judge to consider
affidavit.
Ibid. (Vic.), s.
163.
Ibid. (Tas.), s. 3.

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DIVISION II.—*Proceeding in nature of Mandamus.*Proceeding in nature of *mandamus.*11 and 12 Vict., c. 44, s. 5 (Eng.).
Cf. Tas., 19 Vict. No. 11, s. 5.

155—(1) Where a 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 or a judge thereof, upon an affidavit of the facts, for a rule or order calling upon such justice and the 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 or order good cause is not shown against it, the court or judge may make the same absolute with or without or upon payment of costs.

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

(4) No action or proceeding shall be commenced or prosecuted against such justice for having obeyed such rule or order and done the act thereby required.

DIVISION III.—*General provisions applicable to all proceedings by way of Appeal.*Proceedings not to be quashed for want of form.
Cf. W.A., s. 211.

156 No complaint, conviction, order, or other proceeding before justices shall be quashed or set aside, or adjudged void, or insufficient for want of form.

Respecting the amendment of convictions, &c.
Cf. s. 12 (Tas.), 19 Vict. No. 10.
Cf. W.A., s. 212.
Cf. Q., s. 223.

157 Whenever any evidence given before the justices in substance supports the adjudication of the justices, and if such evidence would have justified the justices in making any necessary allegation or finding omitted in such adjudication, or in the formal conviction or order, or any warrant issued in pursuance of such adjudication, all necessary amendments shall be made by the court or judge, and when in a conviction there is some excess which may (consistently with the merits of the case) be corrected, the conviction shall be amended accordingly, and shall stand good for the remainder; and all amendments shall be subject to such order as to costs and otherwise as the court or judge thinks fit.

Want of summons or complaint.
Cf. W.A., s. 213.
Cf. Tas. (New).
Cf. Q., s. 224.

158 When the person convicted, or against whom an order has been made, or any person whose goods have been condemned or directed to be sold as forfeited, was present at the hearing of the case, the conviction or order shall be sustained, although there may have been no complaint or summons or amendment thereof, unless he objected at the hearing that there was no complaint or summons or amendment thereof, and the court or judge is of opinion that the course of procedure was prejudicial to the conduct of his case.

Distribution of penalty.
Cf. W.A., s. 214.
Cf. Q., s. 225.

159 No conviction or order shall be defeated for the want of any distribution, or for a wrong distribution of the penalty or forfeiture.

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160—(1) Where any person committed to gaol by virtue of a summary conviction or order has been brought up by writ of *habeas corpus*, and the court or judge postpones the final decision of the case, the court or judge may discharge the person upon his recognisance, with or without sureties for his appearance at such time and place, and upon such conditions, as the court or judge may appoint.

(2) If the judgment of the court or judge is against any such person, the court or judge may remand him to his former custody, there to serve the rest of the term for which he was committed.

161 The judges of the Supreme Court, or any Two of them, may make general rules and orders to regulate the practice and procedure under this Part, and for carrying this Part into effect, and, subject to the provisions of this Act, may prescribe the fees to be taken and the costs to be allowed.

162 Notwithstanding anything contained in any other Act to the contrary, there shall be no appeal from any summary conviction or order of justices except as provided by this Act.

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Power to court or judge to admit to bail.

Cf. W.A., s. 210.
Cf. N.S.W., s. 120.

On judgment against him person to be remanded to former custody.

Cf. W.A., s. 210.
Cf. N.S.W., s. 121.

Rules.

24 Vict. No. 5,
s. 10 (Tas.).
Cf. W.A., s. 220.All appeals to be subject to this Act.
Cf. W.A., s. 221.

PART VIII.

PROTECTION OF JUSTICES IN THE EXECUTION OF THEIR OFFICE.

Actions.

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

(2) In the declaration or plaint it shall be expressly alleged that the act was done maliciously and without reasonable and probable cause.

(3) If at the trial, upon the general issue being pleaded, the plaintiff fails to prove the allegation aforesaid, he shall be nonsuited, or a verdict shall be given for the defendant, with costs.

164—(1) An action against a justice for an act done by him in a matter—

i. Of which by law he has not jurisdiction: or

ii. In which he has exceeded his jurisdiction—

may be maintained by any person injured by such act or by any act done under any conviction or order made, or any warrant issued by such justice in such matter, in the same form and in the same case as such an action might have been maintained before the passing of this Act.

(2) In the declaration or plaint it shall not be necessary to allege that the act was done maliciously and without reasonable and probable cause.

Action for act done within jurisdiction as a justice.

11 & 12 Vict.
c. 44, s. 1 (Eng.),
s. 1 (Tas.) *ibid.*
Cf. 6 Geo. V.,
No. 2675 (Vic.).

Action for act done without or in excess of jurisdiction.

Ibid. s. 2 (Eng.)
s. 2 (Tas.) *ibid.*
Cf. *ibid.*, (Vic.),
s. 167, 168.

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Where not maintainable.

Ibid.

Cf. Q., s. 252, 8.

Cf. W.A., s. 222,

6.

Cf. N.S.W., 1902,

No. 27, s. 136.

(3) No such action shall be brought—

- I. For anything done under such conviction or order until after such conviction or order has been set aside by justices or a police magistrate under Section Ninety-nine, or has been quashed upon application for an order to review under this Act:
- II. For anything done under any warrant issued by the justice to procure the appearance of such person if such warrant has been followed by a conviction or order in the same matter until after such conviction or order has been set aside by justices or a police magistrate, under Section Ninety-nine, or has been quashed upon application for an order to review under this Act:
- III. For anything done under any warrant issued by the justice to procure the appearance of such person if—
 - (a) Such warrant has not been followed by a conviction or order in the same matter: or
 - (b) Such warrant was upon an information for an alleged indictable offence, and a summons had been issued previously to such warrant and duly served, and such person had not appeared according to the exigency thereof.

No action maintainable for exercise of discretion; s. 4 (Eng.) s. 4 (Tas.), *ibid.* Cf. (Vic.), s. 171, *et seq.*

or for anything done under warrant of commitment where conviction affirmed; *Ibid.* s. 6 (Eng.) *Ibid.* s. 6 (Tas.) or by reason of defect in conviction or order of another justice; *Ibid.* s. 3 (Eng.) *Ibid.* s. 3 (Tas.) or of want of jurisdiction in other justice. *Ibid.*

When prohibited action brought, proceedings may be set aside *Ibid.*, s. 7 (Eng.) *Ibid.*, 19 Vic., No. 11. s. 7 (Tas.).

165 No action shall be brought against a justice—

- I. For or by reason of the manner in which he has exercised his discretion in the execution of a discretionary power conferred on him by any Act:
- II. For anything done under any warrant of execution or of commitment on the ground of any defect in the conviction or order on which it was founded if, either before or after the granting of such warrant, such conviction or order has been confirmed or amended upon appeal:
- III. By reason of any defect in a conviction or order made by some other justice or justices on which he has *bonâ fide* and without collusion granted a warrant of execution or of commitment:
- IV. By reason of any want of jurisdiction in any other justice or justices by whom a conviction or order has been made on which he has *bonâ fide* and without collusion granted a warrant of execution or of commitment.

166 If an action is brought in the Supreme Court or a Court of Requests against a justice which by this Act is declared to be not maintainable the judge or commissioner of such court may, upon the application of the defendant, and upon an affidavit of the facts, set aside the proceedings in such action, with or without costs.

*Justices Procedure.**Notice of Action.*

167 No action shall be brought against any justice for anything done by him in the execution of his office unless notice in writing of the intended action has been delivered to such justice or left for him at his usual place of abode by the party intending to commence the same, or by his solicitor.

Such notice shall state clearly and explicitly the cause of action and the court in which it is intended to bring the action.

Such notice shall 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, with the name and place of abode or of business of such solicitor.

Where action may be brought.

168 An action against a justice for anything done by him in the execution of his office may be brought in the Supreme Court, or in a Court of Requests of competent jurisdiction.

Provided that—

- I. No such action shall be brought in a court of requests if the justice objects thereto :
- II. If the justice, or his solicitor, within Six days, after being served with a summons in any such action, gives notice in writing to the plaintiff in such action that he objects to being sued in the court of requests for such cause of action, all proceedings afterwards had in that court in such action shall be null and void.

169 If at the trial of any such action the court or jury find that the plaintiff is not entitled to damages beyond the amount (if any) tendered or paid into court—

- I. Judgment shall be given for the defendant : and
- II. The plaintiff shall not be at liberty to elect to be nonsuited : and
- III. So much of the amount (if any) paid into court as is sufficient to pay the defendant's costs, shall be paid out of court to the defendant, and the residue (if any) to the plaintiff.

Damages.

170 If the plaintiff in any such action is entitled to recover and—

- I. 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
- II. Proves that he was imprisoned under the conviction or order and seeks to recover damages for such imprisonment—

and it is further proved—

- III. That he was actually guilty of the offence of which he was convicted : or
- IV. That he was liable by law to pay the sum he was ordered to pay : and

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Limitations as to commencement of action.

