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THE
SUMMARY JURISDICTION ACTS,
1848—1884,

REGULATING THE

Duties of Justices of the Peace,

WITH RESPECT TO

Summary Convictions and Orders,
and Indictable Offences, also the Prosecution of Offences
Acts, 1879 and 1884.

WITH COPIOUS NOTES, CASES, INDEX, AND APPENDIX
OF STATUTES.

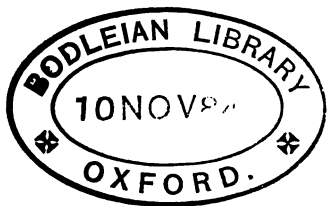
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FIFTH EDITION
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BY
W. CUNNINGHAM GLEN,
BARRISTER-AT-LAW.

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P R E F A C E .

THE importance of the Summary Jurisdiction Acts to those engaged in proceedings before Justices in Courts of Summary Jurisdiction and in Petty Sessions, and in the administration of Criminal Justice, can scarcely be over-estimated; for they contain within themselves a complete code of magisterial practice with relation to summary convictions and orders, and to indictable offences, and they provide for the due protection of the Justices in the fair and reasonable discharge of their duties. Since Sir Robert Peel's and the Marquis of Lansdowne's Acts, no measures have passed the legislature which have so much improved the local administration of justice in England as these statutes, and the admirable manner in which those known as Jervis's Acts have worked is the best evidence of the skill and judgment with which they were framed by their author, the late Mr. JOHN FREDERICK ARCHBOLD, Barrister-at-Law.

The Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), is supplemented by the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), the Summary Jurisdiction (Process) Act, 1881 (44 & 45 Vict. c. 24), and

the Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 48), and together those Acts regulate the procedure before Justices of the Peace with respect to summary convictions and orders; whilst the Protection of Justices Act, 1848 (11 & 12 Vict. c. 44), and the Review of Justices Decisions Act, 1872 (35 & 36 Vict. c. 26), provide for their protection from vexatious actions for acts done by them in the execution of their office. The 20 & 21 Vict. c. 48, amended or supplemented by the Summary Jurisdiction Act, 1879 (s. 83), enables either party to proceedings in a Court of Summary Jurisdiction to require Justices of the Peace to submit to the High Court of Justice points of law arising in any case adjudicated upon summarily in such Court. The 11 & 12 Vict. c. 78, provided for the decision of any difficult question of law that might arise in criminal trials; but until the 20 & 21 Vict. c. 48, there was no power by which the decision of the Justices who had adjudicated in summary proceedings within their jurisdiction upon a point of law could be removed into a Superior Court for authoritative decision except by writ of *certiorari*. Now, under the Summary Jurisdiction Act, 1879, any person aggrieved by a conviction order or determination, or other proceeding of a Court of Summary Jurisdiction, as being erroneous in point of law or in excess of jurisdiction, may apply to the Court to state a special case, and the case may be

stated with respect to criminal matters, adjudicated upon summarily, as well as with respect to any other matter so adjudicated upon.

The rule is well established that no appeal lies from a decision of Justices either in a matter of fact or law, unless it be expressly given by statute; but though the 20 & 21 Vict. c. 48, remedied that defect in respect of questions of law, it left untouched appeals in which matters of fact are involved: such appeals therefore still lie only to Quarter Sessions, and only when they are expressly allowed by statute. The general effect of the statute is to allow an appeal against any conviction or order of Justices to a superior Court of Common Law upon the ground that it is erroneous in point of law. Except where the application is made for a case to be stated under the direction of the Attorney-General, the Justices may refuse to allow the appeal if they are of opinion that the application is merely frivolous; but in such a case the appellant, if he think fit, may apply to the Court of Queen's Bench for a rule calling upon them to show cause why the appeal should not lie.

The Act (12 & 13 Vict. c. 45) commonly known as Baine's Act, regulates the procedure in Courts of General and Quarter Sessions of the Peace on appeals from Justices' summary decisions.

The next branch of the work contains the Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), and the Amending Act (31 & 32 Vict. c. 107), for facilitating the performance of the duties of Justices of the Peace out of Sessions with respect to persons charged with Indictable Offences; also the Prosecution of Offences Act, 1879 (42 & 43 Vict. c. 22). The first of these Acts defines the duties of Justices of the Peace with respect to Indictable Offences which are not triable in a summary manner, and step by step, from the issuing of the summons or warrant to the discharge or final committal of the accused for trial, indicates the course of proceeding to be adopted. This is distinct from the provisions relating to the summary trial of persons charged with certain Indictable Offences which are now embodied in the Summary Jurisdiction Act, 1879. The next Acts are the Prosecution of Offences Act, 1879, relating to the Appointment and Duties of the Director of Public Prosecutions; and the Prosecution of Offences Act, 1884, which abolishes the Office of Director of Public Prosecutions under the Act of 1879, and transfers the office and duties of Director of Public Prosecutions to the person for the time holding the office of solicitor for the affairs of Her Majesty's Treasury.

The Appendix contains the statutes relating to the expenses of prosecutions, the appointment, payment,

and fees of Clerks of the Peace and of Clerks of Justices of the Peace, and Clerks of Special and Petty Sessions, and vexatious indictments, the orders of the Secretary of State prescribing the scale of allowances to prosecutors and witnesses, and the rules of the High Court of Justice framed under the Act of 1879 together with the schedule of forms thereby prescribed.

A list of the Petty Sessional Divisions in each county in England and Wales is added.

In the present edition all the new statutes bearing upon the subject of the work have been incorporated, and the decisions of the Courts upon the various points which have arisen on the construction of the several statutes contained in it, have been carefully noted up to the date of publication.

Care has been taken to enhance the usefulness of the work by the copiousness of the Index.

W. C. G.

5, ELM COURT, TEMPLE,
1st October, 1884.

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[14th August, 1848.]

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[31st July, 1868.]

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THE
SUMMARY JURISDICTION ACT, 1848.

11 & 12 VICT. CAP. 48.

An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales, with respect to Summary Convictions and Orders.
[14th August, 1848.]

WHEREAS it would conduce much to the improvement of the administration of justice within England and Wales, so far as respects summary convictions, and orders to be made by Her Majesty's justices of the peace therein, if the several statutes and parts of statutes relating to the duties of such justices in respect of such summary convictions and orders were consolidated, with such additions and alterations as may be deemed necessary, and that such duties should be clearly defined by such positive enactment: Be it therefore declared and enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, that in all cases where an information shall be laid before one or more of Her Majesty's justices of the peace for any county, riding, division, liberty, city, borough,

Sect. 1.
—

In all cases where information shall be laid or complaint made of offences

Sect. 1. or place within England or Wales, that any person has committed or is suspected to have committed any offence or act within the jurisdiction of such justice or justices for which he is liable by law, upon a summary conviction for the same before a justice or justices of the peace, to be imprisoned or fined, or otherwise punished, and also in all cases where a complaint shall be made to any such justice or justices upon which he or they have or shall have authority by law to make any order for the payment of money or otherwise, then and in every such case it shall be lawful for such justice or justices of the peace to issue his or their summons (A.) directed to such person, stating shortly the matter of such information or complaint, and requiring him to appear at a certain time or place before the same justice or justices, or before such other justice or justices of the same county, riding, division, liberty, city, borough, or place as shall then be there, to answer to the said information or complaint, and to be further dealt with according to law: and every such summons shall be served by a constable or other peace officer, or other person to whom the same shall be delivered, upon the person to whom it is so directed, by delivering the same to the party personally, or by leaving the same with some person for him at his last or most usual place of abode; and the constable, peace officer, or person who shall serve the same in manner aforesaid shall attend at the time and place and before the justices in the said summons mentioned, to depose, if necessary, to the service of the said summons: Provided always, that nothing herein mentioned shall oblige any justice or justices of the peace to issue any such summons in any case where

committed, justices may issue summons to persons to answer the same.

How!summons to be served.

Justices not obliged to issue summonses in certain cases.

the application for any order of justice is by law to be made *ex parte*: Provided also, that no objection shall be taken or allowed to any information, complaint, or summons, for any alleged defect therein in substance or in form, or for any variance between such information, complaint, or summons, and the evidence adduced on the part of the informant or complainant at the hearing of such information or complaint as hereinafter mentioned; but if any such variance shall appear to the justice or justices present and acting at such hearing to be such that the party so summoned and appearing has been thereby deceived or misled, it shall be lawful for such justice or justices, upon such terms as he or they shall think fit, to adjourn the hearing of the case to some future day.

Sect. 1.

No objection allowed for want of form.

As to the local jurisdiction of courts of summary jurisdiction, see section 46 of the Summary Jurisdiction Act, 1879, *post*; and as to service of process in Scotland, see 44 & 45 Vict. c. 24, s. 4, *post*.

No new offence is cognizable in a summary manner unless expressly made so by Act of parliament; and the examination and punishment of offenders by justices of the peace in a summary manner is entirely founded on special authority given by and regulated by statute.

In this Act the distinction between an "information" and a "complaint" should always be kept in mind. An information is *laid* against a person charged with the commission of, or who is suspected to have committed, an offence for which he is liable by law, upon a summary conviction, to be imprisoned or fined, or otherwise punished. A complaint is *made* when the person is liable by law to have an order made upon him by justices for the payment of money, or to do some act which he has refused or neglected to do contrary to law. After laying the information or making the complaint, as the case may be, the next step in the proceeding is to obtain the appearance of the defendant; and for this purpose either a summons or a warrant issues. If on the issuing of a summons the defendant appears before the justices at the time and place named in it, the plaintiff being also present, the matter is heard by the justices, and the witnesses, first for the plaintiff and then for the defen-

Procedure before justices.

**Note to
Sect. 1.**
—

dant, are examined and cross-examined as to the facts, and the matter which is the subject of the information or complaint adjudicated upon by the justices. If the defendant do not appear to the summons, either by himself or by his attorney, or other agent, the plaintiff being present, the justices may, on the service of the summons being duly proved by the constable, and if they are satisfied that it came to his hands in sufficient time to enable him to attend, proceed with the hearing of the case *ex parte* (section 2), and adjudicate accordingly; or instead of hearing the plaintiff they may issue a warrant to bring the defendant before them as in section 2.

In so far the proceedings of the justices upon an information or complaint are the same, only that the latter need not be in writing (see section 8); but when they adjudicate upon an information they either convict or acquit the defendant of the offence charged. If they convict him they do so in the forms (I. 2) or (I. 3), see section 14, and adjudicate the penalty or punishment. If they acquit the defendant they make an order of dismissal in the form (L.), see section 14. On the other hand, when they adjudicate upon a complaint, they make an order for the payment of money (K. 1), (K. 2), section 14; or for the matter to be done (K. 3), section 14; or in like manner dismiss the complaint, form (L.), section 14. In either case the conviction or order is enforced by warrant of distress, or commitment if necessary.

*Res judi-
cata.*

With reference to proceedings before justices under their summary jurisdiction, it is necessary to observe that a judgment of a court of concurrent jurisdiction directly upon the point is conclusive between the same parties upon the same matter directly in question in another court. When, therefore, a servant in husbandry who had been discharged by her master before her proper time, sued him in the county court for wrongfully discharging her without reasonable cause, whereupon judgment was given for the defendant; and she afterwards, at the expiration of her quarter, took out a summons before justices under 4 Geo 4, c. 34, s. 5, to recover her quarter's wages, the same question arising, upon a case stated under 20 & 21 Vict. c. 43, it was held that the decision of the county court was a bar to such proceeding; *Routledge v. Hislop*, 2 L. T. (N.S.) 53; 6 Jur. (N.S.) 398; 24 J. P. 148. The rule of law, as stated by De Grey, C. J., in delivering the opinion of the judges in the House of Lords in the *Duchess of Kingston's Case* (2 Smith L. C. 593, 4th ed.), is, that "the judgment of a court of concurrent jurisdiction directly upon the point is, as a plea, a bar, or as evidence, conclusive between the same parties upon the same matter directly in question in another court." See also on the same

subject the judgment of Lord Selborne, L. C., in *Reg. v. Hutchins*, 44 L. T. (N.S.) 368.

Note to
Sect. 1.

With regard to the power to convict without an information having been laid or summons issued, see *Blake v. Beech*, 34 L. T. (N.S.) 764. In that case a conviction under 8 & 9 Vict. c. 109, s. 3, and 16 & 17 Vict. c. 119, ss. 3, 11, was quashed by *Cleasby, B.*, and *Grove, J.*, *Field, J.*, dissentient.

As regards the doctrine of *res judicata*, see *Leith Harbour and Docks Commissioners v. Inspector of the Poor*, 1 L. R. Scotch Appeals, 17; and *Jenkins, app.*, *Robertson, resp.*, 2 L. R. Scotch Appeals, 117.

In order to obtain a summons it is not necessary that the information or complaint should be to two or more justices; for it is competent for any one justice within whose jurisdiction the matter may have arisen to issue it; and that even though the hearing must be before two or more justices (section 29). As before observed it is not necessary that a complaint should be in writing; but in every case an information must be reduced into writing before a summons can issue.

Service of
summons.

The summons is addressed to the defendant himself, and is served by the constable by delivering it to him personally, or by leaving it with some person for him at his last or most usual place of abode. Care in that case should be taken to give it to some member of the defendant's family, or, if he be a lodger, to his landlord or other person likely to give it to him; and the constable must attend before the justices at the time appointed for the hearing to prove the service of it if necessary.

If a summons be served on a defendant by leaving it with some person for him at his last or most usual place of abode, the nature of the summons must be explained to the person with whom it is left; and where the defendant was at sea pursuing his occupation as a fisherman from the 9th to the 13th March, and it was proved that a summons had been left at his mother's house on the 10th, but he did not know of it till after he was convicted on the 12th, it was held that the justices had acted without jurisdiction, and a rule for a *certiorari* to bring up and quash the conviction was made absolute: *Re William Smith*, 32 L. T. (N.S.) 394; 23 W. R. 523; 39 J. P. 292, n. 613.

With regard to the service of a summons on a joint stock company, it is enacted by the Companies Act, 1862, 25 & 26 Vict. c. 89, s. 62, that any summons, notice, order, or other document required to be served upon the company may be served by leaving the same or sending it through the post in a prepaid letter, addressed to the company, at their registered office.

On joint
stock com-
panies.

**Note to
Sect. 1.**

By section 63 of the same Act, any document to be served by post on the company shall be posted in such time as to admit of its being delivered in the due course of delivery within the period (if any) prescribed for the service thereof; and in proving service of such document, it shall be sufficient to prove that such document was properly directed, and that it was put as a prepaid letter into the post office. By section 65, recovery of penalties under the Act may be enforced in manner provided by 11 & 12 Vict. c. 43.

By the Companies Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 16), section 135, and by the Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), section 138, any summons or notice, or any writ or other proceeding at law or in equity, requiring to be served upon the company, may be served by the same being left at, or transmitted through the post directed to the principal office of the company, or one of the principal offices where there shall be more than one, or being given personally to the secretary, or in case there be no secretary, then by being given to any one director of the company. As to what is the "principal office" of a railway company under the last-mentioned enactment, see *Garton v. Great Western Railway Company*, E. B. & E. 837; and in error, *ib.* 846.

**Proceedings
ex parte.**

The first proviso to 11 & 12 Vict. c. 43, s. 1, provides for cases in which the justices can by law make orders *ex parte*; as, for instance, orders for the removal of paupers from one parish to another in England, or to Ireland or Scotland; in which case no summons can be issued to any one to show cause against the order before it is made. With respect to the second proviso it may be observed that if the defendant attend upon the summons, his appearance will cure every defect in it (see also section 9).

No order, whether it be for the payment of money or otherwise (except such orders as are provided for by the first proviso), can be made by a justice in the absence of the person to be affected by it; and therefore before it is made, a summons should be issued, even though it may not be in terms required by the particular Act of parliament on which the order is founded; *Reg. v. Totnes*, 14 L. J. R. (N.S.), M. C. 148; 9 J. P. 584.

A warrant of distress issued by a justice without previously summoning and hearing the party to be distrained upon is illegal, though a summons and hearing be not required by the terms of the Act under which the proceeding is taken; for a magistrate who grants a warrant in the nature of execution is bound first to summon and hear the parties unless the statute under which he acts clearly renders the discharge of that function ministerial only, or in some

other manner dispenses with the summons and hearing; *Painter v. Liverpool Gas Light Company*, 3 A. & E. 433.

Note to Sect. 1.

With regard to the time of service of a summons, it is to be observed that the justices are the judges of whether a summons is served in a reasonable time before the hearing; and the fact that a defendant did not receive the summons until eleven o'clock at night (which fact was not known to the justices), it having been left at eight o'clock in the morning at the house of the defendant, did not deprive them of their jurisdiction to hear and adjudicate upon the complaint. *In re Williams*, 21 L. J. R. (N.S.), M. C. 46; 2 Prac. Rep. 280; 16 J. P. 181.

Time of service of summons.

If the proceeding be for the recovery of a sum of money "as damages," under the provision of any Act of parliament, the justices have exclusive jurisdiction, as in the case of *Blackburn v. Parkinson*, 28 L. J. (N.S.) M. C. 7; 23 J. P. 262, where, by a special Act incorporating 8 Vict. c. 20, and 10 & 11 Vict. c. 34, it was enacted that certain expenses incurred by the commissioners in paving streets, &c., might be "recovered as damages;" and an action having been brought to recover expenses so incurred, it was held that such action was not maintainable, for that the proper construction of the several Acts was that the expenses were to be recovered as damages upon a proceeding before justices.

Exclusive jurisdiction.

Referring to the last proviso to this section, the following illustrates what is not a variance within the statute. An appellant was summoned on a charge of being drunk and guilty of riotous behaviour, an offence punishable under the Towns Police Clauses Act, 1847 (10 & 11 Vict. c. 89, s. 2), and was convicted by the justices of drunkenness under 21 Jac. 1, c. 7. On a case stated under section 2 of 20 & 21 Vict. c. 43, s. 2, it was held that the conviction was bad, and that there was not a variance between the time or place mentioned in the summons and the evidence. The summons was for a kind of joint offence, and the justices convicted of another offence, punishable in another and a different way. The proper course is in such a case to take out another summons; *Martin, app., Pridgeon, resp.*, 5 Jur. (N.S.) 894; 33 L. T. 119; 23 J. P. 277; 1 E. & E. 778. With reference to this case, see, however, *Loadman v. Cragg*, 26 J. P. 743, in which, per *Cockburn, C. J.*, "the less you say about the reasons in that case the better; however, it is a decision in point, and we must decide in your favour."

Variance.

A variance between an information, which proceeded in the name of "B. and his partners," and an agreement in which they were designated as "the R. M. and H. Coal Company," it was held, was not calculated to mislead or deceive the appellant, and was, therefore, within the operation of the pro-

Note to Sect. 1.

Warrant when issued.

vision in section 1 of 11 & 12 Vict. c. 43; *Whittle, app., Frankland, resp.*, 8 Jur. (N.S.) 382.

At common law everything had to be proved as laid, *secundum allegata et probata*, but this is now remedied by the proviso to this section, and therefore it was held that in an information for malicious injury to property under 24 & 25 Vict. c. 97, s. 52, where the ownership was laid in several persons, and it appeared that only one of them was the legal owner, the justices ought not to have dismissed the information, but ought to have heard the case; or if they thought the variance likely to mislead, to have adjourned the hearing; *Ralph v. Harrell*, 32 L. T. (N.S.) 816.

Jurisdiction of justices in unions.

By 30 & 31 Vict. c. 106, s. 27, where a union extends into several distinct jurisdictions, every matter, act, charge or complaint by which the guardians thereof are affected, or in which they have any interest, shall for the purpose of jurisdiction be deemed to arise or exist equally throughout the union. Under this enactment the appellate jurisdiction from an order of removal is the same as that under which the order is made, and it does not depend upon the place from which the removal is ordered; *Dudley Union v. Wolverhampton Union*, 25 L. T. (N.S.) 829; see *Reg. v Staffordshire JJ.*, 41 L. J. M. C. 78; L. R. 7 Q. B. 288.

Petty sessions in boroughs.

By 12 & 13 Vict. c. 18, every sitting and acting of justices of the peace, or of a stipendiary magistrate, in and for any city, borough, or town corporate having a separate commission of the peace, or any part thereof, within England and Wales, at any police court or other place appointed in that behalf, shall be deemed a petty sessions of the peace, and the district for which the same shall be holden shall be deemed a petty sessional division within the meaning of any Acts of parliament already made or hereafter to be made, having relation to such petty sessions, or to any business to be transacted thereat.

With regard to the jurisdiction of borough justices, see the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), sections 155—160.

If there be no separate commission of the peace for the borough, the mayor and ex-mayor have jurisdiction in the borough as justices, and the justices of the county at large have concurrent jurisdiction; and the mayor and ex-mayor justices in and for the borough act as county justices with their powers limited to a particular locality; see *Reigate v. Hart, post*.

Death of justice signing summons.

It will be seen that by section 37 of the Summary Jurisdiction Act, 1879, *post*, a summons under this Act or any other Act shall not be avoided by reason of the justice who signed the same dying or ceasing to hold office.

By 31 Vict. c. 22, ss. 4, 5, power is given to the justices in quarter sessions assembled and to the council of any borough having a separate commission of the peace to agree for a common sessions house or to contract for the same. See also note to section 30 of 42 & 43 Vict. c. 49, *post*.

Note to Sect. 1.

Sessions house.

With regard to offences by militiamen, it is enacted by the Regulation of the Forces Act, 1881 (44 & 45 Vict. c. 57), as follows:—

8. (1.) In the case of a person charged with the offence of desertion, absence without leave, fraudulent enlistment, false answer, or any offence in connection with enlistment under this Act—

Supplemental provisions as to offences by militiaman.

- (a) The alleged offender shall not be liable to be tried both by court-martial and by a court of summary jurisdiction, but may be tried by either of such courts, according as any general or special regulations of the Secretary of State may direct.
- (b) Proceedings against the alleged offender when a militiaman, whether before a court-martial or a court of summary jurisdiction, may be instituted, whether the term of his militia service has or has not expired, at any time within two months after the offence becomes known to the commanding officer of the militiaman, if the militiaman is then apprehended, or, if not, within two months after he is apprehended:
- (c) Where an offender has on several occasions been guilty of any such offence as above mentioned, he may, for the purposes of any proceedings against him, be deemed to belong to any one or more of the corps to which he has been appointed or transferred, as well as to the corps to which he properly belongs; and it shall be lawful to charge the offender with any number of the above-mentioned offences at the same time, and to give evidence of such offences against him, and if he be convicted of more than one offence to punish him accordingly, as if he had been previously convicted of any such offence.

The Secretary of State for War has issued an army circular in pursuance of the above enactment to the following effect:

1. With reference to sub-section 1 (a) of section 8 of Regulation of the Forces Act, 1881, the Secretary of State for War directs that no prosecution of a militiaman under the said Act shall be instituted before a court of summary jurisdiction without the sanction of the commanding officer, or of an authority superior to the commanding officer.

2. The militia regulations prescribe the conditions under which a militiaman may be so prosecuted.

With reference to the above the Home Secretary in a

Note to Sect. 1.

circular dated 21st October, 1881, states, that the object of the injunction is to prevent the prosecution before courts of summary jurisdiction of militiamen for offences under the Act relating to the militia at the instance of unauthorized persons—an irregularity which, he states, now frequently takes place with the result of removing from the jurisdiction of courts martial offences which ought properly to be dealt with by military tribunals alone. In order that this regulation may be made generally known, and that magistrates may decline to proceed with unauthorized cases, the Secretary of State addressed a communication to the clerk of each petty sessional division, and requested the clerk of the peace to take any further steps that may be necessary for securing the object in view.

See also with reference to this section, *Reg. v. Adamson, post.*

If summons be not obeyed justices may issue warrant.

2. And be it enacted, that if the person so served with a summons as aforesaid shall not be and appear before the justice or justices at the time and place mentioned in such summons, and it shall be made to appear to such justice or justices, by oath or affirmation, that such summons was so served what shall be deemed by such justice or justices to be a reasonable time before the time therein appointed for appearing to the same, then it shall be lawful for such justice or justices, if he or they shall think fit, upon oath or affirmation being made before him or them substantiating the matter of such information or complaint to his or their satisfaction, to issue his or their warrant (B.) to apprehend the party so summoned, and to bring him before the same justice or justices, or before some other justice or justices of the peace in and for the same county, riding, division, liberty, city, borough, or place, to answer to the said information or complaint, and to be further dealt with according to law; or upon such information being laid as aforesaid for any offence punishable on conviction the justice or justices before

or may issue warrant in the first instance;

whom such information shall have been laid may, if he or they shall think fit, upon oath or affirmation being made before him or them substantiating the matter of such information to his or their satisfaction, instead of issuing such summons as aforesaid, issue in the first instance his or their warrant (C.) for apprehending the person against whom such information shall have been so laid, and bringing him before the same justice or justices, or before some other justice or justices of the peace in and for the same county, riding, division, liberty, city, borough, or place to answer to the said information, and to be further dealt with according to law ; or if, where a summons shall be so issued as aforesaid, and upon the day and at the place appointed in and by the said summons for the appearance of the party so summoned, such party shall fail to appear accordingly in obedience to such summons, then and in every such case, if it be proved upon oath or affirmation to the justice or justices then present that such summons was duly served upon such party a reasonable time before the time so appointed for his appearance as aforesaid, it shall be lawful for such justice or justices of the peace to proceed *ex parte* to the hearing of such information or complaint, and to adjudicate thereon, as fully and effectually, to all intents and purposes, as if such party had personally appeared before him or them in obedience to the said summons.

Sect. 2.
 —
 or if summons, having been duly served, be not obeyed, the justices may proceed *ex parte*.

As to proof of service, &c., see section 41 of Summary Jurisdiction Act, 1879, *post*.

A warrant may be issued in two instances:—1st, in the event of the summons not being obeyed ; and 2nd, it may be issued in the first instance without a summons. Instead of issuing a warrant to bring the defendant before them, the

**Note to
ect. 2.**

justices may proceed *ex parte*, as already explained; but if for any reason they do not think it expedient to do so, they will issue their warrant, after proof of the service of the summons a reasonable time before the time appointed for the hearing. What is a "reasonable time" will be of course for the justices to determine with reference to each case, and therefore no general rule can be laid down. See *In re Williams, ante*, p. 7. If they should be of opinion that a reasonable time had not elapsed, or if the constable do not attend to prove the summons, they should withhold the issue of a warrant; and if the defendant require them to do so, issue another summons for the defendant's attendance before them at a future day.

A warrant to apprehend can be issued in either case of an information or complaint, after a summons has been issued and the defendant has not appeared; but a warrant to apprehend in the first instance can only issue in the case of an information. In such case it is discretionary with the justice whether he will issue it or not; and he will act advisedly by confining the issue of a warrant in the first instance to cases in which there is every probability of a summons not being attended to, or that the accused person will abscond when he is informed of the proceedings that are being taken against him. A summons may issue without the plaintiff being sworn; but the section requires that the information shall be laid before the justice, upon oath or affirmation, substantiating the truth thereof to his satisfaction, previous to his issuing a warrant in the first instance.

Detention
of offenders
under
Merchant
Shipping
Act.

By the Merchant Shipping Acts Amendment Act (25 & 26 Vict. c. 63), s. 37, it shall be lawful for the master or other officer of any duly surveyed passenger steamer, and for all persons called by him to his assistance, to detain any person who has committed any offence against any of the provisions of sections 35 and 36 of the Act, and whose name and address are unknown to such officer, and to convey such offender with all convenient dispatch before some justice without any warrant or other authority than the Act; and such justice shall have jurisdiction to try the case, and shall proceed with all convenient dispatch to the hearing and determining of the complaint against such offender. The offences referred to in sections 35 and 36 are being drunk and disorderly, molesting passengers, forcing way on board ship when full, refusing to quit ship when full, avoiding payment of fares, and injuring steamer or molesting the crew.

Death of
justice,
issuing
warrant.

By section 37 of the Summary Jurisdiction Act, 1879, *post*, a warrant under this Act or any other Act shall not be avoided by reason of the justice who signed it dying or ceasing to hold office. See also 44 & 45 Vict. c. 24, s. 5, *post*.

3. And be it enacted, that every such warrant to apprehend a defendant, that he may answer to any such information or complaint as aforesaid, shall be under the hand and seal or hands and seals of the justice or justices issuing the same, and may be directed either to any constable or other person by name, or generally to the constable of the parish or other district within which the same is to be executed, without naming him, or to such constable and all other constables within the county or other district within which the justice or justices issuing such warrant hath or have jurisdiction, or generally to all the constables within such last-mentioned county or district, and it shall state shortly the matter of the information or complaint on which it was founded, and shall name or otherwise describe the person against whom it has been issued, and it shall order the constable or other person to whom it is directed to apprehend the said defendant, and to bring him before one or more justice or justices of the peace (as the case may require) of the same county, riding, division, liberty, city, borough, or place, to answer to the said information or complaint, and to be further dealt with according to law; and that it shall not be necessary to make such warrant returnable at any particular time, but the same may remain in full force until it shall be executed; and such warrant may be executed by apprehending the defendant at any place within the county, riding, division, liberty, city, borough or place within which the justices issuing the same shall have jurisdiction, or, in case of fresh pursuit, at any place in the next adjoining county or place within seven miles of the border of such first-

Sect. 3.

Form of
warrant.Where and
how war-
rant may be
executed.

Sect. 3. mentioned county, riding, division, liberty, city, borough, or place, without having such warrant backed as hereinafter mentioned; and in all cases where such warrant shall be directed to all constables or peace officers within the county or other district within which the justice or justices issuing the same shall have jurisdiction, it shall be lawful for any constable, headborough, tithingman, borsholder, or other peace officer for any parish, township, hamlet, or place situate within the limits of the jurisdiction for which such justice or justices shall have acted when he or they granted such warrant, to execute such warrant in like manner as if such warrant were directed specially to such constable by name, and notwithstanding that the place in which such warrant shall be executed shall not be within the parish, township, hamlet, or place for which he shall be such constable, headborough, tithingman, borsholder, or other peace officer; and such of the provisions and enactments contained in a certain Act of parliament made and passed in this present session of parliament, intituled "An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales with respect to Persons charged with Indictable Offences," as to the backing of any warrant, and the indorsement thereon by a justice of the peace or other officer, authorizing the person bringing such warrant, and all other persons to whom the same was originally directed, to execute the same within the jurisdiction of the justice or officer so making such indorsement, as are applicable to the provisions of this Act, shall extend to all such warrants, and to all warrants of commitment issued

Certain provisions of 11 & 12 Vict. c. 42, as to backing of warrants to extend to warrants issued under this Act.

under and by virtue of this Act, in as full and ample a manner as if the said several provisions and enactments were here repeated and made parts of this Act: Provided always, that no objection shall be taken or allowed to any such warrant to apprehend a defendant so issued upon any such information or complaint as aforesaid under or by virtue of this Act, for any alleged defect therein in substance or in form, or for any variance between it and the evidence adduced on the part of the informant or complainant as hereinafter mentioned; but if any such variance shall appear to the justice or justices present and acting at such hearing to be such that the party so apprehended under such warrant has been thereby deceived or misled, it shall be lawful for such justice or justices, upon such terms as he or they shall think fit, to adjourn the hearing of the case to some future day, and in the meantime to commit (D.) the said defendant to the house of correction or other prison, lock-up house, or place of security, or to such other custody as the said justice or justices shall think fit, or to discharge him upon his entering into a recognizance (E.), with or without surety or sureties, at the discretion of such justice or justices, conditioned for his appearance at the time and place to which such hearing shall be so adjourned: Provided always, that in all cases where a defendant shall be discharged upon recognizance as aforesaid, and shall not afterwards appear at the time and place in such recognizance mentioned, then the said justice who shall have taken the said recognizance, or any justice or justices who may then be there present, upon certifying (F.) upon the back of the said recognizance

Sect. 3.

No objection allowed for want of form in the warrant, or for any variance between it and evidence adduced;

but if the party charged is deceived by the variation, he may be committed or discharged upon recognizance;

but if he fail to re-appear the justice may transmit the recognizance to the clerk of the peace.

Sect. 3. the non-appearance of the defendant, may transmit such recognizance to the clerk of the peace of the county, riding, division, liberty, city, borough, or place within which such recognizance shall have been taken, to be proceeded upon in like manner as other recognizances, and such certificate shall be deemed sufficient *primâ facie* evidence of such non-appearance of the said defendant.

Warrants,
execution
of.

The observations on the 10th section of 11 & 12 Vict. c. 42, *post*, may be referred to as being equally applicable to the provision in this section regarding warrants to apprehend. It should be observed that such of the provisions of that Act as relates to the backing of warrants are inserted into and incorporated with 11 & 12 Vict. c. 43, by the operation of sections 3 and 37. Section 2 of that Act enables a justice for any offence punishable on summary conviction to issue his warrant in the first instance without a previous summons; consequently a warrant may be issued and executed, after being backed, in either Ireland, Scotland, or the islands mentioned, in the case of a person committing any offence punishable summarily upon conviction—as, for instance, an offence against the Vagrant Act (5 Geo. 4, c. 83)—and the offender brought before the justice issuing it, or any other justice having jurisdiction in the same place or district, and if the charge be substantiated, punished accordingly. See also 14 & 15 Vict. c. 55, s. 18, *post*, as to the officers competent to indorse warrants in the isles of Guernsey, Jersey, Alderney, and Sark.

With regard to the execution of warrants by county and borough constables see 22 & 23 Vict. c. 32, s. 2, *post*.

It will be seen from section 42 of the Summary Jurisdiction Act, 1879, *post*, that recognizances may be taken out of court.

Description
of the pro-
perty of
partners,
&c.;

4. And be it enacted, that in any information or complaint, or the proceedings thereon, in which it shall be necessary to state the ownership of any property belonging to or in the possession of partners, joint tenants, parceners, or tenants in common, it shall be sufficient to name one of such persons, and to state the property to belong to the

person so named and another or others, as the case may be, and whenever in any information or complaint, or the proceedings thereon, it shall be necessary to mention, for any purpose whatsoever, any partners, joint tenants, parceners, or tenants in common, it shall be sufficient to describe them in manner aforesaid; and whenever in any such information or complaint, or the proceedings thereon, it shall be necessary to describe the ownership of any work or building made, maintained, or repaired at the expense of any county, riding, division, liberty, city, borough, or place, or of any materials for the making, altering, or repairing of the same, they may be therein described as the property of the inhabitants of such county, riding, division, liberty, city, borough, or place respectively; and all goods provided by parish officers for the use of the poor may in any such information or complaint, or the proceedings thereon, be described as the goods of the churchwardens and overseers of the poor of the parish, or of the overseers of the poor of the township or hamlet, or of the guardians of the poor of the union to which the same belong, without naming any of them; and all materials and tools provided for the repair of highways at the expense of parishes or other districts in which such highways may be situate, may be therein described as the property of the surveyor or surveyors of such highways respectively, without naming him or them; and all materials or tools provided for making or repairing any turnpike road, and buildings, gates, lamps, boards, stones, posts, fences, or other things erected or provided for the purpose of any such turnpike road, may be described as the property of

Sect. 4.

of the property of counties;

of the property in goods provided for the poor;

of the property in materials for parish roads;

of the property in materials for turnpike roads, &c.;

Sect. 4. the commissioners or trustees of such turnpike road, without naming them; and all property of the commissioners of sewers of any district may be described as the property of such commissioners without naming them.

of the property of commissioners of sewers.

Description of goods, &c.

This provision is similar to that contained in 7 Geo. 4, c. 64, ss. 14—18, with regard to indictable offences, as to which see section 46 (2) (3) of the Summary Jurisdiction Act, 1879, *post*. The 5 & 6 Will. 4, c. 69, s. 7, also makes provision for describing in legal proceedings the goods of the guardians of the poor of a union. As regards money belonging to a parish, see 12 & 13 Vict. c. 103, s. 15, which enacts, "that in respect of any indictment or other criminal proceeding every collector or assistant overseer appointed under the authority of any order of the poor law commissioners, or the poor law board, shall be deemed and taken to be the servant of the inhabitants of the parish whose money or other property he shall be charged to have embezzled or stolen, and shall be so described; and it shall be sufficient to state any such money or property to belong to the inhabitants of such parish, without the names of any such inhabitants being specified." This enactment removes the difficulty experienced in *Reg. v. Townsend*, 2 Car. & K. 168.

Prosecution and punishment of aiders and abettors in the commission of offences.

5. And be it enacted, that every person who shall aid, abet, counsel, or procure the commission of any offence which is or hereafter shall be punishable on summary conviction shall be liable to be proceeded against and convicted for the same, either together with the principal offender, or before or after his conviction, and shall be liable on conviction to the same forfeiture and punishment as such principal offender is or shall be by law liable, and may be proceeded against and convicted either in the county, riding, division, liberty, city, borough, or place where such principal offender may be convicted, or in that in which such offence of aiding, abetting, counselling, or procuring may have been committed.

Conviction of aiders

This extended to persons who aided, counselled, or abetted in the commission of offences punishable on summary con-

viction, the provisions in 7 & 8 Geo. 4, c. 29, s. 62, and c. 30, s. 31 (Peel's Acts, repealed by 24 & 25 Vict. c. 95), regarding indictable offences. A conviction cannot be procured under this section, unless the principal offence has actually been committed; but from *Rex v. Vaughan*, 4 Burr, 2494, and *Rex v. Higgins*, 2 East, 5, it would seem that, although the offence be not actually committed, the soliciting or inciting another to commit it is a misdemeanor at common law, and punishable accordingly. It should be remembered, however, that there the offence charged was that of inciting another to commit a felony. Though there may be accessories after the fact in regard to felonies, there can be none such in the case of an offence punishable on summary conviction, as the above section only applies to aiding, &c., the commission of any offence.

Note to
Sect. 5.

and
abettors.

A warrant of commitment for aiding, abetting, counselling, and procuring a person to commit an offence under the 4 Geo. 4, c. 34, described the offence of the accessory by reference to the offence of the principal, which was correctly stated, and was held to be good; for the charging the accessory as aiding, abetting, counselling, and procuring, is a good charge, it being consistent that the several offences were the result of one act. In a case of this nature the court will not inquire into the jurisdiction of the committing magistrate; *Ex parte Charles Smith*, 3 H. & N. 227; 27 L. J. R. (N.S.) M. C. 186; 22 J. P. 834. That case also shows that where a warrant of commitment is found to be defective the error may be amended by a second warrant of commitment.

If the keeper of a house of public resort instruct his servant to manage his house in his absence in such a manner as to amount to a misdemeanor, under 2 & 3 Vict. c. 47, s. 44, and the servant carries out such instructions, both are guilty, the master as principal, and the servant as aiding and abetting; and the latter may be convicted. This was so held where the magistrate refused to convict, on the ground that the relation of master and servant was insufficient to establish, in point of law, an aiding and abetting, according to the true intent and meaning of 11 & 12 Vict. c. 43, s. 5; *Wilson, app., Stewart, resp.*, 3 B. & S. 913; 9 Jur. (N.S.) 1130.

6. And be it enacted, that such of the provisions and enactments in the Act aforesaid made and passed in this present session of parliament, intituled "An Act to facilitate the Performance of the Duties of

Provisions
of 11 & 12
Vict. c. 42,
as to justices
in one
county, &c.,
acting for

Sect. 6. Justices of the Peace out of Sessions within England and Wales with respect to Persons charged with Indictable Offences," whereby a justice of the peace for one county, riding, division, liberty, city, borough, or place may act for the same whilst residing or being in an adjoining county, riding, division, liberty, city, borough, or place of which he is also a justice of the peace, or whereby a justice of the peace for any county at large, riding, division, or liberty, may act as such within any city, town, or precinct next adjoining thereto or surrounded thereby, being a county of itself, or otherwise having exclusive jurisdiction, as are applicable to the provisions of this Act, shall be deemed to be incorporated into this Act, and to extend to all acts required of or to be performed by justices of the peace under or by virtue of this Act, in as full and ample a manner as if the said provisions and enactments were here repeated and made parts of this Act.

Jurisdiction
of justices.

See 11 and 12 Vict. c. 42, s. 6, *post*, and 13 & 14. Vict. c. 91, s. 9, which latter enacts that "The justices of every city or borough shall have the same jurisdiction with respect to all offences committed and matters arising within such city or borough as the justices of the county in which such city or borough is situate now have under or by virtue of any local or general Act of parliament; and such offences and matters shall be cognizable by one or more of the justices of such city or borough in the same manner as such offences and matters are now cognizable by one or more justices of such county: Provided always, that in every case in which imprisonment may be awarded for or in respect of any such offences or matters aforesaid, or to enforce payment of any penalty, rate, sum of money, or costs imposed or made payable by or by virtue of any such general or local Act, or otherwise, such imprisonment may be awarded to take place in any gaol or house of correction to which the justices of the said city or borough now have or hereafter may have power to commit offenders."