Ibid., s. 8 (Eng.).

Cf. N.S.W., s.

139.

Cf. Q., s. 258.

Cf. W.A., s. 227.

Cf. 63 Vict., No

36 (Tas.).

Where action may be brought.

Ibid. s. 10 (Tas.).

s. 140 (N.S.W.).

Cf. *ibid.* (Vic.),

s. 175.

Where plaintiff does not recover damages beyond amount tendered, judgment to be for defendant.

Cf. *ibid.* s. 11

(Tas.).

Cf. *ibid.*, s. 176

(Vic.).

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

Ibid. s. 13 (Eng.).

Ibid. s. 13 (Tas.)

Cf. N.S.W., s.

144.

Cf. *ibid.*, s. 178

(Vic.).

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v. With respect to such imprisonment that he had undergone no greater punishment 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 levied or paid or any sum as damages for such imprisonment or any costs of suit.

Costs.

Costs.

Ibid. s. 14 (Eng.).*Ibid.* s. 14 (Tas.).

Cf. N.S.W. s. 145.

Cf. *ibid.*, s. 179

(Vic.).

171—(1) Subject to the immediately preceding section, if the plaintiff in any such action recovers a verdict, or obtains judgment by default, he shall be entitled, unless the court otherwise orders—

- I. To costs in the same manner as if this Act had not been passed; or
- II. If he has alleged in the declaration or plaint that the act complained of was done maliciously and without reasonable and probable cause, to his full costs as between solicitor and client.

(2) Unless the court otherwise orders, the defendant in any such action, if he obtains judgment by verdict or otherwise, or if the plaintiff discontinues the action, shall be entitled to his full costs as between solicitor and client.

(3) If the plaintiff in any such action recovers a sum less than Forty Shillings as damages, he shall not be entitled to recover from the defendant any costs of suit.

*Justices Procedure.***SCHEDULES.**

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Section 3.

(1)

Date of Act.	Title of Act.	Extent of Repeal.
19 Vict. No. 8, 1855	"The Magistrates Summary Procedure Act"	The whole Act.
31 Vict. No. 11, 1867	"The Magistrates Summary Procedure Act, No. 2"	The whole Act.
63 Vict. No. 27, 1899	"The Magistrates Summary Procedure Amendment Act, 1899"	The whole Act.
1 Ed. VII. No 41, 1901	"The Magistrates Summary Procedure Amendment Act, 1901"	The whole Act.
3 Geo. V. No. 27, 1912	"The Magistrates Summary Procedure Amendment Act, 1912"	The whole Act.
20 Vict. No. 27, 1857	"The Penalties Distribution Act"	The whole Act.
21 Vict. No. 48, 1858	"An Act to make permanent 'The Penalties Distribution Act'"	The whole Act.
32 Vict. No. 25, 1868	"The Small Penalties Act, 1868"	The whole Act.
19 Vict. No. 9, 1855	"The Magistrates Criminal Procedure Act"	The whole Act.
34 Vict. No. 3, 1870	"An Act to remove some Defects in the Administration of the Criminal Law"	Sections Two, Three, and Seven.
37 Vict. No. 6, 1873	"The Criminal Law Procedure Act, 1873"	Sections Seventy-one and Seventy-five so far as they relate to recognisances entered into before Justices, also Sec- tions Seventy-three and Seventy-four.
19 Vict. No. 11, 1855	"The Magistrates Protection Act"	The whole Act.
19 Vict. No. 10, 1855	"The Appeals Regulation Act"	The whole Act.
6 Geo. V. No. 7	"The Appeals Amendment Act, 1915"	The whole Act.
24 Vict. No. 5, 1860	"The Magistrates Stated Cases Act, 1860"	The whole Act.
41 Vict. No. 14, 1877	"The Magistrates Stated Cases Act, 1877"	The whole Act.
38 Vict. No. 11, 1874	"The Review of Justices Decisions Act, 1874"	The whole Act.
6 Ed. VII. No. 31, 1906	"The Local Government Act, 1906"	Section One hundred and fifty-six—The word "penalty" occurring in Sub- section (2) of Sec- tion One hundred and seventy-four; and Sub-sections (5) and (7) of Sec- tion Two hundred and forty-three.

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Section 9,
Subsection (2).

(2)

ORIGINATING PROCEEDINGS.

1.—*Complaint to ground search warrant.*

TASMANIA,
[Hobart] to wit. }

The complaint of *C.D.*, of _____, in the said State, _____, made this _____ day of _____, 19____, before the undersigned, one of His Majesty's Justices of the Peace for the said State [or for the District of _____, in the said State], who says that the following goods of [him], the said *C.D.*, to wit [describe them] were on the _____ day of _____ [or have lately been] feloniously stolen, taken, and carried away, from and out of the dwelling-house [or as the case may be] of the said *C.D.*, situated at _____, in the said State; and that he, the said *C.D.*, has reasonable cause to suspect, and does suspect, that the said goods, or part thereof, are concealed in the dwelling-house or premises [or as the case may be], in the occupation of *A.B.*, situate at _____, in the said State. [*Here state grounds of suspicion.*]

Sworn [or made] before me, the day and year first above-mentioned at _____, in the said State.

J.S., J.P.

2.—*Complaint in all other cases.*

TASMANIA,
[Hobart] to wit. }

The complaint of *C.D.*, of _____, in the said State, _____, made this _____ day of _____, 19____, before the undersigned, one of His Majesty's Justices of the Peace for the said State [or for the District of _____, in the said State], who says that on the _____ day of _____, 19____, at _____ [dec., stating the offence or subject matter].

Sworn [or made] before me, the day and year first above-mentioned at _____, in the said State.

J.S., J.P.

3.—*Certificate of indictment being found.*

I hereby certify that on the _____ day of _____, 19____, an information was filed by His Majesty's Attorney-General (or the officer duly appointed for that purpose) in the Supreme Court of Tasmania against *A.B.*, therein described as *A.B.*, late of _____, in the said State, for that he, on the _____ day of _____, 19____, at _____ [dec., stating shortly the offence], and that the said *A.B.* has not appeared or pleaded to the said information.

Dated this _____ day of _____, 19____.

J.D.,

Clerk of the Supreme Court.

Justices Procedure.

SUMMONSES.

A D. 1919.

4.—*Summons to the defendant upon complaint.*

To A B., of _____, in the State of Tasmania.

Whereas a complaint has this day been made before the undersigned, one of His Majesty's Justices of the Peace for the said State [or &c.] that you, on the _____ day of _____, 19____, at _____ [here state shortly the matter of the complaint]: These are therefore to command you, in His Majesty's name to appear at _____, in the said State, on the _____ day of _____ 19____ at _____ o'clock in the forenoon, before such Justice or Justices as may then be there, to answer the said complaint, and to be further dealt with according to law.

Given under my hand, at _____, in the said State, this _____ day of _____, 19____.

J.S., J.P.

Indorsement of Service.

On the _____ day of _____, 19____, at _____, I served the within-named A.B. with the within summons by delivering a copy of it to him personally [or by leaving a copy of it for him at his last or most usual place of abode (or of business), with _____, appearing to be not less than sixteen years of age and apparently an inmate of such place of abode (or employed at such place of business)].

(Signature)

(Date)

5.—*Summons of a witness.*

To E.F., of _____, in the State of Tasmania.

Whereas a complaint was, on the _____ day of _____, 19____, made before the undersigned, one of His Majesty's Justices of the Peace for the said State [or &c.] that A.B. [&c., as in the summons or warrant against the defendant]. These are therefore to require you to appear at _____, in the said State, on the _____ day of _____, 19____, at _____ o'clock in the forenoon, before such Justices as may then be there, to testify what you know concerning the matter of the said complaint [and you are further required to bring with you and produce at the time and place above-named] [here describe the documents to be produced].

Given under my hand, at _____, in the said State, this _____ day of _____, 19____.

J.S., J.P.

Indorsement of Service.

[Same as Indorsement of Service in Form 4.]

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6.—*Warrant in the first instance to apprehend a person charged with an indictable offence or a simple offence.*

To _____ and to all other police officers

in the State of Tasmania.

Whereas a complaint has this day been made upon oath before the undersigned, one of His Majesty's Justices of the Peace for the said State [or &c.] for that *A.B.*, on the _____ day of _____, 19____, at _____ [here state shortly the offence or matter of the complaint]: These are therefore to command you, in His Majesty's name, forthwith to apprehend the said *A.B.* and to bring [him] before some one or more of His Majesty's Justices of the Peace, to answer to the said complaint, and be further dealt with according to law.

Given under my hand, at _____, in the said State, this _____ day of _____, 19____.

J.S., J.P.

For offences committed on the high seas the warrant may be the same as in ordinary cases, but describing the offence to have been committed "on the high seas out of any jurisdiction or place in the State of Tasmania, and within the jurisdiction of the Admiralty of England."

For offences committed abroad for which the parties may be indicted in this State the warrant also may be the same as in ordinary cases, but describing the offence to have been committed "on land out of the State of Tasmania, to wit, at _____" [as the case may be].

7.—*Search warrant.*

To _____ and all other police officers

in the State of Tasmania.

Whereas a complaint has this day been made upon oath before the undersigned, one of His Majesty's Justices of the Peace for the said State [or &c.], for that [&c., as in Form 1 to the end, then thus]: These are therefore to command you, in His Majesty's name, forthwith, with proper assistance, to enter the said dwelling-house and premises [or as the case may be] of the said *A.B.* [in the day-time], and there diligently search for the said goods; and if the same, or any part thereof, are found upon search, that you attach the goods so found [and apprehend the said *A.B.*, and bring [him] before some one or more of His Majesty's Justices of the Peace, to give an account of how he came by the said goods, and to be further dealt with according to law.]

Given under my hand, at _____, in the said State, this _____ day of _____, 19____.

J.S., J.P.

MESNE WARRANTS.

8.—*Warrant to apprehend defendant where the summons is disobeyed.*

To _____ and all other police officers

in the State of Tasmania.

Whereas on the _____ day _____, 19____, a complaint was made that *A.B.* [&c., as in the summons], and a summons was then issued to the said *A.B.* commanding [him] to appear at _____, in the said State, on the _____ day of _____, 19____, at _____ o'clock in the forenoon, before such Justices as might then be there, to answer the said complaint: And whereas the said *A.B.* neglected to appear at the time and place appointed by the said summons, and it has been proved that the said summons was duly served upon the said *A.B.*: These are therefore to command you, in His Majesty's name, forthwith to apprehend the said *A.B.* and to bring [him] before some one or more of His Majesty's Justices of the Peace, to answer the said complaint, and to be further dealt with according to law.

Given under my hand, at _____, in the said State, this day of _____, 19____.

J.S., J.P.

Justices Procedure.

9.—*Warrant to apprehend a person required to give surety of the peace.* A.D. 1919.

[As in the above warrant, and conclude as follows, instead of "and to be further dealt with," &c.:—] and to find sufficient sureties to keep the peace towards His Majesty and his people, and especially towards the said C.D., for such term as shall be directed. Sec 117.

Given under my hand, &c.

J.S., J.P.

10.—*Warrant where a witness has not obeyed a summons to attend the examination of a person charged with an indictable offence or the hearing of a charge of a simple offence or breach of duty.*

To _____ and all other police officers
in the State of Tasmania.

Whereas on the _____ day of _____, 19____, a complaint was made that A.B. [&c. as in the summons or warrant], and a summons was duly issued to E.F., of _____, in the said State _____, requiring [him] to appear on _____ day of _____, 19____, at _____, in the said State, before such Justices as might then be there, to testify what [he] knew concerning the matter of the said complaint: And whereas proof has been made that such summons was duly served upon the said E.F.: And whereas the said E.F. neglected to appear at the time and place appointed by the said summons, and no just excuse has been offered for such neglect: These are therefore to command you, in His Majesty's name, forthwith to apprehend the said E.F. and bring [him] before [me] _____ at _____, in the said State, or before such other Justices as may then be there, to testify what [he] knows concerning the matter of the said complaint.

Given under my hand, at _____, in the said State, this _____ day
of _____, 19____.

J.S., J.P.

11.—*Warrant for a witness in the first instance.*

To _____ and all other police officers
in the State of Tasmania.

Whereas on the _____ day of _____, 19____, at _____ a complaint was made that A.B. [&c., as in the summons or warrant], and it being made to appear before me on oath that E.F., of _____, in the said State _____ is likely to give material evidence on behalf of the prosecution [or as the case may be] in the matter, and it is probable that the said E.F. will not attend to give evidence without being compelled so to do: These are therefore to command you, in His Majesty's name, forthwith to apprehend the said E.F. and bring [him] before me at _____, in the said State, or before such other Justices as may be there, to testify what [he] knows concerning the matter of the said complaint.

Given under my hand, at _____, in the said State, this _____ day
of _____, 19____.

J.S., J.P.

12.—*Warrant on certificate of indictment having been found to apprehend person indicted.*

To _____ and all other police officers
in the State of Tasmania.

Whereas it has been certified by [the Clerk of the Supreme Court] that [&c., stating the certificate (Form 3)]: These are therefore to command you, in His Majesty's name, forthwith to apprehend the said A.B. and to bring him before me or some other Justice or Justices of the Peace, to be dealt with according to law.

Given under my hand, at _____, in the said State, this _____ day
of _____, 19____.

J.S., J.P.

Justices Procedure.

A.D. 1919

REMANDS.

13.—*Warrant remanding a prisoner.*

To _____ and all other police officers
in the State of Tasmania, and to the keeper of the gaol at _____,
in the said State.

Whereas *A.B.* was this day charged before the undersigned [*one*] of His Majesty's Justices of the Peace for the said State [*or, &c.*], for that [*&c., as in the warrant to apprehend*], and it appears to me to be necessary to remand the said *A.B.*: These are therefore to command you, the said police officers, in His Majesty's name, forthwith to convey the said *A.B.* to the said gaol, and there to deliver [*him*] to the keeper thereof, together with this warrant, and [*I*] hereby command you, the said keeper, to receive the said *A.B.* into your custody in the said gaol, and there safely keep [*him*] until the _____ day of _____, 19____, or such earlier day as may be lawfully ordered in that behalf, when I hereby command you to have [*him*] at _____, in the said State, at _____ o'clock in the forenoon, before such Justices as may then be there, further to answer the said charge and to be further dealt with according to law.

Given under my hand, at _____, in the said State, this _____ day
of _____, 19____.

J.S., J.P.

14.—*Warrant of committal for safe custody during an adjournment of the hearing.*

To _____ and to all other police officers
in the State of Tasmania, and to the keeper of the gaol at _____,
in the said State.

Whereas on the _____ day of _____, 19____, complaint was made before the undersigned [*or as the case may be*], [*one*] of His Majesty's Justices of the Peace for that [*&c., as in the summons or warrant*], and whereas the hearing of the same is adjourned to the _____ day of _____, 19____, at _____ o'clock in the forenoon, at _____, in the said State, and it is necessary that the said *A.B.* should in the meantime be kept in safe custody: These are therefore to command you, the said police officers, in His Majesty's name, forthwith to convey the said *A.B.* to the said gaol, and there deliver [*him*] into the custody of the keeper thereof, together with this warrant, and I hereby command you, the said keeper, to receive the said *A.B.* into your custody in the said gaol, and there keep [*him*] until the _____ day of _____, 19____, when I hereby require you to convey and have [*him*] the said *A.B.*, at the time and place to which the said hearing is so adjourned as aforesaid, before such Justices as may then be there, to answer further the said complaint, and to be further dealt with according to law.

Given under my hand, at _____, in the said State, this _____ day
of _____, 19____.

J.S., J.P.

RECOGNISANCES, &c.

15.—*Certificate of consent to bail by the committing Justice indorsed on the commitment.*

I hereby certify that I consent to the within-named *A.B.* being bailed by recognisance himself in the sum of _____ and [*two*] sureties in the sum of _____ [each.]

Given under my hand, at _____, in the said State, this _____ day
of _____, 19____.

J.S., J.P.

*Justices Procedure.*16.—*The like on a separate paper.*

A.D. 1919.

Whereas *A.B.* was, on the day of , 19 , committed by me to the gaol at , in the State of Tasmania, charged with [*&c.*, *naming the offence shortly*]:

I hereby certify that I consent to the said *A.B.* being bailed by recognisance, himself in the sum of and [*two*] sureties in the sum of [*each*].

Dated this day of , 19 .

*J.S., J.P.*17.—*Recognisance for the appearance of a defendant, where the case is adjourned or not at once proceeded with.*

TASMANIA,
[Hobart] to wit. }

Be it remembered that on the day of , 19 , *A.B.*, of , in the said State , and *L.M.*, of , in the said State , personally came before the undersigned [*one*] of His Majesty's Justices of the Peace for the said State [*or, &c.*], and severally acknowledged themselves to owe to our Sovereign Lord the King the several sums following— that is to say, the said *A.B.* the sum of , and the said *L.M.* the sum of sterling, to be made and levied of their several goods and chattels, lands, and tenements respectively, to the use of our said Lord the King, his heirs and successors, if [*he*] the said *A.B.*, shall fail in the following condition.

Taken and acknowledged before me the day and year first above-mentioned, at , in the said State.

*J.S., J.P.**Condition.*

The condition of the above recognisance is such that if the said *A.B.* charged upon the complaint of *C.D.* with [*here insert briefly nature of charge, such as larceny, assault, &c.*] shall personally appear at , in the said State, on the day of , 19 , at o'clock in the forenoon, before such Justices as may then be there, [*further*] to answer the said charge made by *C.D.* against the said *A.B.*, and to be further dealt with according to law, then the said recognisance to be void, or else to stand in full force and virtue.