As to the commitment of prisoners, see the provisions of the Prisons Act, 1877 (40 & 41 Vict. c. 21), ss. 24-29, **Note to Sect. 6.**
post.

Justices for a county have jurisdiction to make an order under 3 & 4 Vict. c. 54, relating to a criminal lunatic, while sitting in a borough having a separate commission of the peace, by virtue of 11 & 12 Vict. c. 42, s. 6, and 11 & 12 Vict. c. 43, s. 6, coupled with 26 & 27 Vict. c. 77, which latter Act so far renders nugatory the exceptions in 11 & 12 Vict. c. 43, s. 35. Per *Cockburn, C.J.*, the 26 & 27 Vict. c. 77, s. 1, in effect enacts that section 35 of 11 & 12 Vict. c. 43, shall be repealed so far as it had any operation to control section 6 of the same Act, and therefore, by what is certainly a most remarkable piece of legislation, the operation of section 6 is left untouched as to the jurisdiction of justices, although other sections of the Act, such as section 11, limiting the time for making the complaints, will still not apply to the orders mentioned in section 35; *Bradford v. Clerk of the Peace for Wilts*, L. R. 3 Q. B. 604; 9 B. & S. 660; 18 L. T. (N.S.) 515.

With regard to the jurisdiction of justices in petty sessional divisions, see 9 Geo. 4, c. 43, "An Act for the better regulation of Divisions in the several Counties of England," since which their jurisdiction has been a thoroughly understood matter.

By the Act to amend the Law relating to the Jurisdiction of Justices residing or being out of the County for which they are Justices (26 & 27 Vict. c. 77), reciting that, Whereas by the sixth section of an Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled "An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales with respect to Summary Convictions and Orders" (which Act is hereinafter referred to as the principal Act), it is enacted, that such of the provisions contained in the Act passed in the same session of parliament, chapter forty-two, and intituled "An Act to facilitate the Performance of the Duties of the Justices of the Peace out of Sessions within England and Wales with respect to Persons charged with Indictable Offences," whereby a justice of the peace for one county, riding, division, liberty, city, borough, or place may act for the same whilst residing or being in an adjoining county, riding, division, liberty, city, borough, or place of which he is also a justice of the peace, or whereby a justice of the peace for any county at large, riding, division, or liberty may act as such within any city, town, or precinct next adjoining thereto or surrounded thereby, being a county of itself, or otherwise having exclusive jurisdiction, as are applicable to the provisions of the principal Act shall be

**Note to
Sect. 6.**

deemed to be incorporated with the principal Act, and to extend to all acts required of or to be performed by justices of the peace under or by virtue of the principal Act in as full and ample a manner as if the said provisions and enactments were repeated and made parts of that Act: And whereas by the thirty-fifth section of the principal Act it is provided that nothing in the Act contained shall extend to certain cases therein mentioned: And whereas it is apprehended that the provisions of the said sixth section of the principal Act are controlled by the thirty-fifth section of the same Act, and that justices cannot act under the first-mentioned of the said two sections in the cases mentioned in the said thirty-fifth section: And whereas it is expedient that the principal Act should be amended as hereinafter provided: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same as follows:—Section 1. The thirty-fifth section of the principal Act shall not apply to or control the sixth section of the same Act, and such last-mentioned section shall be construed as if the thirty-fifth section were not and never had been contained in the principal Act; and any acts done or orders made by justices previously to the passing of this Act which would have been valid if this Act had been passed at the respective dates of such acts being done or orders made shall be and are hereby declared to be valid accordingly.

Power to
justices to
summon
witnesses to
attend and
give
evidence.

7. And be it enacted, that if it shall be made to appear to any justice of the peace, by the oath or affirmation of any credible person, that any person within the jurisdiction of such justice is likely to give material evidence in behalf of the prosecutor or complainant or defendant, and will not voluntarily appear for the purpose of being examined as a witness at the time and place appointed for the hearing of such information or complaint, such justice may and is hereby required to issue his summons (G. 1) to such person under his hand and seal, requiring him to be and appear at a time and place mentioned in such summons before the said justice, or before such other justice or justices of the peace for the

same county, riding, division, liberty, city, borough, or place, as shall then be there, to testify what he shall know concerning the matter of the said information or complaint; and if any person so summoned shall neglect or refuse to appear at the time and place appointed by the said summons, and no just excuse shall be offered for such neglect or refusal, then (after proof upon oath or affirmation of such summons having been served upon such person, either personally or by leaving the same for him with some person at his last or most usual place of abode, and that a reasonable sum was paid or tendered to him for his costs and expenses in that behalf) it shall be lawful for the justice or justices before whom such person should have appeared to issue a warrant (G. 2) under his or their hands and seals to bring and have such person, at a time and place to be therein mentioned, before the justice who issued the said summons, or before such other justice or justices of the peace for the same county, riding, division, liberty, city, borough, or place, as shall then be there, to testify as aforesaid, and which said warrant may, if necessary, be backed as hereinbefore is mentioned, in order to its being executed out of the jurisdiction of the justice who shall have issued the same; or if such justice shall be satisfied by evidence upon oath or affirmation, that it is probable that such person will not attend to give evidence without being compelled so to do, then, instead of issuing such summons, it shall be lawful for him to issue his warrant (G. 3) in the first instance, and which, if necessary, may be backed as aforesaid; and if on the appearance of such person so summoned before the said last-mentioned justice or

Sect. 7.

If summons be not obeyed justices may issue warrant.

In certain cases may issue warrant in the first instance.

Persons appearing on sum-

Sect. 7. justices, either in obedience to the said summons, or upon being brought before him or them by virtue of the said warrant, such person shall refuse to be examined upon oath or affirmation concerning the premises, or shall refuse to take such oath or affirmation, or having taken such oath or affirmation, shall refuse to answer such questions concerning the premises as shall then be put to him, without offering any just excuse for such refusal, any justice of the peace then present, and having there jurisdiction, may by warrant (G. 4) under his hand and seal, commit the person so refusing to the common gaol or house of correction for the county, riding, division, liberty, city, borough, or place where such person so refusing shall then be, there to remain and be imprisoned for any time not exceeding seven days, unless he shall in the meantime consent to be examined and to answer concerning the premises.

mons, &c., refusing to be examined may be committed.

Summoning of witnesses.

Before a summons is issued to compel the attendance of an unwilling witness, oath or affirmation must be made before the justice, that such witness, if present, would be able to give evidence material to the prosecutor, or complainant, or defendant, as the case may be, and that he will not voluntarily appear as a witness. The summons (G. 1) must be served upon the witness, either personally or by being left at his last or most usual place of abode. It need not necessarily be served by a constable, but may be served by any person, and at the time of service a reasonable sum should be tendered to defray the witness's expenses of going to and returning from the place of hearing. If the witness do not obey the summons, and no just excuse be offered, then upon proof upon oath or affirmation of the service of the summons, and tender of reasonable costs, a warrant (G. 2) may be issued to apprehend him. The warrant, in such case, will be executed by the constable or other peace officer in the usual manner; but if the witness be not within the jurisdiction of the justice issuing the warrant, then it may be backed in the same way as an ordinary warrant to apprehend. On the other hand, if the justices should be

satisfied by evidence upon oath or affirmation that it is probable the witness will not attend to give evidence unless he is compelled to do so, such justice may issue his warrant to apprehend (G. 3), in the first instance, without a previous summons, which may be executed the same, in all respects, as a warrant to apprehend upon a previous summons. If, when the witness is got before the justice, he refuse to be examined, or refuse to be sworn, or to answer the questions put to him without offering any just excuse for such refusal, he may be committed (G. 4) for seven days to the common gaol or house of correction, unless he shall sooner consent to be examined. As to the bringing up prisoners who are in gaol to be examined as witnesses in any matter, civil or criminal, depending, or to be inquired of, or determined, in or before any justice, the 16 & 17 Vict. c. 30, s. 9, enacts, "That it shall be lawful for one of Her Majesty's principal secretaries of state, or any judge of the Court of Queen's Bench or Common Pleas, or any baron of the Exchequer, in any case, where he may see fit to do so, upon application by affidavit, to issue a warrant or order under his hand for bringing up any prisoner or person confined in any gaol, prison, or place, under any sentence or under commitment for trial or otherwise (except under process in any civil action, suit, or proceeding), before any court, judge, justice, or other judicature, to be examined as a witness in any cause or matter, civil or criminal, depending, or to be inquired of, or determined, in or before such court, judge, justice, or judicature; and the person required by such warrant or order to be so brought before such court, judge, justice, or other judicature, shall be so brought under the same care and custody, to be dealt with in like manner in all respects as a prisoner required by any writ of *habeas corpus* awarded by any of Her Majesty's superior courts of law at Westminster, to be brought before such court to be examined as a witness in any cause or matter depending before such court, is now by law required to be dealt with."

Note to
Sect. 7.

Witnesses
who are
prisoners.

With regard to the examining of witnesses in proceedings to be had before justices in petty or special sessions, or out of sessions, under the provisions of the Poor Law Acts, see 7 & 8 Vict. c. 101, s. 70. In poor law proceedings.

Where an infirm witness is unable to attend on the subpoena and give evidence on a matter at petty sessions, there is not power in the superior courts to issue an order to a justice of the peace residing near the witness to take his examination. Infirm witnesses.
Ex parte Kimbolton, 25 J. P. 759.

To entitle a witness to refuse to give evidence on the ground that it might criminate him, the court must determine from the nature of the evidence and the surrounding circumstances that there is reasonable ground to apprehend Refusal of witness to give evidence.

Note to Sect. 7. danger to the witness. A bare possibility of legal peril is not sufficient to entitle a witness to protection. *Ex parte Reynolds, in re Reynolds*, 46 J. P. 533; 46 L. T. (N.S.) 508.

Complaints for an order need not be in writing.

8. And be it enacted, that in all cases of complaint upon which a justice or justices of the peace may make an order for the payment of money or otherwise, it shall not be necessary that such complaint shall be in writing, unless it shall be required to be so by some particular Act of parliament upon which such complaint shall be framed.

See note to section 1, *ante*, p. 3.

As to proceedings upon informations for offences punishable on summary convictions.

9. And be it declared and enacted, that in all cases of informations for any offences or acts punishable upon summary conviction any variance between such information and the evidence adduced in support thereof as to the time at which such offence or act shall be alleged to have been committed shall not be deemed material, if it be proved that such information was in fact laid within the time limited by law for laying the same; and any variance between such information and the evidence adduced in support thereof as to the parish or township in which the offence or act shall be alleged to have been committed shall not be deemed material, provided that the offence or act be proved to have been committed within the jurisdiction of the justice or justices by whom such information shall be heard and determined; and if any such variance, or any variance in any other respect between such information and the evidence adduced in support thereof, shall appear to the justice or justices present and acting at the hearing to be such that the party charged by

The party charged, if deceived by variation between information and evidence may

such information has been thereby deceived or misled, it shall be lawful for such justice or justices upon such terms as he or they shall think fit, to adjourn the hearing of the case to some future day, and in the meantime to commit (D.) the said defendant to the house of correction or other prison, lock-up house, or place of security, or to such other custody as the said justice or justices shall think fit, or to discharge him upon his entering into a recognizance (E.) with or without surety or sureties, at the discretion of such justice or justices, conditioned for his appearance at the time and place to which such hearing shall be so adjourned: Provided always, that in all cases where a defendant shall be discharged upon recognizance as aforesaid, and shall not afterwards appear at the time and place in such recognizance mentioned, then the said justice who shall have taken the said recognizance, or any justice or justices who may then be there present, upon certifying (F.) upon the back of the said recognizance the non-appearance of the defendant, may transmit such recognizance to the clerk of the peace of the county, riding, division, liberty, city, borough, or place within which such recognizance shall have been taken, to be proceeded upon in like manner as other recognizances, and each certificate shall be deemed sufficient *prima facie* evidence of such non-appearance of the said defendant.

Sect. 9.

be committed or discharged upon recognizance;

but if he fail to re-appear the justice may transmit the recognizance to the clerk of the peace.

This section relates exclusively to proceedings upon information. There is nothing in the Act which in express terms requires that an information shall be in writing; but looking to the language of this section and to the express mention in section 8 that complaints need not be in writing, nothing being there said about informations, the obvious

Proceedings on information.

Note to Sect. 9.

Objections on the ground of variance.

inference is that the latter must, or at all events ought to be in writing.

No objection shall be taken to the proceedings on the ground of variance between an information and the evidence in support of it:—1. As to the time at which the offence or act alleged to have been committed, if it be proved that the information was in fact laid within the time limited by law for laying the same, see section 11, *post*, p. 30, and 12 & 13 Vict. c. 103, s. 9, *post*, p. 31. The courts will take judicial cognizance that a place lies east or west of Greenwich, and consequently has a time different from that of Greenwich. *Curtis v. March*, 4 Jur. (N.S.) 1112; 23 J. P. 663; so a statute passes at the first hour of the day on which it bears date, and all events happening on the same day happen after the passing of the Act. *Tomlinson v. Bullock*, L. R. 4 Q. B. D. 230; 43 J. P. 508. And further with regard to the time of committing an offence it may be added that an excise license to keep a dog under 30 Vict. c. 5, operates only from the time when it was granted, and does not relate back to the earliest moment of the day on which it was dated so as to justify a violation of the Act before the license existed. *Campbell v. Strangeways*, L. R. 3 C. P. D. 105. 2. As to the parish or township in which the offence or act shall be alleged to have been committed; and 3, in any other respect unless such variance shall appear to the justices present and acting at the hearing to be such as to have deceived or misled the accused. Section 1 provides for objections to an information for alleged defects in substance or in form.

With regard to "time" it is enacted by 43 & 44 Vict. c. 9, s. 1, that whenever any expression of time occurs in any Act of parliament, deed, or other legal instrument, the time referred to, shall, unless it is otherwise specifically stated, be held in the case of Great Britain to be Greenwich mean time, and in the case of Ireland, Dublin mean time.

Manner of making complaint or laying information.

10. And be it declared and enacted, that every such complaint upon which a justice or justices of the peace is or are or shall be authorized by law to make an order, and that every information for any offence or act punishable upon summary conviction, unless some particular Act of parliament shall otherwise require, may respectively be made or laid without any oath or affirmation being made of the truth

thereof; except in cases of informations where the justice or justices receiving the same shall thereupon issue his or their warrant in the first instance to apprehend the defendant as aforesaid, and in every such case where the justice or justices shall issue his or their warrant in the first instance the matter of such information shall be substantiated by the oath or affirmation of the informant, or by some witness or witnesses on his behalf, before any such warrant shall be issued; and every such complaint shall be for one matter of complaint only, and not for two or more matters of complaint; and every such information shall be for one offence only, and not for two or more offences; and every such complaint or information may be laid or made by the complainant or informant in person, or by his counsel or attorney or other person authorized in that behalf.

Sect. 10.
 When
 warrant
 issued in
 the first
 instance
 information
 to be upon
 oath, &c.

As to the distinction between a complaint and an information, see section 1 and note thereon. They may respectively be laid without any oath or affirmation being made of the truth of them, except in cases where a warrant may be issued in the first instance (when they must be upon oath or affirmation, see section 2), and except also in cases where the statute making the offence provides to the contrary. A complaint for an order need not be in writing (section 8), but it would seem that an information ought to be. See note to sections 2, 9.

Every complaint must be for one matter of complaint only; and every information for one offence only, and not for two or more; and they may be laid or made by the informant or complainant himself, by his counsel or attorney, or by any other person whom he may expressly authorize. See also section 12. When persons are jointly charged with an offence only one information is necessary against both, or as many as there may be; for only one offence has been committed within the meaning of the section, though several may have been concerned in its commission.

An information should state the circumstances which constitute the particular offence with precision, according to the definition in the statute under which it is laid; and the par-

Complaint.

Informa-
 tion.

**Note to
Sect. 10.**

particular acts done should also be stated in order that it may be seen whether they constitute an offence within the statute. This should be done as a rule, but any variance between the information and the evidence adduced in support of it will not render the proceedings invalid. See section 1.

A conviction under 19 Geo. 2, c. 21, for using several oaths on one and the same occasion, is one offence only; and 11 & 12 Vict. c. 43, s. 10, therefore does not apply to such a case. *Reg. v. Scott*, 33 L. J. M. C. 15; 4 B. & S. 368; see also *Stannanought, appellant, v. Hazeldine, respondent*, L. R. 4 C. P. D. 191; 43 J. P. 352, which had reference to an offence against section 4 of the Ballot Act, 1872 (35 & 36 Vict. c. 33).

On an information under 16 & 17 Vict. c. 119, s. 3, charging the defendant with keeping a betting house "on the 5th October last, and on divers other days and times between the said 5th October and the laying of the said information," he was convicted of having committed the offence specified on the 8th of November, the information being laid on the 16th November. The conviction was upheld notwithstanding that the offence was committed on a day not specified in the information, and though it was contended that the information alleged the commission of several offences, contrary to section 10 of 11 & 12 Vict. c. 43. *Onley v. Gee*, 30 L. J. M. C. 222.

Time
limited for
such com-
plaint or
informa-
tion.

11. And be it enacted, that in all cases where no time is already or shall hereafter be specially limited for making any such complaint or laying any such information in the Act or Acts of parliament relating to each particular case, such complaint shall be made and such information shall be laid within six calendar months from the time when the matter of such complaint or information respectively arose.

Previous to this statute there was no general limitation of the time within which informations or complaints might be laid or made. The Metropolitan Police Act, 2 & 3 Vict. c. 71, s. 44, however, prescribed six months as the limit of time within which offences are punishable on summary conviction before a police magistrate sitting at one of the police courts in the metropolis. In general the statute creating the offence limits the time, but if it do not the information or complaint must now be laid or made within six

calendar months after the offence was committed or the matter of complaint arose; except in proceedings taken by a district poor law auditor for the recovery of moneys certified to be due under 7 & 8 Vict. c. 101, s. 32; the 12 & 13 Vict. c. 103, s. 9, having enacted "that nothing in the provisions of the said Act herein recited (i.e. 11 & 12 Vict. c. 43, s. 11) shall be deemed to apply to any such proceeding by any auditor, but that no auditor shall commence any such proceeding after the lapse of nine calendar months from the disallowance or surcharge by such auditor, or, in the event of an application by way of appeal against the same to the court of Queen's Bench or to the Poor Law Board, after the lapse of nine calendar months from the determination thereupon."

Note to Sect. 11.

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In the case of poor law auditors.

Section 11 of 11 & 12 Vict. c. 43, applies to an order of justices made for the payment of expenses of the maintenance of a pauper under an order of removal, and therefore an application for an order to enforce them must be made within six calendar months of the time when demanded. An order for payment of such costs would not be a warrant or order of removal within the exemption in section 35 of 11 & 12 Vict. c. 43. *Collumpton v. Brighton*, 3 L. T. (N.S.) 318; S. C. nom. *Hill*, app., *Thornicroft*, resp., 7 Jur. (N.S.) 163; 24 J. P. 741.

Orders of removal.

An order for expenses of maintenance of a pauper under a suspended order of removal made under 35 Geo. 3, c. 101, s. 2, within six months from the time when the expenses became payable is within the time limited by 11 & 12 Vict. c. 43, s. 11. *Reg. v. Scalcoates*, 9 B. and S. 911.

The 11 & 12 Vict. c. 43, s. 11, applies to an information under 5 Geo. 4, c. 83, s. 4, and therefore there must be a chargeability of the wife and children of the man consequent on his remaining away, and the offence is not complete till the chargeability. It is, therefore, sufficient if the information be laid within six months of the chargeability. *Reeves v. Yates*, 31 L. J. M. C. 241; 8 Jur. (N.S.) 751; 1 H. & C. 435.

Vagrant Act.

By some it was considered that this Act prevented proceedings being taken for the recovery of a poor rate more than six months after the rate was made; but the better opinion was that it did not. The statute contemplates "complaints upon which the justices" have or shall have authority by law to make any order for the payment of money or otherwise, and not cases where the order for payment has already been made by other competent authority, and the justices' aid is only sought to enforce it. This is clear from sections 13 and 16, as, on a complaint under the Act, the party complained against may be apprehended, and if he cannot enter into satisfactory recognizances, may be committed until the hearing. This cannot be done in the case of a defaulter in pay-

Poor rates

Note to Sect. 11.

ment of poor rates. The forms given in the schedule, moreover, show that this Act contemplates cases where the justices adjudge the party to pay a sum of money, and not where a party has already been adjudged and assessed to pay a sum by another authority, namely, the overseers. Section 27 also refers to warrants of distress to enforce these orders, and therefore shows that warrants of distress are not themselves such orders or complaints as are meant originally. Further, the levying of poor rates is regulated by an express statute, the 12 & 13 Vict. c. 14.

It has since been held that the words "such complaint" in section 11 refers to complaints mentioned in section 8, viz., complaints "upon which a justice may make an order for the payment of money or otherwise," and that section 11, therefore, does not apply to proceedings for enforcing a rate by the mere issuing of a warrant of distress. *Sweetman v. Guest*, 37 L. J. M. C. 59; 18 L. T. (N.S.) 49; 52 L. R. 3 Q. B. 262.

As regards the recovery of arrears of poor rates, see *East Dean v. Everett*, 3 L. T. (N.S.) 700; 7 Jur. (N.S.) 124; 25 J. P. 565.

Church rates.

But see *Reg. v. JJ. of Shrewsbury*, 31 L. T. p. 114. In that case more than six months after a demand of immediate payment of a church rate, which was not complied with, a second demand was made and a refusal given. Three days after a summons was taken out to levy the same by distress (53 Geo. 3, c. 127, s. 7), which the justices dismissed on the ground that the matter of complaint arose more than six months before the summons; and it was held that the justices had acted within their jurisdiction. The court, however, said, referring to the rate, that it must not be considered as lost, and that in the case of another ratepayer, the magistrates may be asked to state a case for the opinion of the court, showing the ground of their determination in point of law; and if they do so, and the court think their ground wrong, it will say so. *Ib.* 22 J. P. 395. In the *Shrewsbury* case it is to be observed that church rates are enforced by an order of justices, and not by a warrant of distress, like poor rates. See also *Backhouse v. Bishopwearmouth*, 25 J. P. 70.

When a person summoned before justices, for non-payment of a church rate, *bond fide* objected before them to the validity of the rate, the court held that the justices had no power to make an order, though he did not object to their jurisdiction to decide the points which he had raised. *Reg. v. Leicester JJ.*, 29 L. J. M. C. 203; 24 J. P. 391.

Compensation for damage.

An order of two justices under 8 Vict. c. 18, awarding compensation for damage done to a landowner by the construction of a railway, is within 11 & 12 Vict. c. 43, s. 11.

Reg. v. Leeds and Bradford Railway Company, 21 L. J. (N.S.) M. C. 193; 16 Jur. 817; 16 J. P. 631. In the same case it was also held that the section had a retrospective operation. **Note to Sect. 11.**

It has been held that, in proceedings for the recovery of expenses under 18 & 19 Vict. c. 122, ss. 73, 103, section 11 of 11 & 12 Vict. c. 43, being taken in connection with 18 & 19 Vict. c. 122, ss. 73 and 103 (the matter of complaint being the non-payment of the expenses), the time of limitation ran from the demand and not from the completion of the works in respect of which the expenses were incurred, and therefore that the complaint was in time, though beyond six months from the completion of the works. *Labalmondiere v. Addison*, 28 L. J. M. C. 25; 1 E. & E. 41; 23 J. P. 26. **Metropolis Building Act.**

The limitation under 11 & 12 Vict. c. 43, s. 11, applies to proceedings for the recovery of expenses incurred by a local board under 11 & 12 Vict. c. 63, s. 51 (now 38 & 39 Vict. c. 55, s. 36). **Sanitary authorities.**

The complaint must be made within six calendar months of the amount being due and notice of the amount due being given to the party, and not within six months of the demand of payment. *Eddlestone, app., Francis, resp.*, 7 C. B. (N.S.) 568; 3 L. T. (N.S.) 270.

The provision in 11 & 12 Vict. c. 43, s. 11, applies to expenses incurred by a local board under section 150 of the Public Health Act, 1875 (38 & 39 Vict. c. 55), which corresponds to the second clause of the repealed statute, 21 & 22 Vict. c. 98, s. 63; but the six months do not commence to run till after the expiration of the three months during which the apportionment of the expenses may be disputed. *Jacomb v. Dudson*, 32 L. J. M. C. 113; 7 L. T. (N.S.) 674; 3 B. & S. 461.

The words in 11 & 12 Vict. c. 43, s. 1, "orders for the payment of money or otherwise," include orders of every kind which a justice of the peace has authority to make; and therefore where a local Act for the improvement of a borough provided that if buildings should be erected "contrary to any requirement by the corporation," the corporation might "make a complaint thereof before a justice," who was empowered to make an order directing the demolition of the building; the complaint in such case upon which an order for demolition was to be founded must be made within six months after the completion of the building erected contrary to the provisions of the local Act. *Morant, app., Taylor, resp.*, L. R. 1 Exch. D. 188; 45 L. J. M. C. 73; 34 L. T. (N.S.) 139; followed in *Vestry of Paddington v. Snow*, 45 L. T. (N.S.) 475.

**Note to
Sect. 11.**
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If a nuisance (as under the Smoke Acts) be a continuing nuisance, the limitation of six months in 11 & 12 Vict. c. 43, s. 11, will not apply. *Higgins v. Northwich Union*, 22 L. T. (N.S.) 752; 34 J. P. 452, n. 806.

The commitment by two justices under 11 & 12 Vict. c. 63, s. 39 (now 38 & 39 Vict. c. 55, s. 196), of an overseer and collector of borough rates for non-delivery of a rate book in his possession by virtue of his office of overseer and collector, is a civil and not a criminal proceeding, being in the nature of a distraint; and the limitation of six months in 11 & 12 Vict. c. 43, s. 11, therefore, does not apply; *semble*, per *Lush, J.*, such limitation will only apply where the object of the proceeding is punishment and not merely coercion. *Meyer v. Harding*, 17 L. T. (N.S.) 140; 31 J. P. 740.

The limit of six months imposed by section 11 of this Act was held to apply to proceedings which were based upon section 129 of the Public Health Act, 1848 (section 251 of the Public Health Act, 1875). *West v. Dowman*, 42 L. T. (N.S.) 340.

And the six months' limitation with regard to the recovery of extra cost of repairing highways caused by extraordinary traffic under 41 & 42 Vict. c. 77, s. 23, dates from the certificate and demand of payment, and not from the time when the repairs are made. *White v. Colson*, 46 J. P. 565.

Lands
Clauses and
Railway
Clauses
Acts.

An adjudication by two justices under the Lands Clauses Consolidation Act, 1845, and Railway Clauses Consolidation Act, 1845, of a sum below £50 to be paid by a railway company as compensation for injury done to lands, is an order within section 1 of this Act, and is bad under this section if the complaint on which the order is founded be made more than six calendar months after the cause of complaint arose; and such an order may be brought up by *certiorari* to be quashed. *In re James Edmundson*, 17 Q. B. 67.

But where a person is required to give up any lands under the 121st section of the Lands Clauses Consolidation Act (8 & 9 Vict. c. 18), and have the amount of compensation settled by two justices, if the lands have not been injuriously affected it is not necessary that the complaint should be made, under sections 1, 11, of 11 & 12 Vict. c. 43, to the justices within six months from the time of the notice. *Reg. v. Hannay*, 31 L. T. (N.S.) 702, distinguishing, with hesitation, *re Edmundson, supra*.

Interest
accruing on
costs not
paid.

Under a local Act interest might be charged after three months if certain costs were not paid, and the whole recovered as damages. On a case stated it was held that interest did not begin to accrue before the expiration of three months, and therefore that a demand of the amount due from an owner within three months of the completion of the works was a

good demand from the date of which the period of six months for obtaining the money by an order of magistrates pursuant to 11 & 12 Vict. c. 43, s. 11, began to run. *Parkinson v. Blackburn*, 22 J. P. 418. With reference to 11 & 12 Vict. c. 43, s. 11, the following case may also be consulted: *Reg. v. Mainwaring*, 27 L. J. (N.S.) M. C. 278; 4 Jur. (N.S.) 928; 22 J. P. 367.

Note to Sect. 11.

12. And be it enacted, that every such complaint and information shall be heard, tried, determined, and adjudged by one or two or more justice or justices of the peace, as shall be directed by the Act of parliament upon which such complaint or information shall be framed, or such other Act or Acts of parliament as there may be in that behalf; and if there be no such direction in any such Act of parliament, then such complaint or information may be heard, tried, determined, and adjudged by any one justice of the peace for the county, riding, division, liberty, city, borough, or place where the matter of such information shall have arisen; and the room or place in which such justice or justices shall sit to hear and try any such complaint or information shall be deemed an open and public court, to which the public generally may have access, so far as the same can conveniently contain them; and the party against whom such complaint is made or information laid shall be admitted to make his full answer and defence thereto, and to have the witnesses examined and cross-examined by counsel or attorney on his behalf; and every complainant or informant in any such case shall be at liberty to conduct such complaint or information respectively, and to have the witnesses examined and cross-examined by counsel or attorney on his behalf.

As to the hearing of complaints and informations.

Places in which justices shall sit to hear complaints, &c., to be deemed an open court.

Parties allowed to plead by counsel or attorney.

Note to Sect. 12.

The hearing, before what justices.

This section only applies to cases in which the statute creating the offence has not expressly provided before what justice and what number of them the hearing is to be. See section 29, which further enacts that it shall not be necessary that the hearing be before the justice or justices who received the information or complaint, or who issued the summons or warrant.

The justices' court.

Under this statute the justices act judicially; under 11 & 12 Vict. c. 42, they act ministerially; and therefore, whilst under the above section they are required to sit to hear and try any information or complaint in open court, section 19 of 11 & 12 Vict. c. 42, provides that the place where the examination is taken shall not be an open court.

Conduct of case before justices.

Under section 10 any one may lay an information or complaint for another; and under this section the plaintiff or defendant may conduct his own cause before the justices in person, or may do so by counsel or attorney. With regard to defendants, this was already provided for by 6 & 7 Will. 4, c. 114, s. 2, which enacted that in all cases of summary convictions, "persons accused shall be admitted to make their full answer and defence, and to have all witnesses examined and cross-examined by counsel or attorney."

Appearing by attorney, &c.

With regard to the appearance of any attorney or solicitor before the justices on behalf of a plaintiff or defendant, it is enacted by 6 & 7 Vict. c. 73, s. 2 (*inter alia*), that no person shall act as an attorney or solicitor at any general or quarter sessions, or before any justice or justices, unless he shall be admitted and enrolled and otherwise duly qualified to act as an attorney or solicitor pursuant to the directions and regulations of that Act, and unless he shall continue to be so qualified and on the roll at the time of his so acting. There is, however, an exception made in favour of clerks to boards of guardians by 7 & 8 Vict. c. 101, s. 68. And it is to be added that the privileges of clerks to boards of guardians in this respect are expressly saved by 23 & 24 Vict. c. 127, s. 33.

Waiver of information or summons.

If a party appears before justices and allows a charge which they have jurisdiction to hear to be proceeded with without objecting, he waives the want of an information or or summons. *Reg. v. Shaw*, 12 L. T. (N.S.) 470.

Interested justices.

If justices, who convict upon a summary proceeding, are interested in the matter, they are disqualified from acting, and their adjudication is invalid. Therefore, where a person was convicted before justices of travelling upon a railway without a proper ticket, and the justices were shareholders in the same railway company, it was held that they were interested justices, and therefore disqualified from adjudicating. *Reg. v. Hammond*, 27 J. P. 793.

But the objection that a justice who sits to adjudicate upon a summary conviction is interested is one which may be waived by the parties, and, if waived, the proceedings are not void on the ground of such interest. *Wakefield Local Board of Health v. West Riding and Grimsby Railway Company*, 13 L. T. (N.S.) 590; 12 Jur. (N.S.) 160.

Note to Sect. 12

Interested Justices.

Though any pecuniary interest, however small, in the subject matter, disqualifies a justice from acting in a judicial inquiry, yet the mere possibility of bias in favour of one of the parties, does not *ipso facto* avoid the justices' decision; in order to have that effect the bias must be shown, at least, to be real. *Reg. v. Rand*, L. R. 1 Q. B. 230.

With regard to interested justices in a case before them, the following may here be noted. At the hearing of a summons for an offence under the Fishery Acts, one of the magistrates, Sir H. D. M., was interested in the decision, and sat on the bench. He stated openly in court that he should take no part in the hearing of the case, but made an observation in the course of the case, that he could prove a material fact in controversy. He also remained and was present at the consultation of the magistrates. Sir H. D. M. stated that he took no part in the matter save as above stated, and that he did not vote upon the decision of the case. Under these circumstances it was held, notwithstanding the disclaimer, that he took such a part in the hearing as invalidated the conviction. *Reg. v. O'Grady*, 7 Cox C. C. 247.

In a case where the convicting justices were members of a town council when a resolution of the council to prosecute was passed, a rule for a *certiorari* to bring up and quash the conviction was made absolute. *Reg. v. Weymouth JJ.*, 43 J. P. 348; L. R. 4 Q. B. D. 332; S. C. *Reg. v. Milledge and others, Justices of Weymouth*, 40 L. T. (N.S.) 748.

An information for an offence against a local Act having been preferred by an officer on behalf of the local authority, and a summons having been issued by a justice who was also a member of the authority, it was held that the justices could not proceed with the hearing of the summons as it was issued by one who was virtually the prosecutor. *Reg. v. Gibbon and another, JJ. of Lancashire*, 6 Q. B. D. 168, which, however, was disapproved in *Reg. v. Handsley*, 8 Q. B. D. 383, *infra*.

A borough justice who was a member of the sanitary committee of the town council was held disqualified on the ground of interest, he having acted as chairman of the committee when a prosecution was ordered against a person in the possession of meat unfit for food. *Reg. v. Justices of West Riding of Yorkshire*, 46 J. P. 404.

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Interested
Justices.

In a municipal borough the mayor appealed against his assessment to the poor rate, and at the special sessions he sat as justice and heard some appeals and decided for the appellants. On his case coming on he went down from the bench into the court and conducted his own appeal, when the other justices reduced his assessment. Under these circumstances the order of justices was held to be bad for bias or the appearance of bias. *Reg. v. Great Yarmouth JJ.*, 46 J. P. 518; 51 L. J. M. C. 39; L. R. 8 Q. B. D. 525.

A sanitary authority at Winchester having found that a house was not constructed in accordance with their bye-laws, ordered it to be pulled down, and some of the justices who were members of the authority and took part in the proceedings having afterwards joined in making an order on the owner for payment of costs, a rule to quash the order was made absolute with costs against the justices who acted in both capacities. *Reg. v. Winchester JJ.*, 46 J. P. 724.

A justice of a borough was member of a sanitary committee, the corporation being the urban authority, and was sitting as a member of the authority when they ordered a prosecution for exposing meat unfit for food. At the hearing of the summons under 38 & 39 Vict. c. 55, s. 251, the same justice was one of the court of summary jurisdiction and joined in the conviction for the offence; but the conviction was quashed on the ground of interest in the justice. *Reg. v. Lee*, 47 J. P. 118; L. R. 9 Q. B. D. 394.

On the other hand where on an information laid under a local Improvement Act by order of a corporation who were the local board for the district, for violating a bye-law by deviating from a plan of building, it was held that the convicting justices were not disqualified as being members of the corporation. *Harring v. Stockton*, 31 J. P. 420. And justices who were members of a town council and as such had taken an active part in the making of an order under the Dogs Act, 1871 (34 & 35 Vict. c. 56), and who sat to hear a complaint of nonobservance of the order, were held to have no such interest in the subject matter as to oust their jurisdiction. *Reg. v. Huntingdon JJ.*, L. R. 4 Q. B. D. 522; 43 J. P. 767.

A justice of the peace who was a member of the town council of a borough sat and adjudicated upon a summons for nonpayment of the borough rate, but it was held that he had not such a substantial interest in the result of the hearing of the summons as to make it likely that he had a real bias in the matter, and he was, therefore, not disqualified from adjudicating. *Reg. v. Handsley, Ex parte King*, 46 J. P. 119; 51 L. J. M. C. 137.

The mere fact of serving a justice with a subpoena does not make him an interested party, so as to prevent him adjudicating in the case. *Reg. v. Tooke*, 48 J. P. 276. **Note to Sect. 12.**

And the being a member of a prosecuting society, as the Society for the Prevention of Cruelty to Animals, does not disqualify a justice from acting in a prosecution by the society. *Reg. v. Mayor and Justices of Deal*, 45 L. T. (N.S.) 439. **Interested justices.**

Upon the hearing of an information for an assault, the justices have jurisdiction to convict the defendant of that offence, although evidence be given which, if true, would prove that not only had the complainant been assaulted, but that a rape had been committed upon her. *Wilkinson v. Dutton*, 32 L. J. M. C. 152. **Evidence, assault.**

Where, upon the hearing of an information, a claim of right is set up by the defendant, such claim, if made *bond fide* and with some show of reason, will oust the jurisdiction of the justices; but, although it is for the justices to determine whether or not the claim is made *bond fide* and with a show of reason, if they determine that it is not so made, the court will review their determination, and overrule it if come to upon insufficient grounds. *Reg. v. Stimpson*, *Reg. v. Peak*, 8 L. T. (N.S.) 536. **Claim of right.**

It has further been held that, upon a summary proceeding before justices, their jurisdiction is not ousted by the *bond fide* claim of a right which cannot exist in law. *Hudson v. McRae*, 33 L. J. M. C. 65; but though a claim of right may oust the jurisdiction of justices under a statute, the mere assertion of the solicitor will not sufficiently establish a *bond fide* objection on the defendant's part. *Reg. v. Sandford*, 30 L. T. (N.S.) 601.

Further with regard to justices sitting in open court, see 42 & 43 Vict. c. 43, s. 20, *post*.

On the hearing of a summons for libel in a newspaper the magistrate is not bound to allow the defendant's counsel to cross-examine the plaintiff so as to show that the alleged libel was a fair comment on the matter referred to in the newspaper. *Reg. v. Flowers*, 43 J. P. 796. **Libel.**

13. And be it enacted, that if at the day and place appointed in and by the summons aforesaid for hearing and determining such complaint or information the defendant against whom the same shall have been made or laid shall not appear when called, the constable or other person who shall have **If defendant does not appear justices may proceed to hear and determine, or issue warrant and adjourn the**

Sect. 13. served him with the summons in that behalf shall then declare upon oath in what manner he served the said summons; and if it appear to the satisfaction of any justice or justices that he duly served the said summons, in that case such justice or justices may proceed to hear and determine the case in the absence of such defendant, or the said justice or justices, upon the non-appearance of such defendant as aforesaid, may, if he or they think fit, issue his or their warrant in manner hereinbefore directed, and shall adjourn the hearing of the said complaint or information until the said defendant shall be apprehended; and when such defendant shall afterwards be apprehended under such warrant he shall be brought before the same justice or justices, or some other justice or justices of the same county, riding, division, liberty, city, borough, or place, who shall thereupon, either by his or their warrant (H.), commit such defendant to the house of correction or other prison, lock-up house, or place of security, or, if he or they think fit, verbally, to the custody of the constable or other person who shall have apprehended him, or to such other safe custody as he or they shall deem fit, and order the said defendant to be brought up at a certain time and place before such justice or justices of the peace as shall then be there, of which said order the complainant or informant shall have due notice; or if upon the day and at the place so appointed as aforesaid such defendant shall attend voluntarily in obedience to the summons in that behalf served upon him, or shall be brought before the said justice or justices by virtue of any warrant, then, if the complainant or informant, having had such notice as aforesaid,

hearing till
defendant
is apprehended.

If defendant
appear, and
complainant,
&c., does not,
justice may
dismiss the
complaint,
&c., or at
discretion,
adjourn

do not appear, by himself, his counsel or attorney, the said justice or justices shall dismiss such complaint or information, unless for some reason he or they shall think proper to adjourn the hearing of the same until some other day, upon such terms as he or they shall think fit, in which case such justice or justices may commit (D.) the defendant in the meantime to the house of correction or other prison, lock-up house, or place of security, or to such other custody as such justice or justices shall think fit, or may discharge him upon his entering into a recognizance (E.), with or without surety or sureties, at the discretion of such justice or justices conditioned for his appearance at the time and place to which such hearing shall be so adjourned; and if such defendant shall not afterwards appear at the time and place mentioned in such recognizance, then the said justice who shall have taken the said recognizance, or any justice or justices who may then be there present, upon certifying (F.) on the back of the recognizance the non-appearance of the defendant, may transmit such recognizance to the clerk of the peace of the county, riding, division, liberty, city, borough, or place within which the offence shall be laid to have been committed, to be proceeded upon in like manner as other recognizances, and such certificate shall be deemed sufficient *prima facie* evidence of such non-appearance of the said defendant; but if both parties appear, either personally or by their respective counsel or attorneys, before the justice or justices who are to hear and determine such complaint or information, then the said justice or justices shall proceed to hear and determine the same.