J.S., J.P.

NOTE.—When a recognisance is proposed to be entered into before any of the persons other than justices mentioned in Section 60, the above form is to be altered to meet the case.

18.—*Notice of such recognisance to be given to the defendant and his surety.*

Take notice that you, *A.B.*, of , in the State of Tasmania, , are bound in the sum of , and you, *L.M.*, of , in the said State, , in the sum of , that you, *A.B.*, appear personally at , in the said State, on the day of , 19 , at o'clock in the forenoon, before such Justices of the Peace as shall then be there, to answer further a certain charge made by *C.D.*, the further hearing of which was adjourned to the said time and place; and unless you appear accordingly the recognisance entered into by you, *A.B.* and by *L.M.*, as your surety, will forthwith be enforced against you and him.

Dated this day of , 19 .

J.S., J.P.

NOTE.—When a recognisance is proposed to be entered into before any of the persons other than justices mentioned in Section 60, the above form is to be altered to meet the case.

Justices Procedure.

A.D. 1919

19.—*Certificate of non-appearance or default to be endorsed on the defendant's recognisance.*

[I] hereby certify that the said *A.B.* did not appear at the time and place in the condition of the within-written recognisance mentioned, but therein has made default, by reason whereof I hereby declare the said recognisance forfeited.

Dated this day of , 19

J.S., J.P.

20.—*Recognisance of Bail on Committal for Trial.*

[Same as Recognisance, Form 17.]

J.S., J.P.

Condition.

The condition of the above recognisance is such that whereas the said *A.B.* was, on the day of , charged before the Justice within mentioned, that [*&c.*, as in the warrant]: if, therefore, the said *A.B.* shall appear at the next criminal sittings of the Supreme Court [*or as the case may be*] to be held at , in the State of Tasmania, on the day of , 19 , and surrender [*himself*] there, and plead to such information as may be filed against [*him*] in respect of the charge aforesaid, and take [*his*] trial upon the same, and not depart from the said Court, without leave, then the said recognisance to be void, or else to stand in full force and virtue.

J.S., J.P.

21.—*Notice of recognisance to be given to the defendant and his bail.*

Take notice that you, *A.B.*, of , in the State of Tasmania, , are bound in the sum of , and you, *L.M.*, of , in the said State, [*Grocer*], and *N.O.*, of , in the said State [*Butcher*], in the sum of each, that you, *A.B.*, appear [*&c.*, as in the condition of the recognisance], and do not depart from the Court without leave; and unless you, the said *A.B.*, personally appear, and surrender yourself and plead and take your trial accordingly, the recognisance entered into by you and your sureties will forthwith be enforced against you and them.

Dated this day of , 19

J.S., J.P.

22.—*Recognisance of the peace.*

[Same as Recognisance, Form 17.]

Condition.

The condition of the above recognisance is such that if the said *A.B.* shall keep the peace towards His Majesty the King and his people, and especially towards *C.D.*, of , for the term of [months] now next ensuing, then the said recognisance to be void, or else to stand in full force and virtue.

23.—*Notice of such recognisance to be given to the defendant and his sureties.*

Take notice that you, *A.B.*, of , in the State of Tasmania, , are bound in the sum of , and you, *L.M.*, of , and *N.O.*, of , in the sum of , that you, *A.B.*, keep the peace towards His Majesty the King and His people, and especially towards *C.D.*, of , for the term of [months] from the day of [last], and unless you so keep the peace accordingly, the recognisance entered into by you, *A.B.*, and by *L.M.* and *N.O.* as your sureties, will forthwith be enforced against you and them.

Dated this day of , 19

J.S., J.P.

*Justices Procedure.*24.—*Recognisance to give evidence.*

A.D. 1919.

TASMANIA,
[Hobart] to wit. }

Be it remembered that on the _____ day of _____, 19____, C.D., of [_____] in the said State, came before one of His Majesty's Justices of the Peace in and for the said State [or, &c.], and acknowledged [himself] to owe to our Sovereign Lord the King the sum of _____ sterling, to be made and levied of [his] goods and chattels, lands, and tenements, to the use of our said Lord the King, his heirs and successors, if [he] the said C.D. shall fail in the following condition.

Taken and acknowledged before me the day and year first abovementioned, at _____, in th said State.

J.S., J.P.

Condition.

The condition of the above recognisance is such that whereas A.B. was this day charged before J.S., the Justice of the Peace within-mentioned, for that [d.c., as in the caption of the depositions]: If, therefore [he], the said C.D., shall appear at the next criminal sittings of the Supreme Court [or as the case may be], to be holden at _____, in the State of Tasmania, on _____, the _____ day of _____, 19____, and there give evidence upon an information to be then preferred against the said A.B. for the offence aforesaid, then the said recognisance to be void, or else to stand in full force and virtue.

J.S., J.P.

NOTE.—When a recognisance is proposed to be entered into before any of the persons other than justices mentioned in Section 60, the above form is to be altered to meet the case.

25.—*Notice of recognisance to be given to the witnesses.*TASMANIA,
[Hobart] to wit. }

Take notice that you, C.D., of _____, in the said State, are found in the sum of _____, to appear at the next [as in the Condition]; and then and there to give evidence against A.B., and unless you then appear and give evidence accordingly the recognisance entered into by you will be forthwith enforced against you.

Dated this _____ day of _____, 19____

J.S., J.P.

DEPOSITIONS, &c.

26.—*Depositions of witnesses.*TASMANIA,
[Hobart] to wit. }

The examination of C.D., of _____, and E.F., of _____, taken this _____ day of _____, 19____, at _____, in the said State, before the undersigned [one], of His Majesty's Justices of the Peace for the said State [or, &c.], in the presence and hearing of A.B., who is charged this day before [me] that [he] [d.c., describing the offence as in a warrant of commitment.]

C.D., on his oath [or affirmation] says as follows [d.c., state the deposition of the witness as nearly as possible in the words he uses, and when his deposition is complete let him sign it.]

E.F., upon his oath [or affirmation] says as follows [d.c.]

Taken and sworn [or affirmed] before [me] at _____, in the said State, on the day and year first above-mentioned.

J.S., J.P.

Justices Procédure.

A D. 1919.

27.—*Statement of the defendant.*

TASMANIA, }
 [Hobart] to wit. }

A.B. stands charged before the undersigned [one] of His Majesty's Justices of the Peace for the said State [or, &c.], this _____ day of _____, 19____, that [he], [&c., as in the caption of the depositions], and the charge being read to the said *A.B.* and the witnesses for the prosecution, *C.D.* and *E.F.* being severally examined in [his] presence, the said *A.B.* is now addressed by [me] as follows:—"Having heard the evidence, do you wish to say anything in answer to the charge? You are not obliged to say anything unless you desire to do so. 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 will be taken down in writing and may be given in evidence against you upon your trial notwithstanding such promise or threat." Whereupon the said *A.B.* says as follows:—[here state whatever the prisoner may say, and in his very words as nearly as possible; get him to sign it if he will].

Taken before [me] at _____, in the said State, the day and
 year first above-mentioned.

A.B.
 J.S., J.P.

CONVICTIONS.

28.—*Conviction for a penalty to be levied by execution, and in default of sufficient execution, imprisonment.*

TASMANIA, }
 [Hobart] to wit. }

Be it remembered that on the _____ day of _____, 19____, at _____, in the said State, *A.B.*, of _____, in the said State [____], is convicted before the undersigned, [one] of His Majesty's Justices of the Peace for the said State [or, &c.] that [he], the said *A.B.* [&c., stating the offence and the time and place when and where it was committed], and [I] adjudge the said *A.B.* for [his] said offence to forfeit and pay the sum of _____ [stating the penalty and the compensation, if any] to be paid and applied according to law, and also to pay to the said *C.D.* the sum of _____ for [his] costs, and if the said several sums are not paid forthwith [or on or before _____ next] then* [I] order that the same be levied by execution against the goods and chattels of the said *A.B.*, and in default of sufficient goods and chattels* [I] adjudge the said *A.B.* to be imprisoned in the gaol at _____, in the said State [there to be kept to hard labour], for the space of _____, unless the said several sums and all costs and charges of the said execution [and of taking and conveying the said *A.B.* to the said [gaol, if ordered]] are sooner paid.

Given under [my] hand, at _____, in the said State, the day and
 year first above-mentioned.

J.S., J.P.

29.—*Conviction for a penalty, and in default of payment, imprisonment.*

TASMANIA, }
 [Hobart] to wit. }

Be it remembered that on the _____ day of _____, 19____, at _____, in the said State, *A.B.*, of _____, in the said State _____, is convicted before the undersigned, [one] of His Majesty's Justices of the Peace for the said State [or, &c.], that [he] the said *A.B.* [&c., stating the offence and the time

* Or where the issuing of warrant of execution would be more injurious to the defendant or his family than imprisonment, or it appears that he has no goods whereon to levy, then instead of the words between the asterisks ** say—"Inasmuch as it appears to [me] that the issuing of a warrant of execution would be more injurious to the said *A.B.* and his family than imprisonment." [or "that the said *A.B.* has no goods or chattels whereon to levy the said sums], [I] adjudge" [&c., as above, to the end, but omitting the words "of the said execution and"].

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and place when and where it was committed], and [I] adjudge the said A.B. for A.D. 1919:
 [his] said offence to forfeit and pay the sum of [stating the penalty and the compensation, if any] to be paid and applied according to law, and also to pay to the said C.D. the sum of for [his] costs, and if the said several sums are not paid forthwith [or on or before next] [I] adjudge the said A.B. to be imprisoned in the gaol at , in the said State, [there to be kept to hard labour], for the space of , unless the said several sums and the costs and charges of commitment and of conveying the said A.B. to the said [gaol, if ordered] are sooner paid.

Given under [my] hand, at , in the said State, the day and year first above-mentioned.

J.S., J.P.

30.—*Conviction when the punishment is imprisonment.*

TASMANIA, }
 [Hobart] to wit. }

Be it remembered that on the day of , 19 , at , A.B., of , is convicted before the undersigned [two] of His Majesty's Justices of the Peace [or a Police Magistrate] for the said State [or &c.], that [he] the said A.B. [stating the offence and the time and place when and where it was committed], and [we] adjudge the said A.B. for [his] said offence be imprisoned in the gaol at , in the said State, [there to be kept at hard labour] for the space of .

Given under [our] hand, at , the day and year first above-written.

J.S., J.P.

H.M., J.P.

31.—*Conviction when the punishment is imprisonment, and costs are awarded to be levied by execution.*

TASMANIA, }
 [Hobart] to wit. }

Be it remembered that on the day of , 19 , at , A.B., of , [,] is convicted before the undersigned [two] of His Majesty's Justices of the Peace for the said State, or &c.] that [he], the said A.B. [&c., stating the offence and the time and place when and where it was committed], and [we] adjudge the said A.B. for [his] said offence to be imprisoned in the gaol at , in the said State [there to be kept to hard labour], for the space of , and [we] also adjudge the said A.B. to pay the said C.D. the sum of for [his] costs; and if the said sum for costs is not paid forthwith [or on or before next], then* [we] order that the said sum be levied by execution against the goods and chattels of the said A.B., and in default of sufficient goods and chattels* [we] adjudge the said A.B. to be imprisoned in the said gaol for the term of , to commence at and from the termination of [his] imprisonment aforesaid, unless the said sum for costs and all costs and charges of the said execution [and of taking and conveying the said A.B. to the said [gaol, if ordered] are sooner paid.

Given under [our] hand, at , in the said State, the day and year first above-mentioned.

J.S., J.P.

H.M., J.P.

* Or where the issuing of warrant of execution would be more injurious to the defendant or his family than imprisonment, or it appears that he has no goods whereon to levy, then instead of the words between the asterisks ** say—"Inasmuch as it appears to [us] that the issuing of a warrant of execution would be more injurious to the said A.B. and his family than imprisonment." [or "that the said A.B. has no goods or chattels whereon to levy the said sums], [we] adjudge" [&c., as above, to the end, but omitting the words "of the said execution and"].

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ORDER AND CERTIFICATES OF DISMISSAL.

32.—*Order of dismissal of complaint.*

TASMANIA, }
[Hobart] to wit. }

Be it remembered that on the _____ day of _____, 19____, a complaint was made that [&c., as in the summons to the defendant or warrant], and on this day of _____, 19____, at _____, in the said State, the said complaint came on for hearing before the undersigned [one] of His Majesty's Justices of the Peace for the said State [or &c.], whereupon it appears to [me] that the said complaint is not proved [or the complainant did not appear], and [I] therefore dismiss the said complaint [and adjudge that the said C.D. pay to the said A.B. the sum of _____ for the costs incurred by [him] in [his] defence, and if the said sum is not paid forthwith [or on or before _____],* [I] order that the same be levied by execution against the goods and chattels of the said C.D., and in default of sufficient goods and chattels* [I] adjudge the said C.D. to be imprisoned in the gaol at _____ for the term of _____, unless the said sum and all costs and charges of the said execution [and of taking and conveying the said C.D. to the said gaol, if ordered] are sooner paid.

Given under [my] hand, at _____, in the said State, this _____ day of _____, 19____.

J.S., J.P.

33.—*Certificate of dismissal.*

TASMANIA, }
[Hobart] to wit. }

[I] the undersigned [one] of His Majesty's Justices of the Peace for the said State [or, &c.], hereby certify that on the _____ day of _____, 19____, at _____, in the said State, A.B. was charged before [me] that [he] the said A.B. [&c., stating the offence and the time and place when and where alleged to have been committed], and that [I] thereupon dismissed the said complaint [with costs.]

Given under [my] hand, at _____, in the said State, this _____ day of _____, 19____.

J.S., J.P.

ORDERS.

34.—*Order for payment of money to be levied by execution, and in default of execution imprisonment.*

TASMANIA, }
[Hobart] to wit. }

Be it remembered that on the _____ day of _____, 19____, complaint was made before the undersigned, [one] of His Majesty's Justices of the Peace for the said State [or, &c.], that [stating the facts entitling the complainant to the order, with the time and place when and where they occurred], and on the _____ day of _____, 19____, at _____, in the said State, having heard the said complaint, [I] adjudge the said A.B. to pay to the said C.D. the sum of _____ forthwith [or as the case may be], and also to pay to the said C.D. forthwith [or as the case may be], the sum of _____ for costs, and if the said several sums are not paid as aforesaid* [I] order that the same be levied by execution against the goods and chattels of the said A.B., and in default

* Or where the issuing of warrant of execution would be more injurious to the defendant or his family than imprisonment, or it appears that he has no goods whereon to levy, then instead of the words between the asterisks** say—"Inasmuch as it appears to [me] that the issuing of a warrant of execution would be more injurious to the said A.B. and his family than imprisonment." [or "that the said A.B. has no goods or chattels whereon to levy the said sums], [I] adjudge" [&c., as above, to the end, but omitting the words "of the said execution and "].

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of sufficient goods and chattels* [I] adjudge the said A.B. to be imprisoned in the gaol at _____, [there to be kept to hard labour], for the term of _____, unless the said several sums and all costs and charges of the said execution [and the costs and charges of commitment and of conveying the said A.B. to the said gaol, if ordered] are sooner paid.

Given under [my] hand, at _____, in the said State, this _____ day of _____, 19 _____.

A.D. 1919.

J.S., J.P.

35.—Order for payment of money, and in default of payment, imprisonment.

TASMANIA, }
[Hobart] to wit. }

Be it remembered that on the _____ day of _____, 19 _____, complaint was made before the undersigned, [one] of His Majesty's Justices of the Peace for the said State [or, &c.], that [stating the facts entitling the complainant to the order, with the time and place when and where they occurred], and on the _____ day of _____, at _____, in the said State, having heard the said complaint, [I] adjudge the said A.B. to forfeit and pay to the said C.D. the sum of _____ forthwith, [or as may be], and also to pay to the said C.D. the sum of _____ for costs, and if the said several sums be not paid as aforesaid [forthwith], [I] adjudge the said A.B. to be imprisoned in the gaol at _____, [there to be kept to hard labour], for the term of _____, unless the said several sums [and the costs and charges of commitment and of conveying the said A.B. to gaol] are sooner paid.

Given under [my] hand, at _____, in the said State, this _____ day of _____, 19 _____.

J.S., J.P.

36.—Order for any matter where the disobeying of it is punishable with imprisonment.

TASMANIA, }
[Hobart] to wit. }

Be it remembered that on the _____ day of _____, 19 _____, complaint was made before the undersigned, [one] of His Majesty's Justices of the Peace for the said State [or, &c.] that [stating the facts entitling the complainant to the order, with the time and place when and where they occurred], and on the _____ day of _____, at _____, in the said State, having heard the said complaint, [I] adjudge the said A.B. to [here state the matter required to be done], and if upon a copy of the minute of this order being duly served upon the said A.B., [he] shall neglect or refuse to obey the same, [I] adjudge the said A.B. to be imprisoned in the gaol at _____, [there to be kept to hard labour], for the term of _____, unless the said order is sooner obeyed [if the statute authorises this], and [I] also adjudge the said A.B. to pay to the said C.D. the sum of _____ for costs, and if the said sum is not paid forthwith [or on or before _____ next], [I] order the same to be levied by execution against the goods and chattels of the said A.B., and in default of sufficient goods and chattels [I] adjudge the said A.B. to be imprisoned in the said gaol for the term of _____, to commence at and from the termination of [his] imprisonment aforesaid, unless the said sum for costs, and all the costs and charges of the said execution [and of taking and conveying the said A.B. to the said gaol, if ordered] are sooner paid.