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hearing and
commit or
discharge
defendant
upon recog-
nizances;

but if he fail
to re-ap-
pear, the
justice may
transmit
the recog-
nizance to
the clerk of
the peace.

If both par-
ties appear,
justice to
hear and
determine
the case.

Note to Sect. 13.

Adjudication.

If at the time appointed for the hearing of the information or complaint the defendant do not appear, the justices, even though he be represented by counsel or attorney, may issue their warrant to enforce his obedience to the summons, by bringing him compulsorily before them, and may adjourn the hearing to a future day or hour if it be thought that the defendant can be easily found. There is no obligation upon them to adjudicate upon the case in the absence of the defendant; but they may do so, whether he be represented by counsel or attorney or not, if they think fit, upon proof that the summons was duly served. If, on the other hand, the defendant appear, but the plaintiff do not appear in person, or by counsel or attorney, the justices may either dismiss the information or complaint, or they may adjourn the hearing. If it be thought that the defendant will not again appear, they may commit him, or they may discharge him upon recognizance, at their discretion; and if afterwards he do not appear, the recognizance may be estreated and a warrant issued for the apprehension of the defendant. See also section 16.

If a solicitor appears to a summons without authority from the defendant and pleads guilty, the conviction will be bad. *Quære*, whether it is competent to justices to convict upon a plea of guilty by an attorney in the absence of the defendant. *Reg. v. Aves*, 24 L. T. (N.S.) 64.

Amendment of law of evidence.

Here may be introduced the Act for amending the Law of Evidence and Practice on Criminal Trials (28 Vict. c. 18), which, reciting that, "whereas it is expedient that the law of evidence and practice on trials for felony and misdemeanor and other proceedings in courts of criminal judicature should be more nearly assimilated to that on trials at *Nisi Prius*," enacts:

Section 1. The provisions of sections from three to eight, inclusive, of this Act shall apply to all courts of judicature, as well criminal as all others, and to all persons having, by law or by consent of parties, authority to hear, receive, and examine evidence.

Section 2. (This section relates to summing up of evidence in cases of felony and misdemeanor).

How far witness may be discredited by the party producing.

Section 3. A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character, but he may, in case the witness shall, in the opinion of the judge, prove adverse, contradict him by other evidence, or by leave of the judge, prove that he has made at other times a statement inconsistent with his present testimony; but before such last-mentioned proof can be given the circumstances of the supposed statement, sufficient to designate the particular occa-

sion, must be mentioned to the witness, and he must be asked whether or not he has made such statement.

Section 4. If a witness, upon cross-examination as to a former statement made by him relative to the subject matter of the indictment or proceeding, and inconsistent with his present testimony, does not distinctly admit that he has made such statement, proof may be given that he did in fact make it; but before such proof can be given the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement.

Section 5. A witness may be cross-examined as to previous statements made by him in writing or reduced to writing relative to the subject matter of the indictment or proceeding, without such writing being shown to him; but if it is intended to contradict such witness by the writing, his attention must, before such contradictory proof can be given, be called to those parts of the writing which are to be used for the purpose of so contradicting him: provided always that it shall be competent for the judge, at any time during the trial, to require the production of the writing for his inspection, and he may thereupon make such use of it for the purposes of the trial as he may think fit.

Section 6. A witness may be questioned as to whether he has been convicted of any felony or misdemeanor, and upon being so questioned, if he either denies or does not admit the fact, or refuses to answer, it shall be lawful for the cross-examining party to prove such conviction; and a certificate containing the substance and effect only (omitting the formal part) of the indictment and conviction for such offence, purporting to be signed by the clerk of the court or other officer having the custody of the records of the court where the offender was convicted, or by the deputy of such clerk or officer (for which certificate a fee of five shillings and no more shall be demanded or taken), shall, upon proof of the identity of the person, be sufficient evidence of the said conviction, without proof of the signature or official character of the person appearing to have signed the same.

Section 7. It shall not be necessary to prove by the attesting witness any instrument to the validity of which attestation is not requisite, and such instrument may be proved as if there had been no attesting witness thereto.

Section 8. Comparison of a disputed writing with any writing proved to the satisfaction of the judge to be genuine shall be permitted to be made by witnesses; and such writings, and the evidence of witnesses respecting the same, may be submitted to the court and jury as evidence of the genuineness or otherwise of the writing in dispute.

Note to Sect 13.

As to proof of contradictory statements of adverse witnesses.

Cross-examinations as to previous statements in writing.

Proof of previous conviction of witness may be given.

As to proof by attesting witnesses.

As to comparison of disputed writing.

- Note to Sect. 13.** Section 9. The word "Counsel" in this Act shall be construed to apply to attorneys in all cases where attorneys are allowed by law or by the practice of any court to appear as advocates.⁵
- Counsel.** By the Bankers Books Evidence Act, 1879 (42 Vict. c. 11), it is enacted as follows :
- Mode of proof of entries in bankers' books.** Section 3. Subject to the provisions of this Act a copy of any entry in a banker's book shall in all legal proceedings be received as *prima facie* evidence of such entry, and of the matters, transactions, and accounts therein recorded.
- Proof that book is a banker's book.** Section 4. A copy of an entry in a banker's book shall not be received in evidence under this Act unless it be first proved that the book was at the time of the making of the entry one of the ordinary books of the bank, and that the entry was made in the usual and ordinary course of business, and that the book is in the custody or control of the bank.
- Such proof may be given by a partner or officer of the bank, and may be given orally or by an affidavit sworn before any commissioner or person authorized to take affidavits.
- Verification of copy.** Section 5. A copy of an entry in a banker's book shall not be received in evidence under this Act unless it be further proved that the copy has been examined with the original entry and is correct.
- Such proof shall be given by some person who has examined the copy with the original entry, and may be given either orally or by an affidavit sworn before any commissioner or person authorized to take affidavits.
- Case in which banker, &c., not compellable to produce book, &c.** Section 6. A banker or officer of a bank shall not, in any legal proceeding to which the bank is not a party, be compellable to produce any banker's book the contents of which can be proved under this Act, or to appear as a witness to prove the matters, transactions, and accounts therein recorded, unless by order of a judge made for special cause.
- Court or judge may order inspection, &c.** Section 7. On the application of any party to a legal proceeding a court or judge may order that such party be at liberty to inspect and take copies of any entries in a banker's book for any of the purposes of such proceedings. An order under this section may be made either with or without summoning the bank or any other party, and shall be served on the bank three clear days before the same is to be obeyed, unless the court or judge otherwise directs.
- Costs.** Section 8. The costs of any application to a court or judge under or for the purposes of this Act, and the costs of anything done or to be done under an order of a court or judge made under or for the purposes of this Act shall be in the discretion of the court or judge, who may order the same

or any part thereof to be paid to any party by the bank, where the same have been occasioned by any default or delay on the part of the bank. Any such order against a bank may be enforced as if the bank was a party to the proceeding,

Note to Sect. 13.

Section 9. In this Act the expressions "bank" and "banker" mean any person, persons, partnership, or company carrying on the business of bankers, and having duly made a return to the Commissioners of Inland Revenue, and also any savings bank certified under the Acts relating to savings banks, and also any post office savings bank.

Interpretation of "bank," "banker," and "bankers' books."

The fact of any such bank having duly made a return to the Commissioners of Inland Revenue may be proved in any legal proceeding by production of a copy of its return verified by the affidavit of a partner or officer of the bank, or by the production of a copy of a newspaper purporting to contain a copy of such return published by the Commissioners of Inland Revenue; the fact that any such savings bank is certified under the Acts relating to savings banks may be proved by an office or examined copy of its certificate; the fact that any such bank is a post office savings bank may be proved by a certificate purporting to be under the hand of Her Majesty's Postmaster-General, or one of the secretaries of the Post Office.

Expressions in this Act relating to "bankers' books" include ledgers, day books, cash books, account books, and all other books used in the ordinary business of the bank.

Section 10. In this Act—

The expression "legal proceeding" means any civil or criminal proceeding or inquiry in which evidence is or may be given, and includes an arbitration;

Interpretation of "legal proceeding," "court," "judge."

The expression "the court" means the court, judge, arbitrator, persons or person before whom a legal proceeding is held or taken;

The expression "judge" means with respect to England a judge of the High Court of Justice, and with respect to Scotland a lord ordinary of the Outer House of the Court of Session, and with respect to Ireland a judge of the High Court of Justice in Ireland;

The judge of a county court may with respect to any action in such court exercise the powers of a judge under this Act.

Section 11. Sunday, Christmas Day, Good Friday, and any bank holiday shall be excluded from the computation of time under this Act.

Computation of time.

14. And be it enacted, that where such defendant shall be present at such hearing the substance of the

Proceedings on the hearing of com-

Sect. 14. plaints and informations. information or complaint shall be stated to him, and he shall be asked if he have any cause to show why he should not be convicted, or why an order should not be made against him, as the case may be, and if he thereupon admit the truth of such information or complaint, and show no cause or no sufficient cause why he should not be convicted, or why an order should not be made against him, as the case may be, then the justice or justices present at the said hearing shall convict him or make an order against him accordingly; but if he do not admit the truth of such information or complaint as aforesaid, then the said justice or justices shall proceed to hear the prosecutor or complainant, and such witnesses as he may examine and such other evidence as he may adduce, in support of his information or complaint respectively, and also to hear the defendant and such witnesses as he may examine and such other evidence as he may adduce in his defence, and also to hear such witnesses as the prosecutor or complainant may examine in reply, if such defendant shall have examined any witnesses or given any evidence other than as to his (the defendant's) general character; but the prosecutor or complainant shall not be entitled to make any observations in reply upon the evidence given by the defendant, nor shall the defendant be entitled to make any observations in reply upon the evidence given by the prosecutor or complainant in reply as aforesaid; and the said justice or justices, having heard what each party shall have to say as aforesaid, and the witnesses and 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 infor-

mation or complaint, as the case may be; and if he or they convict or make an order against the defendant, a minute or memorandum thereof shall then be made, for which no fee shall be paid, and the conviction (L. 1-3) or order (K. 1-3) shall afterwards be drawn up by the said justice or justices in proper form, under his or their hand and seal or hands and seals, and he or they shall cause the same to be lodged with the clerk of the peace, to be by him filed among the records of the general quarter sessions of the peace; or if the said justice or justices shall dismiss such information or complaint, it shall be lawful for such justice or justices, if he or they shall think fit, being required so to do, to make an order of dismissal of the same (L.), and shall give the defendant in that behalf a certificate thereof (M.), which said certificate afterwards, upon being produced, without further proof, shall be a bar to any subsequent information or complaint for the same matters respectively against the same party: *Provided always,* Proviso. that if the information or complaint in any such case shall negative any exemption, exception, proviso, or condition in the statute on which the same shall be framed, it shall not be necessary for the prosecutor or complainant in that behalf to prove such negative, but the defendant may prove the affirmative thereof in his defence, if he would have advantage of the same.

As to pleadings, see section 39 of the Summary Jurisdiction Act, 1879, *post*.

Both parties being present at the hearing of the information or complaint, either by themselves or by counsel or attorney, the defendant is asked if he has any cause to show against the matter of information or complaint; and if he thereupon admit the truth of it, and show no cause, or no Procedure.

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Note to Sect. 14. sufficient cause, why he should not be convicted, or an order should not be made against him, the justices may at once convict him, or make an order against him. But before doing so, in cases where they are invested with a discretion as to the amount of punishment to be awarded, or the extent of the order they are to make, they may hear the evidence on both sides, so far as it may be necessary to guide them in awarding the punishment or making the order.

Justices ought to exercise their discretion, properly when a discretion is given to them in respect of the particular proceeding. As was said in *Rooke's case*, 3 Co. Rep. 203, by Lord *Coke*, "notwithstanding the words of the commission give authority to the commissioners to do according to their discretion, yet their proceedings ought to be limited and bound within the rule of reason and law. For discretion is a science or understanding to discern between falsity and truth, and between wrong and right, between shadows and substance, between equity and colourable glosses and pretences, and not to do according to their wills and private affections; for as one saith, *talis discretio discretionem confundit*." See also *Crake v. Powell*, 21 L. J. (N.S.) Q. B. 183, and *Reg. v. Boteler*, 23 L. J. (N.S.) M. C. 101; 8 L. T. (N.S.) 514, on this point; therefore, where by an Act of parliament power is conferred upon justices to issue a distress warrant, "if they think fit," they must not refuse to issue it merely because they think the Act of parliament does an injustice in giving such power in the particular case. In *Reg. v. Boteler, supra*, the court made the rule absolute against the justices, with costs, they having improperly exercised their discretion, and dismissed the complaint.

Where upon a summary hearing before two justices at petty sessions one of them is not present until a portion of the evidence has been given, the witness should be re-sworn and should again give his evidence. It is not sufficient that the evidence already given should be read over to the other; but the error is only an irregularity which may be waived by the parties to the proceedings. *Reg. v. Jeffreys*, 22 L. T. (N.S.) 786.

Order. It must be borne in mind that no order of justices can, without a previous summons, be made in the absence of the party whose interests are to be affected by it. *Reg. v. Totnes*, 14 L. J. R. (N.S.) M. C. 148; 2 N. S. C. 82; 9 J. P. 584. See also *Painter v. Liverpool Gas Light Company, ante*, p. 7.

The hearing.

When the truth of the information or complaint is denied the justices first hear the prosecutor or plaintiff and his witnesses, and then the defendant and his witnesses, and also such witnesses as both may examine in reply, if the defendant

have examined witnesses or given any evidence other than as to his general character; and on both sides the witnesses may be cross-examined and re-examined. But neither the prosecutor nor the defendant is entitled to reply upon the evidence. The justices having then considered the whole matter are to convict (I. 1-3) or make an order (K. 1-3), or dismiss the complaint or information, as the case may be. The conviction or order is then to be drawn up in proper form, and lodged with the clerk of the peace, for the purpose of being filed among the records of the general quarter sessions; and care should be taken to lodge it within the time limited by the particular statute under which the proceedings may be taken; and if no time be limited, as soon after it is made as is practicable.

Note to
Sect. 14.

The hearing.

Justices of the peace are bound by 11 & 12 Vict. c. 43, s. 14, to lodge with the clerk of the peace all summary convictions which take place before them, in order that they may be filed among the records of the quarter sessions; and a *mandamus* does not lie to the clerk to the justices for this purpose even though he may have received the fees for drawing up such convictions allowed under section 30 (*post*, p. 77) of the Act. *Ex parte Haywood*, 3 B. & S. 546; 32 L. J. M. C. 89; 27 J. P. 102; 9 Jur. (N.S.) 820; S. C. *Ex parte Clerk of the Peace of Rochester*, 7 L. T. (N.S.) 622.

If the information or complaint be dismissed, on being required to do so, the justices may make an order of dismissal (L.), and a certificate (M.), which will be a bar to any subsequent information or complaint for the same offence. It would seem that the application for the certificate of dismissal of a complaint may be made at any time after the complaint has been dismissed. See on this point *Costar v. Hetherington*, 28 L. J. (N.S.) M. C. 198; 23 J. P. 663.

A certificate of dismissal of a complaint under 11 & 12 Vict. c. 43, s. 14, is not of the essence of the acquittal, but only a convenient method of proving it; and the granting of it is not necessary to make the previous proceedings conclusive in subsequent proceedings between the same parties. *Reg. v. Hutchins*, L. R. 5 Q. B. D. 353; 42 L. T. (N.S.) 766.

With reference to the justices' certificate on the dismissal of an information or complaint, upon a proceeding under 9 Geo. 4, c. 31 (now repealed), it was held that where a magistrate dismisses a complaint for an assault on the ground that it is too trifling to merit punishment, the granting of a certificate under section 27 of that Act is not a discretionary act, and therefore it may be done in the absence of the prosecutor. After the hearing of the prisoner, but before the next case was called on, the magistrate directed his clerk to make out the certificate, which the clerk did, and the next day sent it to the accused; and in

Note to Sect. 14.

The hearing.

an action for the assault it was held that this was a sufficient compliance with 9 Geo. 4, c. 31, s. 27, which directs that the magistrate shall "forthwith" make out a certificate. *Hancock v. Somes*, 5 Jur. (N.S.) 983; 23 J. P. 662. Again, where a party was convicted at petty sessions and sentenced to imprisonment under 6 Geo. 4, c. 129, which, in section 12, gives a power of appeal, and provides that the execution of every judgment appealed from shall be suspended if the person convicted shall "immediately" enter into certain recognizances, with two sureties, it is not necessary that the recognizances should be taken at the time of the conviction. The prisoner is entitled to be discharged, if he makes his application to have the recognizances taken promptly and expeditiously after the conviction, regard being had to all the circumstances of the particular case. *Reg. v. Aston*, 19 L. J. (N.S.) M. C. 236; 14 Jur. 1045; 15 J. P. 9. See 20 & 21 Vict. c. 43, *post*, as to appeals against justices' decisions under this Act.

If after the case had been decided one of the convicting justices should die before the conviction has been drawn up under the hands and seals of the justices, the statute provides no means whereby it can be returned to the quarter sessions. It will be seen that 42 & 43 Vict. c. 49, s. 37, *post*, refers to a summons or warrant only.

A conviction need not be signed by more than two of the convicting justices. In *Ex parte Roynton*, 14 J. P. 129, *Erle, J.*, said that it is sufficient if the conviction be signed by any two of the four convicting justices, and that there is no objection to that course, although other justices take part in the decision, and are named in the conviction; but a conviction before a magistrate can only be proved by the production of the record of the conviction or an examined copy of it; therefore, where a magistrate, after hearing a case of common assault, ordered the accused to enter into a recognizance, and pay the recognizance fee, but did not order him to be imprisoned or to pay any fine, and an action having been subsequently brought for the same assault, the magistrate's clerk stated in evidence the above facts; but no record of the proceedings was put in, it was held that there was no conviction within the meaning of 24 & 25 Vict. c. 100, s. 45, and secondly, that the conviction was not proved. *Hartley v. Hindmarsh*, 1 L. R. C. P. 553.

If the information or complaint negative "any exemption, exception, proviso, or condition," in the statute on which it shall be framed, the defendant must prove the affirmative, in his defence, if he desires to take advantage of it, as it is expressly provided that it shall not be necessary for the prosecutor or complainant to prove the negative in such case.

This is the general course of proceeding to be adopted at the

hearing; but it is, nevertheless, necessary that attention should be paid in each case to the provisions of the particular statute under which proceedings may be taken, as they will not unfrequently be found at variance with this statute. Moreover, it will be seen that section 35, *post*, specifies certain matters to which the Act shall not extend.

The court of Queen's Bench decided in *Labalmondiere v. Frost*, 28 L. J. (N.S.) M. C. 155; 23 J. P. 598, that an order therein referred to, although drawn according to form K. 1 of the statute, was bad on the face of it for not adjudging the complaint to be true. Apparently, it will not be safe to follow implicitly the form in question. The justices should therefore adjudicate the complaint to be true, although that adjudication is omitted in the form K. 1.

Though this section enacts that if the justices convict or make an order against a defendant, a minute thereof shall then be made, and the conviction or order be afterwards drawn up in proper form, it is not necessary before issuing a warrant of distress that an order should have been formally drawn up under hand and seal; the pronouncing the order on one day, and the service of the minute of the order on the next, are sufficient to justify the issuing of the warrant. *Ratt v. Parkinson*, 20 L. J. R. (N.S.) M. C. 208; 15 J. P. 356. See also section 17, *post*.

The court will not grant a *certiorari* to bring up a conviction by justices in a matter over which they have jurisdiction, even though it be alleged that they convicted without any evidence whatever. *Ex parte Blewitt, re Shropshire JJ.*, 14 L. T. (N.S.) 598; and an order of justices not warranted by the provisions of an Act of parliament, may be removed into this court by *certiorari*, though the Act contains a section taking away the *certiorari*. *Reg. v. Gosse*, 3 E. & E. 277.

There is no appeal under the Judicature Acts against the discharge of a rule for a *certiorari* to bring up a summary conviction. *Reg. v. Fletcher*, L. R. 2 C. B. D. 43.

If a conviction, when filed with the clerk of the peace, is imperfect, it cannot be carried by a fresh conviction free from the imperfections. *Ex parte Austin*, 45 J. P. 302.

The reservation in favour of travellers in the Metropolitan Police Act, 2 & 3 Vict. c. 47, s. 42, which prohibits the opening of public houses for the sale of wine, beer, &c., on Sundays, "except refreshment for travellers," is not an exception within the meaning of 11 & 12 Vict. c. 43, s. 14; and therefore the onus of proving that the persons supplied with refreshments are not travellers is on the informer. (*Taylor v. Humphries* affirmed.) *Davis v. Scrase*, 38 L. J. M. C. 17 Q. B. (N.S.) 539; 34 L. J. C. P. M. C. 1.

Note to Sect. 14.

The hearing

Certiorari.

Exception in Metropolitan Police Act of refreshment for travellers; onus of proof.

Note to Sect. 14.

It may be added in this place, that a person who is committed to prison in default of distress for non-payment of a sum of money adjudged to be paid by a court of summary jurisdiction is a criminal prisoner within the meaning of the Prisons Act, 1865, s. 5. *Kennard v. Simons*, 50 L. T. (N.S.) 28.

Prosecutors and complainants in certain cases to be deemed competent witnesses, and examined upon oath, &c.

15. And be it enacted, that every prosecutor of any such information, not having any pecuniary interest in the result of the same, and every complainant in any such complaint as aforesaid, whatever his interest may be in the result of the same, shall be a competent witness to support such information or complaint respectively; and every witness at any such hearing as aforesaid shall be examined upon oath or affirmation, 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 or affirmation.

Competency of informer or prosecutor.

A distinction is here made between the competency of an informer or prosecutor of an information as a witness, and the competency of a complainant. The former is competent only when he has no pecuniary interest in the result of the case, and the latter is competent as a witness whatever his interest in the result may be. But when the particular statute under which the proceedings are taken makes the informer competent as a witness notwithstanding he is entitled to a portion of the penalty, his competency is not taken away by the present statute, but remains as before.

Power to justices to adjourn the hearing of cases, and commit defendant, or suffer him to go at large, or

16. And be it enacted, that before or during such hearing of any such information or complaint it shall be lawful for any one justice, or for the justices present, in their discretion, to adjourn the hearing of the same 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 attornies or agents then present, and in the meantime the said justice or justices may suffer the defendant to go at large, or may commit (D.) him to the common gaol or house of correction or other prison, lock-up house, or place of security in the county, riding, division, liberty, city, borough, or place for which such justice or justices shall be then acting, or to such other safe custody as the said justice or justices shall think fit, or may discharge such defendant upon his entering into a recognizance (E.), with or without surety or sureties, at the discretion of such justice or justices, conditioned for his appearance at the time and place to which such hearing or further hearing shall be adjourned; and if at the time or place to which such hearing or further hearing shall be so adjourned either or both of the parties shall not appear personally, or by his or their counsel or attornies respectively, before the said justice or justices, or such other justice or justices as shall then be there, it shall be lawful for the justice or justices then there present to proceed to such hearing or further hearing as if such party or parties were present; or if the prosecutor or complainant shall not appear, the said justice or justices may dismiss such information or complaint, with or without costs, as to such justices shall seem fit: Provided always, that in all cases where a defendant shall be discharged on recognizance as aforesaid, and shall not afterwards appear at the time and place mentioned in such recognizance, then the said justice or justices who shall have taken the said recognizance, or any other justice or justices who may then be there present, upon certifying (F.) on the back of the recog-

Sect. 16.

discharge
him upon
his own
recogni-
zance;

but if he
fail to
re-appear.

Sect. 16. nize the non-appearance of such accused party, may transmit such recognizance to the clerk of the peace of the county, riding, division, liberty, city, borough, or place within which such recognizance shall have been taken, to be proceeded upon in like manner as other recognizances, and such certificate shall be deemed sufficient *prima facie* evidence of such non-appearance of the said defendant.

the justice may transmit the recognizance to the clerk of the peace.

Adjournment.

Any one justice, or those who are present, may adjourn the hearing to a certain time and place to be appointed and stated in the presence and hearing of the party or parties then present, or of their attorneys or agents. If the justices should have no reason to fear that the defendant will not appear at the adjourned hearing they may suffer him to go at large without recognizances. In other cases they may commit him, or they may discharge him upon recognizance, with or without sureties, to appear at the time and place to which the hearing shall be adjourned, and if he then fail to appear the recognizance may be estreated. If at the time and place appointed for the adjourned hearing neither of the parties appear, the justices may proceed as if they were both present, and adjudicate upon the case; and it will be proper that they adopt this course when they have reason to suppose that an improper compromise of the matter of information or complaint is intended. If, on the other hand, the prosecutor or complainant do not appear, the justices may dismiss the information or complaint, with or without costs.

Further with regard to adjournment, see 42 & 43 Vict. c. 49, s. 20 (11), *post*.

How when informant withdraws from case.

It is laid down in the case of *Tunncliffe v. Tedd*, 16 L. J. (N.S.) M. C. 67; 12 J. P. 249, that an information is the commencement of a criminal proceeding analagous to an indictment; that the summons is the act of the magistrate on behalf of the public; and that the party who brings a criminal proceeding cannot withdraw from it, leaving it pending, but, on the contrary, that the party charged has a right to force it on to a conclusion; and that if, at the time for concluding the case, the informant offers no evidence in support of his charge, it ought to be dismissed, and that such a dismissal is a hearing. In that case the informant attended

the return of the summons, and, on the defendant pleading not guilty, withdrew from the case.

**Note to
Sect. 16.**

The same principle has been held to apply to a case where the plaintiff did not appear on the return of the summons, but previously sent notice to the defendant that the summons was withdrawn, and where the magistrate dismissed the summons on the application of the defendant, and granted a certificate of dismissal. *Bradshaw v. Vaughton*, 30 L. J. (N.S.) 93; *S. nom Vaughton, app., Bradshaw, resp.*, 9 C. B. (N.S.) 103; 7 Jur. (N.S.) 468.

By a railway Act penalties for breach of bye-laws were recoverable before a justice of the peace, and officers of the railway company were empowered to seize offenders under certain circumstances, and to convey them before a justice without a warrant, such justice being "empowered and required to proceed immediately to the conviction or acquittal of such offender." Defendant being brought before justices, charged with an offence against a bye-law of the company, it was held that although the Act constituting the offence gave no power to the justices to remand the accused, yet the justice was authorized, if in his discretion he thought fit, to commit defendant under a warrant pursuant to this section, to the house of correction; and this, even though the defendant had paid his fare, which he was charged with not having done. *Gelen v. Hall*, 27 L. J. (N.S.) M. C. 78; 2 H. & N. 379; 21 J. P. 710.

By 12 & 13 Vict. c. 45, s. 7, *post*, power is given to the quarter sessions, on the trial of any appeal against any order or judgment made or given by any justice or justices, to amend such order or judgment, and to adjudicate thereupon as if no omission or mistake had occurred. The statute refers to "orders" and "judgments," but does not expressly name a "commitment" as being within the power of the court to amend, and it may therefore be a doubtful point how far a commitment is within the meaning of the statute. A commitment is in the nature of an order, for the justices thereby "order" the constable to take, and the gaoler to receive the prisoner into the gaol, and there him imprison. If this be the correct view then any omission or mistake in a commitment, as well as in any other order of justices, may be amended by the sessions. Amendment.

Under the above enactment the High Court of Justice held that the quarter sessions had the power to amend a conviction by substituting two months' imprisonment for three months, which was a clerical error. *Reg. v. Walker*, 45 J. P. 236.

Sect. 17. **17.** And be it enacted, that in all cases of conviction where no particular form of such conviction is or shall be given by the statute creating the offence or regulating the prosecution for the same, and in all cases of conviction upon statutes hitherto passed, whether any particular form of conviction have been therein given or not, it shall be lawful for the justice or justices who shall so convict to draw up his or their conviction on parchment or on paper in such one of the forms of conviction (I. 1-8) in the schedule to this Act contained as shall be applicable to such case, or to the like effect; and where an order shall be made, and no particular form of order is or shall be given by the statute giving authority to make such order, and in all cases of orders to be made under the authority of any statutes hitherto passed, whether any particular form of order shall therein be given or not, it shall be lawful for the justice or justices by whom such order is to be made to draw up the same in such one of the forms of orders (K. 1-8) in the schedule to this Act contained as may be applicable to such case, or to the like effect; and in all cases where by any Act of parliament authority is given to commit a person to prison, or to levy any sum upon his goods or chattels by distress, for not obeying any order of a justice or justices, the defendant shall be served with a copy of the minute of such order before any warrant of commitment or of distress shall issue in that behalf, and such order or minute shall not form any part of such warrant of commitment or of distress.

Form of convictions and orders.

Convictions. Formerly there was much variance in the mode in which convictions and orders were drawn up; and even though

3 Geo. 4, c. 23, s. 1, gave a general form which was made applicable to all cases where a particular form was not prescribed by the statute creating the offence, uniformity was not thereby secured, for, owing to the prolixity of the form given in that statute, it came to be the practice in new Acts of parliament to insert the form of conviction which was to be used. These forms, however, were for the most part extremely defective. Now one general form is to be used in all cases where the statute does not otherwise direct (L. 1-3), and so also when an order is to be made (K. 1-3). The conviction must set out the adjudication of the justices, and when a penalty is inflicted, for what length of time the defendant is to be imprisoned if it be not paid, or cannot be levied by distress. And when an order is made, before a warrant of commitment or distress can issue, a copy of the minute of the order must be served on the defendant, which, however, is not to form any part of the warrant of commitment or of distress.

Where by a statute giving justices a power to convict summarily they are empowered to commit the offender to prison for a certain period, with or without hard labour, and in their warrant of commitment nothing is said about hard labour, it is to be taken that they do not mean to give hard labour; and the warrant would not be objectionable for omitting to state whether the imprisonment is to be with or without hard labour. *Ex parte Thompson*, 3 L. T. (N.S.) 318; 24 J. P. 805.

It is not necessary that an order of justice should be sealed with wax. An impression made in ink with a wooden block in the usual place of a seal is sufficient when the document purports to be given under the hands and seals of the justices, and is in fact signed and delivered by them. *Reg. v. St. Paul, Covent Garden*, 7 Q. B. 232; 9 J. P. 441.

As to the latter part of this section see section 14, *ante*, p. 45, and *Ratt v. Parkinson*, cited in note thereon, *ante*, p. 51.

18. And be it enacted, that in all cases of summary conviction or of orders made by a justice or justices of the peace it shall be lawful for the justice or justices making the same, in his or their discretion, to award and order in and by such conviction or order that the defendant shall pay to the prosecutor or complainant respectively such costs as to such justice or justices shall seem just and reason-

Sealing
order, &c.

Power to
justice to
award
costs, which
shall be
specified
in conviction
or order of
dismissal
and may
be re-
covered
by distress.

Sect. 18. able in that behalf; and in cases where such justice or justices, instead of convicting or making an order as aforesaid, shall dismiss the information or complaint, it shall be lawful for him or them, in his or their discretion, in and by his or their order of dismissal, to award and order that the prosecutor or complainant respectively shall pay to the defendant such costs as to such justice or justices shall seem just and reasonable, and the sums so allowed for costs shall in all cases be specified in such conviction or order of dismissal aforesaid, and the same shall be recoverable in the same manner and under the same warrants as any penalty or sum of money adjudged to be paid in and by such conviction or order is to be recoverable; and in cases where there is no such penalty or sum to be thereby recovered, then such costs shall be recoverable by distress and sale of the goods and chattels of the party, and in default of such distress by imprisonment, with or without hard labour, for any time not exceeding one calendar month unless such costs shall be sooner paid.

Sufficiency
of conviction.

The forms of conviction given in the schedule to this Act apply to all cases; and convictions drawn up in such of the forms as are applicable to the case are sufficient. Therefore, where a conviction under the Game Acts, 1 & 2 Will. 4, c. 32, and 5 and 6 Will. 4, c. 20, s. 21, adjudged a pecuniary penalty to be paid and applied according to law, following the words of Form I. 2, the latter Act providing that one moiety of the penalty should be paid to the informer, and the other moiety to go to the overseers of the poor, and to be paid to one of the overseers or to some parish officer appointed by the justices, it was held that the conviction was sufficient by virtue of sections 17 and 32 of this Act. *Reg. v. Hyde*, 21 L. J. R. (N.S.) M. C. 94; El. & Bl. 859; 16 Jur. 337; 16 J. P. 67.

See also *Reg. v. Barton*, 18 L. J. (N.S.), M. C. 56; 13 J. P. 120, which related to a conviction under 29 Car. 2, c. 7.

In drawing up a conviction, it should be borne in mind that where an Act of parliament gives summary proceedings for the various offences, the conviction, though formally drawn, will not support a complaint, if it leaves it uncertain under which section of the Act the conviction actually took place. *Charter v. Grame*, 18 L. J. (N.S.) M. C. 73; 13 J. P. 232.

Note to Sect. 18.

19. And be it enacted, that where a conviction adjudges a pecuniary penalty or compensation to be paid, or where an order requires the payment of a sum of money, and by the statute authorizing such conviction or order such penalty, compensation, or sum of money is to be levied upon the goods and chattels of the defendant by distress and sale thereof, and also in cases where by the statute in that behalf no mode of raising or levying such penalty, compensation, or sum of money, or of enforcing the payment of the same, is stated or provided, it shall be lawful for the justice or justices making such conviction or order, or for any justice of the peace for the same county, riding, division, liberty, city, borough, or place, to issue his or their warrant of distress (N. 1, 2) for the purpose of levying the same, which said warrant of distress shall be in writing under the hand and seal of the justice making the same; and if after delivery of such warrant of distress to the constable or constables to whom the same shall have been directed to be executed sufficient distress shall not be found within the limits of the jurisdiction of the justice granting such warrant, then, upon proof alone being made on oath of the handwriting of the justice granting such warrant before any justice of any other county or place, such justice of such other county or place shall thereupon make an indorsement (N. 3) on

Power to justice to issue warrant of distress

How warrant to be backed.

Sect. 19. such warrant, signed with his hand, authorizing the execution of such warrant within the limits of his jurisdiction, by virtue of which said warrant and indorsement the penalty or sum aforesaid, and costs, or so much thereof as may not have been before levied or paid, shall and may be levied by the person bringing such warrant, or by the person or persons to whom such warrant was originally directed, or by any constable or other peace-officer of such last-mentioned county or place, by distress and sale of the goods and chattels of the defendant in such other county or place: Provided always, that whenever it shall appear to any justice of the peace to whom application shall be made for any such warrant of distress as aforesaid that the issuing thereof would be ruinous to the defendant and his family, or wherever it shall appear to such justice, by the confession of the defendant or otherwise, that he hath no goods or chattels whereon to levy such distress, then and in every such case it shall be lawful for such justice, if he shall deem it fit, instead of issuing such warrant of distress, to commit such defendant to the house of correction, or if there be no house of correction within his jurisdiction then to the common gaol, there to be imprisoned, with or without hard labour, for such time and in such manner as by law such defendant might be so committed in case such warrant of distress had issued, and no goods or chattels could be found whereon to levy such penalty or sum and costs aforesaid.

Where the issuing a warrant would be ruinous to defendant, or where there are no goods, justice may commit him to prison.

Penalty. This enactment applies to cases in which the particular statute under which the proceedings are taken, is silent on the subject of levying the penalty or compensation, as well

as to other statutes in which the mode of enforcing the penalty, &c., is expressly directed. The warrant may be signed by any one justice having jurisdiction, whether he made the order or not (see section 29); and it must be under seal. The statute also provides for the backing of the warrant, so that the constable may be enabled to follow the goods of the defendant; and following 33 Geo. 3, c. 55, s. 3, it enables the justices to issue a warrant of commitment at once, if upon the confession of the defendant it appear that he has no goods whereon to levy, or that a distress warrant would be ruinous to the defendant and his family. See also section 23.

**Note to
Sect. 19.**

As to the procedure on the execution of warrants of distress, see section 43 of the Summary Jurisdiction Act, 1879, *post*. Levy by
distress.

The penalty of five shillings, including costs for breach of bye law mentioned in 33 & 34 Vict. c. 75, s. 74 (Elementary Education Act), does not include the costs of distress warrant following thereon under 11 & 12 Vict. c. 43, s. 19. *Cook v. Plasket*, 47 J. P. 265; 46 L. T. (N.S.), 383.

A conviction under 35 & 36 Vict. c. 94, ss. 3 and 50, for selling beer by retail without being duly licensed and which proceeded to adjudge that if the penalty were not paid forthwith, inasmuch as it appeared that the defendant had no goods or chattels whereon to levy the same by distress the defendant should be imprisoned for six calendar months unless the money should be sooner paid, was held to be invalid in so far as it awarded imprisonment because the justices did not make an order, in the words of section 51, sub-section 2, that a distress shall be made in default of payment, notwithstanding the proviso to section 19 of 11 & 12 Vict. c. 43. *Reg. v. Newcastle-upon-Tyne JJ., ex parte Brown*, 38 L. T. (N.S.) 682. Imprison-
ment.

Further, with regard to warrants of distress, see section 39 of Summary Jurisdiction Act, 1879, *post*. See also 47 & 48 Vict. c. 24, s. 5, *post*, as to this section, and s. 21 *infra*.

20. And be it enacted, that in all cases where a justice of the peace shall issue any such warrant of distress, it shall be lawful for him to suffer the defendant to go at large, or verbally or by a written warrant in that behalf, to order the defendant to be kept and detained in safe custody until return shall be made to such warrant of distress, unless such Justice
after issu-
ing war-
rant, may
suffer
defendant
to go at
large, or
order him
into cus-
tody, until
return be

Sect. 20. defendant shall give sufficient security, by recognizance or otherwise, to the satisfaction of such justice, for his appearance before him at the time and place appointed for the return of such warrant of distress, or before such other justice or justices for the same county, riding, division, liberty, city, borough, or place as may then be there: Provided always, that in all cases where a defendant shall give security by recognizance as aforesaid, and shall not afterwards appear at the time and place in such recognizance mentioned, then the said justice who shall have taken the said recognizance, or any justice or justices who may then be there present, upon certifying (F.) on the back of the recognizance the non-appearance of the defendant, may transmit such recognizance to the clerk of the peace of the county, riding, division, liberty, city, borough, or place within which the offence shall be laid to have been committed, to be proceeded upon in like manner as other recognizances, and such certificate shall be deemed sufficient *primâ facie* evidence of such non-appearance of the said defendant.

made, unless he gives security by recognizance; but if he fail to re-appear, the justice may transmit the recognizance to the clerk of the peace.

Execution of commitment.

This and the three following sections provide for the execution of convictions for penalties, and for the enforcement of orders for the payment of money.

When a distress warrant is issued, the justices may in their discretion, according to the circumstances of the particular case, adopt one or other of the following alternatives. They may suffer the defendant to go at large, or they may verbally, or by a written warrant, order him to be kept in custody until return shall be made by the constable to the warrant, unless security be given for his appearance at the time appointed for the return of the warrant. Of course it is not necessary that in every case a distress warrant should issue, for the defendant may be willing to pay the penalty at once, or the justices may be satisfied with his undertaking to do so by the time specified in the conviction or order. If he fail in the undertaking, the warrant of distress may then issue; and if there be reason

to think that the defendant will not appear when it is returnable, or that no sufficient distress will be found, he may be apprehended on a warrant and detained till the time for the return of the warrant, unless he give security that he will then be forthcoming.

Note
Sect. 20.
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The court, in its discretion, refused to grant a *mandamus* to justices to enforce a summary conviction by warrant of distress or commitment. *In re Williams*, 2 N. S. C. 570. In *Ex parte Thomas*, 11 Jur. 107; 11 J. P. 295, it was also held that the court has a discretion as to granting a *mandamus* to justices to issue a distress warrant or a committal against a person summarily convicted by them. *Mandamus.*

Further, with regard to warrants of commitment, see section 39 of Summary Jurisdiction Act, 1879, *post*.

21. And be it enacted, that if at the time and place appointed for the return of any such warrant of distress the constable who shall have had the execution of the same shall return (N. 4) that he could find no goods or chattels or no sufficient goods or chattels whereon he could levy the sum or sums therein mentioned, together with the costs of or occasioned by the levying of the same, it shall be lawful for the justice of the peace before whom the same shall be returned to issue his warrant of commitment (N. 5) under his hand and seal, directed to the same or any other constable, reciting the conviction or order shortly, the issuing of the warrant of distress, and the return thereto, and requiring such constable to convey such defendant to the house of correction, or if there be no house of correction then to the common gaol of the county, riding, division, liberty, city, borough, or place for which such justice shall then be acting, and there to deliver him to the keeper thereof, and requiring such keeper to receive the defendant into such house of correction or gaol, and there to imprison him, or to imprison him and keep him to hard labour, in

In default of sufficiency of distress, justice may commit defendant to prison.