Given under [my] hand, at _____, in the said State, this _____ day of _____, 19 _____.

J.S., J.P.

* Or where the issuing of warrant of execution would be more injurious to the defendant or his family than imprisonment, or it appears that he has no goods whereon to levy, then instead of the words between the asterisks* say—"Inasmuch as it appears to [me] that the issuing of a warrant would be more injurious to the said A.B. and [his] family than imprisonment" [or "that the said A.B. has no goods or chattels whereon to levy the said sums], [I] adjudge" [etc., as above, to the end, but omitting the words "of the said execution and"].

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WARRANTS OF EXECUTION, &c.

37.—*Warrant of execution upon a conviction for a penalty.*

To _____ and all other police officers
in the State of Tasmania.

Whereas *A.B.*, late of _____, in the said State _____, was on the _____ day of _____, 19____, at _____, convicted before *E.F.* [and others] [one of] His Majesty's Justices of the Peace for the said State [or, &c.], of an offence against the provisions of the section of the _____ Act [or as the case may be, describing the Act or By-law under which the offence is created], and it was thereby adjudged that the said *A.B.* should for such [his] offence forfeit and pay [&c., as in the conviction], and should also pay to the said *C.D.* the sum of _____, [his] costs, and it was thereby ordered that if the said several sums should not be paid [forthwith] the same should be levied by execution against the goods and chattels of the said *A.B.**: And whereas the said *A.B.* being [now] required to pay the said sums, has not paid the same [or any part thereof]: These are therefore to command you, in His Majesty's name, forthwith to take the goods and chattels of the said *A.B.*, and if within the space of _____ days after taking them the said sums, together with the reasonable charges of taking and keeping the goods and chattels, are not paid, that then you sell the said goods and chattels and pay the money arising by such sale to the clerk of petty sessions at _____, in the said State, and if no goods and chattels can be found that you certify the same to me.

Given under [my] hand, at _____, in the said State, this _____ day of _____, 19____.

J.S., J.P.

* See Form 53.

38.—*Warrant of execution upon an order for the payment of money.*

To _____ and all other police officers
in the State of Tasmania.

Whereas on the _____ day of _____, 19____, at _____, upon the hearing of a complaint made by *C.D.*, of _____, against *A.B.*, of _____, *E.F.* [and others] [one of] His Majesty's Justices of the Peace for the said State [or &c.], adjudged that the said *A.B.* should pay to the said *C.D.* the sum of _____ on or before the _____ then next [or as the case may be], and also should pay to the said *C.D.* the sum of _____ for costs, and it was thereby ordered that if the said several sums were not paid on or before the said _____ day of _____ then next, the same should then be levied by execution against the goods and chattels of the said *A.B.**: And whereas the said *C.D.* has not paid the said several sums of _____ [or any part thereof]: These are therefore to command you, in His Majesty's name, forthwith to take the goods and chattels of the said *A.B.*, and if within the space of _____ days after taking them the said lastmentioned sums, together with the reasonable charges of taking and keeping the said goods and chattels, are not paid, that then you sell the said goods and chattels and pay the money arising from such sale to the clerk of petty sessions at _____ in the said State, and if no goods and chattels can be found, then that you certify the same to me.

Given under my hand, at _____, in the said State, this _____ day of _____, 19____.

J.S., J.P.

* See Form 53.

39.—*Warrant of execution for costs upon an order for dismissal of a complaint.*

To _____ and all other police officers
in the State of Tasmania.

Whereas on the _____ day of _____, 19____, at _____, upon the hearing of a complaint made by *C.D.* against *A.B.* before *E.F.* [and others], [one of] His Majesty's Justices of the Peace for the said State [or, &c.], dismissed the complaint, and adjudged that the said *C.D.* should pay to the said *A.B.* the sum

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of costs, and that if the said sum were not paid [*forthwith*] the same should be levied by execution against the goods and chattels of the said *C.D.** And whereas the said *C.D.* being [*now*] required to pay the said *A.B.* the said sum for costs, has not paid the same or any part thereof: These are therefore to command you, in His Majesty's name, forthwith to take the goods and chattels of the said *C.D.*, and if within the space of days next after taking them the said sum, together with the reasonable charges of taking and keeping the goods and chattels, are not paid, that then you sell the said goods and chattels, and pay the money arising from such sale to the clerk of petty sessions at in the said State, and if no goods and chattels can be found, that you certify the same to me.

A.D. 1919.

Given under my hand, at this day of , 19 , in the said State,

J.S., J.P.

* See Form 54.

40.—*Warrant of execution for costs upon a conviction where the offence is punishable by imprisonment.*

To and all other police officers in the State of Tasmania.

Whereas *A.B.*, of , in the said State of Tasmania, [], was on the day of , 19 , at , convicted before *E.F.* [and others], [one of] His Majesty's Justices of the Peace for the said State [or, &c.], of an offence against the provisions of the section of the Act [or as the case may be, describing the Act or by-law under which the offence is created], and it was adjudged that the said *A.B.* should be imprisoned in the gaol at , [there to be kept to hard labour], for the term of , and it was also adjudged that the said *A.B.* should pay to the said *C.D.* the sum of for costs, and it was thereby ordered that if the said sum of for costs should not be paid [*forthwith*] the same should be levied by execution against the goods and chattels of the said *A.B.** And whereas the said *A.B.*, being required to pay the said sum of , has not paid the same [or any part thereof]: These are therefore to command you, in His Majesty's name, forthwith to take the goods and chattels of the said *A.B.*, and if within the space of days next after taking them the said lastmentioned sum, together with the reasonable charges of taking and keeping the goods and chattels, are not paid, that then you sell the said goods and chattels and pay the money arising from such sale to the clerk of petty sessions at , in the said State, and if no goods and chattels can be found, that you certify the same to me.

Given under my hand, at this day of , 19 , in the said State,

J.S., J.P.

* See Form 55.

41.—*Warrant of execution for costs upon an order where the disobeying of the order is punishable with imprisonment.*

To and all other police officers in the State of Tasmania.

Whereas on the day of , 19 , at upon a complaint made by *C.D.*, of , against *A.B.*, of *E.F.* [and others], [one of] His Majesty's Justices of the Peace for the said State [or, &c.], adjudged that the said *A.B.* should [d.c., as in the order], and it was thereby also adjudged that the said *A.B.* should pay to the said *C.D.* the sum of for costs, and it was ordered that if the said sum should not be paid [*forthwith*] the same should be levied by execution against the goods and chattels of the said *A.B.*, and that in default of sufficient goods and chattels the said *A.B.* should be imprisoned in the gaol at for the term of

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, to commence at and from the termination of [his] imprisonment aforesaid, unless the said sum for costs and all costs and charges of the said execution and of the commitment and conveying of him the said A.B. to the said gaol should be sooner paid.* And whereas a copy of the minute of the said order was duly served upon the said A.B., but the said A.B. has not paid the said sum for costs, or any part thereof: These are therefore to command you, in His Majesty's name, forthwith to take the goods and chattels of the said A.B., and if within the space of _____ days after taking them the said lastmentioned sum, together with the reasonable charges of taking and keeping the goods and chattels, are not paid, that then you sell the said goods and chattels, and pay the money arising from such sale to the clerk of petty sessions at _____, in the said State, and if no goods and chattels can be found, then that you certify the same to me.

Given under my hand, at _____, in the said State,
this _____ day of _____, 19 _____

J.S., J.P.

* See Form 55.

42.—*Return to a warrant of execution.*

I, W.T., police officer of _____, in the State of Tasmania, hereby certify that by virtue of this warrant I have made diligent search for the goods and chattels of the within-mentioned A.B., and that I can find no sufficient goods or chattels of the said A.B. whereon to levy the sums within mentioned.

Witness my hand, this _____ day of _____, 19 _____

W.T.

WARRANTS OF COMMITTAL, &C.

43.—*Warrant of commitment for trial or for sentence.*

To all police officers in the State of Tasmania, and to the keeper of the gaol at _____, in the said State.

Whereas A.B. was this day charged before me, J.S., one of His Majesty's Justices of the Peace for the said State [or, &c.], on the oath of C.D., of _____, in the State of _____, that [&c., stating shortly the indictable offence], [and the said A.B. admitted that [he] is guilty of the said offence]. And thereupon it was ordered that the said A.B. should be committed to take his trial for the said offence at the next criminal sittings of the Supreme Court [or as the case may be] to be holden at, &c. (or should be committed to the Supreme Court for sentence). These are therefore to command you, the said police officers, to convey the said A.B. to the gaol at _____ and deliver [him] to the keeper thereof, together with this warrant; and [I] hereby command you, the said keeper, to receive the said A.B. into your custody in the said gaol and [him] there keep until the said sittings of the said court, or until [he] shall be thence delivered by due course of law (or where he is committed to be sentenced, to be dealt with according to law).