Sect. 21. such manner and for such time as shall have been directed and appointed by the statute on which the conviction or order mentioned in such warrant of distress was founded, unless the sum or sums adjudged to be paid, and all costs and charges of the distress, and also the costs and charges of the commitment and conveying of the defendant to prison, if such justice shall think fit so to order (the amount thereof being ascertained and stated in such commitment), shall be sooner paid.

Commitment.

This and the following section provide for the commitment of the defendant in default of distress, and they apply to distinct matters, or rather to matters under distinct statutes. The present section has reference to the class of statutes which provide for the commitment of the defendant, in case no sufficient distress can be found whereon to levy the penalty and costs; and the following section to cases where the statute gives no remedy in default of distress. On the return of the constable that he can find no sufficient goods whereon to levy, the justices will proceed to draw out their warrant of commitment; and they must insert in it the whole of the costs incurred as well as the expenses which will be incurred in conveying the defendant to prison, if they are ordered to be paid in addition to the penalty. The commitment must be under seal; and it may be issued by any justice having jurisdiction. See section 29, *post*, p. 76.

The Debtors' Act, 1869 (32 & 33 Vict. c. 62) s. 4, enacts that, with the exceptions therein after mentioned, no person shall be arrested or imprisoned for making default in payment of a sum of money—but that there shall be excepted from the operation of the enactment:

1. Default in payment of a penalty, a sum in the nature of a penalty other than a penalty in respect of any contract;
2. Default in payment of any sum recoverable summarily before a justice or justices of the peace.

Costs of an appeal to quarter sessions against an order of affiliation are within the exception to section 4 of 32 & 33 Vict. c. 62, "default in payment of any sum recoverable summarily before a justice or justices of the peace." *Ex parte Cole*, 21 L. T. (N.S.) 750; S. C. *Ex parte Pratt*, L. R. 5 Q. B. 176.

As to this section see 47 & 48 Vict. c. 24, s. 5, *post*.

22. And whereas by some Acts of Parliament **Sect. 22.**
 justices of the peace are authorized to issue warrants
 of distress to levy penalties or other sums recovered
 before them by distress and sale of the offender's
 goods, but no further remedy is thereby provided in
 case no sufficient distress be found whereon to levy
 such penalties; be it therefore enacted, that in all
 such cases, and in all cases of conviction or orders
 where the statute on which the same are respec-
 tively founded provides no remedy in case it shall
 be returned to a warrant of distress thereon that no
 sufficient goods of the party against whom such
 warrant shall have been issued can be found, it shall
 nevertheless be lawful to the justice to whom such
 return is made, or to any other justice of the peace
 for the same county, riding, division, liberty, city,
 borough, or place, if he or they shall think fit, by
 his warrant as aforesaid, to commit the defendant to
 the house of correction or common gaol as aforesaid
 for any term not exceeding three calendar months,
 unless the sum or sums adjudged to be paid, and all
 costs and charges of the distress, and of the com-
 mitment and conveying of the defendant to prison
 (the amount thereof being ascertained and stated in
 such commitment), shall be sooner paid.

In all cases
 of penalties,
 convictions,
 or orders,
 where the
 statute pro-
 vides no
 remedy in
 default of
 distress,
 justice may
 commit de-
 fendant to
 prison.

This section is further extended by 21 & 22 Vict. c. 73, by
 section 5 of which it is enacted as follows:—"Section
 twenty-two of the Act of the session holden in the eleventh
 and twelfth years of Her Majesty, chapter forty-three, shall
 extend and be deemed to have extended to all cases in which
 it is returned to a warrant of distress issued under the autho-
 rity of such Act for levying any penalty, compensation, or
 sum of money adjudged or ordered to be paid by any convic-
 tion or order, that no sufficient goods of the party against
 whom such warrant was issued can be found, where the
 statute on which the conviction or order is founded provides
 Commit-
 ment on
 default of
 distress.

Note to Sect. 22.

no mode of raising or levying such penalty, compensation, or sum of money, or of enforcing payment of the same, as well as to cases where the statute on which the conviction or order is founded authorizes the issuing thereon of a warrant of distress." This enactment removes the doubt which was formerly entertained on the point, that since 11 & 12 Vict. c. 43, justices had no authority under certain Acts to commit defendants to prison in default of distress for the penalty or other sums adjudged to be paid by them.

Power to justices to order commitment in the first instance for non-payment of a penalty or of a sum ordered to be paid.

23. And be it enacted, that in all cases where the statute by virtue of which a conviction for a penalty or compensation, or an order for the payment of money, is made, makes no provision for such penalty or compensation or sum being levied by distress, but directs that if the same be not paid forthwith, or within a certain time therein mentioned, or to be mentioned in such conviction order, the defendant shall be imprisoned, or imprisoned and kept to hard labour, for a certain time, unless such penalty, compensation, or sum shall be sooner paid, in every such case such penalty, compensation, or sum shall not be levied by distress; but if the defendant do not pay the same, together with costs, if awarded, forthwith, or at the time specified in such conviction or order for the payment of the same, it shall be lawful for the justice or justices making such conviction or order, or for any other justice of the peace for the same county, riding, division, liberty, city, borough, or place, to issue his or their warrant of commitment (O. 1, 2), under his or their hand and seal, or hands and seals, requiring the constable or constables to whom the same shall be directed to take and convey such defendant to the house of correction or common gaol for the county, riding, division, liberty, city, borough, or place aforesaid, as the case

may be, and there to deliver him to the keeper thereof, and requiring such keeper to receive such defendant into such house of correction or gaol, and there to imprison him, or to imprison him and keep him to hard labour, as the case may be, for such time as the statute on which such conviction or order is founded as aforesaid shall direct, unless the sum or sums adjudged to be paid, and also the costs and charges of taking and conveying the defendant to prison, if such justice or justices shall think fit so to order, shall be sooner paid. **Sect. 23**

Section 19 applies to cases in which the particular statute under which the proceedings are taken is silent on the subject of levying the penalty or compensation, as well as to other statutes in which the mode of enforcing the penalty, &c., is expressly directed; section 21 applies to cases where the particular statute under which the proceedings are taken makes no provision for the commitment of the defendant in case no sufficient distress can be found; and section 22 to cases in which the statute gives no remedy in default of distress; the present section applies to cases in which the particular statute makes no provision for the penalty, &c., being levied by distress, but directs that if it be not paid forthwith or within a certain time, the defendant shall be imprisoned, &c. In every such case the section provides that the penalty, &c., shall not be levied by distress, but that the defendant shall be committed for such time as the statute on which the conviction or order is founded shall direct, unless the penalty, &c., shall be sooner paid. The statute, moreover, only makes each person included in the conviction liable for the costs of conveying him to gaol; therefore a conviction adjudging each of the persons convicted to be imprisoned until the costs of conveying all to gaol had been paid, is bad; *Reg. v. Cridland*, 3 Jur. (N.S.) 1213; 7 E. & B. 853. The warrant of commitment must be under seal, and it may be issued by any justice having jurisdiction (see section 29, *post*, p. 137), and it may be backed if the defendant be not found within the jurisdiction. See section 3, *ante*, p. 13.

Commitment in first instance.

In *Re Fletcher*, 13 L. J. (N.S.) M. C. 16; 1 D. & L. 726, it was held that a warrant of commitment directing the gaoler to imprison a person for three months, omitting the day of the month on which it was granted, was bad; but this was

Term of imprisonment.

**Note to
Sect. 23.**

overruled in the subsequent case of *In re Bowdler*, 17 L. J. R. 243 Q. B. ; 12 J. P. 708, where the court held that the term of imprisonment was to be calculated from the time when the prisoner was taken into custody, and not from the date of the order of commitment; therefore, a warrant without a date is good, and if the defendant be not immediately apprehended under it, the term of his imprisonment will commence from the time that he is taken. In *Ex parte Foulkes*, 11 J. P. 728, the court said that there was no necessity to specify in the order of commitment the day from whence the term of imprisonment was to run, as it must be computed from the day of its execution. See also *Braham v. Joyce*, 19 L. J. (N.S.) Exch. 1; 14 J. P. 39, on the same point.

“One calendar month” in a sentence of imprisonment means a period expiring on that day in the succeeding month which corresponds numerically with the day on which the sentence is pronounced. If there should be no corresponding day in the next month, then the sentence expires on the last day of that month, *i.e.*, the last day of the short month. *Nigoti v. Colville*, 40 L. T. (N.S.) 522; 43 J. P. 143; L. R. 4 C. P. D. 233; S. C. *Migotti v. Colville*, 43 J. P. 620; 14 C. C. C. 305.

Execution of warrant by constable.

A justice's warrant of commitment upon a conviction for a penalty, following the form given in 11 & 12 Vict. c. 43, schedule (O. 1), and addressed “to the constable of a parish,” can only be executed by the parish constable, and not by a county police constable stationed at a parish; *Reg. v. Sanders*, 1 Law Rep. C. C. R.; 36 L. J. M. C. 87; 10 C. C. C. 445.

Power to justices to order commitment where the conviction is not for a penalty, nor the order for payment of money, and the punishment is by imprisonment, &c.

24. And be it enacted, that where a conviction does not order the payment of any penalty, but that the defendant be imprisoned, or imprisoned and kept to hard labour for his offence, or where 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, or imprisoned and kept to hard labour, and the defendant neglects or refuses to do such act, in every such case it shall be lawful for such justice or justices making such conviction or order, or for some other justice of the peace for the

same county, riding, division, liberty, city, borough, or place, to issue his or their warrant of commitment (P. 1, 2), under his or their hand and seal or hands and seals, and requiring the constable or constables to whom the same shall be directed, to take and convey such defendant to the house of correction or common gaol for the same county, riding, division, liberty, city, borough, or place, as the case may be, and there to deliver him to the keeper thereof, and requiring such keeper to receive such defendant into such house of correction or gaol, and there to imprison him, or to imprison him and keep him to hard labour, as the case may be, for such time as the statute on which such conviction or order is founded as aforesaid shall direct; and in all such cases where by such conviction or order any sum for costs shall be adjudged to be paid by the defendant to the prosecutor or complainant, such sum may, if the justice or justices shall think fit, be levied by warrant of distress (P. 3, 4), in manner aforesaid, and in default of distress the defendant may, if such justice or justices shall think fit, be committed (P. 5) to the same house of correction or common gaol in manner aforesaid, there to be imprisoned for any time not exceeding one calendar month, to commence at the termination of the imprisonment he shall then be undergoing, unless such sum for costs, and all costs and charges of the said distress, and also the costs and charges of the commitment and conveying of the defendant to prison, if such justice or justices shall think fit so to order, shall be sooner paid.

Sect. 24.

Costs may be levied by distress, and in default defendant may be committed for a further term.

Under this section it is competent for one justice to issue the warrant of commitment, though the conviction or order of justices.

Note to Sect. 24. upon which it proceeded was required to be made by two justices. See section 29, *post*. If the defendant be not found within the jurisdiction, and search be made for him, the warrant may be backed in like manner as an ordinary warrant. See section 3, *ante*, p. 13. Under section 18, p. 136, the justices in all cases of summary convictions or of orders may in their discretion award such costs as they may deem just and reasonable. The present section provides for the levying of those costs by distress (P. 3, 4), and in default of distress a warrant of commitment (P. 5) may issue, and the term of imprisonment in that case will commence at the termination of the period of imprisonment mentioned in the original warrant of commitment, unless the costs be paid before that period expires.

Aggravated assault on women and children.

The 16 Vict. c. 30, s. 1, gives jurisdiction to two justices sitting at a place where petty sessions are usually held to convict persons accused of aggravated assaults committed on females and male children under fourteen years of age; and it has been held that a warrant of commitment under that Act, in the general form provided by 11 & 12 Vict. c. 43 (Schedule P. 1), is sufficient without any allegation that the convicting justices were sitting at a place where petty sessions are usually held; *Ex parte Allison*, 24 L. J. R. (N.S.) M. C. 73; 18 J. P. 746.

As to a case in which it was held that the form given in the schedule to this Act (P. 1) was not applicable, see *Eggington v. Lichfield, Mayor, &c.*, 24 L. J. Q. B. 360; 1 Jur. (N.S.) 908; 19 J. P. 819.

Imprisonment for a subsequent offence to commence at expiration of that for previous offence.

25. And be it enacted that where a justice or justices of the peace shall upon any such information or complaint as aforesaid adjudge the defendant to be imprisoned, and such defendant shall then be in prison undergoing imprisonment upon a conviction for any other offence, the warrant of commitment for such subsequent offence shall in every such case be forthwith delivered to the gaoler to whom the same shall be directed; and it shall be lawful for the justice or justices issuing the same, if he or they shall think fit, to award and order therein and thereby that the imprisonment for such subsequent offence shall commence at the expiration of the im-

prisonment to which such defendant shall have been **Sect. 25.**
previously adjudged or sentenced.

This assimilates the practice with regard to summary convictions and orders for a subsequent offence to that of 7 & 8 Geo. 4, c. 28, s. 10, under which the court may award imprisonment for a subsequent offence when a sentence is passed for felony, and the person convicted is already in prison for another offence. It is discretionary with the justices whether or not they will order imprisonment for a second offence to commence from the termination of the imprisonment for the first. But whether they do so or not it is imperative that a warrant be forthwith delivered by the constable to the gaoler to whom it is directed. In *Wilkes v. Rex* (in error), 4 Burr. C. P. 367, it was decided that a judgment of imprisonment against a defendant to commence in future, *i. e.*, from and after the determination of an imprisonment to which he was before sentenced for another offence, is good in law; and it has since been held that 11 & 12 Vict. c. 43, s. 25, applies equally to a case where a defendant is at one and the same time sentenced for several offences, wherefore a conviction is good which imposes a sentence "to commence at the expiration of the first three calendar months' imprisonment to which he has this day been adjudged by us the said justices;" *Reg. v. Paine*, 16 L. T. (N.S.) 282; *S. C. Reg. v. Cutbush and another*, L. R. 2 Q. B. 379; 36 L. J. M. C. 70; 8 B. & S. 319; 10 C. C. C. 489; and *Reg. v. Maidstone JJ.*, 31 J. P. 454.

Term of imprisonment.

26. And be it enacted, that where any information or complaint shall be dismissed with costs as aforesaid, the sum which shall be awarded for costs in the order for dismissal may be levied by distress (Q. 1) on the goods and chattels of the prosecutor or complainant in manner aforesaid; and in default of distress or payment such prosecutor or complainant may be committed (Q. 2) to the house of correction or common gaol in manner aforesaid, for any time not exceeding one calendar month, unless such sum, and all costs and charges of the distress, and of the commitment and conveying of such

If information be dismissed costs may be recovered by distress upon prosecutor, &c., who in default may be committed.

Sect. 26. prosecutor or complainant to prison (the amount thereof being ascertained and stated in such commitment), shall be sooner paid.

Costs.

See section 18, *ante*, p. 57, as to the power of justices to award costs to a defendant on the dismissal of an information or complaint; and section 19 as to the mode of proceeding to recover money from a defendant by distress. Under this section the proceedings are the same as under section 19, only that the forms are different.

After appeal against conviction or order justice may issue warrants of distress for execution of the same.

27. And be it enacted, that after an appeal against any such conviction or order as aforesaid shall be decided, if the same shall be decided in favour of the respondents, the justice or justices who made such conviction or order, or any other justice of the peace of the same county, riding, division, liberty, city, borough, or place, may issue such warrant of distress or commitment as aforesaid for execution of the same, as if no such appeal had been brought; and if upon any such appeal, the court of quarter sessions shall order either party to pay costs, such order shall direct such costs to be paid to the clerk of the peace of such court, to be by him paid over to the party entitled to the same, and shall state within what time such costs shall be paid; and if the same shall not be paid within the time so limited, and the party ordered to pay the same shall not be bound by any recognizance conditioned to pay such costs, such clerk of the peace or his deputy, upon application of the party entitled to such costs, or of any person on his behalf, and on payment of a fee of one shilling shall grant to the party so applying a certificate (R.) that such costs have not been paid; and upon production of such certificate to any justice or justices of the peace for the same county, riding, division,

Costs of appeal, how recovered.

liberty, city, borough, or place, it shall be lawful for **Sect. 27.**
 him or them to enforce the payment of such costs by
 warrant of distress (S. 1) in manner aforesaid, and
 in default of distress he or they may commit (S. 2)
 the party against whom such warrant shall have
 issued in manner hereinbefore mentioned for any
 time not exceeding three calendar months, unless
 the amount of such costs, and all costs and charges
 of the distress, and also the costs of the commitment
 and conveying of the said party to prison, if such
 justice or justices shall think fit so to order (the
 amount thereof being ascertained and stated in such
 commitment), shall be sooner paid.

As to appeals to general or quarter sessions, see 42 & 43
 Vict. c. 49, s. 19, *post*.

If the particular statute under which the proceedings are **Costs.**
 taken gives costs to either party, and if upon the appeal the
 sessions order either party to pay costs, the order of sessions
 is to direct that they shall be paid to the clerk of the
 peace, to be by him paid over to the party entitled to them.
 When the party prosecuting the appeal is not bound by re-
 cognizance to pay costs, they may be summarily and expedi-
 tiously levied under this section by the party entitled to
 them obtaining the certificate (R.) from the clerk of the
 peace. Upon production of this certificate to any justice
 having jurisdiction, he is empowered to grant a warrant of
 distress (S. 1) to levy them; and in default of distress a
 warrant of commitment (S. 2). This is a proceeding taken
 to enforce an order of sessions already made, and therefore
 no previous summons to the defendant is required; and the
 mode of proceeding under the warrants is the same as that
 indicated in sections 19 and 21, *ante*.

The section provides that where the quarter sessions upon
 appeal against an order direct either party to pay costs,
 "such order shall direct such costs to be paid to the clerk of
 the peace, to be by him paid over to the party entitled;"
 but a mistake in ordering costs to be paid directly to the
 party to the appeal instead of to the clerk of the peace, has
 been held not to be a defect of jurisdiction, but merely
 erroneous procedure. *Reg. v. Binney*, 1 El. & B. 810; 22
 J. R. (N.S.) M. C. 127; 17 Jur. 854; 17 J. P. 440.

**Note to
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The 17 Geo. 2, c. 38, s. 4, empowering the quarter sessions upon appeal against a poor rate to order costs to be paid to the party in whose favour the appeal is decided, is not affected by the section, neither is it affected by 12 & 13 Vict. c. 45, s. 5. *Reg. v. Huntley*, 3 El. & B. 172; 23 L. J. R. (N.S.) M. C. 106. But when upon an appeal to quarter sessions against a poor rate, the court, under 12 & 13 Vict. c. 45, s. 5, directs the person against whom it is decided to pay to the other his costs, such costs are to be recovered in the manner pointed out by 11 & 12 Vict. c. 43, s. 27; and an order of quarter sessions directing such costs to be paid to the clerk of the peace to be by him paid over to the party entitled to them, is a good order. *Gay v. Matthews*, 7 L. T. (N.S.) 504, affirmed in error, 8 L. T. (N.S.) 674; 33 L. J. M. C. 14. A standing order of the court of quarter sessions that costs of appeal should follow the event unless the court should otherwise interfere in any case, may be good as a rule of practice notwithstanding 11 & 12 Vict. c. 43, s. 27, and 12 & 13 Vict. c. 45, s. 5, although it directs such costs to be paid by the parties. It is not necessary that such costs should be taxed in court; the bench may adopt the taxation of the clerk of the peace, and insert it in the order, provided all be done by the court before the end of the sessions. *Read v. Freeman*, 7 Jur. (N.S.) 546; 25 J. P. 87. See also *Southampton Gaslight and Coke Company v. Southampton Guardians*, 36 L. T. (N.S.) 548, which was a case under Baines's Act, 12 & 13 Vict. c. 45, s. 13, in which an appeal against a poor rate was ordered to be referred to an arbitrator, whose award should be entered as the judgment of the court, and in whose discretion the costs of the appeal and reference and award should be. The arbitrator awarded that the rate be affirmed and the costs paid by the appellants. At the next sessions judgment was entered accordingly, but nothing was said as to the taxation of the costs, and they were taxed out of sessions, that being the usual practice. The taxation was held to be regular, and a rule to quash the order of sessions that the award be entered as a judgment and the costs paid by the appellants discharged. On the same subject see also *Reg. v. Phillips*, 29 L. T. (N.S.) 100.

Where the quarter sessions make an order giving a successful appellant his costs, the course pointed out by 11 & 12 Vict. c. 43, s. 27, and 12 & 13 Vict. c. 45, s. 5, must be pursued, although the respondents (a public company) say that they have no funds out of which to pay the costs, and that they dispute the validity of the order. *Austin v. Milton-next-Sittingbourne*, 29 J. P. 760.

Where upon an appeal against a refusal of justices at petty sessions to grant an alehouse license, the quarter sessions reversed such refusal and ordered the license to be granted, and the quarter sessions further ordered the justices to pay the appellant on demand a sum for his costs, it was held that the part of the order awarding costs was bad, inasmuch as it did not follow the directions as to payment of costs contained in 12 & 13 Vict. c. 45, s. 5, and 11 & 12 Vict. c. 43, s. 27, which require the costs in the first instance to be paid to the clerk of the peace. *Reg. v. Peek*, 20 L. T. (N.S.) 393.

Note to
Sect. 27.

By the Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 4, with the exceptions thereafter mentioned, no person shall be arrested or imprisoned for making default in payment of a sum of money. There shall be excepted from the operation of the above enactment 2. Default in payment of any sum recoverable summarily before a justice or justices of the peace; and upon a rule to show cause why a writ of *habeas corpus* should not issue to bring up the body of Isabella Cole, it was held that costs which had been awarded by quarter sessions against one of the parties to an appeal, and which by 12 & 13 Vict. c. 45, s. 5, and 11 & 12 Vict. c. 43, s. 27, may be enforced before a justice by warrant of distress, and in default of distress by warrant of commitment, are within the above exception, and the defaulter is therefore not protected from imprisonment. *Ex parte Pratt*, L. R. 5 Q. B. 176. See also *ante*, p. 63.

The 9 Geo. 4, c. 61, s. 29, is repealed by 11 & 12 Vict. c. 43, ss. 27 and 36; *Reg. v. Hellier*, 17 A. & E. 229; 21 L. J. R. (N.S.) M. C. 3; 15 J. P. 675.

28. And be it enacted, that in all cases where any person against whom a warrant of distress shall issue as aforesaid shall pay or tender to the constable having the execution of the same the sum or sums in such warrant mentioned, together with the amount of the expenses of such distress up to the time of such payment or tender, such constable shall cease to execute the same; and in all cases in which any person shall be imprisoned as aforesaid for nonpayment of any penalty or other sum he may pay or cause to be paid to the keeper of the prison in which he shall be so imprisoned the sum in the

On payment of penalty, &c., distress not to be levied, or the party, if imprisoned for non-payment, shall be discharged

Sect. 28. warrant of commitment mentioned, together with the amount of the costs, charges, and expenses (if any) therein also mentioned, and the said keeper shall receive the same, and shall thereupon discharge such person, if he be in his custody for no other matter.

As to the application of the penalties by the constable or keeper of the gaol, see section 31, *post*, p. 81.

In case of summary proceedings one justice may issue summons or warrant, &c., and after conviction or order may issue warrant of distress, &c.

29. And be it enacted, that in all cases of summary proceedings before a justice or justices of the peace out of sessions upon any information or complaint as aforesaid it shall be lawful for one justice to receive such information or complaint, and to grant a summons or warrant thereon, and to issue his summons or warrant to compel the attendance of any witnesses, and to do all other necessary acts and matters preliminary to the hearing, even in cases where by the statute in that behalf such information or complaint must be heard and determined by two or more justices; and after the case shall have been so heard and determined one justice may issue all warrants of distress or commitment thereon; and it shall not be necessary that the justice who so acts before or after such hearing shall be the justice or one of the justices by whom the said case shall be heard and determined: Provided always, that in all cases where by statute it is or shall be required that any such information or complaint shall be heard and determined by two or more justices, or that a conviction or order shall be made by two or more justices, such justices must be present and acting together during the whole of the hearing and determination of the case.

As to the hearing upon an information or complaint, see section 12, *ante*, p. 35, and *note*. As to all other matters, this section provides that one justice only may act; and that he may do so, whether or not he be the justice who is to hear, or shall have heard, the case. The proviso to the section is affirmatory of the common law, that when an act is required to be done by two or more justices, they shall all be present and acting together during the whole of the hearing, and until the determination of the case. In *Reg. v. Harwich JJ.*, 18 L. J. (N.S.) M. C. 106, it was held that where an Act of parliament in one section provided that all penalties imposed by it should be recoverable by information before two justices, and in another section provided that where an information was laid before one justice, such justice should issue a summons for the appearance of the party before two justices, and the form of information given by the schedule to the Act recited the appearance of the informant "before us, two of Her Majesty's justices," it was held that an information exhibited before one justice was sufficient, and that two justices were therefore bound to hear it.

**Note to
Seet. 29.**

Justices
acting
singly or
together.

30. And be it enacted, that the fees to which any clerk of the peace [*clerk of the special sessions, or clerk of the petty sessions, or clerk to any justice or justices out of sessions*] shall be entitled, shall be ascertained, appointed, and regulated in manner following; (that is to say,) the justices of the peace at their quarter sessions for the several counties, ridings, divisions of counties, and liberties throughout England and Wales, and the council or other governing body of every borough in England and Wales, shall, from time to time, as they shall see fit respectively, make tables of the fees which, in their opinion, should be paid to the clerks of the peace [*to the clerks of special and petty sessions, and to the clerks of the justices of the peace*] within their several jurisdictions, and which said tables respectively, being signed by the chairman of every such court of quarter sessions, or by the mayor or other head officer of

Regulations
as to the
payment of
clerk's fees.

Sect. 30. any such borough respectively, shall be laid before Her Majesty's principal secretary of state; and it shall be lawful for such secretary of state, if he thinks fit, to alter such table or tables of fees, and to subscribe a certificate or declaration that such fees are proper to be demanded and received by the several clerks of the peace [*clerks of special sessions and petty sessions, and the clerks to the several justices of the peace*] throughout England and Wales; and such secretary of state shall cause copies of such table or set of tables of fees to be transmitted to the several clerks of the peace throughout England and Wales [*to be by them distributed to the several clerks of special sessions and petty sessions and to the clerks to the justices*] within their several districts respectively: and if after such copy shall be received by such clerk or clerks he or they shall demand and receive any other or greater fee or gratuity for any business or act transacted or done by him as such clerk than such as is set down in such table or set of tables, he shall forfeit for every such demand or receipt the sum of twenty pounds, to be recovered by action of debt in any of the superior courts of law at Westminster, by any person who will sue for the same: Provided always, that until such table or set of tables shall be framed and confirmed and distributed as aforesaid, it shall be lawful for such clerk or clerks to demand and receive such fees as they are now by any rule or regulation of a court of quarter sessions or otherwise authorized to demand and receive.

The words in this section within brackets and printed in italics were repealed by 40 & 41 Vict. c. 43, s. 8, *post*.

Fees.

With respect to this section, see 20 & 21 Vict. c. 43, s. 3 *post*, p. 217. The statute under which the fees to clerks of

the peace and the justices' clerks were regulated formerly was 26 Geo. 2, c. 14, and 57 Geo. 3, c. 91, which requires the tables, after having been settled by the justices in quarter sessions, to be ratified by the judge of assize; the present statute does away with the assent of the judges, and makes the certificate of "Her Majesty's principal secretary of state" alone necessary; but as there are *four* principal secretaries of state, it seems to be dubious which of them was intended. It must, however, be assumed that the secretary of state for the home department is the one who should give the certificate. The question is not material under the present statute, but with reference to 26 Geo. 2, c. 14, s. 1, it has been held that that Act, which required that the table of fees should be made at a particular quarter sessions, and should be approved "by the justices of the peace at the next succeeding quarter sessions of the peace," had not been complied with by the approval of the table at an adjourned sessions. *Bowman v. Blyth*, 7 El. & Bl. 26; 26 L. J. R. (N.S.) M. C. 57; 22 J. P. 5.

In a later case it was questioned whether, under 26 Geo. 2, c. 14, it is necessary to give validity to a table of fees that it should be made at the quarter sessions next after the 24th June, 1753, or be in substitution of one then made. *Semble v. Blackburne, Mellor, Lush, and Denman, JJ.*, that this is not necessary to the validity of the table, and that the quarter sessions may from time to time make a new table of fees, whether a table was made at the quarter sessions next after the 24th June, 1753, or not. *Lewis v. Davis*, 39 J. P. 148.

It is provided by 5 & 6 Vict. c. 109, s. 17, "that the justices of the county, in general quarter sessions assembled, shall, from time to time, subject to the approval of one of Her Majesty's principal secretaries of state, settle tables of fees and allowances to the clerks to the justices for the performance of their duties under this Act, and to the constables for the service of summons and execution of warrants, and for the performance of such other occasional duties which may be required of the said constables, for which the said justices shall think that fees ought to be allowed; and whenever any duty for which any such fee or allowance shall have been settled, and for which the payment is not by law charged upon the county rates, shall have been performed by any clerk, or by any constable appointed under this Act, the amount of the fee or allowance shall be paid by the overseers of the parish in respect of which such fee has become payable, out of any moneys in their hands collected for the relief of the poor, upon the order of the justices in petty sessions assembled, for the division, and under such regulations as shall be made from time to time by the justices in general or quarter

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**Note to
Sect. 30.**

sessions assembled, subject to the approval of the secretary of state." Provision has, however, been subsequently made by 14 & 15 Vict. c. 55, s. 9, for the payment of clerks of the peace, and clerks to justices, by salaries instead of fees in certain cases, and for the clerks to account for the fees to the treasurer of the county, &c., to be applied in aid of the county rate, or rate in the nature of a county rate. By the same statute it is also enacted (section 12) "that where any clerk is paid by salary by virtue of any order made under this Act, any justice or justices before whom any proceeding is had, whereon a fee is payable which should be accounted for by such clerk, under this Act, or before whom any person is summoned for nonpayment of any such fee, may remit such fee in whole or in part for poverty, or other reasonable cause, in their or his discretion; and in every such case, the justices or justice by whom any fee is wholly or in part remitted, shall cause an entry to be made in a book or books to be kept for that purpose by such clerk, of the nature and amount of the several fees so remitted, and of the reason for the remission in such case, which entry shall be signed by the justice, or two or more of the justices authorizing such remission, and shall be a sufficient voucher to discharge the clerk therefrom."

The section leaves it doubtful whether it was intended that there might be two or more concurrent tables of fees in force at the same time; or whether the business for which fees are to be charged must in every case be included in one table, *i.e.*, in the table to be made for each clerk respectively. It is, however, obviously desirable that in framing a new table of fees under this section, care should be taken to comprise in it all the business in respect of which it is intended that fees shall be charged. After the copy of the table is received by the clerk, it is unlawful for him to receive "any other or greater fee or gratuity for any business or act transacted or done by him as such clerk, than such as is set down in such table or set of tables;" and it is therefore expedient that there should be only one table of fees for each clerk. The justices "shall, from time to time, as they shall see fit respectively, make tables of fees," &c., to be paid to the several clerks respectively mentioned; and if after having once done so they see fit to revise the table in respect of any fee, or to provide a new fee for any particular business, they should, as it were, re-enact the whole table, with the amendments or additions, and not merely confine the order of court of quarter sessions to the particular amendments or additions. By so doing, they will avoid all question as to the legality of the fees which are to be charged by the clerk, and at the same time relieve the officer from much embarrassment.

As regards the fee to be paid to the clerk to the justices for giving notices of special sessions of the peace, for hearing appeals against poor rates, under 6 & 7 Will. 4, c. 96, s. 6, see 13 & 14 Vict. c. 101, s. 7, whereby it is enacted "that such fee or remuneration as shall have been, or shall hereafter be settled by the justices of the peace at their respective general quarter sessions, according to the statute in that behalf (*i.e.*, 11 & 12 Vict. c. 43, s. 30) to be paid the clerks to justices of the peace, for the preparing and giving of a notice of a special sessions for this purpose, or in default thereof of a notice of any special sessions, shall be paid by the overseers of each parish comprised within the division for which the special sessions are to be held, and be charged by them upon the poor rate."

The justices cannot in the table direct who is to pay the fees; all that they do is to fix specific fees for the particular services to be rendered by the clerk. The question of the payment of the fees must be settled by the particular rule of law applicable to each case as it arises.

It would seem that the clerk may recover his fees by action in the county court against the party who commenced the proceedings. See *Wray v. Chapman*, 14 J. P. 95; 14 L. T. 439; *Drew v. Harris*, 14 J. P. 26; *Ex parte Reddish*, 20 J. P. 101. With regard to the rates of allowances of payments to prosecutors and witnesses see the rules and regulations in that behalf of secretary Sir George Grey, in the Appendix.

Further, with reference to this section, see *Ex parte Haywood*, *ante*, p. 49.

Generally, see also the statutes 14 & 15 Vict. c. 55, and 29 & 30 Vict. c. 52, in the Appendix.

Note to
Sect. 30.

Recovery of
fees.

31. And be it enacted, that in every warrant of distress to be issued as aforesaid the constable or other person to whom the same shall be directed shall be thereby ordered to pay the amount of the sum to be levied thereunder unto the clerk of the division in which the justice or justices issuing such warrant shall usually act; and if any person convicted of any penalty, or ordered by a justice or justices of the peace to pay any sum of money, shall pay the same to any constable or other person, such constable or other person shall forthwith pay the same

Regulations
as to whom
penalties,
&c., to be
paid.

Sect 31. to such clerk ; and if any person committed to prison upon any conviction or order as aforesaid for nonpayment of any penalty, or of any sum thereby ordered to be paid, shall desire to pay the same, and costs, before the expiration of the time for which he shall be so ordered to be imprisoned by the warrant for his commitment, he shall pay the same to the gaoler or keeper of the prison in which he shall be so imprisoned, and such gaoler or keeper shall forthwith pay the same to the said clerk ; and all sums so received by the said clerk shall forthwith be paid by him to the party or parties to whom the same respectively are to be paid, according to the directions of the statute on which the information or complaint in that behalf shall have been framed ; and if such statute shall contain no such directions for the payment thereof to any person or persons, then such clerk shall pay the same to the treasurer of the county, riding, division, liberty, city, borough, or place for which such justice or justices shall have acted, and for which such treasurer shall give him a receipt without stamp ; and every such clerk, and every such gaoler or keeper of a prison, shall keep a true and exact account of all such moneys received by him, of whom and when received, and to whom and when paid, in the form (T.) in the schedule to this Act annexed, or to the like effect, and shall once in every month render a fair copy of every such account unto the justices who shall be assembled at the petty sessions for the division in which such justice or justices as aforesaid shall usually act, to be holden on or next after the first day of every month, under the penalty of forty shillings, to be recovered by distress in manner aforesaid ; and the said clerk

Clerks to keep accounts of all monies received, &c., in the form in schedule to this Act, and render the same to the justices at sessions.

shall send or deliver every return so made by him as aforesaid to the clerk of the peace for the county, riding, division, liberty, city, borough, or place within which such division shall be situate, at such times as the court of quarter sessions for the same shall order in that behalf. **Sect. 31.**

This enactment has secured greater uniformity of practice, as well as regularity, in accounting for penalties, &c., under summary convictions and orders, than was previously the case. It provides—

1. For payment of money levied by a constable under a warrant of distress.
2. For the application of money paid to a constable under a conviction or order of justices.
3. For the application of money paid to the gaoler or keeper of a prison by a prisoner therein, under a conviction or order of justices.
4. And for the application of the clerk of the justices of the moneys so paid to him by any constable or gaoler, &c.,
 1. To the person or persons to whom the same are respectively to be paid according to the directions of the statute on which the information or complaint in that behalf shall have been framed.
 2. If such statute contain no direction in that behalf, to the treasurer of the county, &c.

The payments so made to the clerk to the justices, and the application of the money, and the moneys received and paid by every gaoler, &c., are to be entered in a book (T.), a fair copy of which is to be laid before the justices once a month, and afterwards sent to the clerk of the peace.

The Justices Clerks Act, 1877 (40 & 41 Vict. c. 43), s. 6, *post*, provides for the payment to the treasurer of the county or borough of unclaimed penalties and other sums.

The effect of 5 & 6 Will. 4, c. 76, and the Railways Act (3 & 4 Vict. c. 97), s. 16, is that penalties recovered under the latter section in a summary manner before a justice of a borough having a separate court of quarter sessions go to the borough and not to the crown. *Attorney-General v. Moore*, 37 L. T. (N.S.) 610.

It is considered by the commissioners of inland revenue that receipts given for penalties under 11 & 12 Vict. c. 43, Stamp duty or receipts

**Note to
Sect. 31.**

s. 31, are not liable to stamp duty. 37 L. T. 191; 26 J. P. 91.

for penal-
ties.

Right to
justices'
clerk's
books.

With regard to the right of the clerk to retain books containing entries of magisterial business, the following case may be cited:—The clerk to the justices of a petty sessional division was accustomed to make private entries in the books in which he entered the magisterial business of the division. Upon his decease these books were taken possession of by his executor, who refused to deliver them up to the successor of the deceased, upon the ground that they were purchased by the deceased, contained items of private business, and because he had a *lien* upon them for fees due and unpaid. Upon a rule for a *mandamus* to compel him to deliver them up, it was held that he was bound to do so. *Reg. v. Rastrick*, 3 L. T. 220; 22 J. P. 386.

Remission
of penal-
ties.

With regard to the remission of penalties, it is enacted by 22 Vict. c. 32, that "it shall be lawful for Her Majesty to remit, in whole or in part, any sum of money which, under any Act now in force or hereafter to be passed, may be imposed of a penalty or forfeiture on a convicted offender, although such money may be, in whole or in part, payable to some party other than the crown, and to extend the royal mercy to any person who may be imprisoned for nonpayment of any sum of money so imposed, although the same may be, in whole or in part, payable to some party other than the crown." When a penalty is recovered under section 193 of the Public Health Act, 1875, the crown has no power to remit the penalty under 22 Vict. c. 32. *Todd v. Robinson*, 50 L. J. (N.S.) 298.

By 11 & 12 Vict. c. 43, s. 31, it will be seen that when persons are convicted by justices under statutes which contain no directions for the payment of the penalties to any person, the penalties are to be paid to the clerk of the division for which the justices usually act, and he is to pay them over to the treasurer of the county, riding, . . . city, borough, or place for which such justices shall have acted; and a return is to be made by the clerk to the clerk of the peace for the county, borough, &c., in which the division is situate, when and as the court of quarter sessions for the same shall order. The municipal borough of R., in the county of S., has no separate commission of the peace, and no court of quarter sessions. The mayor and ex-mayor of R. have jurisdiction in R. as justices, and the justices of the county at large have concurrent jurisdiction. There is a treasurer for the borough. It was held that the justices in and for the borough acted as county justices, with their powers limited to a particular locality; and the word

“borough” in the above section meant a borough which has a court of quarter sessions; and therefore that penalties imposed by the justices acting in and for the borough were to be paid to the treasurer of the county, and not to the treasurer of the borough. *Reigate v. Hart*, 18 L. T. (N.S.) 237; 37 L. J. M. C. 70; L. R. 3 Q. B. 244.

Note to
Sect. 31.

The municipal borough of Bradford (W. R.) has a separate commission of the peace, but no court of quarter sessions, and, therefore, the justices of the borough act as county justices; consequently, penalties imposed by the justices acting in and for the borough should be paid to the treasurer of the county and not to the treasurer of the borough. *Winn v. Mossman*, 20 L. T. (N.S.) 672; L. R. 4 Exch. 292; 38 L. J. Exch. 203; 33 J. P. 743; following and affirming *Reigate v. Hart*, L. R. 3 Q. B. 244; 18 L. T. (N.S.) 237; and *Reg. v. Dale*, 22 L. J. M. C. 45.

32. And be it enacted, that the several forms in the schedule to this Act contained, or forms to the like effect, shall be deemed good, valid, and sufficient in law.

Forms in
the schedule
deemed
valid.

The statute does not enact that these forms only shall be used, and that no others shall be valid. It will, however, be convenient to adhere to them in all ordinary cases; if any very material departure from them be made, it should be done with great caution, and in very special cases only on the advice of counsel. In *Goss v. Jackson*, 3 Esp. 198, it was held that where an Act of parliament gives the form of conviction for any offence, that form must be followed; and a warrant granted on a conviction drawn up in any other form is illegal, and the justices and those acting under it are trespassers; but see *Egginton v. Lichfield*, cited *ante*, p. 70.

Forms.

33. And be it enacted, that any one of the magistrates appointed or hereafter appointed to act at any of the police courts of the metropolis, and sitting at a police court within the metropolitan police district, and every stipendiary magistrate appointed or to be appointed for any other city, town, liberty, borough, or place, and sitting at a police court or other place appointed in that behalf, shall have full

Metropoli-
tan police
magistrates
and stipen-
diary magis-
trates in
other places
may act
alone.

Sect. 33. power to do alone whatsoever is authorized by this Act to be done by any one or more justice or justices of the peace; and that the several forms hereinafter mentioned may be varied, so far as it may be necessary to render them applicable to the police courts aforesaid, or to the court or other place of sitting of such stipendiary magistrate; and that nothing in this Act contained shall alter or affect in any manner whatsoever any of the powers, provisions or enactments contained in an Act passed in the tenth year of the reign of His late Majesty King George the Fourth, intituled "An Act for improving the Police in and near the Metropolis," or in an Act passed in the third year of the reign of Her present Majesty, intituled "An Act for further improving the Police in and near the Metropolis," or in an Act passed in the same year of the reign of Her present Majesty, intituled "An Act for regulating the Police Courts in the Metropolis," or in an Act passed in the fourth year of the reign of Her present Majesty, intituled "An Act for better defining Powers of Justices within the Metropolitan Police District."

Nothing to affect powers, &c., contained in 10 Geo. 4, c. 44, 2 & 3, Vict. c. 71, and 3 & 4 Vict. c. 84.

Jurisdiction of justices in the metropolis.

As regards the metropolis, 2 & 3 Vict. c. 71, s. 13, enacts, that where any Act is directed or authorized to be done by any justice or justices of the peace belonging to any of the metropolitan police courts, or by any justice or justices residing in or near or next the parish or place where any offence or other matter cognizable before him or them shall be committed or shall arise, the same jurisdiction may be exercised by one of the said magistrates in any of the said courts; and further, by section 14, "That it shall be lawful for any one of the said magistrates appointed, or hereafter to be appointed, to do alone any act at any of the said courts, or at any place where Her Majesty shall order any such court to be holden within the limits of the metropolitan police district for the time being, which by any law now in force, or by any law not containing an express enactment to the contrary, hereafter to be made, is or shall be directed to be done by

more than one justice: Provided always, that none of the said magistrates shall be competent to act as a justice of the peace, either alone or with any other justice or justices, in anything which is to be done at a special or petty sessions of all the justices acting in the division, or by the justices of any of the said counties or liberties in quarter sessions assembled." It has been decided that county justices who, acting under 3 & 4 Vict. c. 84, s. 6, convict for an offence under 2 & 3 Vict. c. 71, are entitled to the privileges of a metropolitan police magistrate under the last-mentioned statute; and therefore to the same limitation of three months upon any action against them which a police magistrate would have had. *Barnett v. Cox*, 16 L. J. (N.S.) M. C. 27; 11 Jur. 118; 11 J. P. 118.

**Note to
Sect. 33.**

By 21 & 22 Vict. c. 73, "to amend the Law concerning the Powers of Stipendiary Magistrates and Justices of the Peace in certain cases," it is enacted:—

Stipendiary
Magistrates.

Section 1. Every stipendiary magistrate appointed for any city, town, liberty, borough, place, or district sitting at a police court or other place appointed in that behalf, shall have power to do alone any act and to exercise alone any jurisdiction which under any law now in force, or under any law not containing an express enactment to the contrary hereafter to be made, may be done or exercised by two justices of the peace, and all the provisions of any Act of parliament auxiliary to the jurisdiction of such justices shall be applicable also to the jurisdiction of such stipendiary magistrate.

Section 2. The authority and jurisdiction given to a stipendiary magistrate by the enactment hereinbefore contained shall extend and apply as well to the cases where the act of jurisdiction is or hereafter may be expressly required to be done or exercised by justices sitting or acting in petty sessions as to other cases, and any enactment authorizing or requiring persons to be summoned or to appear at such petty sessions shall in the like cases authorize or require persons to be summoned or to appear before the stipendiary magistrate having jurisdiction at the police court or other place appointed for his sitting.

Section 3. Nothing hereinbefore contained shall extend to acts to be done or jurisdiction to be exercised at the general or quarter sessions of the peace, or to acts or jurisdiction expressly required (by any existing or future law) to be done or exercised at special sessions, or to any act or jurisdiction in relation to the grant or transfer of any license.

Section 4. Nothing hereinbefore contained shall extend, alter, or affect in any manner the powers or authorities of the

**Note to
Sect. 33.**

magistrates appointed or to be appointed to the police courts in the metropolitan police district.

* * * * *

Section 6. So much of section eighteen of the Act of the session holden in the second and third years of Her Majesty, chapter seventy-one, as makes void (except in the case therein excepted) "every summons or warrant issued by any justice of the peace of the counties of Middlesex, Surrey, Kent, Essex, or Hertfordshire respectively, requiring any person residing within the metropolitan police district to appear at any place without the said district to answer any information or complaint touching any matter arising within the said district," shall not apply to any such summons or warrant in respect of any matter arising within any part of the said district not assigned for the time being to any of the police courts of the metropolis.

Section 7. In every case in which any person shall be brought before any police magistrate, or any two magistrates acting within the said metropolitan police district, for any place within which no police court shall have been established, for any offence under the twenty-fourth section of an Act of the session holden in the second and third years of Her Majesty, chapter seventy-one, such police magistrate, or such magistrates acting in and for such place, may hear and determine the matter, and in case of conviction may commit the offender to be imprisoned in any gaol or house of correction in and for the county, liberty, or place in which such offence shall have been committed, though not within the said metropolitan police district, and with or without hard labour, for any time not exceeding two calendar months, and in their discretion without the infliction of any fine in default of payment of which such imprisonment might be adjudged.

* * * * *

Section 14. It shall be lawful for Her Majesty to appoint any stipendiary magistrate acting for any city, town, liberty, borough, or place in England or Wales to be a magistrate of any one of the police courts of the metropolitan police district, although such stipendiary magistrate shall not have practised as a barrister during at least seven years then last past, nor shall have practised as a barrister for four years then last past, having previously practised as a certificated special pleader for three years below the bar.

By 32 & 33 Vict. c. 34, s. 2, it shall be lawful for any stipendiary magistrate or police magistrate, with the approval of the secretary of state for the home department, to appoint a deputy, who shall have practised as a barrister-at-law for at

least seven years, to act for him for any time or times not exceeding six weeks in any consecutive period of twelve calendar months, and in case of sickness or unavoidable absence, it shall be lawful for such stipendiary magistrate or police magistrate, with the approval of the secretary of state for the home department, on each occasion of this power being exercised, to appoint a deputy, qualified as aforesaid, for any period not exceeding three calendar months at one time, and every such deputy during the time for which he shall be so appointed, shall have all the powers and perform all the duties of the stipendiary magistrate for whom he shall have been so appointed.

See also 42 & 43 Vict. c. 49, s. 54, *post*.

34. And be it enacted, that it shall be lawful for the lord mayor of the city of London, or for any alderman of the said city for the time being, sitting at the Mansion House or Guildhall Justice Rooms in the said city, to do alone any act, at either of the said justice rooms, which by any law now in force, or by any law not containing an express enactment to the contrary hereafter to be made, is or shall be directed to be done by more than one justice; and that nothing in this Act contained shall alter or affect in any manner whatsoever any of the powers, provisions, or enactments contained in an Act passed in the third year of the reign of Her present Majesty, intituled "An Act for regulating the Police in the City of London."

It has been decided that an alderman of London sitting at the Mansion House and Guildhall, has not (by 11 & 12 Vict. c. 43, s. 34, and 3 & 4 Vict. c. 84, s. 6), the same power as a police magistrate has (by 3 & 4 Vict. c. 84, s. 13), to send a constable to view deserted premises, and to deliver up possession, under 11 Geo. 2, c. 19, s. 16. *Edwards v. Hodges*, 15 C. B. 477; 24 L. J. (N.S.) M. C. 81; 1 Jur. (N.S.) 91; 19 J. P. 102.

See also 42 & 43 Vict. c. 49, s. 54, *post*.

35. And be it enacted, that nothing in this Act shall extend or be construed to extend to any war-

Note to Sect. 33.

The lord mayor, or any alderman of London, may act alone.

Nothing to affect powers, &c. contained in 2 & 3 Vict. c. 94.

Jurisdiction of aldermen of city of London.

To what this Act shall not extend.

Sect. 35. rant or order for the removal of any poor person who is or shall become chargeable to any parish, township or place ; nor to any complaints or orders made with respect to lunatics, or the expenses incurred for the lodging, maintenance, medicine, clothing, or care of any lunatic or insane person ; nor to any information or complaint or other proceeding under or by virtue of any of the statutes relating to *Her Majesty's revenue of excise or customs, stamps, taxes or post office* ; nor shall anything in this Act extend or be construed to extend to any complaints, orders, or warrants in matters of *bastardy* made against the putative father of any bastard child, save and except such of the provisions aforesaid as relate to the backing of warrants for compelling the appearance of such putative father, or warrants of distress, or to the levying of sums ordered to be paid, or to the imprisonment of a defendant for non-payment of the same [*nor shall anything in this Act extend to any proceedings under the Acts of parliament regulating or otherwise relating to the labour of children and young persons in mills or factories*].

The words in italics within brackets were repealed by 34 & 35 Vict. c. 104, s. 11, which again was repealed by 41 Vict. c. 16 (Factory and Workshops Act, 1878.)

Revenue laws.

The exception in this section of "any information or complaint, or other proceeding under or by virtue of any of the statutes relating to Her Majesty's revenue of excise, &c.," does not apply where the particular information or complaint proceeds upon a section of a statute not relating to the revenue of excise, &c., although there are other sections in the statutes which do not relate to the revenue of excise, &c. Therefore a conviction under 4 & 5 Will. 4, c. 85, s. 8, for signing a false certificate for the purpose of obtaining a license for the sale of beer, drawn up according to the form provided in schedule (I. 1.) of 11 & 12 Vict. c. 43, is valid. The word "statutes" in section 35 is to be read as if it were "enactments." *Reg. v. Bakewell*, 7 El. & Bl. 848 ; 26 L. J. (n.s.)

M. C. 150; 3 Jur. (N.S.) 1003; 21 J. P. 357. Now, however, section 53 of the Summary Jurisdiction Act, 1879, *post*, extends the Summary Jurisdiction Acts to all informations and complaints before a court of summary jurisdiction under the statutes relating to the post-office or Her Majesty's revenue under the control of the inland revenue commissioners.

Note to Sect. 35.

As regards complaints, orders, or warrants, in matters of bastardy, see section 54 of the same Act, *post*.

In *Reg. v. Tiffield*, 22 J. P. 784, it was decided that justices acting for adjoining counties could not act in one for the other in respect of any matter excluded from the operation of section 35 of 11 & 12 Vict. c. 43; and consequently that an order of removal made under such circumstances was bad. Again, an order for payment of costs of maintenance under an order of removal does not come within the exemption in this section, and therefore the limitation in section 11 applies. *Collumpton v. Brighton*, 3 L. T. (N.S.) 318; S. C. nom, *Hill v. Thorncroft*, 30 L. J. M. C. 52; 7 Jur. (N.S.) 163; 24 J. P. 741.

Order of removal.

Further, with regard to section 35 of 11 & 12 Vict. c. 43, see 26 & 27 Vict. c. 77, s. 1, *ante*, p. 21, with reference to the provisions of section 6 of this Act, and also 42 & 43 Vict. c. 49, ss. 53, 54, *post*.

* * * * *

37. And be it enacted, that the town of Berwick-upon-Tweed shall be deemed to be within England for all the purposes of this Act; but that nothing in this Act shall extend or be construed to extend to Scotland or Ireland, or to the Isles of Man, Jersey, Guernsey, Alderney, or Sark, save and except the several provisions respecting the backing of warrants contained in an Act of parliament passed in this present session, intituled "An Act to facilitate the the Performance of the Duties of Justices of Sessions within England and Wales with respect to Persons charged with Indictable Offences," and incorporated into this Act, as aforesaid.

Act to extend to Berwick-upon-Tweed but not to Scotland, Ireland, &c., except as to backing of warrants under 11 & 12 Vict. c. 42.

The declaration that the town of Berwick-upon-Tweed shall be deemed to be within England for all the purposes of this Act, is unnecessary, for it is part of the realm of Eng-

Berwick-upon-Tweed and Wales.

Note to Sect. 37. land, and is bound by all Acts of parliament applying to England, whether it be specially named in them or otherwise. It was enacted by 20 Geo. 2, c. 42, s. 3, "that in all cases where the kingdom of England, or that part of Great Britain called England, hath been, or shall be mentioned in any Act of parliament, the same has been and shall from henceforth be deemed and taken to comprehend and include the dominion of Wales and the town of Berwick-upon-Tweed;" but Lord Mansfield in *Rex v. Cowle*, 2 Burr., 834, showed that that Act was entirely superfluous. Before the union (with Scotland), he said, Berwick was bound by every English general Act of parliament, in like manner as Wales was bound, and that was as being part of the realm of England. Where it is particularly named in Acts of parliament, that is superfluous; and so also is the naming of Wales. If it was not part of England before the union, it is now no part of Great Britain, for only England and Scotland are united. It is bound by all general laws since the union; and, further, where provisions are made for that part of Great Britain called England, Wales and Berwick-upon-Tweed are comprehended under that description. Further on this point see note to 11 & 12 Vict. c. 42, s. 32, *post*, and the cases and authorities there cited.

Note that sections 36, 33, and 49 of this Act were repealed by the Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66).

SCHEDULES.

(A.)

Summons to the Defendant upon an Information or Complaint.

To *A. B.* of *Labourer.*

Whereas information hath this day been laid [or complaint hath this day been made] before the undersigned, [one] of Her Majesty's justices of the peace in and for the said [county] of _____, for that you [here state shortly the matter of the information or complaint]: These are therefore to command you, in Her Majesty's name, to be and appear on _____, at _____ o'clock in the forenoon, at _____,

before such justices of the peace for the said county **Sched. A.**
as may then be there, to answer to the said
information [*or* complaint], and to be further dealt
with according to law.

Given under my hand and seal, this _____ day of
_____, in the year of our Lord _____, at _____ in
the [*county*] aforesaid.

J. S. (L.S.)

(B.)

Warrant where the Summons is disobeyed.

To the constable of _____ and to all other peace
officers in the said [*county*] of _____.

Whereas on _____ last past information was laid
[*or* complaint was made] before the undersigned,
[*one*] of Her Majesty's justices of the peace in and
for the said county of _____, for that *A. B.* [*&c.*,
as in the summons]: And whereas I then issued my
summons unto the said *A. B.*, commanding him, in
Her Majesty's name, to be and appear on _____, at
o'clock in the forenoon, at _____, before such justices
of the peace for the said county as might then be
there, to answer to the said information [*or* com-
plaint], and to be further dealt with according to
law: And whereas the said *A. B.* hath neglected to
be or appear at the time and place so appointed in
and by the said summons, although it hath now been
proved to me upon oath that the said summons hath
been duly served upon the said *A. B.*: These are
therefore to command you, in Her Majesty's name,
forthwith to apprehend the said *A. B.*, and to bring
him before some one or more of Her Majesty's jus-
tices of the peace in and for the said county, to
answer to the said information [*or* complaint], and
to be further dealt with according to law.

Given under my hand and seal, this _____ day of
_____, in the year of our Lord _____, at _____,
the [*county*] aforesaid.

J. S. (L.S.)

Sched. C.

(C.)

Warrant in the first instance.

To the constable of _____ and to all other peace officers in the said [county] of _____ .

Whereas information hath this day been laid before the undersigned [one] of Her Majesty's justices of the peace in and for the said [county] of _____, for that *A. B.* [*here state shortly the matter of the information*]; and oath being now made before me substantiating the matter of such information: These are therefore to command you, in her Majesty name, forthwith to apprehend the said *A. B.*, and to bring him before some one or more of Her Majesty's justices of the peace in and for the said county, to answer to the said information, and to be further dealt with according to law.

Given under my hand and seal, this _____ day of _____ in the year of our Lord _____, at _____, in the [county] aforesaid. J. S. (L.S.)

(D.)

Warrant of Committal for safe Custody during an Adjournment of the Hearing.

To *W. T.*, constable of _____, and to the keeper of the [house of correction] at _____ .

Whereas on _____ last past information was laid [or complaint was made] before the undersigned, [one] of Her Majesty's justices of the peace in and for the said [county] of _____, for that [*&c.*, as in the summons]: And whereas the hearing of the same is adjourned to the _____ day of _____ instant, at _____ o'clock in the forenoon, at _____, and it is necessary that the said *A. B.* should in the mean-

time be kept in safe custody: These are therefore to **Sched. D.**
 command you the said constable, in Her Majesty's
 name, forthwith to convey the said *A. B.* to the
 [house of correction] at _____, and there deliver him
 into the custody of the keeper thereof, together with
 this precept; and I hereby command you the said
 keeper to receive the said *A. B.* into your custody
 in the said house of correction, and there safely keep
 him until the _____ day of _____ instant, when you
 are hereby required 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 jus-
 tices of the peace for the said [county] as may then
 be there, to answer further to the said information
 [or complaint], and to be further dealt with accor-
 ding to law.

Given under my hand and seal, this _____ day of
 _____, in the year of our Lord _____, at _____, in
 the [county] aforesaid. *J. S.* (L.S.)

(E.)

*Recognizance for the appearance of the Defendant
 where the Case is adjourned, or not at once pro-
 ceeded with.*

Be it remembered, that on _____, *A. B.* of _____,
labourer, and *L. M.* of _____, *grocer*, personally came
 before the undersigned [one] of Her Majesty's jus-
 tices of the peace in and for the said [county] of
 _____, and severally acknowledged themselves to
 owe to our sovereign Lady the Queen the several
 sums following; (that is to say,) the said *A. B.* the
 sum of _____, and the said *L. M.* the sum of _____
 of good and lawful money of Great Britain, to be
 made and levied of their several goods and chattels,
 lands and tenements respectively, to the use of our
 said Lady the Queen, her heirs and successors, if he
 the said *A. B.* shall fail in the condition endorsed.

Sched. E. Taken and acknowledged, the day and }
 year first above mentioned, at , }
 before me, J. S. }

The condition of the within-written recognizance is such, that if the said *A. B.* shall personally appear on the day of instant at o'clock in the forenoon, at , before such justices of the peace for the said [county] as may then be there, to answer further to the information [or complaint] of *C. D.* exhibited against the said *A. B.*, and to be further dealt with according to law, then the said recognizance to be void, or else to stand in full force and virtue.

*Notice of such Recognizance to be given to the
 Defendant and his Surety.*

Take notice, that you *A. B.* are bound in the sum of , and you *L. M.* in the sum of , that you *A. B.* appear personally on , at o'clock in the forenoon, at , before such justices of the peace for the said county as shall then be there, to answer further to a certain information [or complaint] of *C. D.*, the further hearing of which was adjourned to the said time and place, and unless you appear accordingly the recognizance entered into by you *A. B.*, and by *L. M.* as your surety, will forthwith be levied on you and him.

Dated this day of , 18 .

J. S.

(F.)

*Certificate of Non-appearance to be endorsed on the
 Defendant's Recognizance.*

I hereby certify, that the said *A. B.* hath not appeared at the time and place in the said condition

mentioned, but therein hath made default, by reason **Sched. F.**
whereof the within-written recognizance is forfeited.

J. S.

(G. 1.)

Summons of a Witness.

To *E. F.*, of _____ in the said [county] of _____.

Whereas information was laid [or complaint was made] before the undersigned, [one] of Her Majesty's justices of the peace in and for the said [county] of _____, for that [etc., as in the summons]; and it hath been made to appear to me upon [oath] that you are likely to give material evidence on behalf of the [prosecutor or complainant, or defendant] in this behalf: These are therefore to require you to be and appear on _____, at _____ o'clock in the forenoon, at _____, before such justices of the peace for the said county as may then be there, to testify what you shall know concerning the matter of the said information [or complaint].

Given under my hand and seal this _____ day of _____
in the year of our Lord _____, at _____ in
the [county] aforesaid. J. S. (L.S.)

(G. 2.)

Warrant where a Witness has not obeyed a Summons.

To the constable of _____ and to all other peace officers _____ in the said [county] of _____.

Whereas information was made [or complaint was made] before the undersigned, [one] of Her Majesty's justices of the peace in and for the said [county] of _____, for that [etc., as in the summons]; and it having made to appear to me upon oath that *E. F.*, of _____, in the said county, labourer, was likely to give material evidence on behalf of the [prosecutor], I did duly issue my summons to the said *E. F.*

Sched. requiring him to be and appear on _____, at
G. 2. o'clock in the forenoon of the same day, at _____,
 before such justices of the peace for the said county
 as might then be there, to testify what he should
 know concerning the said *A. B.*, or the matter of
 the said information [*or* complaint]: And whereas
 proof hath this day been made before me upon oath
 of such summons having been duly served upon the
 said *E. F.*, and of a reasonable sum having been
 paid [*or* tendered to him for his costs and expenses
 in that behalf:] And whereas the said *E. F.* hath
 neglected to appear at the time and place appointed
 by the said summons, and no just excuse hath been
 offered for such neglect: These are therefore to com-
 mand you to take the said *E. F.*, and to bring and
 have him on _____, at _____ o'clock in the forenoon,
 at _____, before such justices of the peace for the
 said county as may then be there, to testify what he
 shall know concerning the matter of the said infor-
 mation [*or* complaint].

Given under my hand and seal, this _____ day of
 _____, in the year of our Lord _____, at _____,
 in the [county] aforesaid. J. S. (L.S.)

(G. 3.)

Warrant for a Witness in the first instance.

To the constable of _____ and to all other peace
 officers in the [county] of _____.

Whereas information was laid [*or* complaint was
 made] before the undersigned, [one] of Her Majesty's
 justices of the peace in and for the said [county] of
 _____, for that [*&c.*, *as in the summons*]; and it
 being made to appear before me upon oath that *E. F.*,
 of _____ [labourer] is likely to give material evidence
 on behalf of the [prosecutor] in this 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 to bring and have the

said *E. F.* before me on _____, at _____ o'clock in **Sched.**
 the forenoon, at _____, or before such other jus- **G. 3.**
 tices of the peace for the said county as may
 then be there, to testify what he shall know con-
 cerning the matter of the said information [*or com-*
plaint.]

Given under my hand and seal, this _____ day of
 _____, in the year of our Lord _____, at _____, in
 the [*county*] aforesaid. *J. S. (L.S.)*

(G. 4.)

*Commitment of a Witness for refusing to be sworn or
 to give Evidence.*

To *W. T.*, constable of _____ in the said [*county*]
 of _____, and to the keeper of the [*house of*
correction] at _____.

Whereas information was laid [*or complaint was
 made*] before the undersigned, [*one*] of Her Majesty's
 justices of the peace in and for the said [*county*] of
 _____, for that [*&c., as in the summons*]; and one
E. F. now appearing before me such justice as
 aforesaid on _____, at _____, and being required
 by me to make oath or affirmation as a witness in
 that behalf, hath now refused so to do [*or being now*
here duly sworn as a witness in the matter of the
said information or complaint, doth refuse to answer
certain questions concerning the premises which are
now here put to him], without offering any just
excuse for such his refusal: These are therefore to
command you the said constable to take the said
E. F., and him safely convey to the [*house of*
correction] at _____ aforesaid, and there deliver him
 to the said keeper thereof, together with this precept;
 and I do hereby command you the said keeper of
 the said [*house of correction*] to receive the said *E. F.*
 into your custody in the said [*house of correction*],
 and there imprison him for such his contempt for

Sched.
G. 4.

the space of _____ days, unless he shall in the mean-
time consent to be examined and to answer con-
cerning the premises; and for your so doing this
shall be your sufficient warrant.

Given under my hand and seal, this _____ day of
_____, in the year of our Lord _____, at _____,
in the [county] aforesaid. J. S. (L.S.)

(H.)

Warrant to remand a Defendant when apprehended.

To *W. T.*, constable of _____, and to the keeper
of the [house of correction] at _____.

Whereas information was laid [or complaint was
made] before the undersigned, [one] of Her Majesty's
justices of the peace in and for the said [county] of
_____, for that [&c., as in the summons or warrant]:
And whereas the said *A. B.* hath been apprehended
under and by virtue of a warrant upon such infor-
mation [or complaint], and is now brought before
me as such justice as aforesaid: These are therefore
to command you the said constable, in Her Majesty's
name, forthwith to convey the said *A. B.* to the
[house of correction] at _____, and there to deliver
him to the said keeper thereof, together with this
precept: And I do hereby command you the said
keeper to receive the said *A. B.* into your custody in
the said [house of correction], and there safely keep
him until _____ next, the _____ day of _____ instant,
when you are hereby commanded to convey and have
him at _____, at _____ o'clock in the forenoon of
the same day, before such justices of the peace of
the said [county] as may then be there, to answer to
the said information [or complaint], and to be fur-
ther dealt with according to law.

Given under my hand and seal, this _____ day of
_____, in the year of our Lord _____, at _____,
in the [county] aforesaid. J. S. (L.S.)

(I. 1.)

Sched.
I. 1.*Conviction for a Penalty to be levied by Distress, and in Default of sufficient Distress, Imprisonment.*

to wit. } Be it remembered, that on the day of
 at , in the year of our Lord ,
 before the undersigned, [one] of Her Majesty's justices of the peace for the said county, for that [he the said A. B., &c., stating the offence, and the time and place when and where committed]; and I adjudge the said A. B. for his said offence to forfeit and pay the sum of [stating the penalty, and also 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 in this behalf; and if the said several sums be not paid forthwith [or on or before next] * I order that the same be levied by distress and sale of the goods and chattels of the said A. B., and in default of such distress* I adjudge the said A. B. to be imprisoned in the [house of correction] at in the said county [there to be kept to hard labour] for the space of , unless the said several sums, and all costs and charges of the said distress, [and of the commitment and conveying of the said A. B. to the said house of correction] shall be sooner paid.

Given under my hand and seal, the day and year first above mentioned, at , in the [county] aforesaid.
 J. S. (L.S.)

* Or, where the issuing of a distress warrant would be ruinous to the defendant or his family, or it appears that he has no goods whereon to levy a distress, then instead of the words between the asterisks,** say, "then, inasmuch as it hath now been made to appear to me [that the issuing of a warrant of distress in this behalf would be ruinous to the said A. B. and his family," or, "that the said A. B. hath no goods or chattels whereon to levy the said sums by distress], I adjudge," &c., as above, to the end.

Sched.
I. 2.

(I. 2.)

*Conviction for a Penalty, and in default of Payment,
Imprisonment.*

to wit. } Be it remembered, that on the day of
 } , in the year of our Lord , at
 } , in the said [county] *A. B.* is convicted before
the undersigned, [one] of Her Majesty's justices of the peace for the said county, for 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 in this behalf; and if the said several sums be not paid forthwith [or on or before next] I adjudge the said *A. B.* to be imprisoned in the [house of correction] at , in the said [county], [and there to be kept to hard labour] for the space of , unless the said several sums [and the costs and charges of conveying the said *A. B.* to the said house of correction] shall be sooner paid.

Given under my hand and seal, the day and year first above mentioned, at , in the [county] aforesaid.
J. S. (L.S.)

(I. 8.)

Conviction when the Punishment is by Imprisonment, &c.

to wit. } Be it remembered, that on the day of
 } , in the year of our Lord , in
 } , in the said [county] *A. B.* is convicted before the under-
signed, [one] of Her Majesty's justices of the peace for the said county, for that [he the said *A. B.* &c., stating the offence, and the time and place when and where committed]; and I adjudge the said *A. B.* for

Sched.
I. 3.

his said offence to be imprisoned in the [house of correction], at _____, in the said [county] [and there kept to hard labour] for the space of _____, and I also adjudge the said *A. B.* to pay the said *C. D.* the sum of _____ for his costs in this behalf; and if the said sum for costs be not paid forthwith [or on or before _____ next] then* I order that the said sum be levied by distress and sale of the goods and chattels of the said *A. B.*; and in default of sufficient distress in that behalf* I adjudge the said *A. B.* to be imprisoned in the said house of correction [and there kept to hard labour] for the space of _____, to commence at and from the termination of his imprisonment aforesaid, unless the said sum for costs shall be sooner paid.

Given under my hand and seal, the day and year first above mentioned, at _____, in the county aforesaid. J. S. (L.S.)

* Or where the issuing of a distress warrant would be ruinous to the defendant or his family, or it appears that he has no goods whereon to levy a distress, then, instead of the words between the asterisks,**, say, "inasmuch as it hath not been made to appear to me [that the issuing of a warrant of distress in this behalf would be ruinous to the said *A. B.* and his family," or "that the said *A. B.* hath no goods and chattels whereon to levy the said sum for costs by distress], I adjudge," &c.

(K. 1.) (a)

Order for Payment of Money to be levied by Distress, and in default of Distress, Imprisonment.

} Be it remembered, that on _____ complaint to wit. } made before the undersigned, [one] of Her Majesty's justices of the peace in and for the

(a) With respect to this form see *Labalmondière v. Frost*, 23 J. P. 598, ante, p. 51.

Sched.
K. 1.

said [county] of _____, for that [stating the facts entitling the complainant to the order, with the time and place when and where they occurred]; and now at this day, to wit, on _____, at _____, the parties aforesaid appear before me the said justice, [or the said C. D. appears before me the said justice, but the said A. B., although duly called, doth not appear by himself, his counsel or attorney, and it is now satisfactorily proved to me on oath that the said A. B. has been duly served with the summons in this behalf, which required him to be and appear here at this day before such justices of the peace for the said county as should now be here, to answer the said complaint, and to be further dealt with according to law]; and now, having heard the matter of the said complaint, I do adjudge the said A. B. [to pay to the said C. D. the sum of _____ forthwith, or, on or before _____ next, or as the statute may require], and also to pay to the said C. D. the sum of _____ for his costs in this behalf; and if the said several sums be not paid forthwith [or on or before _____ next]* I hereby order that the same be levied by distress and sale of the goods and chattels of the said A. B. and in default of sufficient distress in that behalf* I adjudge the said A. B. to be imprisoned in the [house of correction] at _____, in the said [county], [and there kept to hard labour] for the space of _____, unless the said several sums, and all costs and charges of the said distress [and of the commitment and conveying of the said A. B. to the said house of correction], shall be sooner paid.

Given under my hand and seal, this _____ day of _____, in the year of our Lord _____, at _____, in the [county] aforesaid. J. S. (L.S.)

* Or where the issuing of a distress warrant would be ruinous to the defendant or his family, or it appears that he has no goods whereon to levy a distress, then, instead of the words between the asterisks,**, say, "then, inasmuch as it hath now been made to

appear to me [that the issuing of a warrant of distress in this behalf would be ruinous to the said *A. B.* and his family," or "that the said *A. B.* hath no goods or chattels whereon to levy the said sums by distress], I adjudge," &c.

Sched.
K. 1.

(K. 2.)

Order for Payment of Money, and in default of Payment, Imprisonment.

Be it remembered, that on complaint to wit. } made before the undersigned, [one] of Her Majesty's justices of the peace in and for the said [county] of , for that [stating the facts entitling the complainant to the order, with the time and place when and where they occurred]; and now at this day, to wit, on , at , the parties aforesaid appear before me the said justice, [or the said *C. D.* appears before me the said justice, but the said *A. B.*, although duly called, doth not appear by himself, his counsel or attorney, and it is now satisfactorily proved to me on oath that the said *A. B.* has been duly served with the summons in this behalf, which required him to be and appear here on this day before such justices of the peace for the said county as should now be here, to answer the said complaint, and to be further dealt with according to law]; and now having heard the matter of the said complaint, I do adjudge the said *A. B.* [to pay to the said *C. D.* the sum of forthwith, or on or before next, or as the statute may require], and also to pay to the said *C. D.* the said sum of for his costs in this behalf; and if the said several sums be not paid forthwith [or on or before next], I adjudge the said *A. B.* to be imprisoned in the [house of correction] at , in the said county [there to be kept to hard labour] for the space of , unless the said several sums [and the costs and charges of conveying the said

Sched.
K. 2.

A. B. to the said house of correction] shall be sooner paid.

Given under my hand and seal, this _____ day of _____ in the year of our Lord _____, at _____, in the [county] aforesaid. J. S. (L.S.)

(K. 3.)

Order for any other Matter where the disobeying of it is punishable with Imprisonment.

Be it remembered, that on _____ complaint to wit. } made before the undersigned, [one] of Her Majesty's justices of the peace in and for the said [county] of _____, for that [stating the facts entitling the complainant to the order, with the time and place when and where they occurred], and now at this day, to wit, on _____, at _____, the parties aforesaid appear before me, the said justice, [or the said *C. D.* appears before me, the said justice, but the said *A. B.* although duly called, doth not appear by himself, his counsel or attorney, and it is now satisfactorily proved to me upon oath that the said *A. B.* has been duly served with the summons in this behalf, which required him to be and appear here at this day, before such justices of the peace for the said county as should now be here, to answer to the said complaint, and to be further dealt with according to law]; and now, having heard the matter of the said complaint, I do therefore adjudge the said *A. B.* to [here state the matter required to be done], and if upon a copy of a minute of this order being served upon the said *A. B.*, either personally or by leaving the same for him at his last or most usual place of abode, he shall neglect or refuse to obey the same, in that case I adjudge the said *A. B.* for such his disobedience to be imprisoned in the [house of correction] at _____, in the said county [there to be kept to hard labour] for the space of _____ [unless the said order be sooner obeyed, if the statute

authorize this]; and I do also adjudge the said *A. B.* to pay to the said *C. D.* the sum of _____ for his costs in this behalf; and if the said sum for costs be not paid forthwith [*or on or before* _____ next], I order the same to be levied by distress and sale of the goods and chattels of the said *A. B.*, [and in default of sufficient distress in that behalf I adjudge the said *A. B.* to be imprisoned in the said *house of correction* [*and there kept to hard labour*] for the space of _____, to commence at and from the termination of his imprisonment aforesaid, unless the said sum for costs shall be sooner paid.]

Sched.
K. 3.

Given under my hand and seal, this _____ day of _____, in the year of our Lord _____, at _____, in the [county] aforesaid.

J. S. (L.S.)

(L.)

Order of Dismissal of an Information or Complaint.

Be it remembered, that on _____ information was laid [*or complaint was made*] before the undersigned, [*one*] of Her Majesty's justices of the peace in and for the said [county] of _____, for that [*&c., as in the summons to the defendant*], and now, at this day, to wit, on _____, at _____, both the said parties appear before me in order that I should hear and determine the said information [*or complaint*], *or* the said *A. B.* appeareth before me, but the said [*C. D.*, although duly called, doth not appear]; whereupon the matter of the said information [*or complaint*] being by me duly considered [it manifestly appears to me that the said information [*or complaint*] is not proved, and*] I do therefore dismiss the same, [and do adjudge that the said *C. D.* do pay to the said *A. B.* the sum of _____ for his costs incurred by him in his defence in this behalf; and if the said sum

Sched. for costs be not paid forthwith [*or on or before*
L.] I order that the same be levied by distress
 and sale of the goods and chattels of the said *C. D.*,
 and in default of sufficient distress in that behalf I
 adjudge the said *C. D.* to be imprisoned in the
 [*house of correction*] at , in the said county
 [*and there kept to hard labour*] for the space of
 , unless the said sum for costs, and all
 costs and charges of the said distress [*and of the*
commitment and conveying of the said C. D. to the
said house of correction], shall be sooner paid.

Given under my hand and seal, this day of
 , in the year of our Lord , at
 in the [*county*] aforesaid. J. S. (L.S.)

* *If the informant or complainant do not appear
 these words may be omitted.*

(M.)

Certificate of Dismissal.

I hereby certify that an information [*or com-
 plaint*] preferred by *C. D.* against *A. B.*, for that
 [*&c., as in the summons*], was this day considered
 by me, one of Her Majesty's justices of the peace
 in and for the [*county*] of , and was by me
 dismissed [*with costs*].

Dated this day of , 186 . J. S.

(N. 1.)

*Warrant of Distress upon a Conviction for a
 Penalty.*

To the constable of , and to all other peace
 officers in the said [*county*] of .

Whereas *A. B.*, late of [*labourer*], was on
 this day [*or on last past*] duly convicted before
 the undersigned, [*one*] of Her Majesty's justices of
 the peace in and for the said county of , for
 that [*stating the offence as in the conviction*], and it

Sched.
N. 1.

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 for his costs in that behalf; and it was thereby ordered that if the said several sums should not be paid [*forthwith*] the same should be levied by distress and sale of the goods and chattels of the said *A. B.*; and it was thereby also adjudged that in default of sufficient distress the said *A. B.* should be imprisoned in the [*house of correction*] at , in the said county [*and there kept to hard labour*] for the space of , unless the said several sums, and all costs and charges of the said distress, and of the commitment and conveying of the said *A. B.* to the said [*house of correction*], should be sooner paid; And whereas the said *A. B.* being so convicted as aforesaid, and being [*now*] required to pay the said sums of and , hath not paid the same or any part thereof, but therein hath made default: These are therefore to command you, in Her Majesty's name, forthwith to make distress of the goods and chattels of the said *A. B.*: and if within the space of days next after the making of such distress the said sums, together with the reasonable charges of taking and keeping the distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and do pay the money arising by such sale unto , the clerk of the justices of the peace for the division of in the said [*county*], that he may pay and apply the same as by law is directed, and may render the overplus, if any, on demand, to the said *A. B.*; and if no such distress can be found, then that you certify the same unto me, to the end that such further proceedings may be had thereon as to the law doth appertain.

Given under my hand and seal, this day of , in the year of our Lord , at , in the [*county*] aforesaid. J. S. (L.S.)

Sched.
N. 2.

(N. 2.)

Warrant of Distress upon an Order for the Payment of Money.

To the constable of and to all other peace officers in the said [county] of .

Whereas on last past, a complaint was made before the undersigned, [one] of Her Majesty's justices of the peace in and for the said county of , for that [&c., as in the order], and afterwards, to wit, on , at , the said parties appeared before me [or as in the order], and thereupon having considered the matter of the said complaint I adjudged the said *A. B.* to [pay to the said *C. D.* the sum of on or before the then next], and also to pay to the said *C. D.* the sum of for his costs in that behalf; and I thereby ordered that if the said several sums should not be paid on or before the said then next, the same should be levied by distress and sale of the goods and chattels of the said *A. B.*; and it was adjudged that in default of sufficient distress in that behalf, the said *A. B.* should be imprisoned in the [house of correction] at , in the said county [and there kept to hard labour] for the space of unless the said several sums, and all costs and charges of the distress [and of the commitment and conveying of the said *A. B.* to the said house of correction], should be sooner paid: And whereas the time in and by the said order appointed for the payment of the said several sums of and hath elapsed, but the said *C. D.* hath not paid the same or any part thereof, but therein hath made default: These are therefore to command you, in Her Majesty's name, forthwith to make distress of the goods and chattels of the said *A. B.*; and if within the space of days after the making of such distress the said last-mentioned sums, together with the reasonable

charges of taking and keeping the said distress, shall not be paid, then that you do sell the said goods and chattels so by you distrained, and do pay the money arising from such sale unto _____, the clerk of the justices of the peace for the division of _____, in the said [county], that he may pay and apply the same as by law directed, and may render the overplus, if any, on demand, to the said A. B.; and if no such distress can be found then that you certify the same unto me, to the end that such proceedings may be had therein as to the law doth appertain.

Sche
N. 2.

Given under my hand and seal, this _____ day of _____, in the year of our Lord _____, at _____, in the [county] aforesaid. J. S. (L.S.)

(N. 3.)

Endorsement in backing a Warrant of Distress.

to wit. } Whereas proof upon oath has this day been made before me, one of Her Majesty's justices of the peace in and for the said county of _____, that the name of J. S. to the within warrant subscribed is of the handwriting of the justice of the peace within mentioned: I do therefore authorize W. T., who bringeth to me this warrant, and all other persons to whom this warrant was originally directed, or by whom the same may be lawfully executed, and also all constables and other peace officers of the said [county] of _____, to execute the same within the said county of _____.

Given under my hand, this _____ day of _____, 186 . . . J. B.

(N. 4.)

Constable's Return to a Warrant of Distress.

I, W. T., constable of _____, in the [county] of _____, do hereby certify to J. S., esquire, one of

Sched. Her Majesty's justices of the peace for the said
N. 4. county, 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 , 186 .
W. T.

(N. 5.)

Warrant of Commitment for Want of Distress.

To the constable of , and to the keeper of the [house of correction] at , in the said [county] of .