Given under [my] hand, at _____, in the said State,
this _____ day of _____, 19 _____

J.S., J.P.

44.—*Warrant of commitment of a person indicted.*

To _____ and to all police officers _____ in the State of Tasmania, and to the keeper of the gaol at _____, in the said State

Whereas by warrant under [my] hand, dated the _____ day of _____, 19 _____, after reciting that J.D. had certified [&c., as in the certificate], [I] commanded _____ and all other police officers of the said State, in His Majesty's name, forthwith to apprehend the said A.B., and

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bring [him] before me or some other Justice or Justices for the said State [or, A.D. 1919. &c.]: And whereas the said A.B. having been apprehended and brought before [me], it is proved to [me] upon oath that the said A.B. is the same person who is charged in the said information: These are therefore to command you, in His Majesty's name, forthwith to convey the said A.B. to the said gaol and deliver [him] to the keeper thereof, together with this warrant, and [I] command you, the said keeper, to receive the said A.B. into your custody in the said gaol, and to safely keep [him] there until [he] shall be thence delivered by due course of law.
Given under [my] hand, at _____, in the said State,
this _____ day of _____, 19 _____

J.S., J.P.

45.—*Warrant to detain a person indicted who is already in custody for another offence.*

To the keeper of the gaol at _____, in the State of Tasmania.

Whereas it has been duly certified by the Clerk of the Supreme Court that [&c., stating the certificate Form 3]: And whereas [I] am informed that the said A.B. is in your custody in the said gaol, charged with some offence or other matter, and it is now proved upon oath before [me] that the said A.B. so indicted as aforesaid, and the said A.B. in your custody as aforesaid, are one and the same person: These are therefore to command you, in His Majesty's name, to detain the said A.B. in your custody in the gaol aforesaid until [he] shall be removed or discharged out of your custody by due course of law.

Given under [my] hand, at _____, in the said State,
this _____ day of _____, 19 _____

J.S., J.P.

46.—*Warrant of commitment of a witness for refusing to be sworn or to give evidence.*

To all police officers in the State of Tasmania, and to the keeper of the gaol at _____, in the said State.

Whereas on the _____ day of _____ 19 _____, upon the hearing of a charge before the undersigned, [one] of His Majesty's Justices of the Peace for the said State, [or, &c.] that [&c., as in the summons or warrant] E.F., of _____, in the said State _____, being required to make oath [or affirmation] as a witness to testify what [he] knew concerning the said charge, refused so to do [or being duly sworn as a witness, refused to answer certain questions concerning the premises which were put to him] without offering any sufficient excuse for such refusal: These are therefore to command you, the said police officers, to convey the said E.F. to the said gaol and deliver [him] to the keeper thereof, together with this warrant, and [I] hereby command you, the said keeper of the said gaol, to receive the said E.F. into your custody in the said gaol, and keep [him] there for the space of _____ days for [his] contempt, unless in the meantime he consents to be examined and to answer concerning the premises.

Given under [my] hand, at _____, in the said State,
this _____ day of _____, 19 _____

J.S., J.P.

47.—*Warrant of commitment for want of sureties of the peace.*

To all police officers in the State of Tasmania, and to the keeper of the gaol at _____, in the said State.

Whereas on the _____ day of _____ 19 _____, upon the hearing of a charge before the undersigned, [one] of His Majesty's Justices of the Peace for the said State [or, &c.] that [&c., as in the complaint] the said A.B. being

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ordered to enter into his own recognisance in the sum of £ , with [two] sufficient sureties in the sum of £ each, to keep the peace, &c. [see condition of the recognisance to keep the peace, &c., ante, Form 22], refused or neglected, and still refuses or neglects, so to do [or is unable to find sufficient surety (or sureties) to the satisfaction of the justice requiring the same]: These are therefore to command you, the said police officers, to convey the said A.B. to the gaol at , and deliver [him] to the said keeper, together with the warrant. And [I] command you, the said keeper of the said gaol, to receive the said A.B. into your custody, and there keep [him] for the term of [], unless he in the meantime enters into such recognisances with such sureties as aforesaid to keep the peace, &c.

Given under [my] hand, at , in the said State,
this day of , 19

J.S., J.P.

48.—*Commitment of witness for refusing to enter into recognisance.*

To all police officers in the State of Tasmania, and to the keeper of the gaol at , in the said State.

Whereas on the day of 19 , upon the hearing of a charge before the undersigned, [one] of His Majesty's Justices of the Peace for the said State [or &c.], that [&c., as in the summons or warrant] E.F., of in the said State having been examined as a witness touching the premises, and being required to enter into a recognisance conditioned to give evidence against the said A.B. refused so to do: These are therefore to command you, the said police officers, to take and convey the said E.F. to the gaol at , in the said State, and deliver [him] to the said keeper thereof, together with this warrant. And [I] hereby command you, the said keeper of the said gaol, to receive the said E.F. into your custody in the said gaol, there to keep [him] until after the trial of the said A.B. for the offence aforesaid, unless in the meantime the said E.F. duly enters into such recognisance as aforesaid in the sum of £ , before some Justice of the Peace, conditioned to appear at the next criminal sittings of the Supreme Court [or as the case may be] to be held at in the said State on the day of [or as the case may be] and there to give evidence upon any complaint which may be then and there preferred against the said A.B. for the offence aforesaid, and also to give evidence upon the trial of the said A.B. for the said offence.

Given under [my] hand, at , in the said State,
this day of , 19

J.S., J.P.

49.—*Warrant of commitment upon a conviction for a penalty in the first instance.*

To all police officers in the State of Tasmania, and to the keeper of the gaol at , in the said State.

Whereas A.B., of , in the State of Tasmania, was on the day of 19 , convicted before the undersigned, [one] of His Majesty's Justices of the Peace in and for the State of Tasmania, [or &c.] for that [stating the offence as in the conviction], and it was adjudged that the said A.B. for [his] said offence should forfeit and pay the sum of [&c., as in the conviction], and should pay to the said C.D. the sum of costs, and it was further adjudged that if the said several sums should not be paid [forthwith] the said A.B. should be imprisoned in the said gaol [and there kept to hard labour] for the term of , unless the said several sums [and the costs and charges for conveying the said A.B. to the said gaol (if ordered)] should be sooner paid: And whereas the time in and by the said con-

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viction appointed for the payment of the said several sums has elapsed, but the said *A.B.* has not paid the same or any part thereof: These are therefore to command you, the said police officers, to take the said *A.B.* and convey [*him*] to the said gaol aforesaid, and deliver [*him*] to the keeper thereof, together with this warrant. And [*I*] hereby command you, the said keeper of the said gaol, to receive the said *A.B.* into your custody in the said gaol, there to imprison [*him*] and keep [*him*] to hard labour for the term of _____, unless the said several sums [and the costs and charges of conveying [*him*] to the said gaol, amounting to the further sum of _____], are sooner paid.

A.D. 1919.

Given under [*my*] hand, at
this _____ day of _____, 19 _____, in the said State,

J.S., J.P.

50.—*Warrant of commitment on an order in the first instance.*

To all police officers in the State of Tasmania, and to the keeper of the gaol at _____, in the said State.

Whereas on the _____ day of _____ 19 _____, upon the hearing of a complaint before the undersigned, [*one*] of His Majesty's Justices of the Peace for the said State [*or, &c.*], that [*&c., as in the order*], [*I*] adjudged the said *A.B.* to pay to the said *C.D.* the sum of _____, on or before the _____ day of _____ 19 _____, and also to pay to the said *C.D.* the sum of _____ costs, and [*I*] also adjudged that if the said several sums should not be paid on or before the said _____ day of _____, 19 _____, the said *A.B.* should be imprisoned in the said gaol at _____, [*and there be kept to hard labour*] for the term of _____, unless the said several sums [and the costs and charges of conveying *A.B.* to the said gaol] should be sooner paid: And whereas the said *A.B.* has not paid the said sums or any part thereof: These are therefore to command you, the said police officers, to take the said *A.B.* and convey [*him*] to the said gaol aforesaid, and there deliver [*him*] to the keeper thereof, together with this warrant. And [*I*] hereby command you, the said keeper, to receive the said *A.B.* into your custody in the said gaol, there to imprison [*him*] and keep [*him*] to hard labour for the term of _____, unless the said several sums [and the costs and charges of conveying [*him*] to the said gaol, amounting to the further sum of _____], are sooner paid.

Given under [*my*] hand, at
this _____ day of _____, 19 _____, in the said State,

J.S., J.P.

51.—*Warrant of commitment on an order where the disobeying of it is punishable by imprisonment.*

To all police officers in the State of Tasmania, and to the keeper of the gaol at _____, in the said State.