Whereas [*&c.*, as in either of the foregoing distress warrants, N. 1, 2, to the asterisk (*) and then thus]: And whereas afterwards on the day of , in the year aforesaid, I, the said justice, issued a warrant to the constable of , commanding him to levy the said sums of and by distress and sale of the goods and chattels of the said *A. B.*: And whereas it appears to me, as well by the return of the said constable to the said warrant of distress as otherwise, that the said constable hath made diligent search for the goods and chattels of the said *A. B.*, but that no sufficient distress whereon to levy the sums above mentioned could be found: These are therefore to command you the said constable of , to take the said *A. B.*, and him safely to convey to the [house of correction] at , aforesaid, and there deliver him to the said keeper, together with this precept: and I do hereby command you the said keeper of the said [house of correction] to receive the said *A. B.* into your custody in the said [house of correction], there to imprison him [*and keep him to hard labour*] for the space of , unless the said several sums and all the costs and charges of

the said distress [and of the commitment and conveying of the said A. B. to the said house of correction] amounting to the further sum of _____, shall be sooner paid unto you the said keeper: and for your so doing this shall be your sufficient warrant.

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N. 5.

Given under my hand and seal, this _____ day of _____, in the year of our Lord _____, at _____, in the [county] aforesaid. J. S. (L.S.)

(O. 1) (a).

Warrant of Commitment upon a Conviction for a Penalty in the first instance.

To the constable of _____, and to the keeper of the [house of correction] at _____, in the said [county] of _____.

Whereas A. B., late of _____ [labourer], was on this day duly convicted before the undersigned, [one] of Her Majesty's justices of the peace in and for the said [county], for that [stating the offence as in the conviction]; and it was thereby 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 _____ for his costs in that behalf; and it was thereby further adjudged that if the said several sums should not be paid [forthwith], the said A. B. should be imprisoned in the [house of correction] at _____, in the said [county] [and there kept to hard labour] for the space of _____, unless the said several sums [and the costs and charges of conveying the said A. B. to the said house of correction] should be sooner paid: And whereas the time in and by the said conviction appointed for the payment of the said several sums hath elapsed, but the said A. B. hath not paid the

(a) See *Reg v. Saunders, ante*, p. 68.

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O. 1.

same or any part thereof, but therein hath made default: These are therefore to command you the said constable of _____, to take the said *A. B.*, and him safely to convey to the [house of correction] at _____ aforesaid, and there to deliver him to the keeper thereof together with this precept; and I do hereby command you the said keeper of the said [house of correction] to receive the said *A. B.* into your custody in the said [house of correction], there to imprison him [and keep him to hard labour] for the space of _____, unless the said several sums [and the costs and charges of conveying him to the said [house of correction] amounting to the further sum of _____] shall be sooner paid; and for your so doing this shall be your sufficient warrant.

Given under my hand and seal, this _____ day of _____, in the year of our Lord _____, at _____, in the [county] aforesaid. J. S. (L.S.)

(O. 2.)

Warrant of Commitment on an Order in the first instance.

To the constable of _____, and to the keeper of the [house of correction] at _____, in the said [county] of _____.

Whereas on _____ last past complaint was made before the undersigned, [one] of Her Majesty's justices of the peace in and for the said county of _____, for that [&c., as in the order], and afterwards, to wit, on _____, at _____, the parties appeared before [me] the said justice [or as it may be in the order], and thereupon having considered the matter of the said complaint I adjudged the said *A. B.* to pay to the said *C. D.* the sum of _____, on or before the _____ day of _____ then next, and also to pay to the said *C. D.* the sum of _____, for his costs in that behalf; and I also thereby adjudged that if the said several sums should not be

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O. 2.

paid on or before the day of then next, the said *A. B.* should be imprisoned in the *house of correction* at , in the said county [*and there kept to hard labour*] for the space of , unless the said several sums [*and the costs and charges of conveying the said A. B. to the said house of correction*] should be sooner paid: And whereas the time in and by the said order appointed for the payment of the said several sums of money hath elapsed, but the said *A. B.* hath not paid the same or any part thereof, but therein hath made default: These are therefore to command you the said constable of , to take the said *A. B.*, and him safely convey to the said *house of correction* at aforesaid, and there to deliver him to the keeper thereof, together with this precept; and I do hereby command you the said keeper of the said *house of correction* to receive the said *A. B.* into your custody in the said *house of correction*, there to imprison him [*and keep him to hard labour*] for the space of , unless the said several sums [*and the costs and charges of conveying him to the said house of correction, amounting to the further sum of*] shall be sooner paid unto you the said keeper; and for your so doing this shall be your sufficient warrant.

Given under my hand and seal, this day of , in the year of our Lord , at in the [county] aforesaid. J. S. (L.S.)

(P. 1.)

Warrant of Commitment on a Conviction where the Punishment is by Imprisonment.

To the constable of , and to the keeper of the [*house of correction*] at , in the said [county] of .

Whereas *A. B.*, late of [*labourer*], was this day duly convicted before the undersigned, [*one*] of Her Majesty's justices of the peace in and for the

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said [county] of _____, for that [stating the offence as in the conviction], and it was thereby adjudged that the said *A. B.* for the said offence should be imprisoned in the *house of correction* at _____ in the said county [and there kept to hard labour] for the space of _____: These are therefore to command you the said constable of _____, to take the said *A. B.*, and him safely convey to the *house of correction* at _____ aforesaid, and there to deliver him to the keeper thereof, together with this precept; and I do here command you the said keeper of the said *house of correction* to receive the said *A. B.* into your custody in the said *house of correction*, there to imprison him [and keep him to hard labour] for the space of _____; and for your so doing this shall be your sufficient warrant.

Given under my hand and seal, this _____ day of _____, in the year of our Lord _____, at _____, in the [county] aforesaid. J. S. (L.S.)

(P. 2.)

Warrant of Commitment on an Order where the disobeying of it is punishable by Imprisonment.

To the constable of _____, and to the keeper of the [house of correction] at _____ in the said [county] of _____.

Whereas on _____ last past complaint was made before the undersigned [one] of Her Majesty's justices of the peace in and for the said county of _____, for that [etc., as in the order] and afterwards, to wit, on _____, at _____, the said parties appeared before me [or as it may be in the order], and thereupon having considered the matter of the said complaint I adjudge the said *A. B.* to [etc., as in the order] and that if, upon a copy of the minute of that order being duly served upon the said *A. B.*, either personally or by leaving the same for him at

his last or most usual place of abode, he should neglect or refuse to obey the same, it was adjudged that in such case the said *A. B.* for such disobedience should be imprisoned in the [house of correction] at _____, in the said county, [and there kept to hard labour] for the space of _____ [unless the said order should be sooner 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 hath not as yet obeyed the said order: These are therefore to command you the said constable of _____ to take the said *A. B.* and him safely to convey to the [house of correction], at _____ aforesaid and there to deliver him to the keeper thereof, together with this precept; and I do hereby command you, the said keeper of the said [house of correction] to receive the said *A. B.* into your custody in the said [house of correction], there to imprison him [and keep him to hard labour] for the space of _____, and for so doing this shall be your sufficient warrant.

Given under my hand and seal, this _____ day of _____, in the year of our Lord _____, at _____, in the [county] aforesaid. J. S. (L.S.)

(P. 3.)

Warrant of Distress for Costs upon a Conviction where the Offence is punishable by Imprisonment.

To the constable of _____, and to all other peace officers in the said [county] of _____.

Whereas *A. B.*, of _____ [labourer], was on last past duly convicted before the undersigned [one] of Her Majesty's justices of the peace in and

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for the said county, for that [*stating the offence as in the conviction*], and it was thereby adjudged that the said *A. B.* for his said offence should be imprisoned in the [*house of correction*] at in the said county [*and there kept to hard labour*] for the space of ; and it was also thereby adjudged that the said *A. B.* should pay to the said *C. D.* the sum of for his costs in that behalf; and it was thereby ordered that if the said sum of for costs should not be paid [*forthwith*] the same should be levied by distress and sale of the goods and chattels of the said *A. B.*; and it was adjudged that in default of sufficient distress in that behalf the said *A. B.* should be imprisoned in the said [*house of correction*] [*and there kept to hard labour*] for the space 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 distress, and of the commitment and conveying of the said *A. B.* to the said [*house of correction*], should be sooner paid: And whereas the said *A. B.*, being so convicted as aforesaid, and being required to pay the said sum of for costs, hath not paid the same or any part thereof, but therein hath made default: These are therefore to command you, in Her Majesty's name, forthwith to make distress of the goods and chattels of the said *A. B.*, and if within the space of days next after the making of such distress, the said last-mentioned sum, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distressed, and do pay the money arising from such sale to , the clerk of the justices of the peace for the division of in the said [*county*], that he may pay the same as by law directed, and may render the surplus (if any), on demand, to the said *A. B.*, and if no such distress can be found, then that you certify the same unto me, to the end that

such proceedings may be had therein as to the law doth appertain. Sched.
P. 3.

Given under my hand and seal, this _____ day of _____, in the year of our Lord _____, at _____, in the [county] aforesaid. J. S. (L.S.)

(P. 4.)

Warrant of distress for Costs upon an Order where the disobeying of the Order is punishable with Imprisonment.

To the constable of _____ and to all other peace officers in the said [county] of _____.

Whereas on _____ last past complaint was made before the undersigned, [one] of Her Majesty's justices of the peace in and for the said county of _____, for that [&c., as in the order], and afterwards, to wit, on _____, at _____, the said parties appeared before me, as such justice as aforesaid [or as it may be in the order] and thereupon having considered the matter of the said complaint, I adjudged the said A. B. to [&c., as in the order]; and that if upon a copy of the minute of that order being served upon the said A. B. either personally or by leaving the same for him at his last or most usual abode, he should neglect or refuse to obey the same, I adjudged that in such case the said A. B. for such his disobedience should be imprisoned in the [house of correction] at _____, in the said [county] [and there kept to hard labour] for the space of _____ [unless the said order should be sooner obeyed]; and I thereby also adjudged the said A. B. to pay to the said C. D. the sum of _____ for his costs in that behalf; and I ordered that if the said sum for costs should not be paid [forthwith] the same should be levied of the goods and chattels of the said A. B.; [and in default of sufficient distress in that behalf I thereby adjudged that the

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P. 4.

said *A. B.* should be imprisoned in the said [*house of correction*] [*and there kept to hard labour*] for the space 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 distress, and of the commitment and conveying of the said *A. B.* to the said [*house of correction*], should be sooner paid]: And whereas after the making of the said order a copy of the minute thereof was duly served upon the said *A. B.* but the said *A. B.* did not then pay, nor hath he paid the sum of _____ for costs, or any part thereof, but therein hath made default: These are therefore to command you, in Her Majesty's name, forthwith to make distress of the goods and chattels of the said *A. B.*, and if within the space of _____ days next after the making of such distress the said last-mentioned sum together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and do pay the money arising from such sale to _____, the clerk of the justices of the peace for the division of _____, in the said [*county*], that he may pay the same as by law directed, and may render the overplus, if any, on demand, to the said *A. B.*, and if no such distress can be found, then that you certify the same unto me, to the end that such proceedings may be had therein as to the law doth appertain.

Given under my hand and seal, this _____ day of _____, in the year of our Lord _____, at _____ in the [*county*] aforesaid.

J. S. (L.S.)

(P. 5.)

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P. 5.
—*Warrant of Commitment for Want of Distress in
either of the last two Cases.*

To the constable of _____, and to the keeper of
the [house of correction] at _____, in the said
[county] of _____.

Whereas [&c., as in the last two forms respectively,
to the asterisk (*) and then thus]: And whereas
afterwards, on the _____ day of _____ in the year
aforesaid, I, the said J. S., issued a warrant to the
constable of _____, commanding him to levy the
said sum of _____ for costs, by distress and sale of
the goods and chattels of the said A. B.: And
whereas it appears to me, as well by the return of
the said constable to the said warrant of distress as
otherwise, that the said constable hath made diligent
search for the goods and chattels of the said A. B.,
but that no sufficient distress whereon to levy the
sum above mentioned could be found: These are
therefore to command you the said constable of
_____, to take the said A. B., and him safely to
convey to the [house of correction] at _____ afore-
said, and there deliver him to the keeper thereof,
together with this precept: And I do hereby com-
mand you, the said keeper of the said [house of
correction] to receive the said A. B. into your cus-
tody in the said [house of correction], there to im-
prison him [and keep him to hard labour] for the
space of _____, unless the said sum, and all costs
and charges of the said distress, [and of the commit-
ment and conveying of the said A. B. to the house of
correction,] amounting to the further sum of _____,
shall be sooner paid unto you the said keeper, and
for your so doing this shall be your sufficient
warrant.

Given under my hand and seal, this _____ day of
_____ in the year of our Lord _____, at _____, in
the [county] aforesaid. J. S. (L.S.)

Sched.
Q. 1.

(Q. 1.)

*Warrant of Distress for Costs upon an Order for
Dismissal of an Information or Complaint.*

To the constable of _____, and to all other
peace officers in the said [county] of _____.

Whereas on _____ last past information was laid
[or complaint was made] before the undersigned,
[one] of Her Majesty's justices of the peace in and
for the said [county], for that [&c., as in the order of
dismissal]; and afterwards, to wit, on _____, at
_____, both parties appearing before me in order
that I should hear and determine the same, and the
several proofs adduced to me in that behalf being
by me duly heard and considered, and it manifestly
appearing to me that the said information [or com-
plaint] was not proved, I therefore dismissed the
same, and adjudged that the said *C. D.* should pay
to the said *A. B.* the sum of _____ for his costs in-
curred by him in his defence in that behalf; and I
ordered that if the said sum for costs should not be
paid [forthwith] the same should be levied of the
goods and chattels of the said *C. D.*; [and I ad-
judged that in default of sufficient distress in that
behalf the said *C. D.* should be imprisoned in the
[house of correction] at _____ in the said county,
[and there kept to hard labour], for the space of
_____, unless the said sum for costs, and all costs
and charges of the said distress, and of the com-
mitment and conveying of the said *C. D.* to the said
[house of correction,] should be sooner paid] (*):
And whereas the said *C. D.*, being now required to
pay unto the said *A. B.* the said sum for costs, hath
not paid the same or any part thereof, but therein
hath made default: These are therefore to command
you, in Her Majesty's name, forthwith to make
distress of the goods and chattels of the said *C. D.* ;

and if, within the space of _____ days next after the making of such distress, the said last-mentioned sum, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and do pay the money arising from such sale to _____, the clerk of the justices of the peace for the division of _____ in the said [county], that he may pay and apply the same as by law directed, and may render the overplus (if any), on demand, to the said C. D., and if no such distress can be found, then that you certify the same unto me, to the end that such proceedings may be had therein as to the law doth appertain.

Sched.
Q. 1.

Given under my hand and seal, this _____ day of _____ in the year of our Lord _____, in the [county] aforesaid. J. S. (L.S.)

(Q. 2.)

Warrant of Commitment for Want of Distress in the last Case.

To the constable of _____, and to the keeper of the [house of correction] at _____, in the said [county] of _____.

Whereas [*&c.*, as in the last form to the asterisk (*), and then thus]: And whereas afterwards, on the day of _____, in the year aforesaid, I, the said justice, issued a warrant to the constable of _____, commanding him to levy the said sum of _____, for costs, by distress and sale of the goods and chattels of the said C. D.: And whereas it appears to me as well by the return of the said constable to the said warrant of distress as otherwise, that the said constable hath made diligent search for the goods and chattels of the said C. D., but that no sufficient distress whereon to levy the sum above

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Q. 2.

mentioned could be found : These are therefore to command you, the said constable of _____, to take the said *C. D.*, and him safely convey to the [house of correction] at _____ aforesaid, and there deliver him to the said keeper thereof, together with this precept ; and I do hereby command you the said keeper of the said [house of correction] to receive the said *C. D.* into your custody in the said [house of correction], there to imprison him [and keep him to hard labour] for the space of _____, unless the said sum, and all costs and charges of the said distress [and of the commitment and conveying of the said *C. D.* to the said house of correction], amounting to the further sum of _____, shall be sooner paid unto you the said keeper, and for your so doing this shall be your sufficient warrant.

Given under my hand and seal, this _____ day of _____, in the year of our Lord _____, at _____ in the [county] aforesaid. J. S. (L.S.)

(R.)

Certificate of Clerk of the Peace that the Costs of an Appeal are not paid.

Office of the clerk of the peace for the [county] of _____.

(Title of the Appeal.)

I hereby certify that at a court of general quarter sessions of the peace holden at _____, in and for the said [county], on _____ last past, an appeal by *A. B.* against a conviction [or order] of *J. S.*, esquire, one of Her Majesty's justices of the peace for the said [county], came on to be tried, and was then heard and determined, and the said court of general quarter sessions thereupon ordered that the said conviction [or order] should be confirmed [or quashed], and that the said [appellant] should pay to the said [respondent] the sum of _____, for his

costs incurred by him in the said appeal, and which sum was thereby ordered to be paid to the clerk of the peace of the said county on or before the day of _____, instant, to be by him handed over to the said [*respondent*]; and I further certify that the said sum for costs has not, nor has any part thereof, been paid in obedience to the said order.
Dated the _____ day of _____ 186 .

Sched.
B.
—

G. H.

[*Deputy*] clerk of the peace.

(S. 1.)

*Warrant of Distress for Costs of an Appeal against a Conviction or Order.**

(S. 2.)

*Warrant of Commitment for want of Distress in the last Case.**

* See rule 30 annulling these two forms, *post*.

Sched.
I.

(T.)
Account of Clerk of the Justices at Petty Sessions, and of the Keeper of the Gaol or House of Correction.

MONTHLY RETURN to Her Majesty's Justices of the Peace at the Petty Sessions of the Peace for the Division of in the County of assembled on the day of 1849, of fines, penalties, and sums of money received by the Clerk of the said Court [or by the Keeper of the Gaol or House of Correction at], and how applied, from the day of 18 to the day of 18 .

Name of Party convicted.	Date.	Offence.	Cost.	Amount thereof paid.	Fine.	Amount thereof paid.	Amount of Fine received for County Rate.	Amount of Fine otherwise applied.	Punishment when Fine not paid.	Names of convicting Magistrates.	Reasons of Non-payment or other Observations.

(Signed) _____
Clerk to the said Court, or Keeper of the above Gaol or House of Correction.

PROTECTION OF JUSTICES ACT, 1848.

11 & 12 VICT. CAP. 44.

An Act to protect Justices of the Peace from vexatious Actions for Acts done by them in execution of their Office.
[14th August, 1848.]

WHEREAS it is expedient to protect justices of the peace in the execution of their duty :

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, that every action hereafter to be brought against any justice of the peace for any act done by him in the execution of his duty as such justice with respect to any matter within his jurisdiction as such justice, shall be an action on the case as for a tort; and in the declaration it shall be expressly alleged that such act was done maliciously, and without reasonable and probable cause; and if at the trial of any such action, upon the general issue being pleaded, the plaintiff shall fail to prove such allegation, he shall be non-suit, or a verdict shall be given for the defendant.

Preamble.

For an act by a justice of peace within his jurisdiction, the action shall be on the case, and it shall be alleged to have been done maliciously, and without probable cause.

**Note to
Sect. 1.**

—
Responsi-
bility of
justice.

The remedy provided by this statute for a wrong committed by a justice upon an individual is quite distinct from the proceedings against a justice for impeding the course of justice. A magistrate is properly answerable to a criminal charge for misconduct in his office, though in such misconduct he may not be actuated by any motive of pecuniary interest, and though he may not mean maliciously to injure any individual. If he gives way to passion, or if in doing anything connected with the administration of justice he is guilty of any impropriety of demeanour so as to affect the due discharge of his duties, the Court of Queen's Bench may direct that his conduct be laid before a jury. Mere errors of judgment will not, however, afford a ground for a criminal information against a magistrate.

This section has been held to protect a justice from liability to an action of trespass for an arrest under a warrant under section 3 of 7 & 8 Vict. c. 101, to bring the putative father of an illegitimate child before two justices for the purpose of enforcing an order in bastardy confirmed on appeal subject to a special case, when the warrant was issued two days after the hearing of the appeal. *Kendal v. Wilkinson*, 4 El. & B. 680; 24 L. J. R. (N.S.) M. C. 89; 19 J. P. 467, for according to the laws of this country an appeal is no stay of execution without a special order for that purpose. *Hope v. Hope*, 23 L. J. R. (N.S.) Ch. 682.

It has also been held that under this section trespass *vi et armis* will not lie against a justice for committing a person to prison in default of finding sureties to keep the peace. *Haylock v. Sparke*, 4 E. & B. 471; 17 J. P. 272. Neither will an action lie for refusing to take bail on a charge of misdemeanour without proof of malice, as a justice's duty in this respect is not merely ministerial. *Lingford v. Fitzroy*, 13 Q. B. 240; 13 J. P. 474. See note to 11 & 12 Vict. c. 42, s. 23. A person was convicted in a penalty of £2 and costs, and in default of payment, two months' imprisonment. He gave notice of appeal, and left the court. A conviction and warrant were afterwards drawn up and signed by the magistrates, in which blanks were left for the amount of the costs. The costs having been ascertained by the clerk to the magistrates and inserted by him, the warrant was issued. The person convicted then, for the first time, became informed of the amount of the costs. In an action of trespass against the magistrates for false imprisonment, it was held that the signing the conviction and warrant in blank was an irregularity, not an excess of jurisdiction, and therefore the plaintiff was rightly non-suited under 11 & 12 Vict. c. 44, s. 1; *Bott v. Ackroyd*, 5 Jur. (N.S.) 1053; 28 L. J. (N.S.) M. C. 207; 23 J. P. 661.

In the following case it was held, that though the conduct of a justice of the peace had been irregular and injudicious, still there was no sufficient evidence of corruption to induce the court to grant a rule for a criminal information against him. Seven artizans who left their master's employment without notice one morning were the same afternoon apprehended under a warrant, handcuffed, and imprisoned till next morning at seven o'clock, when they were taken before the justice, who refused their request to postpone the hearing till they procured legal assistance, and who heard all the cases in a lump, without taking each separately, and awarded to each the punishment of forfeiture of one day's wages. *Ex parte Higgins; Reg. v. Lipscombe*, 25 J. P. 726.

A declaration against justices, where it sufficiently appeared that they had acted without jurisdiction, was held to be good, although it contained no allegation that they had acted maliciously, and without reasonable and probable cause. *Pease v. Chaytor*, 31 L. J. M. C. 1; 27 J. P. 309; 8 Jur. (N.S.) 482; 1 B. & S. 658; 5 L. T. (N.S.) 280.

But justices are not liable to an action for damages if they honestly, though erroneously, decide that an objection to the validity of a church rate made at the hearing of a complaint for non-payment of arrears is not made *bonâ fide*, and proceed to adjudicate, and issue their warrant to enforce payment. *Ibid.*, 8 L. T. (N.S.) 613.

In the following case a justice of the peace was held to have acted without jurisdiction, and to be liable to an action, and not protected by 11 & 12 Vict. c. 44, s. 1. The 7 & 8 Geo. 4, c. 108, s. 13, empowers certain persons to make a rate upon the owners of Stratford Abbey Lands, and section 15 empowers a justice, on proof of demand and refusal to pay, to enforce payment by distress warrant; section 16 requires the warrant to be directed to the collector; section 36 gives power of appeal against the rate to any person claiming exemption on the grounds that the lands rated are not Abbey Lands; and by section 42, the decision of quarter sessions on appeal is final. The plaintiff, having been rated and refused to pay, D., a justice, issued a distress warrant directed to S., the collector, who executed it. The plaintiff sued D. and S. in trespass, and the jury found that the land in respect of which the rate was made was not Abbey Land. The court held, first, that the plaintiff was not bound to appeal to the sessions, but might try the validity of the rate by an action of trespass; second, that D. had acted without jurisdiction, and was liable to such action, and not protected by 11 & 12 Vict. c. 44; and third, that S. being the person to whom the warrant was directed, and who was required to execute it, was an officer of the law, and protected by 24

Note to Sect. 1.

Responsibility of justice.

Note to Sect. 1. Geo. 2, c. 44, s. 6. *Pedley v. Davis and Shipston*, 30 L. J. C. P. 374; 8 Jur. (N.S.) 263; 26 J. P. 343; 10 C. B. (N.S.) 492.

Actions
against
constables.

By 24 Geo. 2, c. 44, s. 6, no action shall be brought against any constable, headborough, or other officer, or against any person or persons acting by his order and in his aid, for anything done in obedience to any warrant under the hand or seal of any justice of the peace, until demand hath been made or left at the usual place of his abode, by the party or parties intending to bring such action, or by his, her, or their attorney or agent in writing, signed by the party demanding the same, of the perusal and copy of such warrant, and the same hath been refused or neglected for the space of six days after such demand; and in case, after such demand and compliance therewith, by showing the said warrant to, and permitting a copy to be taken thereof by the party demanding the same, any action shall be brought against such constable, headborough, or other officer, or against such person or persons acting in his aid for any such cause as aforesaid without making the justice or justices who signed or sealed the said warrant, defendant or defendants, that on producing and proving such warrant at the trial of such action, the jury shall give their verdict for the defendant or defendants notwithstanding any defect of jurisdiction in such justice or justices; and if such action be brought jointly against such justice or justices, and also against such constable, headborough, or other officer or person or persons acting in his or their aid as aforesaid, then on proof of such warrant, the jury shall find for such constable, headborough, or other officer, or for such person and persons so acting as aforesaid, notwithstanding such defect of jurisdiction as aforesaid; and if the verdict be given against the justice or justices, that in such case the plaintiff shall recover his, her, or their costs against him or them, to be taxed in such manner by the proper officer, as to include such costs as such plaintiff or plaintiffs are liable to pay to such defendant or defendants for whom such verdict shall be found as aforesaid.

By section 8, actions against any constable, headborough, &c., must be commenced within six calendar months after the act committed.

For an act done by him, without or exceeding his jurisdiction, action may

2. And be it enacted, that for any act done by a justice of the peace in a matter of which by law he has not jurisdiction, or in which he shall have exceeded his jurisdiction, any person injured thereby,

or by any act done under any conviction or order made or warrant issued by such justice in any such matter, may maintain an action against such justice in the same form and in the same case as he might have done before the passing of this Act, without making any allegation in his declaration that the act complained of was done maliciously and without reasonable and probable cause: Provided nevertheless, that no such action shall be brought for anything done under such conviction or order until after such conviction shall have been quashed, either upon appeal or upon application to Her Majesty's Court of Queen's Bench; nor shall any such action be brought for anything done under any such warrant which shall have been issued by such justice to procure the appearance of such party, and which shall have been followed by a conviction or order in the same matter, until after such conviction or order shall have been so quashed as aforesaid; or if such last-mentioned warrant shall not have been followed by any such conviction or order, or if it be a warrant upon an information for an alleged indictable offence, nevertheless if a summons were issued previously to such warrant, and such summons were served upon such person, either personally or by leaving the same for him with some person at his last or most usual place of abode, and he did not appear according to the exigency of such summons, in such case no such action shall be maintained against such justice for anything done under such warrant.

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lie; without such allegation;

but not for an act done under a conviction, or order, until they have been quashed.

Not for an act done under a warrant to compel appearance, if a summons were previously served and not obeyed.

This and section 1 must be read together; and it applies only to those cases where the act in respect of which the action is brought against the justice, is in itself an excess of jurisdiction. Therefore where a justice convicted the plain- Justices acting in excess of jurisdiction.

**Note to
Sect. 2.**

tiff in a penalty, and adjudged that it should be levied by distress and sale, but exceeded his jurisdiction in ordering the plaintiff in default of payment to be set in the stocks, which, however, was not done, but the penalty was levied by distress, it was held that an action of trespass for seizing the goods under the distress was not within this section, and was not maintainable by reason of section 1. *Barton v. Bricknell*, 13 Q. B. 393; 15 Jur. 668; 20 L. J. R. (N.S.) M. C. 1; 15 J. P. 82. As to the liability of justices to an action in trespass for acting without jurisdiction, see *Newbould v. Coultsman and another*, 20 L. J. (N.S.) M. C. 149; 15 J. P. 372. Per *Jervis, C. J.*, "exceeding his jurisdiction" means assuming to do something which the Act under which the justice is proceeding could by no possibility justify, as in the case of *Leary v. Patrick and another*, 19 L. J. R. (N.S.) M. C. 211; 15 Q. B. 266; 4 N. S. C. 258; 14 Jur. 932; 14 J. P. 575, where there could have been no authority to issue a distress for costs not adjudged by a conviction. In that case it was held that where there is an excess of jurisdiction by justices, an action of trespass may be maintained against them under this section. The section has been held not to apply to a default in non-appearance to a summons for payment of penalties after conviction (*Bessell v. Wilson*, 1 L. & B. 489; 22 L. J. R. (N.S.) M. C. 94; 17 J. P. 567); and it was also held in the same case that the appearance of the defendant by counsel and attorney, assuming the section to apply to a summons after conviction, was a sufficient appearance. As already observed, an action cannot, without proof of malice, be maintained against a justice for refusing to admit to bail a person charged with a misdemeanor and entitled to bail, for the duty of a magistrate in respect of admitting to bail is judicial. *Linford v. Fitzroy*, 18 L. J. R. (N.S.) M. C. 108; 3 N. S. C. 438; 13 Jur. 303; 13 J. P. 474. In *Gelen v. Hall*, 27 L. J. (N.S.) M. C. 78; 21 J. P. 710, a question arose as to whether an action is maintainable against a justice of the peace for wilfully and maliciously, and without reasonable and probable cause, convicting a person in a penalty in a matter in which the justice had jurisdiction, and in which the penalty was paid, but the conviction had been subsequently quashed. The point was, however, not decided. In the following case the justices were held not to be liable to an action for making an order for payment of church rates, which was afterwards quashed and costs thereby incurred by the ratepayer. Upon a summons for non-payment of church rates, the ratepayers set up a demand by the collector for the rate, and a refusal by himself to pay it, more than six months before the application for the summons, in order to oust the jurisdiction of the justices

under 11 & 12 Vict. c. 43, s. 11; on which the other side proved a second demand and refusal within the six months; whereupon the justices made an order for payment, under 53 Geo. 3, c. 127. This order having been removed, was quashed, on the ground that the cause of complaint was complete on the first demand and refusal. In the course of the argument, *Hill, J.*, said that the justices merely gave a wrong decision in the course of exercising their jurisdiction; if the plaintiff were right, then an action will lie in every case where a conviction is quashed for the costs of getting it quashed. The true rule, he added, was laid down in *Barton v. Bricknell, supra*; and unless malice can be shown, the action cannot be maintained. *Somerville v. Mirehouse*, 3 L. T. (N.S.) 294; 25 J. P. 21; 1 B. & S. 652.

Note to
Sect. 2.

3. And be it enacted, that where a conviction or order shall be made by one or more justice or justices of the peace, and a warrant of distress or of commitment shall be granted thereon by some other justice of the peace *bonâ fide* and without collusion, no action shall be brought against the justice who so granted such warrant by reason of any defect in such conviction or order, or for any want of jurisdiction in the justice or justices who made the same, but the action (if any) shall be brought against the justice or justices who made such conviction or order.

If one justice make a conviction, &c., and grant another warrant, action must be brought against the former.

This section prevents a justice from being made liable for the acts of another, and confines his liability to his own acts only.

4. And be it enacted, that where any poor rate shall be made, allowed, and published, and a warrant of distress shall issue against any person named and rated therein, no action shall be brought against the justice or justices who shall have granted such warrant, by reason of any irregularity or defect in the said rate, or by reason of such person not being

No action for issuing distress warrant irregularly.

No action against justices

Sect. 4. liable to be rated therein; and that in all cases where a discretionary power shall be given to a justice of the peace by any Act or Acts of parliament, no action shall be brought against such justice for or by reason of the manner in which he shall have exercised his discretion in the execution of any such power.

in the exercise of discretionary power.

Area of jurisdiction of justices.

In a case where the justices refused to issue a distress warrant to enforce a poor rate, the objection to the rate being that the house rated was not within the bounds of the particular parish, although they were shown this proviso, which protected them from any liability in issuing their warrant, the court granted a rule nisi in the alternative for a *mandamus* to issue, or a rule under the fifth section (*Reg. v. JJ. of Great Yarmouth*, 4 N. S. C. 313; 14 J. P. 320), but it was afterwards discharged with costs (14 J. P. 320, 769), *Patteson, J.*, saying (referring to *Weaver v. Price*, 3 B. & A. 409), that the section will not protect the justice where the land is not in the parish.

If a justice refuse to do an act, the Court of Queen's Bench may by rule order him to do it, and no action shall be brought against him for doing it.

5. And whereas it would conduce to the advancement of justice and render more effective and certain the performance of the duties of justices, and give them protection in the performance of the same, if some simple means not attended with much expense were devised by which the legality of any act to be done by such justices might be considered and adjudged by a court of competent jurisdiction, and such justices enabled and directed to perform it without risk of any action or other proceeding being brought or had against him: Be it therefore enacted, that in all cases where a justice or justices of the peace shall refuse to do any act relating to the duties of his or their office as such justice or justices, it shall be lawful for the party requiring such act to be done to apply to Her Majesty's Court of Queen's Bench, upon an affidavit of the facts, for a rule

calling upon such justice or justices, and also the party to be affected by such act, to show cause why such act should not be done; and if after due service of such rule good cause shall not be shown against it, the said court may make the same absolute, with or without or upon payment of costs, as to them shall seem meet; and the said justice or justices upon being served with such rule absolute shall obey the same, and shall do the act required; and no action or proceeding whatsoever shall be commenced or prosecuted against such justice or justices for having obeyed such rule, and done such act so thereby required as aforesaid.

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It will not in all cases be the most expedient course to proceed under section 5 of 11 & 12 Vict. c. 44, when a question arises as to the justices' jurisdiction. The 20 & 21 Vict. c. 43, has provided a new means whereby the opinion of a superior court can be obtained on a point of law arising before the justices at petty sessions. Where a rule had been moved for under 11 & 12 Vict. c. 44, s. 5, calling upon the justices to show cause why they should not issue their distress warrant for levying a rate, or why they should not state a case under 20 & 21 Vict. c. 43, Lord Campbell, C. J., said that a *special case will be much more convenient. Luton Local Board of Health, app., Davis, resp.*, 6 Jur. (N.S.), 581 n; 24 J. P. 677; but see the note on 29 L. J. M. C. p. 175. The court will not under this provision, grant a rule merely to put the justices in motion. In *Reg. v. Kesteven JJ.*, 13 L. J. B. (N.S.) M. C. 78; 8 J. P. 629, Lord Denman, C. J., said that it must be taken to be generally known that the Court of Queen's Bench will not entertain a case in such a state of it as that their decision may merely operate to put the court below in motion; and that the court is first to decide upon the case in one way or another; upon that adjudication the court above is willing to say which way, upon the whole matter, the final decision should be.

The issue of distress warrants for non-payment of rates is a ministerial and not a judicial act, and if the justices refuse to issue the warrant, application for a rule is properly made under 11 & 12 Vict. c. 44, s. 5. *Reg. v. Marsham*, 50 L. T. (S.S.) 142.

Rule to
Justices.

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Rule to
justices.

Where justices refused to hear a summons against a person for having a board over his door, stating that he was licensed to retail beer, &c., he not being so licensed, contrary to 35 & 36 Vict. c. 74, s. 11, the court refused a rule against the justices under 11 & 12 Vict. c. 44, but granted rule for *mandamus*. It is only where justices would need protection if they proceeded to do any act relating to the duties of their office, that a rule, calling on them to show cause why such act should not be done, can be granted. *Reg. v. Percy*, L. R. 9 Q. B. 64; 43 L. J. M. C. 45; S. C. *Reg. v. Cumberland JJ.*, 38 J. P. 422. See also 48 J. P. 164, as to the preferable mode of procedure when justices' jurisdiction is ousted by a claim of right.

Where justices have convicted of penalties on matters within their jurisdiction, and the convictions are regular in form, and there is no legal reason shown why the parties convicted have not paid the penalties, the court will feel bound to grant a rule under 11 & 12 Vict. c. 44, s. 5, to the justices to issue warrants to levy the amounts, and have no jurisdiction to refuse to do so on the ground of some supposed hardship in the number of the convictions, or the amount of the costs. *In re Hartley*, 31 L. J. M. C. 232; 26 J. P. 438.

It should be borne in mind that this enactment protects the justices only, and not the parties, if the warrant cannot be supported, and that under this section the court may issue process to the justices, even where the law is not quite clear; and the person to be affected by the act commanded may try the question by resisting the order of justices. Per *Cole-ridge, J.*, in *Reg. v. Cotton*, 15 A. & E. 574.

The Court of Queen's Bench will inquire into the validity of an order of justices before compelling them under this section to issue a distress warrant to enforce such order, and will refuse a rule for that purpose where the order appears to be invalid. *Reg. v. Collins and another, JJ. of Durham*, 21 L. J. R. (N.S.) M. C. 73; 16 Jur. 422; 16 J. P. 230. Though it prescribes that if a justice shall refuse to do any act relating to his office he may be directed by rule of court to do it, the court is not authorized to order justices to draw up one joint conviction instead of two separate convictions against each of two persons against whom a joint information has been laid and determined by the justices. *In re Clee and Osborne*, 21 L. J. (N.S.) M. C. 112; 1 B. C. C. 31. Again, the court of Queen's Bench will not interfere under this section in a case where the jurisdiction in the particular matter is given to the justices, as in such a case the justices are at liberty to disregard the opinion of the court if they dissent from it. *Ex parte Board of Works, Westminster District*, 21 J. P. 133, and *Reg. v. Paynter*, 3 Jur. (N.S.) 511; 7 E. & B. 328;

26 L. J. R. (N.S.) M. C. 102; 21 J. P. 626. Neither will the court call upon a magistrate by rule under this section to hear and adjudicate upon a matter of fact affecting his jurisdiction. Per Lord *Campbell*, C. J., "the present mode of proceeding under the statute is merely a substitute for the old prerogative writ of *mandamus*, being a more speedy and economical remedy; but this remedy will only apply in cases where a *mandamus* would lie." *Reg. v. Dayman*, 29 L. T. 125; 21 J. P. 340; 26 L. J. R. (N.S.) M. C. 128; 3 Jur. (N.S.) 744; 7 El. & Bl. 672. And the same principle was upheld in *Reg. v. Brown and others, JJ. of Monmouth*, 3 Jur. (N.S.) 745; 21 J. P. 357; 26 L. J. R. (N.S.) M. C. 183; 29 L. T. 160, where upon an information against one of several owners of a mine under 18 & 19 Vict. c. 106, s. 4, after evidence had been taken in support of the complaint, it was objected that the information ought to have been laid against all the owners of the mine, and the justices, holding the objection good, thereupon dismissed the complaint; but the court held that the objection being untenable, and being a preliminary one in the nature of a plea in abatement, the justices had declined jurisdiction, and therefore the court made a rule absolute calling upon them under this section to hear and adjudicate upon the case. But by *Erle, J., dissenting*, as the magistrate's decision was upon a matter of fact, on which his jurisdiction depended, the court might properly review his decision, and if it should appear that he had erroneously decided on the point of jurisdiction, require him to hear and adjudicate upon the merits of the case. In a case where justices decided as follows:—"Upon a careful consideration of the evidence and the wording of the notice (which was dated the 10th February, 1858, and by an error referred to "the 23rd day of February next," instead of the 23rd day of February instant), the magistrates are of opinion that they are not in a position to order an assessment," in respect of damages under an inclosure Act, the court granted a rule commanding them to hear and decide the case:—Lord *Campbell*, C. J., saying, "they have decided that they are not in a position to decide. That seems to be quite consistent with their having heard and not decided. Their duty is to hear and decide." *Thorning v. Bennett*, 22 J. P. 399. In *Reg. v. Blanshard*, 18 L. J. (N.S.) M. C. 110; 13 J. P. 104, the court refused a *mandamus* to the justices to do an act, as it appeared that they had not declined to exercise their jurisdiction, but had entered upon the inquiry and decided, though erroneously. In *Reg. v. Bristol JJ.*, 18 Jur. 426, it was also held that this section does not give the court power to grant a rule calling upon the justices to show cause, where before the statute they could not issue a *mandamus*.

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Rule to
Justices.

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justices.

Where a person rated to a highway rate neglected to appeal against it in time, and upon being summoned to appear before a justice for not paying it, showed a seemingly good ground of exemption, and the justices thereupon refused to issue a distress warrant against him; upon an application for a rule that the justice should issue his warrant, the court held that the party was liable to the rate, as he had not appealed against it, and they therefore made the rule absolute commanding the justice to issue a distress warrant for its recovery. *Reg. v. Oxfordshire JJ.*, 18 L. J. R. (N.S.) M. C. 222; 6 Dowl. & L. 288; 14 Jur. 575; 13 J. P. 445. In *Reg. v. Shropshire JJ.*, 13 Q. B. 654, cited in *Reg. v. Oxfordshire*, J. P. 1849, p. 315, 3 N. S. C. 641, it was also held that a rule under 11 & 12 Vict. c. 44, is not the proper remedy to try the validity of an exemption from the highway rate, but in this case the time for appeal had not gone by. But the court will not in all cases interfere under the section. In cases of much complexity or difficulty, or where the question is of such importance that the parties ought to have their right of appealing to a higher tribunal, in case they should be dissatisfied with the decision of the Court of Queen's Bench, that court will not in general interfere, but will leave the party to his remedy by *mandamus*. The Court of Queen's Bench is bound to interfere in cases where justices refuse to issue a warrant which they ought to issue; and that court will enforce a rule against the justices in such a case though there may be no information before the court as to whether any, or what evidence was given before the justices at the hearing, or what the defence was. In such a case all that the court requires is that the facts of the case authorizing the issuing of the warrant, and that the justices refused to issue it. *Reg. v. Deverell*, 3 El. & Bl. 372; 23 L. J. R. (N.S.) M. C. 121. On motion against a justice under this enactment, as well as on motion for *mandamus*, the general rule is that the court will order the unsuccessful party to pay costs, and will not on the motion for costs enter into the merits of the original application. *Reg. v. Ingham*, 17 A. & E. 884. Further, with regard to proceedings under this section, see *Sparrow v. Impington*, 29 L. J. M. C. 176, n.

A party claiming an exemption from highway rates should appeal against the rate, and if he has allowed the time limited for appeal to expire, he cannot set up the claim to exemption as an answer to a rule under 11 & 12 Vict. c. 44, s. 5, calling upon the justices to issue a distress warrant. *Bletchington v. Peyton*, 6 Dowl. & L. 288.

A rate is void if made on a person in respect of land not in his occupation (*Milward v. Caffin*, 2 W. Bl. 1330), which is

an exception to the rule that a rate, good on the face of it and unappealed against, cannot be resisted. So where a statute says that a rate shall be void without certain previous ceremonies, it is the general rule that when it has been proved that these ceremonies have been gone through that is alone sufficient to show that the rate is not void.

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Rule to Justices.

On the hearing of a complaint for non-payment of a rate the justices are bound to issue their distress warrant, and have no power to state a case under 20 & 21 Vict. c. 43. The proper course is to appeal against the rate if it be objected to. *Reg. v. Newman and others, JJ. of Gloucestershire*, 29 L. J. M. C. 117. See also *Wheeler v. Brimington Overseers*, *post*; and *Sparrow v. Impington Overseers*, *post*.

Where no cause is shown against a rule under 11 & 12 Vict. c. 44, s. 5, the court will not make the rule absolute with costs unless asked for by the rule. *Leamington Priors v. Moultrie*, 7 Dowl. & L. 311.

The court will not give the respondent costs on dismissing an appeal against a decision of justices where the question is a fairly arguable one; neither will they listen to an application for that purpose in the term after the decision. *Coswell, app.*, *Cook, resp.*, 11 C. B. (N.S.) 242.

The following report is extracted from the *Times* newspaper of the 26th January, 1875.

IN THE MATTER OF THE GUARDIANS OF NEATH.

This was an application to this court, under Jervis' Act, for the assistance and protection of magistrates to exercise a "little gentle compulsion" upon them in a case in which they doubted their authority to act. The Act (11 & 12 Vict.) provides that, whereas it would conduce to the due administration of justice and facilitate the execution by justices of the duties of their office if protection was afforded to them, by providing some simple means of ascertaining the legality of any act they may be called upon to do, without exposing them to the risk of an action; that in all cases where justices refuse to do any act relating to the duties of their office they, or the party interested, may apply to this court for a rule calling upon them and on the opposite party to show cause why they should not do the act, and thereupon the court may direct them to do the act, for which they would then not be liable. In the present case the guardians had made an application for an order on a man for the maintenance of his wife. He denied the legality of his marriage to her, and the clerk of the magistrates advised them that if they made and en-

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forced the order they might be liable to an action, and thereupon they declined to make the order; and

Mr. *Giffard*, Q.C., on behalf of the guardians, made an application under Jervis' Act for a rule calling on the magistrates to show cause why they should not make the order; but, after some discussion,

The *Lord Chief Justice* said,—We should be setting a very bad precedent if we acceded to this application. No one in the position of a judge ought to shrink from the discharge of his duty—according to what he believes it to be his duty—from any fear of ulterior consequences to himself. And here the magistrates really do not want the protection of the court; for they will not be liable to any action merely for making the order of maintenance. It is only when the application is made to them to issue a warrant to enforce the order by distress that they can be under any liability to action of trespass supposing them to have had no jurisdiction; and then, that being a merely ministerial act, they may, having already exercised their judicial function, apply to us under Jervis' Act for protection. You are “leaping before you come to the stile.” The magistrates will be quite right in applying for the protection of the court under Jervis' Act in a case in which they are fairly entitled to it; but they must first exercise their judicial mind and duty in hearing and determining the application before them. And they may come to us for protection when they really want it; but here at present they do not want it, and are not entitled to it.

Mr. Justice *Mellor*.—I think they will not incur any risk in discharging that part of their duty which is involved in deciding on making the order for maintenance.

Mr. Justice *Lush*.—They will not be liable to any action for making that order.

Mr. *Giffard* said probably this intimation of the opinion of the court would be sufficient to satisfy the magistrates.

The *Lord Chief Justice*.—I should think so. There is really no necessity at present for such an application.

Accordingly, on the ground that the application was premature, it was dismissed.

After conviction or order confirmed on appeal, no action for anything done under a warrant upon it.

6. And be it enacted, that in all cases where a warrant of distress or warrant of commitment shall be granted by a justice of the peace upon any conviction or order which, either before or after the granting of such warrant, shall have been or shall be confirmed upon appeal, no action shall be brought

against such justice who so granted such warrant for anything which may have been done under the same by reason of any defect in such conviction or order. Sect. 6.

7. And be it enacted, that in all cases where by this Act it is enacted that no action shall be brought under particular circumstances, if any such action shall be brought it shall be lawful for a judge of the court in which the same shall be brought, upon application of the defendant, and upon an affidavit of facts, to set aside the proceedings in such action, with or without costs, as to him shall seem meet. If an action be brought where by this Act it is prohibited, a judge may set aside the proceedings.

8. And be it enacted, that no action shall be brought against any justice of the peace for anything done by him in the execution of his office, unless the same be commenced within six calendar months next after the act complained of shall have been committed. Limitation of action.

With reference to an action in respect of a matter done *in pursuance of an Act of parliament*, it may be useful to quote the language of *Bayley, J.*, in *Smith v. Shaw*, 10 B. & C. 284. According to the decision upon similar words, he said, a thing is to be considered as done *in pursuance* of the Act, when the person who does it is acting honestly and *bond fide*, either under the powers which the Act gives, or in discharge of the duties which it imposes. Though he may erroneously exceed the powers the Act gives, or inadequately discharge the duties, yet, if he acts *bond fide* in order to execute such powers or to discharge such duties, he is to be considered as acting in pursuance of the Act and is to be entitled to the protection conferred upon persons whilst so acting. This is established by *Gaby v. Wilts and Berks Canal Company*, 3 M. & S. 580. *Theobald v. Crickmore*, 1 B. & Ald. 227; *Parton v. Williams*, 3 B. & Ald. 330; and *Smith v. Willshire*, 2 Bro. & B. 619, and *Cook v. Leonard*, 6 B. & C. 351, establish the same point as to constables and other persons acting in obedience to a justice's warrant. How if justices act *bond fide*.

Sect. 9. **9.** And be it enacted, that no such action shall be commenced against any such justice of the peace until one calendar month at least after a notice in writing of such intended action shall have been delivered to him, or left for him at his usual place of abode, by the party intending to commence such action, or by his attorney or agent, in which said notice the cause of action, and the court in which the same is intended to be brought, shall be clearly and explicitly stated; and upon the back thereof shall be endorsed the name and place of abode of the party so intending to sue, and also the name and place of abode or of business of the said attorney or agent, if such notice have been served by such attorney or agent.

Notice of
action.

Under 24 Geo. 3, c. 44, s. 1, which enacts that no writ shall be sued out against a magistrate until a notice in writing shall have been delivered to him, "at least one calendar month before the issuing out" of the writ, the month is to be calculated exclusively of the day of the notice, and of the day of suing out the writ. *Young v. Higgon*, 9 L. J. (N.S.) M. C. 29; 4 J. P. 683, 699.

A notice of action served before the quashing of a warrant of commitment (see section 2, *supra*), in respect of which an action was brought against the justice granting it, is a sufficient notice under this section. *Haylock v. Sparke*, 1 El. & B. 471; 22 L. J. R. (N.S.) M. C. 67; 17 Jur. 731; 17 J. P. 262. In that case it was held that a justice has jurisdiction to require sureties for good behaviour in some cases of libel against private individuals; and therefore that he was not liable to an action for wrongfully doing so, as he had jurisdiction in the matter out of which the cause of action arose, and within the meaning of section 1 of 11 & 12 Vict. c. 44.

It has been held that a magistrate acting in the execution of his office is by this section entitled to notice of action, although he may have acted maliciously and without reasonable and probable cause. In such case the question whether he acted *bonâ fide*, or used his office colourably, does not arise. *Kirby v. Simpson*, 10 Exch. 358; 23 L. J. R. (N.S.) M. C.

155; 18 Jur. 983; 18 J. P. 696. But the notice of action should clearly and explicitly state a cause of action against the defendant under section 1 of the Act for maliciously doing an act in a matter over which he had jurisdiction. *Taylor v. Nesfield*, 3 El. & B. 724; 23 L. J. R. (N.S.) M. C. 169; 18 Jur. 747; 19 J. P. 663. In reference to that case, *Erle, J.*, said, "A justice is liable to be sued in two ways for acts done under his warrant: if he has acted without jurisdiction, he is liable to an action as for a trespass; if he has acted within his jurisdiction, he is also liable to an action, but in the latter instance it must be an action on the case, and must charge malice, and I think a notice of action in such a case must also charge malice." The notice of action will not be sufficient if it omit to state the place where the act complained of was done, and a tender of amends will not cure such a defect. *Mantins v. Upcher*, 11 L. J. R. (N.S.) Q. B. 291; 6 J. P. 474, which however, had reference to the 24 Geo. 2, c. 44. It has also been held that a justice of the peace who, upon his own view, seizes property as stolen, under circumstances which do not raise a reasonable ground of suspicion, is, under the 24 Geo. 2, c. 44, entitled to a notice of action at the suit of the person whose property is taken. *Wedge v. Berkeley*, 6 L. J. R. (N.S.) M. C. 86.

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Notice of action.

A notice of action to a magistrate indorsed by the attorney for the plaintiff was held not to be bad by reason of its being signed by the plaintiff, or of its being served, not by the attorney, but by his clerk. *Morgan v. Leach*, 12 L. J. M. C. 4; 7 J. P. 242.

A justice of the peace has no power to make an order for the examination of the person of a female committed for trial on the charge of concealing the birth of a child; and all persons concerned in making such an examination against the consent of the female are liable to an action of assault. Therefore, a justice of the peace having made such an order was held not entitled under 11 & 12 Vict. c. 44, s. 9, to notice of action although he may have acted *bonâ fide* in the belief that he had authority to make the order, there being nothing in fact on which he could ground such belief. *Agnew v. Jobson, McKay, Allan and Banks*, 42 J. P. 424.

10. And be it enacted, that in every such action the venue shall be laid in the county where the act complained of was committed, or in actions in the county court, the action must be brought in the court within the district of which the act complained

Venue.

Sect 10.

Defendant may plead the general issue, any special matter, &c., in evidence.

of was committed; and the defendant shall be allowed to plead the general issue therein, and to give any special matter of defence, excuse, or justification in evidence under such plea, at the trial of such action: Provided always, that no action shall be brought in any such county court against a justice of the peace for anything done by him in the execution of his office if such justice shall object thereto: and if within six days after being served with a summons in any such action such justice, or his attorney or agent, shall give a written notice to the plaintiff in such action that he objects to being sued in such county court for such cause of action, all proceedings afterwards had in such county court in any such action shall be null and void.

Venue.

Now by order xxxvi., rule 1, under the Judicature Act, 1875, 38 & 39 Vict. c. 77, there shall be no local venue for the trial of any action.

Certiorari.

It has been held that if a justice of the peace be sued in the county court for an act done in the execution of his office, and gives notice under this section that he objects to being sued there, the plaint cannot afterwards be removed by *certiorari*; for the words "all proceedings afterwards had in such county court in any such action shall be null and void," render everything done in the county court entirely nugatory, and place the matter in the same position as if the action had never been brought. *Western v. Sneyd*, 26 L. J. Exch. 161; 21 J. P. 198; 1 H. & N. 703.

Tender, and payment of money into court.

11. And be it enacted, that in every such case after notice of action shall be so given as aforesaid, and before such action shall be commenced, such justice to whom such notice shall be given may tender to the party complaining, or to his attorney or agent, such sum of money as he may think fit as amends for the injury complained of in such notice; and after such action shall have been com-

menced, and at any time before issue joined therein, such defendant, if he have not made such tender, or in addition to such tender, shall be at liberty to pay into court such sum of money as he may think fit, and which said tender and payment of money into court, or either of them, may afterwards be given in evidence by the defendant at the trial under the general issue aforesaid; and if the jury at the trial shall be of opinion that the plaintiff is not entitled to damages beyond the sum so tendered or paid into court, or beyond the sums so tendered or paid into court, then they shall give a verdict for the defendant, and the plaintiff shall not be at liberty to elect to be nonsuit, and the sum of money, if any, so paid into court, or so much thereof as shall be sufficient to pay or satisfy the defendant's costs in that behalf, shall thereupon be paid out of court to him, and the residue, if any, shall be paid to the plaintiff; or if, where money is so paid into court in any such action, the plaintiff shall elect to accept the same in satisfaction of his damages in the said action, he may obtain from any judge of the court in which such action shall be brought an order that such money shall be paid out of court to him, and that the defendant shall pay him his costs to be taxed, and thereupon the said action shall be determined, and such order shall be a bar to any other action for the same cause.

12. And be it enacted, that if at the trial of any such action the plaintiff shall not prove that such action was brought within the time hereinbefore limited in that behalf, or that such notice as aforesaid was given one calendar month before such

In what cases nonsuit, or verdict for defendant.

Sect. 12. action was commenced, or if he shall not prove the cause of action stated in such notice, or if he shall not prove that such cause of action arose in the county or place laid as venue in the margin of the declaration, or (when such plaintiff shall sue in the county court) within the district for which such court is holden, then and in every such case such plaintiff shall be nonsuit, or the jury shall give a verdict for the defendant.

Damages.

13. And be it enacted, that in all cases where the plaintiff in any such action shall be entitled to recover, and he shall prove the levying or payment of any penalty or sums of money under any conviction or orders as parcel of the damages he seeks to recover, or if he prove that he was imprisoned under such conviction or order, and shall seek to recover damages for any such imprisonment, he shall not be entitled to recover the amount of such penalty or sum so levied or paid, or any sum beyond the sum of two-pence as damages for such imprisonment, or any costs of suit whatsoever, if it shall be proved that he was actually guilty of the offence of which he was so convicted, or that he was liable by law to pay the sum he was so ordered to pay, and (with respect to such imprisonment) that he had undergone no greater punishment than that assigned by law for the offence of which he was so convicted, or for non-payment of the sum he was so ordered to pay.

Costs.

14. And be it enacted, that if the plaintiff in any such action shall recover a verdict, or the defendant shall allow judgment to pass against him by default,

such plaintiff shall be entitled to costs in such **Sect. 14.**
 manner as if this Act had not been passed; or if in
 such case it be stated in the declaration, or in the
 summons and particulars in the county court if he
 sue in that court, that the act complained of was
 done maliciously and without reasonable and pro-
 bable cause, the plaintiff, if he recover a verdict for
 any damages, or if the defendant allow judgment to
 pass against him by default, shall be entitled to his
 full costs of suit, to be taxed as between attorney
 and client; and in every action against a justice of
 the peace for anything done by him in the execution
 of his office the defendant, if he obtain judgment
 upon verdict or otherwise, shall in all cases be en-
 titled to his full costs in that behalf, to be taxed as
 between attorney and client.

15. And be it enacted, that this Act shall extend Extent of Act.
 only to England and Wales and the town of Berwick-
 upon-Tweed.

With regard to the town of Berwick-upon-Tweed, see notes
 to 11 & 12 Vict. c. 42, s. 32, *post*, and 11 & 12 Vict. c. 43,
 s. 37, *ante* p. 91.

* * * * *

18. And be it enacted, that this Act shall apply Act to apply to persons protected by the repealed statutes.
 for the protection of all persons for anything done
 in the execution of their office in all cases in which,
 by the provisions of any Act or Acts of parliament,
 the several statutes or parts of statutes hereinbefore
 mentioned and by this Act repealed would have been
 applicable if this Act had not passed.

Note that sections 16, 17 and 19 of this Act were re-
 pealed by the Statute Law Revision Act, 1875 (38 & 39 Vict.
 c. 66).

THE REVIEW OF JUSTICES DECISIONS
ACT, 1872.

85 & 86 VICT. CAP. 26.

*An Act to amend the practice of the Courts of Law
with respect to the Review of the Decisions of Jus-
tices.*
[18th July, 1872.]

WHEREAS *ex parte* proceedings are frequently taken in the superior courts of common law at Westminster to bring under review the decisions of justices of the peace acting both in and out of sessions, and there is no fund at the disposal of such justices to defray the expense of appearing by counsel to support their decisions :

And whereas it is expedient that such justices should, without expense to themselves, have an opportunity in such cases of informing the court of the grounds of their decision, and of all material facts bearing upon the same :

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited as "The Review of **Sect. 1.**
Justices Decisions Act, 1872."

Short title.

2. Whenever the decision of any justice or justices is called in question in any superior court of common law by a rule to show cause or other process issued upon an *ex parte* application, it shall be lawful for any such justice to make and file in such court an affidavit setting forth the grounds of the decision so brought under the review, and any facts which he may consider to have a material bearing upon the question at issue, without being required to pay any fee in respect of filing such affidavit or any stamp duty thereupon, and such affidavit may be sworn before a commissioner authorized to take oaths in Chancery, and may be forwarded by post to one of the masters of the court for the purpose of being so filed.

Justice, when his decision is called in question in a superior court, may file affidavit showing grounds of his decision without payment of fee.

See 11 & 12 Vict. c. 44, s. 5, *ante*, p. 134.

3. Whenever any such affidavit has been filed as aforesaid, the court shall, before making the rule absolute against the justice or justices, or otherwise determining the matter so as to overrule or set aside the acts or decisions of the justice or justices to which the application relates, take into consideration the matters set forth in such affidavit, notwithstanding that no counsel appear on behalf of the said justices.

Court to take into consideration matters contained in affidavit notwithstanding non-appearance of counsel in support.

STATEMENT OF CASE BY JUSTICES FOR
OPINION OF HIGH COURT OF JUSTICE.

20 & 21 VICT. CAP. 43.

*An Act to improve the Administration of the Law so
far as respects Summary Proceedings before Justices
of the Peace.* [17th August, 1857.]

WHEREAS it is expedient that provision should be made for obtaining the opinion of a superior court on questions of law which arise in the exercise of summary jurisdiction by justices of the peace: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, as follows :

Interpreta-
tion of
terms.

1. In the interpretation and for the purposes of this Act, the following words shall have the meaning hereinafter assigned to them ; that is to say,

“ Superior courts of law ” shall for England mean the supreme courts of law at Westminster,

and for Ireland the supreme courts at law at Sect. 1.
Dublin :

“ Court of Queen’s Bench ” shall mean for England the Court of Queen’s Bench at Westminster, and for Ireland the Court of Queen’s Bench at Dublin.

2. After the hearing and determination by a justice or justices of the peace of any information or complaint which he or they have power to determine in a summary way, by any law now in force or hereafter to be made, either party to the proceeding before the said justice or justices may, if dissatisfied with the said determination as being erroneous in point of law, apply in writing within three days after the same to the said justice or justices, to state and sign a case setting forth the facts and the grounds of such determination, for the opinion thereon of one of the superior courts of law to be named by the party applying; and such party, hereinafter called “ the appellant,” shall, within three days after receiving such case, transmit the same to the court named in his application, first giving notice in writing of such appeal, with a copy of the case so stated and signed, to the other party to the proceeding in which the determination was given, hereinafter called “ the respondent.”

Justices, on application of a party aggrieved, to state a case for the opinion of superior courts.

This and 42 & 43 Vict. c. 49, s. 33, *post*, p. 238, are most useful enactments; but justices should not grant a case for the opinion of the court when the application appears to them to be frivolous. A case ought not to be granted unless some doubtful point of law has been raised fit to be referred to the superior court; and it should be borne in mind that the court has no jurisdiction to say anything but whether

Justices granting case.

Note to Sect. 2.

the justices did right or wrong in the particular case, and to answer the questions submitted to the court by the justices. See the observations of *Blackburn, J.*, on this point in *St. Botolph v. Whitechapel*, 2 L. T. (N.S.) 507; 24 J. P. 564. The court will not entertain an appeal upon a question of fact. Therefore where a magistrate, upon the construction of the 5th rule of section 26 of the Metropolitan Building Act, 1855 (18 & 19 Vict. c. 122), decided that a certain place, being a row of houses forming part of a line of thoroughfare, was a street, the court declined to interfere with his decision. *Newman, app., Baker, resp.*, 8 C. B. (N.S.) 200, s. 2. The Act only gives the justices the power of asking the opinion of the court upon a point of law; and the question for the court is not whether the justices came to a right conclusion, but whether there was any evidence in support of that conclusion. *Green v. Pensam*, 22 J. P. 727.

Per *Erle, C. J.*, the 20 & 21 Vict. c. 43, is a very salutary statute; it was intended to enable all these summary jurisdictions to obtain an authoritative decision upon any point of law which may arise before them. *City of London v. Acocks* 8 C. B. (N.S.) 773. And per *Mellor, J.*, in *Sweetman v. Guest*, 37 L. J. M. C. 59; 18 L. T. (N.S.) 49; L. R. 3 Q. B. 262, the 20 & 21 Vict. c. 43 was intended to give justices an opportunity when exercising summary jurisdiction, of getting advice on points of law in cases in which they had no means of doing so before the Act.

As to rates.

Where the justices have no jurisdiction to inquire into the validity of a rate, they cannot under this Act state a case for a superior court. *Ex parte May*, 31 L. J. M. C. 161; 26 J. P. 340; 2 B. & S. 426, following the rule in *Reg. v. Kingston-on-Thames JJ.*, E. B. & E. 256, and *Reg. v. Bradshaw*, 29 L. J. (N.S.) M. C. 176; 6 Jur. (N.S.) 629, namely, that the duty of magistrates when payment is sought to be enforced, is to see that there is a rate as is alleged, and that the party summoned is assessed to it, and that he has not paid his assessment; when they have ascertained these matters, the rate being good on the face of it, their duty is to enforce payment, and not to enter into the question of its legality, which is for the jurisdiction of the quarter sessions on appeal.

As to a street.

Whether a "lane" is a "street," within the meaning of the Metropolitan Management Acts, is a question of fact and not of law; and a magistrate cannot be compelled to state a case under 20 & 21 Vict. c. 43, for the opinion of the high court upon the point. *Reg. v. Sheil*, 50 L. T. (N.S.) 590.

Statement of case.

In drawing up the special case care should be taken that it contains every question which it is desired to submit for the

opinion of the superior court, as that court has no power to give an opinion on a question asked by the parties to the case, but which the justices by whom the case is stated have not submitted for the opinion of the court. *St. James, Westminster, app., St. Mary, Battersea, resp.*, 29 L. J. (N.S.) M. C. 26; 6 Jur. (N.S.) 100. See also *Hills v. Hunt*, 15 C. B. 1, where the court would not allow a special case to be amended, by raising a point which the parties had not raised for the consideration of the court.

Note to Sect. 2.

Statement of case.

A magistrate, like a judge, is bound to know the law, and if he sees the existence of any fatal objection, even though that objection is not taken by either of the parties, it is the duty of the magistrate to act upon what he knows to be the law; therefore a magistrate cannot refuse to state a case on the ground that an objection has not been formally brought to his notice, where the objection is of such a kind as goes to the root of the whole matter before him for adjudication, and one, therefore, which he must be presumed to have known. In making absolute a rule to compel a magistrate under such circumstances to state a case, the court refused to allow the appellant the costs of the rule, because he had not raised the objection distinctly before the magistrate. *Ex parte Markham*, 21 L. J. (N.S.) 748; 39 J. P. 150.

Costs.

In the case of *Wickham v. Phillips* ("Times" newspaper, 18th April, 1883), Mr. Justice *Field* is reported to have observed with reference to a case sent back to justices to be re-stated, that "when the court sends back a case to be stated, the court does so on the faith of the magistrates acting as judges, and stating the facts truly, whatever their own opinion on the case may be. If a different course were taken in this respect, the confidence the court reposes in magistrates would be shaken."

In a case stated from sessions, Lord *Denman*, C. J., said that the justices have done right if they ask the opinion of the court whether the facts stated in the case will warrant the finding which they made; but wrong if they refer to the court the mere question of fact and asks its opinion as a jury upon it. *Reg. v. Pilkington*, 13 L. J. (N.S.) M. C. 64; 8 J. P. 724.

The duty of the court upon a case stated, under 20 & 21 Vict. c. 48, s. 2, is simply to answer the question of law put to them by the justices. *Buckmaster, app., Reynolds, resp.*, 13 C. B. (N.S.) 62.

The proper mode of stating a case for the opinion of the court is to submit some point or points of law for its consideration, and not to seek the decision of the court on the evidence generally as to its sufficiency to support a conviction. *Reg. v. Brennan*, 6 C. C. C. 381.

**Note to
Sect. 2.**

Statement
of case.

The justices cannot state a case which they decline to hear for want of jurisdiction: per *Blackburn, J.*, "I think nothing can be clearer than that the justices made a mistake in granting the case, as the statute 20 & 21 Vict. c. 43, does not apply. The justices, when the question of jurisdiction was raised before them, decided, rightly or wrongly, that they had no jurisdiction. If they were right, then the parties can only go and renew the information before other justices who are not interested. If they were wrong, then the remedy is to apply for a rule under Jervis' Act, commanding them to hear and determine the case. There was no need of a case to be stated under 20 & 21 Vict. c. 43, to raise the point of law regarding the interest of parties. The Act, 20 & 21 Vict. c. 43, was only intended for those cases where formerly there was no means of bringing the matter otherwise before the superior court, but it was never intended to decide in this way a question of jurisdiction. The parties have mistaken their remedy." *Wakefield v. West Riding Railway Company*, 80 J. P. 389; 12 Jur. (N.S.) 936. Where, however, the justices have heard the case, and determined to dismiss the information on the ground that they have no jurisdiction, they may state a case. See *Muir v. Hoare*, *post*, p. 158.

No point can be stated in a case for the opinion of a superior court which was not taken before the justices: therefore, upon a conviction under 9 Geo. 4, c. 61, for knowingly permitting persons of notoriously bad character to assemble and meet together in his inn, against the tenor of his license, upon a case stated, it was held, upon the argument of the case, that the appellant could not object that there was no evidence of his knowledge, that point not having been taken before the justices. *Purkis v. Constable*, 5 Jur. (N.S.) 790; 23 J. P. 197; see also *Mottram, app., Eastern Counties Railway Company, resp.*, 7 C. B. (N.S.) 58, on the same point. Again, no case can be stated under 20 & 21 Vict. c. 43, s. 2, unless the determination of the justice be upon an information or complaint; consequently, a case cannot be stated on the refusal of justices to grant a certificate for a beer license under 32 & 33 Vict. c. 27. *Garratt v. Potts*, 23 L. T. (N.S.) 410; S. P. *West v. Potts*, 34 J. P. 760.

If a defendant be charged with obstructing the works of a local board of health, he is not necessarily entitled to have the case dismissed by the magistrates because the obstruction took place in assertion of a private right. Nor are justices, under such circumstances, warranted in refusing, as frivolous, an application to state a case. *Reg. v. Pollard (Justices of the West Riding of Yorkshire)*, 14 L. T. (N.S.) 599, Q. B. *Lush, J.*

A question as to what is a "new building" within the Local Government Act, 1858 (21 & 22 Vict. c. 98), s. 34 (now the Public Health Act, 1875, 38 & 39 Vict. c. 55, ss. 157, 159), may properly be raised as a question of law for the opinion of the court under 20 & 21 Vict. c. 43. *Hobbs v. Dance*, L. R. 9 C. P. 30.

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Statement of case.

The court has no power hostilely to vary a special case which has been stated by counsel for the purpose of raising a different question from that which the parties originally contemplated. This was so held where, by consent of parties and under a judge's order, pursuant to the Common Law Procedure Act, 1852, a case was stated for the opinion of the Court of Common Pleas. *Mersey Dock Trustees v. Jones*, 8 C. B. (N.S.) 124.

The court, it is apprehended, will not entertain a case if the point of law involved in it has been before decided. Where the quarter sessions sent a case for the opinion of the Court of Queen's Bench, being ignorant that the point stated in it had been previously decided, the court refused to review their judgment. *Reg. v. St. John the Evangelist*, 2 Jur. 46.

In *Hastings v. St. James, Clerkenwell*, L. R. 1 Q. B. 43, the court said: "It is important that points arising on settled law, which are determined, should not be again disturbed."

Section 2 empowers the justices to state a case for the opinion of a superior court in the event of an acquittal as well as of a conviction. *Davys v. Douglas*, 28 L. J. R. (N.S.) M. C. 193; 32 L. T. 283; 23 J. P. 135. And it would seem from *Ex parte Smith*, 27 L. J. R. (N.S.) M. C. 186, that a judge at chambers can grant an order upon the justices to state a case under this Act. See sections 5 and 7, *post*, as to the authority of a judge at chambers under the Act.

A case stated under this Act set out the grounds of the determination in respect of one of the conclusions at which the justices had arrived, but as to the other set out objections, and then stated that they were overruled. This, it would seem, is a sufficiently setting forth of the "grounds of determination" within the meaning of the Act. *Christie v. St. Luke, Chelsea*, 27 L. J. (N.S.) M. C. 153; 22 J. P. 496.

In *Blackpool v. Bennett*, 23 J. P. 198, it was held that a case stated under 20 & 21 Vict. c. 43, sufficiently set forth facts to support a conviction under a bye-law of a local board of health, when such facts are stated as warranted an inference that the offence had been committed.

This enactment gives a remedy to parties in cases where before they possessed none; but it does not enable parties to

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of case.

avoid the ordinary and legitimate modes of redress which already existed. Therefore the justices cannot be called upon to grant a case on summary proceedings before them to enforce payment of a rate where an appeal lies against the rate to the quarter sessions, and the only objection raised is as to the validity of the rate on the ground that the party derives no benefit from the works for which it was made. This was so held where a party had been summoned by commissioners under a local Act before justices to show cause why a distress warrant should not be issued to compel payment of a 1s. 10d. rate under the Act in respect of certain sewage works. Before the justices the party summoned contended that he was not liable, because he was not benefited by the works. The justices decided against him, and refused to grant a case under the Act, and gave a certificate under section 4, that the application was a frivolous one. *Reg. v. Gloucestershire JJ.*, 1 L. T. (N.S.) 294; 29 L. J. (N.S.) M. C. 117; 24 J. P. 263; 2 E. & E. 420. It has, however, been held that a refusal of justices to enforce by distress, under 2 & 3 Vict. c. 84, s. 1, payment of money under a contribution order of a board of guardians, made under article 83, form M. of the consolidated order, is a ground of appeal to one of the superior courts under 20 & 21 Vict. c. 43, s. 2. *City of London Union (Guardians of) v. Acocks*, 8 C. B. (N.S.) 760.

It has been held that justices have no power to state a case on refusing to make an order authorizing an urban sanitary authority to enter premises under section 305 of the Public Health Act, 1875 (38 & 39 Vict. c. 55), inasmuch as their refusal is not the determination of a complaint within 20 & 21 Vict. c. 43, s. 2. *Diss Urban Sanitary Authority, apps., Aldrich, resp.*, W. N. 1877, p. 46; L. R. 2 Q. B. D. 179; 36 L. T. (N.S.) 663.

Where, by the rules of a friendly society, disputes between the society and a member are to be referred to justices, pursuant to 21 & 22 Vict. c. 101, s. 5, the justices it was held might be compelled to state and sign a case under 20 & 21 Vict. c. 43. *Watts v. Kent JJ.*; *Pearch v. Kent JJ.*, 35 L. J. M. C. 190; S. C. *Reg. v. Lambarde and others, JJ. of Kent*, L. R. 1 Q. B. 388; but this was overruled, and now, where by the rules of a friendly society disputes between the society and a member are to be referred to justices, such justices have no power to state a case under 20 & 21 Vict. c. 43. *Callaghan v. Dolliven*, L. R. 4 C. P. 288; 38 L. J. M. C. 110, overruling *Watts v. Kent JJ.*, *supra*.

Where the security of such a society is summoned as such security before the justices to answer a complaint against the

society, and an order is thereupon made against the society, the society is substantially the appellant for the purposes of procuring a case to be stated under 20 & 21 Vict. c. 43; and therefore when, after the application for the case, the security has resigned his post, and given the justices notice of withdrawal of the application, the society may nevertheless continue the proceedings, and obtain a rule ordering the case to be stated, in the event of a refusal by the justices.—*Ibid.*

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Statement of case.

The section, it will be perceived, applies only to a case in which there has been "a hearing and determination by a justice or justices of the peace of any information or complaint which he or they have power to determine in a summary manner." Apparently, therefore, the statute is confined to cases which can be dealt with under 11 & 12 Vict. c. 43; but nevertheless in *Frend v. Tolleshunt Knights*, 28 L. J. (N.S.) M. C. 169; 5 Jur. (N.S.) 1080; 33 L. T. 89; 23 J. P. 677 (which related to the liability of the incumbent of a district church to be assessed to the poor rate in respect of the tithe rentcharge apportioned to his incumbency), a case was stated under 20 & 21 Vict. c. 43, s. 2, and the statute was treated as being applicable to cases of nonpayment of poor rates; it has, however, since been held that 20 & 21 Vict. c. 43, does not apply to a decision of justices, at a special sessions for hearing appeals against poor rates, upon an appeal against an assessment. Such a case should be stated under section 11 of 12 & 13 Vict. c. 45. *Wheeler v. Brimington*, 6 Jur. (N.S.) 698; 2 L. T. (N.S.) 171; 29 L. J. M. C. 175; 24 J. P. 261, 660. See also *Sparrow v. Impington*, *ib.* 176; 6 Jur. (N.S.) 953. It has also been held that an appeal under 20 & 21 Vict. c. 43, s. 2, is not the proper mode of proceeding when the justices refuse to enforce a highway rate. *Walker v. Great Western Railway Company*, 29 L. J. (N.S.) M. C. 107; 24 J. P. 262; 2 E. & E. 325.

Where justices hear an information or complaint and dismiss it on the ground that they have no jurisdiction, and at the same time offer to state a case for the opinion of one of the superior courts, a rule will not be granted by the court desiring the justices to hear and determine the matter. In such an event the justices would have adjudicated, and the court cannot command them to decide in a particular manner a case in regard to which they have jurisdiction. *Ex parte McLeod*, 3 L. T. (N.S.) 700; 25 J. P. 84.

It has been held that an appeal lay to a superior court under 20 & 21 Vict. c. 43, in a case coming within the General Highway Act, 5 & 6 Will. 4, c. 50, s. 44, which requires the justices to hear and determine any complaint made to them against the accounts, or the application of moneys

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of case.

received by the surveyor of the highways, and to make such order thereon as to them shall seem meet. *Townsend, app., Read, resp.*, 10 C. B. (N.S.) 308; 4 L. T. (N.S.) 447; 30 L. J. (N.S.) M. C. 223.

The justices, though not bound to grant a case if they are of opinion that the application is frivolous, ought nevertheless to do so when it is shown that the party applying for it was asserting a right, as a disputed right of way, and the proceedings arise out of the assertion of that right.

The justices are not bound to state a case under 20 & 21 Vict. c. 43, when the application discloses no point on which a case ought to be granted: per *Mellor, J., Reg. v. Rutlandshire JJ.*, 13 L. T. (N.S.) 722.

The power of appeal to the quarter sessions given by 20 & 21 Vict. c. 83 (Lord Campbell's Act), does not take away the jurisdiction of the magistrate, under 20 & 21 Vict. c. 43, to state a case under that Act for the opinion of one of the superior courts on a point of law arising under 20 & 21 Vict. c. 83. *Steel v. Brannan*, 41 L. J. M. C. 85; 26 L. T. (N.S.) 509.

By the Metropolitan Building Act, 18 & 19 Vict. c. 123, s. 106, power to appeal to a superior court is given if either party is dissatisfied with the determination of the justice in respect of any point of law; and it has been held that the power to state a case under 20 & 21 Vict. c. 43, is not thereby taken away. *Power v. Wigmore*, 27 L. T. (N.S.) 148.

Though section 108 of 32 & 33 Vict. c. 70 (Contagious Diseases (Animals) Act), gives a power of appealing from the justices to the quarter sessions, it does not deprive a party of the right to have a case stated under 20 & 21 Vict. c. 43; and if the justices, having heard the case, determine that they have no jurisdiction the opinion of the high court will be properly applied for under 20 & 21 Vict. c. 43, instead of an application for a *mandamus* to the justices. *Muir v. Hoare*, 47 L. J. M. C. 17; 37 L. T. (N.S.) 315.

In *Potton v. Brown*, 39 L. T. 363, there was a rule *nisi* to strike out a case stated by justices under 20 & 21 Vict. c. 43, on the ground that the application to the justices to state a case was verbal and not in writing. The court not being unanimous on this point desired the case itself to be argued, which was done, and then, by arrangement, it was ordered that the rule should drop, each party paying his own costs.

With regard to the manner in which a case should be stated, it is to be observed that the court expects such cases to be submitted to the judges in a complete form. Ordinarily the court will refuse to send back a case for amendment under 11 & 12 Vict. c. 78, s. 4 (*Reg. v. Holloway*, 1 Den.

C. C. R. 370; 3 N. S. C. 410; 18 L. J. M. C. 60); and cases for the consideration of the judges under that Act are not to be lengthy narratives of the facts. *Reg. v. Stear*, 13 Jur. 41.

Note to Sect. 2.

Statement of case.

A case for the opinion of one of the superior courts, or of a judge of any such court, may be stated according to the following form :—

The Queen against

to wit. } This was an information [*or, complaint*] preferred by
} against _____, for that [*here state shortly the*
substance of the information or complaint], and after hearing
the parties and the evidence adduced by them, the under-
signed, being two of Her Majesty's justices of the peace in
and for the _____, did thereupon [*set out shortly*
the adjudication of the justices]. And the said _____,
alleging that he is dissatisfied with the said determination, as
being erroneous in point of law, did, within three days there-
after, apply to us the said justices to state and sign a case,
setting forth the facts and the grounds of such determination
for the opinion thereon of the court of _____ [*or, a judge of*
the court of _____]. Wherefore we the justices aforesaid,
in compliance with the said request, and in pursuance of the
statute in such case made and provided, do hereby state and
sign the following case for the opinion of the said court [*or*
of a judge of the said court].

CASE.

At the hearing of the said information [*or, complaint*],
and on the close of the informant's [*or, complainant's case*],
the said _____ [*or, the attorney for the said* _____] was
heard in answer to the matter of the said information [*or,*
complaint]; and it being proved on the part of the said
_____ [*the informant or complainant*], that [*here set out the*
facts which the justices deem to have been proved, with such
objections, &c., of either party, as will raise the point in-
tended to be submitted], we the said justices did adjudge and
determine [*set out shortly the adjudication of the justices*].

QUESTION.

The question upon which the opinion of the said court [*or,*
judge of the said court] is desired is, whether we the said
justices, upon the above statement of facts, came to a correct
decision in point of law; and if not, what should be done in
the premises? [*Or, the questions of law arising upon the*

**Note to
Sect. 2.**Statement
of case.

above statement of facts are .] Whereupon the opinion of the said court [*or*, judge of the said court] is asked upon the said questions of law, whether or not we the said justices were correct in our determination as aforesaid? and if not, what should be done or ordered by the said court in the premises?