Whereas on the _____ day of _____ 19 _____, upon the hearing of a complaint before the undersigned, [*one*] of His Majesty's Justices of the Peace for the said State [*or, &c.*], that [*&c., as in the order*], [*I*] adjudged the said *A.B.* to [*&c., as in the order*] and ordered that if upon a copy of the minute of that order being duly served upon the said *A.B.* [*he*] should refuse or neglect to obey the same, the said *A.B.* should be imprisoned in the said gaol [*there to be kept to hard labour*], for the term of _____, unless the said order should be obeyed: And whereas it is now proved to [*me*] that after the making of the said order a copy of the minute thereof was duly served upon the said *A.B.*, but [*he*] then refused [*or neglected*] to obey the same, and has not as yet obeyed the said order: These are therefore to command you, the said police officers, to apprehend the said *A.B.* and convey [*him*] to the said gaol at _____ aforesaid, and deliver [*him*] to the keeper thereof, together with this warrant. And [*I*] hereby command you, the said keeper, to receive the said *A.B.* into your custody in the gaol, there to imprison [*him*] and keep [*him*] to hard labour for the term of _____.

Given under [*my*] hand, at
this _____ day of _____, 19 _____, in the said State,

J.S., J.P.

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52.—*Warrant of commitment on a conviction where the punishment is by imprisonment.*

To all police officers in the State of Tasmania, and to the keeper of the gaol at _____, in the said State.

Whereas *A.B.*, of _____, was this day duly convicted before the undersigned, [*one*] of His Majesty's Justices of the Peace for the said State [*or, &c.*], that [*stating the offence as in the conviction*], and it was adjudged that the said *A.B.* should be imprisoned in the said gaol [*there to be kept to hard labour*] for the term of _____: These are therefore to command you, the said police officers, to take and convey the said *A.B.* to the said gaol aforesaid, and deliver [*him*] to the keeper thereof, together with this warrant. And [*I*] command you, the said keeper of the said gaol, to receive the said *A.B.* into your custody in the said gaol, and there to imprison [*him*] and keep [*him*] to hard labour for the term of _____

Given under [*my*] hand, at _____, in the said State,
this _____ day of _____, 19 _____

J.S., J.P.

EXECUTION AND IMPRISONMENT.

53.—*Warrant of commitment for want of execution upon a conviction for a penalty or upon an order for payment of money.*

To all police officers in the State of Tasmania, and to the keeper of the gaol at _____, in the said State.

Whereas [*&c., as in either of the foregoing warrants of execution, Forms 37 and 38, to the asterisk (*), and then thus*]: And it was adjudged that in default of sufficient goods and chattels the said *A.B.* should be imprisoned in the said gaol at _____ [*there to be kept to hard labour*] for the term of _____, unless the said several sums and all costs and charges of the said execution and of taking and conveying the said *A.B.* to the said gaol should be sooner paid: And whereas on the _____ day of _____ in the year aforesaid, a warrant was issued to (as in address of Forms 37 and 38), in the said State, commanding them to levy the said sums of _____ and _____ by execution against the goods and chattels of the said *A.B.*: And whereas it appears to me as well by the return of *W.T.*, a police officer, to the said warrant of execution as otherwise that no sufficient goods and chattels could be found whereon to levy the sums above mentioned: These are therefore to command you, the said police officers, to take the said *A.B.* and convey [*him*] to the said gaol aforesaid, and deliver [*him*] to the keeper thereof, together with this warrant. And I hereby command you, the said keeper, to receive the said *A.B.* into your custody in the said gaol, there to imprison [*him*] and keep [*him*] to hard labour for a term of _____, unless the said several sums and all costs and charges of the said execution [and of the commitment and conveying of the said *A.B.* to the said gaol, amounting to the further sum of _____], are sooner paid to you.

Given under [*my*] hand, at _____, in the said State,
this _____ day of _____, 19 _____

J.S., J.P.

54.—*Warrant of commitment for want of execution for costs on dismissal of a complaint.*

To all police officers in the State of Tasmania, and to the keeper of the gaol at _____, in the said State.

Whereas [*&c., as in Form 39 to the asterisk (*), and then proceed as in Form 53, "And it was adjudged, &c.," reciting order of dismissal according to its terms.*]

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55.—*Warrant of commitment for want of execution for costs where offence is punishable by imprisonment, or upon an order where disobeying the order is punishable with imprisonment.* A.D. 1919.

To all police officers in the State of Tasmania, and to the keeper of the gaol at _____, in the said State.

Whereas [&c., as in Forms 40 and 41 respectively, to the asterisk (*), and then proceed as in Form 53, " And it was adjudged, &c., reciting conviction or order according to its terms],

RECEIPT FOR PRISONER.

56.—*Receipt for the prisoner.*

I hereby certify that I have received from *W.T.*, police officer, of _____, in the State of Tasmania, the body of *A.B.*, together with a warrant under the hand of *J.S.*, Esquire, [*one*] of His Majesty's Justices of the Peace for the said State [*or, &c.*], and that the said *A.B.* was [*sober, or as the case may be*] at the time he was so delivered into my custody.

P.K.,

Keeper of the Gaol at _____

DELIVERANCE.

57.—*Warrant for discharge on bail being given for a prisoner already committed.*

To the Keeper of the Gaol at _____, in the State of Tasmania.

Whereas *A.B.*, late of _____, in the said State, has, before the undersigned, [*one*] of His Majesty's Justices of the Peace for the said State [*or, &c.*], entered into his own recognisance and found sufficient sureties for [*his*] appearance at the next Criminal Sittings of the Supreme Court [*or as the case may be*], to be held at _____, in the said State, to answer a charge that [*&c., as in the commitment*] for which [*he*] was committed to your said gaol: These are therefore to command you, in His Majesty's name, that if the said *A.B.* is now in your custody in the said gaol for the said cause and for no other, you forthwith suffer [*him*] to go at large.

Given under [*my*] hand, at _____, in the said State,
this _____ day of _____, 19 _____.

J.S., J.P.

58.—*Warrant to discharge a person committed for want of sureties of the peace.*

To the Keeper of His Majesty's Gaol at _____, in the State of Tasmania.

Whereas *A.B.*, late of _____, in the said State, has, before the undersigned, [*one*] of His Majesty's Justices of the Peace for the said State [*or, &c.*], entered into his own recognisance and found sufficient sureties to keep the peace [*&c., as in the condition of the recognisance*]: These are therefore to command you [*&c., as in the preceding Warrant of Discharge*].

Given under [*my*] hand, at _____, in the said State,
this _____ day of _____, 19 _____.

J.S., J.P.

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59.—*Order to discharge a witness where prisoner not committed for trial or sentence.*

To the Keeper of the Gaol at _____, in the State of Tasmania.

Whereas by a warrant, dated the _____ day of _____, 19____, under the hand of *L.M.*, [one] of His Majesty's Justices of the Peace for the said State [or &c.], reciting that upon the hearing of a charge against one *A.B.* for a certain offence therein mentioned, *E.F.*, having been examined as a witness, refused to enter into a recognisance to give evidence against the said *A.B.*, the said *L.M.* committed the said *E.F.* to your custody, and required you to keep [him] until after the trial [or sentence, as the case may be] of the said *A.B.* for the offence aforesaid, unless in the meantime the said *E.F.* should enter into such recognisance as aforesaid: And whereas the said *A.B.* has not been committed for trial [or for sentence] or held to bail for the said offence, but has been discharged: These are therefore to direct you to discharge the said *E.F.* out of your custody and suffer [him] to go at large as to the said commitment.

Given under [my] hand, at _____, in the said State,
this _____ day of _____, 19____.

J.S., J.P.

(3)

FEES TO BE TAKEN IN COURTS OF PETTY SESSIONS.

By every Clerk of Petty Sessions—

	s. d.
For every Complaint if tendered ready drawn	1 0
The like, if drawn by the Clerk	2 6
For every Summons to a Defendant	5 0
For every Summons to a Witness	1 0
For every Copy of a Summons	0 6
For every Warrant of Arrest of a Defendant	5 0
For every Oath, Affirmation, or Declaration	1 0
For every Recognisance (with or without sureties). included notices thereof entered into	5 0
Provided that no fee shall be charged in respect of a Recognisance entered into on a remand or under any of the following Acts or any amendment thereof:—	
(a) "The Deserted Wives and Children Maintenance Act, 1873."	
(b) "The Infant Life Protection Act, 1907."	
(c) The Summary Jurisdiction (Married Persons) Act, 1909."	
(d) "The Children's Charter."	
(e) "The First Offenders' Probation Act, 1898."	
For every Warrant of Execution or Distress... ..	2 6
For every Warrant of Commitment issued for non-payment of any sum of money. But no fee in respect of a Warrant of Commitment shall be charged where the imprisonment is for non-payment of costs alone or in consequence of there being no goods and chattels or insufficient goods and chattels whereon to levy.	
For every Order for the Payment of Money	2 6
For every other Order	1 0
For every Certificate of Dismissal of any Complaint... ..	2 6

T. G. PRIOR,

ACTING GOVERNMENT PRINTER, TASM.