The case must be signed by the justices; and the party applying for the case must enter into a recognizance as directed by statute 20 & 21 Vict. c. 43, s. 3. If the case be for the opinion of the court, it must be set down for argument, and copies, with the points intended to be argued, must be delivered to the judges, as in the ordinary practice upon a special case. But if it be for the opinion of a judge, the appellant must obtain an appointment for the hearing, and give notice thereof to the respondent, and, four clear days before the day appointed for the hearing, deliver at the judge's chambers a copy of the appeal. (See section 11, and note thereon, *post*.)

With reference to the manner of stating a case under the Act, the observations of Lord *Campbell*, C. J., in *Reg. v. Lee*, are too important to be omitted:—The defendant, George Lee, kept a shop in Westgate Street, Gloucester, in which he sold sweets; and he had been convicted by two magistrates of Gloucester, of “following his usual calling on the Lord’s-day,” and fined five shillings. He appealed against the conviction, and a case was stated for the opinion of this court, under 20 & 21 Vict. c. 43. When the case was called on, no one appeared to support the conviction.

Lord *Campbell* said that, in stating the case, he was sorry to observe that the magistrates had made an observation which was wholly extra-judicial. The observation was, “the magistrates have only to add that Lee’s shop is in the most conspicuous part of the city, and that the continual Sunday trading therein, for which the defendant has been several times convicted, has been repeatedly made the subject of public complaint.”

Counsel for the appellant said he was instructed that an application had been made to the clerk to the magistrate to amend the case, but the only answer made was, that he should not alter a letter.

Lord *Campbell* said he thought the court ought to animadvert upon such statements being introduced into the case. It was most improper, and he hoped it would not prejudice the minds of the court, though it could only have been introduced for that purpose, and he did not think the case was so stated that the court ought to take judicial knowledge of it.

His lordship took the opportunity to express his great satisfaction at the manner in which cases had been stated under this Act of parliament. He approved of the Act, but he was at first afraid of the manner in which the cases would be stated. In general, the cases had been well stated by the magistrates' clerks; but, in this instance, it did not put the court into possession of the charge brought against the defendant, nor the grounds on which the conviction took place. The conviction must be quashed.

Note to Sect. 2.

Statement of case.

The application to the justices to state a case must be made within three days after the hearing and determination of the information or complaint; and it has been held that, in computing those three days, Sunday, when it is the last of those days, is not to be excluded. *Peacock v. Regina*, 4 C. B. (N.S.) 264; 31 L. T. 101; 27 L. J. (N.S.) C. P. 224; 22 J. P. 403. On the hearing of the appeal, if the respondent do not appear, the appellant, in order to entitle him to the judgment of the court, must show that the decision of the justices was wrong. *Syred v. Carruthers*, 27 L. J. (N.S.) M. C. 273; 23 J. P. 37; 1 E. B. & E. 469.

Application to state case.

The provision that the appellant shall within three days after receiving the case transmit the same to the court, first giving notice in writing of such appeal, with a copy of the case, to the other party, is a condition precedent to the right of appeal, and where such provision is not complied with the court has no jurisdiction. *Woodhouse v. Wood*, 1 L. T. (N.S.) 59; 23 J. P. 754, 759; 6 Jur. (N.S.) 421; 29 L. J. (N.S.) M. C. 149. Accordingly, where the appellant did not so transmit the case or serve the copy of it until after the expiration of such three days, the court, upon the application of the respondent, struck out the case, notwithstanding he had written letters to the appellant amounting to a waiver of the objection. *Morgan v. Edwards*, 5 H. & N. 415; 6 Jur. (N.S.) 379; 24 J. P. 245. The provision that the case must be delivered to the respondent within a specified time is imperative, and cannot be waived. But *semble*, if the appellant endeavours to comply with the statute, *e. g.*, by endeavouring to serve the respondent, but is prevented by his keeping out of the way, he may be let in to have his appeal. *Morgan v. Edwards, supra*. When a case is stated, the section is satisfied if the appellant, within three days of his obtaining the case from the justice, seeks to find the respondent, but cannot do so, and within such three days, gives notice to the attorney who represented the respondent before the justice, and after the expiration of the three days gives notice to the respondent, who does not object. Upon the production of an affidavit of these facts the court heard the appellant,

Transmission of case.

**Note to
Sect. 2.**

Transmis-
sion of case.

though the respondent did not appear: *Syred v. Carruthers*, 1 E. B. & E. 469; 27 L. J. (N.S.) M. C. 273; 23 J. P. 37.

A case having been stated by justices under 20 & 21 Vict. c. 43, but the appellant not having complied with the conditions required by that Act, and there being consequently no jurisdiction to hear the case, the respondent applied by way of motion to strike the case out of the paper, and the application was granted with costs against the appellant. *Great Northern and London and North Western Joint Committee, app., Inett, resp.*, W. N. 1877, p. 124; L. R. 2 Q. B. D. 284; 46 L. J. M. C. 237; 41 J. P. 710. But the respondent's costs were refused in a similar case (in which, however, the non-compliance with the statute was owing to the sudden death of one of the partners in the firm of solicitors acting for the appellant) by the Common Pleas Division of the High Court of Justice in the case of *The North British Railway Company v. The Holme Cultram Local Board*, M. S. Easter Sittings, 1879.

If notice of appeal, under 20 & 21 Vict. c. 43, be not given to the respondent before the case is lodged in court, the case will be struck out after it has been set down for hearing. It is not sufficient to post the notice of appeal to the respondent within the three days allowed for lodging the case, if it does not reach him until the day after the case is transmitted to the office. *Ashdown v. Curtis*, 31 L. J. M. C. 216; 26 J. P. 312; 6 L. T. 331; 8 Jur. (N.S.) 511.

A person convicted by justices applied for a case under 20 & 21 Vict. c. 43. The case was delivered by the justices' clerk to the appellant's attorney on 31st December, 1862, who gave notice of appeal and a copy to the appointed attorney; and on the 1st January, 1863, sent by post the original to his London agent to be lodged in court. The London agent received it the next day, but did not lodge it till the 10th January. Under these circumstances it was held that the case had not been duly transmitted to the court according to the statute. *Sed quære*, whether if the case is duly put into a regular course of transmission to the court, e.g., by post, and does not reach it within time in consequence of something over which the sender has no control, this is a compliance with the statute. *Banks, app., Goodwin, resp.*, 3 B. & S. 548; 9 Jur. (N.S.) 891; 32 L. J. (N.S.), 87; 7 L. T. (N.S.) 740; 27 J. P. 72.

An attorney in a country town, instructed by the London attorneys of the parties interested, attended to resist a summons before justices in the country town. The justices decided against the party, who being dissatisfied sent the justices a written notice demanding a case to be stated under

20 & 21 Vict. c. 43. The justices stated the case and sent it to the country agent on Thursday, who the next day forwarded it to the London attorneys. The latter deposited the case in the office of the court on the Monday following. Under this statement of circumstances the court held that the country agent had, presumably, authority to receive the case for the appellant; and that as the case had not been transmitted to the court within three days after it had been received, the provisions of the 2nd section of 20 & 21 Vict. c. 43, had not been complied with, and consequently the appeal was struck out. *Pennell v. Uzbridge*, 31 L. J. M. C. 92; 8 Jur. (N.S.) 99; 5 L. T. (N.S.) 685; 26 J. P. 87.

Note to Sect. 2.

—
Transmission of case.

The court will not order a case, stated under 20 & 21 Vict. c. 43, to be struck out because the intervention of days on which the offices of the court are closed has rendered it impossible for the appellant to transmit the case in time. (The case was received on Good Friday and transmitted to the proper court on the following Wednesday.) Nor is it a condition precedent that the case shall be transmitted in the time limited by the Act, the words of which are directory, and the court may, in its discretion, refuse to deprive a suitor of his right of appeal when he has done all in his power to comply with the statutory requirements. In this respect the cases of *Morgan v. Edwards*; *Syred v. Carruthers*; *Woodhouse v. Woods*; *Peacock v. Regina*, and *Pennell v. Uzbridge*, *supra*; *Fisher v. Cox*, 16 L. T. (N.S.) 397, are distinguished. *Mayor v. Harding*, 16 L. T. (N.S.) 429; 31 J. P. 376; L. R. 2 Q. B. 410.

In *Ex parte Hurst*, 27 J. P. 824, the justices were ordered to state a case under 20 & 21 Vict. c. 43, where the evidence was doubtful in a conviction for poaching. In *Cornwall, app.*, *Sanders, resp.*, 3 B. & S. 206: per *Cockburn, C. J.*, *Blackburn* and *Mellor, JJ.*, if there be evidence before the justices the court ought not to review their decision; but per *Wightman, J.*, the evidence being set out, the court might review their decision and reverse it, if it appeared that they had come to a wrong conclusion.

After a case has been stated and signed by the justices under 20 & 21 Vict. c. 43, and delivered to the appellant, it becomes wholly inoperative, and no appeal can be had upon it, unless the appellant transmit it to the court within three days after he has received it from the justices. If after the expiration of the three days the case remain in the appellant's hands and he take it back to the justices, they have no power to amend it; but if they do so in fact, the appellant does not thereby gain a further period of three days from the date of

Note to Sect. 2.

Transmission of case.

Security and notice to be given by the appellant.

the amendment for transmitting the case to the court. *Gloucester Local Board of Health v. Chandler*, 32 L. J. M. C. 66; 7 L. T. (N.S.) 722; 27 J. P. 88.

3. The appellant, at the time of making such application, and before a case shall be stated and delivered to him by the justice or justices, shall in every instance enter into a recognizance, before such justice or justices, or any one or more of them, or any other justice exercising the same jurisdiction, with or without surety or sureties, and in such sum as to the justice or justices shall seem meet, conditioned to prosecute without delay such appeal, and to submit to the judgment of the superior court, and pay such costs as may be awarded by the same; and the appellant shall at the same time, and before he shall be entitled to have the case delivered to him, pay to the clerk to the said justice or justices his fees for and in respect of the case and recognizances, and any other fees to which such clerk shall be entitled, which fees, except such as are already provided for by law, shall be according to the schedule to this Act annexed, marked (A.), until the same shall be ascertained, appointed, and regulated in the manner prescribed by the statute, eleventh and twelfth Victoria, chapter forty-three, section thirty; and the appellant, if then in custody, shall be liberated upon the recognizance being further conditioned for his appearance before the same justice or justices, or, if that is impracticable, before some other justice or justices exercising the same jurisdiction who shall be then sitting, within ten days after the judgment of the superior court shall have been given, to abide such judgment, unless the determination appealed against be reversed.

On an appeal from a decision of justices under sections 2, 3, the appellant may enter into the required recognizance at any time during the three days allowed for applying for a case; and he need not enter into it simultaneously with making the application. *Chapman, app., Robinson, resp.*, 1 E. & E. 25; 28 L. J. (N.S.) M. C. 30; 32 L. T. 89; 23 J. P. 228.

Note to Sect. 3.

Recognizances.

Although an appellant for a decision of justices under 20 & 21 Vict. c. 43, must apply for a case to be stated within three days specified in section 2, it is not necessary for him to enter into the recognizances required by section 3, simultaneously with his application for a case to be stated. It is sufficient if he do so between the time of applying for and stating the case. *Stanhope, app., Thorsby, resp.*, 12 Jur. (N.S.) 374; 14 L. T. (N.S.) 332; 35 L. J. M. C. 182; 1 L. R. C. P. 423.

Where a rule is moved calling upon the appellant to show cause why an appeal should not be struck out of the paper on the ground that he had not entered into his recognizance within three days, as required by section 3, the affidavit upon which the motion is made should be entitled in the names of the parties, and not merely "for the Queen's Bench." If it be not the court will discharge the rule as being irregular. *Johnson v. Simpson*, 1 L. T. (N.S.) 60; 23 J. P. 756, 775.

The general rule is to give costs to the successful party; but if on an appeal under 20 & 21 Vict. c. 43, in which judgment is given for the appellant, the respondent do not appear, costs will not be given to the appellant under section 6. *Lee, app., Strain, resp.*, 5 Jur. (N.S.) 846; 28 L. J. (N.S.) M. C. 221. Costs.

The rule is not to give costs when no one appears on behalf of the respondent, or a case stated under 20 & 21 Vict. c. 43. *Lee, app., Strain, resp., supra*; but where in a case stated by justices under 20 & 21 Vict. c. 43, the respondent did not appear upon the argument, and the court decided in favour of the appellant, it was held, without laying down any general rule, that the appellants were entitled to the costs of the appeal. *Wednesbury, app., Stephenson, resp.*, 10 Jur. (N.S.) 151; 33 L. J. M. C. 111; S. C. *Reg. v. Wednesbury*, 9 L. T. (N.S.) 731.

Where on an appeal under 20 & 21 Vict. c. 43, against a conviction by justices, the court quashed the conviction, they held that the costs were to be paid by the party prosecuting. *Venables v. Hardman*, 1 E. & E. 79; 28 L. J. (N.S.) M. C. 33.

**Note to
Sect. 3.**

In cases stated under 20 & 21 Vict. c. 43, costs are as a rule to follow the result. *Henry v. Trinity House, Newcastle*, 22 J. P. 515; *Davys v. Douglas*, 23 J. P. 135; and section 3 does not give the court power to award costs to the justices. *Luton Local Board of Health, app., Davis, resp.*, 6 Jur. (N.S.) 580; 24 J. P. 276. In that case application was made to the court for justices' costs, owing to their having been obliged to state a case for the opinion of the court, and having been put thereby to great expense; but the court refused the application, observing, that the justices were not obliged to state the case by means of barristers.

Costs.

The successful party in an appeal under 20 & 21 Vict. c. 43, if allowed costs by the court, is entitled to the costs of preparing and amending the case beyond the fees allowed to the justices' clerk by section 3, and schedule A., *post*, p. 177. *Glover v. Booth*, 31 L. J. M. C. 270; 9 Jur. (N.S.) 76.

In a case where upon appeal under 20 & 21 Vict. c. 43, a conviction was quashed upon an objection not brought to the notice of the convicting justices, the court refused costs to the appellant. *Stainson, app., v. Browning, resp.*, 12 Jur. (N.S.) 262.

The court will not entertain an application for costs of an appeal under 20 & 21 Vict. c. 43, in the term after that in which judgment is pronounced; and, *semble*, that the application for costs should be made immediately upon the disposal of the case by the court. *Budenberg, app., Roberts, resp.*, 2 L. R. C. P. 292. *Bovil*, C. J., observing that he saw no reason for departing from the wholesome rule in *Carswell v. Cook*, 12 C. B. (N.S.) 242.

Three terms after a decision of justices was reversed with costs upon a case stated under 20 & 21 Vict. c. 43, the appellant applied for his costs, and it was held, that, although the court had by section 6 a discretion over such costs at the disposal of an appeal, it should be exercised only in a strong case of vexation or oppression; and that the delay, without fraud, which had taken place effectually precluded it. *Cook, app., Montague, resp.*, 28 L. T. (N.S.) 494; W. N. 1873, p. 89; 37 J. P. 292, 694.

The statute is binding upon the crown equally with private persons; therefore upon an appeal against a conviction upon the information of an officer of excise prosecuting for the crown by order of the commissioners of inland revenue, for an offence under 4 & 5 Will. 4, c. 85, s. 17, the court, confirming the conviction, may order costs to be paid to the respondent, the excise officer. *Moore, app., Aaron Smith, resp.*, 5 Jur. (N.S.) 892; 23 J. P. 133.

If upon an appeal to the quarter sessions a case is stated for the opinion of a superior court under 12 & 13 Vict. c. 45,

s. 11, the practice is to give costs as between party and party. *Clarendon v. St James, Westminster*, 21 L. J. (N.S.) M. C. 213; 15 J. P. 340.

Note to Sect. 3.

The following report of the case of *Garnsworthy v. Pyne* is extracted from the 34th volume of the Justice of the Peace, page 310:—

Death of one of the parties to the proceeding.

Garnsworthy, app., v. Pyne, resp. Appeal.—Case stated by justices.—Death of respondent; 20 & 21 Vict. c. 43.

This was a case stated under 20 & 21 Vict. c. 43. The prosecutor was a harbour-master, and the defendant was a captain of a vessel who was convicted of an offence against the Harbour Clauses Act. A case having been demanded under 20 & 21 Vict. c. 43, before it was stated the prosecutor had died, and the appellant delivered a copy of the case to the respondent's successor in the office of harbour-master, and who handed it to the dock company's solicitor, who instructed counsel to defend the decision of the justices.

Counsel for the appellant objected to the respondent appearing in the case unless the dock company were treated as the respondent instead of the present harbour-master.

Counsel for the respondent said he could not undertake to put the dock company in the position of the respondent unless the appellant's recognizance for costs should be deemed to apply to the respondent's costs, and if this arrangement was not made he asked the case to be postponed.

Blackburn, J.—At present we cannot recognize any respondent, for the real respondent is dead. And yet we cannot see why the appellant is to be deprived of his right to appeal against the decision merely on that account. The terms offered by Sir J. *Karslake* are fair and equitable, but if they are not acceded to, the court will, nevertheless, go on with the case as if there was no respondent who appeared.

The case was ultimately postponed by desire of both parties.

4. If the justice or justices be of opinion that the application is merely frivolous, but not otherwise, he or they may refuse to state a case, and shall, on the request of the appellant, sign and deliver to him a certificate of such refusal; provided that the justice or justices shall not refuse to state a case where the application for that purpose is made to them by or under the direction of Her Majesty's attorney-general for England or Ireland, as the case may be.

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

**Note to
Sect. 4.**Refusal to
state case.

An application for a rule calling upon justices to show cause why a case should not be stated under 20 & 21 Vict. c. 43, should be made to the Queen's Bench Division of the High Court of Appeal, and not to the divisional court of appeal. *Re Ellershaw, JJ. of Leeds, Ex parte Longbottom*, L. R. 1 Q. B. D. 481; 40 J. P. 342.

In the following case it was held that the justices properly refused to state a case under the Act. A. was committed by the justices for deserting his wife and family. It appeared that they had been known as man and wife for twenty years, and their daughter, aged 37, said she had always looked upon them as married; the man had compromised a previous charge of the same nature by agreeing to pay five shillings a week. In 1858 he was married to another woman, was charged with bigamy and discharged. On the hearing of the charge for desertion it was contended that there was no proof of the defendant's marriage; it was then proposed to call the woman, but he objected to this on the ground that her evidence was not admissible. The justices, however, committed him, and refused to grant a case; and in so refusing as above stated, the court held that they had well determined. *Reg. v. Yeomans*, 1 L. T. (N.S.) 369; 24 J. P. 150. The remarks of *Crompton, J.*, with reference to the above case, deserve attention:—"I think," he said, "the justices would have done wrong if they had stated a case; they are only to do so when there are disputed questions of law; here the question is one of fact." The justices should therefore bear in mind, when asked to state a case, that they are only bound to state it when it is alleged that their determination is erroneous in point of law, and that an error in a matter of fact is no ground for a case being stated under the Act. They should also remember that they are not bound to grant a case on a point of law if they should be of opinion that the application is frivolous.

Where on a summons before justices to enforce payment of a special district rate under a Local Improvement Act, incorporating the Public Health Act, 11 & 12 Vict. c. 63, by section 135 of which an appeal to the quarter sessions against the rate is given, it was objected that the party rated received no benefit from the works for which the rate was made; the justices, however, made an order for the party to pay the sum demanded, and refused to state a case under section 2; and on a rule being moved for to compel them to state a case, it was held that they could not be required to do so. *Reg. v. Newman and others*, 29 L. J. (N.S.) M. C. 117; 6 Jur. (N.S.) 298.

5. Where the justice or justices shall refuse to state a case as aforesaid, it shall be lawful for the appellant to apply to the Court of Queen's Bench upon an affidavit of the facts for a rule calling upon such justice or justices, and also upon the respondent, to show cause why such case should not be stated; and the said court may make the same absolute or discharge it, with or without payment of costs, as to the court shall seem meet, and the justice or justices, upon being served with such rule absolute, shall state a case accordingly, upon the appellant entering into such recognizance as is hereinbefore provided.

Sect. 5.

Where the justices refuse, the Court of Queen's Bench may by rule order a case to be stated.

The court refused a rule to justices ordering them to state a special case for the opinion of the court, where the objection was that they had improperly received evidence. To enable the court to interfere it must appear that the determination of the justices was wrong in point of law, as it is confined in its consideration of the case to the determination of the justices. *Reg. v. Macclesfield JJ.*, 2 L. T. (N.S.) 352.

Rule to state case.

An application for a rule under 20 & 21 Vict. c. 43, calling on justices to state a case for the opinion of the superior court, as already stated, is not an application within the 45th section of the Judicature Act. *Ex parte Longbottom*, L. R. 1 Q. B. D. 481; 40 J. P. 342.

6. The court to which a case is transmitted under this Act shall hear and determine the question or questions of law arising thereon, and shall thereupon reverse, affirm, or amend the determination in respect of which the case has been stated, or remit the matter to the justice or justices, with the opinion of the court thereon, or may make such other order in relation to the matter, and may make such orders as to the court may seem fit; and all such orders shall

Superior court to determine the questions on the case.

Its decisions to be final.

Sect. 6. be final and conclusive on all parties: Provided always that no justice or justices of the peace who shall state and deliver a case in pursuance of this Act shall be liable to any costs in respect or by reason of such appeal against his or their determination.

Right to begin.

The practice in the Court of Queen's Bench is for the party in support of a conviction to begin, unless the court think it more convenient in a particular case that the appellant should begin. *Crick v. Crick*, 22 J. P. 368. The same rule was adopted by the Court of Exchequer in a case stated for the opinion of that court under 20 & 21 Vict. c. 43. *Reg. v. Bennett*, 32 L. T. 26; 23 J. P. 198. But where, under 20 & 21 Vict. c. 43, the appellant insists that the information or complaint has been wrongfully dismissed by the justices, the appellant is entitled to begin the argument. *Jones v. Taylor*, 1 E. & E. 20, confirmed by *Ellis v. Kelly*, 6 Exch. Rep. 222; 30 L. J. (N.S.) M. C. 35; 6 Jur. (N.S.) 1119; 3 L. T. (N.S.) 332; 25 J. P. 279. This is now the rule, and in the case of the *North Eastern Railway Company, app., Scarborough, resp.*, 9 B. & S. 1009, it was allowed on the argument of a special case stated under 12 & 13 Vict. c. 45, or 20 & 21 Vict. c. 43, that the appellant begins; reversing the practice recognized by *Hilton and Watherfield, app., Bowes, resp.*, 7 B. & S. 223, and it is in accordance with that adopted by the Court of Common Pleas upon appeals under 20 & 21 Vict. c. 43, namely, to adhere to the practice prevailing in that court in appeals from revising barristers and from county courts, of allowing the appellant to begin. *Gardner, app., Whitford, resp.*, 4 C. B. (N.S.) 665. On an appeal against a conviction the respondent begins, because the onus lies on the party seeking to sustain the conviction; but this reason does not apply when the magistrates have dismissed the complaint. In such a case the court holds that the party who appears in support of the complaint must begin.

On a special case stated for the opinion of a superior court, pursuant to 12 & 13 Vict. c. 45, s. 11, it is an established practice that the respondent begins. *Hansom v. Epsom Local Board*, 2 Jur. (N.S.) 38 n; 20 J. P. 340. If neither the appellant nor the respondent appears, the court will not, on the application of the justices, entertain the case, for the matter would not be judicially before the court in the absence of both the parties to the appeal, and until they pre-

sent themselves the court cannot entertain it. *Walters, app., Williams, resp.*, 9 C. B. (N.S.) 179. **Note to Sect. 6.**

But by the practice of the Court of Common Pleas (unlike that of the court of Queen's Bench and Exchequer), the appellant, upon the hearing of a case stated under 12 & 13 Vict. c. 45, s. 11, is entitled to begin. *Sheppard v. Bradford*, 33 L. J. M. C. 182; 10 L. T. (N.S.) 42; 10 Jur. (N.S.) 799; 16 C. B. (N.S.) 369. **Practice.**

Upon the argument of a case stated by the justices under section 2, the appellant will not be allowed to take objections which were not raised before the justices. Therefore where the appellant was charged with knowingly permitting persons of bad character to meet in his house, and the only defence suggested before the justices was, that the persons were there only for the purpose of obtaining refreshment, and therefore that the appellant could not be convicted, the court of Queen's Bench refused to hear an objection that there was no evidence that the appellant knew that the persons in his house were bad characters. *Purkis v. Huxtable*, 28 L. J. (N.S.) M. C. 221; 23 J. P. 293; E. & E. 780.

This section provides that the justices are not to be liable to any costs in respect or by reason of an appeal against their determination. Therefore, where upon an appeal under the 20 & 21 Vict. c. 43, against a conviction under a local turnpike act, for illegally taking toll, the conviction was quashed, it was held that the party prosecuting must pay the costs. *Venables v. Hardman*, 28 L. J. (N.S.) M. C. 33; 4 Jur. (N.S.) 1108. The court may also make an order for costs for or against the crown in an appeal against an order of justices under this Act. Where upon an appeal against a conviction upon the information of an officer of excise, prosecuting for the crown by order of the commissioners of inland revenue, the court had held the conviction right, and given the costs of the appeal to the respondent, it was held that such order was right, and a rule nisi to amend a rule of court, by striking out so much of it as ordered the costs of the appeal to be paid by the appellant, was discharged. The meaning of the legislature, Lord Campbell, C. J., said, is clear. The 4th section provides that the justice or justices shall not refuse to state a case where the application for that purpose is made to them by the attorney-general, and the 6th section gives power to the superior courts to make such order as to costs as the court may think fit. This language he said evidently contemplates proceedings by which the crown is affected. *Moore v. Smith*, 28 L. J. (N.S.) M. C. 126; 32 L. T. 314; 23 J. P. 133. It has been decided that the court have power under section 6 of this Act to draw up an order under section 24 of

Note to Sect. 6.

the Pawnbrokers Act, 39 & 40 Geo. 3, c. 99; but in the particular case the court declined to do so, and remitted the case to the justices for rehearing, with a view to the 24th section, in order not to deprive the appellant of his appeal to the quarter sessions under the 35th section of the same Act. *Shackell v. West*, 29 L. J. (N.S.) M. C. 45; 6 Jur. (N.S.) 95; 24 J. P. 22.

Case may be sent back for amendment.

7. The court for the opinion of which a case is stated shall have power, if they think fit, to cause the case to be sent back for amendment, and thereupon the same shall be amended accordingly, and judgment shall be delivered after it shall have been amended.

Application to amend.

An application to send back for amendment a case on appeal under section 2 may be entertained by the court before the day of argument, as there is nothing in the Act to take away the ordinary jurisdiction of the court as to amending special cases. In the particular case it was agreed that the case should go back for amendment, and that each party should be at liberty to submit to the justices any additions which they might think ought to be made. *Yorkshire Tyre and Axle Company v. Rotherham Local Board of Health*, 4 C. B. (N.S.) 362; 22 J. P. 625. In *Hodgson, app., Little, resp.*, 16 C. B. (N.S.) 202, a case under 20 & 21 Vict. c. 43, was remitted to the magistrates to be amended. The court, however, will not on a mere suggestion by the appellant in the affidavit that there has been misconduct or negligence in drawing a case, send it back to be amended or re-stated, though they may do so if they find the materials to be insufficient. *Townsend, app., Read, resp.*, 4 L. T. (N.S.) 447.

Powers of superior court may be exercised by a judge at chambers.

8. The authority and jurisdiction hereby vested in a superior court for the opinion of which a case is stated under this Act shall and may (subject to any rules and orders of such court in relation thereto) be exercised by a judge of such court sitting at chambers, and as well in vacation as in term time.

After the decision of superior

9. After the decision of the superior court in relation to any case stated for their opinion under

this Act, the justice or justices in relation to whose determination the case has been stated, or any other justice or justices of the peace exercising the same jurisdiction, shall have the same authority to enforce any conviction or order, which may have been affirmed, amended, or made by such superior court, as the justice or justices who originally decided the case would have had to enforce his or their determination if the same had not been appealed against; and no action or proceeding whatsoever shall be commenced or had against the justice or justices for enforcing such conviction or order by reason of any defect in the same respectively.

Sect. 9.
 court, justices may issue warrants.

10. No writ of *certiorari* or other writ shall be required for the removal of any conviction, order, or other determination in relation to which a case is stated under this Act, or otherwise, for obtaining the judgment or determination of the superior court on such case under this Act.

Certiorari not to be required for proceedings under this Act.

11. The superior courts of law may from time to time, and as often as they shall see occasion, make and alter rules and orders to regulate the practice and proceedings in reference to the cases hereinbefore mentioned.

Superior courts may make rules for proceedings.

In Michaelmas Term, 1857, and again in Hilary Term, rules were made for regulating the practice and proceedings under 20 & 21 Vict. c. 43. These rules became obsolete, and fresh rules have been passed taking their place, which again have become more or less obsolete.

Regula generalis.

In a case where counsel appeared for the respondent, in a case stated under 20 & 21 Vict. c. 43, the court refused to hear him on account of default in the respondent not having furnished the judges with paper books, and in not having paid to the appellants the cost of the paper books furnished by them on the default of the respondent, in pursuance of

Note to Sect. 11. Rule 16, Hilary Term, 1853. The court, however, intimated that counsel for the respondent would be heard on the next crown paper day if the respondent had then complied with the rule. See *Hill, app., Thorncroft, resp.*, 7 Jur. (N.S.) 163; 25 J. P. 262.

The proper place for the delivery of paper books for the judges under Rule 16 of the Practice Rules of Hilary Term, 1853, is the judges chambers; and, therefore, where a party delivered his paper books duly as regards the time for delivery, but ordinarily as regards the place (he delivering them to the judges' clerks at Westminster), the court visited him with the penalty inflicted by the rule making him pay for the copies delivered in his default by the other side. *Howell v. Wynne*, 8 L. T. (N.S.) 577; 9 Jur. (N.S.) 1041.

Costs.

Evidence and documents set out at length in an appendix to a special case should be numbered in paragraphs pursuant to R. G. Hil. T. 1862, or the costs will not be allowed. *Hadley, app., Perks, resp.*, L. R. 1 Q. B. 445.

"Justices" to include a stipendiary magistrate.

12. The words "justice or justices" in this Act shall include a magistrate of the police courts of the metropolis and any stipendiary magistrate.

Recognizances how to be enforced.

13. In all cases where conditions, or any of them, in the said recognizance mentioned, shall not have been complied with, the justice or justices who shall have taken the same, or any other justice or justices, shall certify upon the back of the recognizance in what respect the conditions thereof have not been observed, and transmit the same to the clerk of the peace of the county, riding, division, liberty, city, borough, or place within which such recognizance shall have been taken, to be proceeded upon in like manner as other recognizances forfeited at quarter sessions may now by law be enforced, and such certificate shall be deemed sufficient *prima facie* evidence of the said recognizance having been forfeited: Provided, that where any such recognizances shall have been taken in England before a magistrate of the police courts of the metropolis, or by any

stipendiary magistrate, all sums of money in which any person or persons shall be therein bound may, if the said magistrate shall think fit, be levied, upon such recognizance being forfeited, and on non-payment thereof, together with the costs of the proceedings to enforce such payment, in the same manner as a police magistrate of the metropolis is now empowered to recover any penalty, forfeiture, or sum of money, by section forty-five of an Act passed in the second and third years of the reign of Her present Majesty, intituled "An Act for regulating the Police Courts in the Metropolis," and that all and every the provisions and enactments contained in the said section forty-five shall extend to and be applicable to this Act, in as ample a manner as if they had been herein re-enacted and made part of the same.

Sect. 13.

2 & 3 Vict.
c. 71, s. 45.

By 2 & 3 Vict. c. 71, s. 45, it is enacted as follows with regard to the recovery of penalties and forfeitures:— All penalties, forfeitures, and other sums of money imposed, awarded, or ordered to be paid by any magistrate continued or appointed under the authority of this Act, and all sums of money which any person is bound to pay under any recognizance taken before a magistrate, and afterwards forfeited, in case of non-payment thereof, may be levied, with the costs of such proceedings on non-payment, by distress and sale of the goods and chattels of the offender or person liable to pay the same, by warrant under the hand of such magistrate, and the overplus (if any) of the money so raised or recovered, after discharging with costs the penalty, forfeiture, or sum ordered to be paid, shall be returned on demand, to the party whose goods and chattels shall have been distrained; and in case any such penalty, forfeiture, or sum of money shall not be forthwith paid, it shall be lawful for such magistrate to order the party to be detained in safe custody until return can be conveniently made to such warrant of distress, unless such party shall give security, to the satisfaction of the magistrate, for his appearance at such place and time, not being more than seven days from the time of such detention, as shall be appointed for the return of the warrant of distress, and the magistrate is

Recovery of
penalties
and for-
feitures.

**Note to
Sect. 13.**

hereby empowered to take such security by way of recognizance or otherwise; but if upon the return of such warrant it shall appear that no sufficient distress could be had whereupon to levy the said penalty, forfeiture, or sum of money, and the same shall not be forthwith paid, or in case it shall appear to the satisfaction of the magistrate, upon the confession of the party or otherwise, that he has not sufficient goods and chattels whereupon such penalty, forfeiture, or sum of money could be levied if a warrant of distress should be issued, it shall be lawful for the magistrate, by warrant under his hand, to commit such party to some common gaol or house of correction within his jurisdiction, there to remain for any time not more than one calendar month, where the sum to be paid shall not exceed five pounds, and not more than three calendar months in any case, the imprisonment to cease on payment of the sum due.

As to the enforcement of recognizances estreated, see 3 Geo. 4, c. 46, *post*, p. 191, and 12 & 13 Vict. c. 45, s. 17, *post*, p. 188.

Appellants
under this
Act not
allowed to
appeal
to quarter
sessions.

14. Any person who shall appeal under the provisions of this Act against any determination of a justice or justices of the peace from which he is by law entitled to appeal to the quarter sessions shall be taken to have abandoned such last-mentioned right of appeal, finally and conclusively, and to all intents and purposes.

Extent of
Act.

15. This Act shall not extend to Scotland.

SCHEDULE A.

Sched. A.

Fees to be taken by Clerks to Justices.

	<i>s.</i>	<i>d.</i>
For drawing case and copy, where the case does not exceed five folios of ninety words each - - - - -	10	0
Where the case exceeds five folios, then for every additional folio- - - - -	1	0
For the recognizance to be taken in pursuance of the Act - - - - -	5	0
For every enlargement or renewal thereof -	2	6
For certificate of refusal of case - -	2	0

QUARTER SESSIONS PROCEDURE.

12 & 18 VICT. CAP. 45.

An Act to amend the Procedure in Courts of General and Quarter Sessions of the Peace in England and Wales, and for the better Advancement of Justice in Cases within the Jurisdiction of those Courts.
[28th July, 1849.]

WHEREAS, in cases of appeal to courts of general or quarter sessions of the peace, it is expedient that the law should be more uniform: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, that in every case of appeal (except as hereinafter mentioned) to any court of general or quarter sessions of the peace fourteen clear days notice of appeal at least shall be given, and such shall be sufficient notice, any Act or Acts, or any rule or practice of any court or courts, to the contrary notwithstanding; and such notice of appeal shall be in writing, signed by the person or persons giving the same, or by his, her, or their attorney, on his, her, or their behalf, and the grounds of appeal shall be specified in every such notice: Provided always, that it shall not be lawful for the appellant or appellants, on the trial of any such appeal, to go into or give evidence of any other ground of appeal besides those set forth in such notice.

Uniformity
of time for
notice of
appeal.

Notice of
appeal to be
in writing,
and signed.

Grounds of
appeal to
be stated.

Fourteen *clear days* notice of appeal means that the notice is to be exclusive of the day of giving the notice, and of the first day of the sessions. *Reg. v. Middlesex JJ.*, 2 N. S. C. 73.

With reference to this enactment, however, it should be borne in mind that the procedure on appeals to general or quarter sessions has been amended by the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49, s. 31, *et seq.*), p. 233; and see 47 & 48 Vict. c. 43, s. 6, *post*, as to such appeals.

Note to Sect. 1.
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2. None of the provisions hereinbefore contained relating to notices of appeal shall be construed to affect or alter the law as to notice of appeal against a summary conviction, or against an order of removal, or against an order under any statute relating to pauper lunatics, or against an order in bastardy, or against any proceeding under or by virtue of any of the statutes relating to Her Majesty's revenue of excise or customs, stamps, taxes, or post-office, but the law with regard to notices of all such appeals shall be deemed and taken to be the same as if the provisions hereinbefore contained had not been enacted.

Act not to affect notices of appeal against orders of removal, orders of bastardy, &c.

With reference to this section see 42 & 43 Vict. c. 49, s. 53, *post*, p. 263.

3. And whereas a statement of the grounds of appeal, when required by this or any other statute, is for the purpose of enabling the party receiving it to inquire into the subject of such statement, and, if need be, to prepare for trial: Be it therefore enacted, that upon the hearing of any appeal to any court of general or quarter sessions of the peace no objection on account of any defect in the form of setting forth any ground of appeal shall be allowed, and no objection to the reception of legal evidence offered in support of any ground of appeal shall prevail, unless the court shall be of opinion that such ground of

Defects in statement of grounds of appeal.

Sect. 3. appeal is so imperfectly or incorrectly set forth as to be insufficient to enable the party receiving the same to inquire into the subject of such statement, and to prepare for trial: Provided always, that in all cases where the court shall be of opinion that any objection to any ground of appeal, or to the reception of evidence in support thereof, ought to prevail, it shall be lawful for such court, if it shall so think fit, to cause any such ground of appeal to be forthwith amended by some officer of the court, or otherwise, on such terms as to payment of costs to the other party, or postponing the trial to another day in the same sessions or to the next subsequent sessions, or both payment of costs and postponement, as to such court shall appear just and reasonable.

Amendment of grounds of appeal.

Frivolous grounds of appeal.

4. If in any notice of appeal the appellant or appellants shall have included any ground or grounds of appeal which shall in the opinion of the court determining the appeal be frivolous or vexatious, such appellant or appellants shall be liable, if the court shall so think fit, to pay the whole or any part of the costs incurred by the respondent or respondents in disputing any such ground or grounds of appeal, such costs to be recoverable in the manner hereinafter directed as to the other costs incurred by reason of such appeal.

Sessions to have a general power to give costs in all cases of appeal.

5. Upon any appeal to any court of general or quarter sessions of the peace the court before whom the same shall be brought may, if it think fit, order or direct the party or parties against whom the same shall be decided to pay to the other party or parties such costs and charges as may to such court appear just and reasonable, such costs to be recoverable in

the manner provided for the recovery of costs upon an appeal against an order or conviction by an Act passed in the twelfth year of Her Majesty's reign, intituled, "An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales with respect to summary Convictions and Orders." **Sect. 5.**

11 & 12 Vict.
c. 43.

See 11 & 12 Vict. c. 43, s. 27, *ante*, p. 72.

6. And for the more effectual prevention of frivolous appeals, be it enacted, that any court of general or quarter sessions of the peace, upon proof of notice of any appeal to the same court having been given to the party or parties entitled to receive the same, though such appeal was not afterwards prosecuted or entered, may, if it so think fit, at the same sessions for which such notice was given, order to the party or parties receiving the same such costs and charges as by the said court shall be thought reasonable and just to be paid by the party or parties giving such notice, such costs to be recoverable in the manner last aforesaid. Frivolous
appeals.

7. And whereas in many cases, where justices of the peace are by law empowered to make orders or to give judgments, great expense and frequent failures of justice have been occasioned by reason that such orders or judgments have, on appeal to the general or quarter sessions of the peace, or on removal by *certiorari* into the Court of Queen's Bench been quashed or set aside upon exceptions or objections to the form of the order or judgment, irrespective of the truth and merits of the matters in question: For remedy thereof be it enacted, that if upon the trial of any appeal to any court of Amendment
of orders or
judgments
of justices
on appeal or
return to
certiorari.

Sect. 7. general or quarter sessions of the peace against any order or judgment made or given by any justice or justices of the peace, or if upon the return to any writ of *certiorari* any objection shall be made on account of any omission or mistake in the drawing up of such order or judgment, and it shall be shown to the satisfaction of the court that sufficient grounds were in proof before the justice or justices making such order or giving such judgment to have authorized the drawing up thereof free from the said omission or mistake, it shall be lawful for the court, upon such terms as to payment of costs as it shall think fit, to amend such order or judgment, and to adjudicate thereupon as if no such omission or mistake had existed: Provided always, that no objection on account of any omission or mistake in any such order or judgment brought up upon a return to a writ of *certiorari* shall be allowed unless such omission or mistake shall have been specified in the rule for issuing such *certiorari*.

Rule for *certiorari* to state objections.

If an adjudication be wrong in point of substance, the order cannot be amended under 12 & 13 Vict. c. 45, s. 7. *Reg. v. Tomlinson*, L. R. 8 Q. B. 12.

Amendment of recognizances.

8. And whereas the statutes giving a right of appeal against orders or summary convictions frequently require a recognizance or recognizances to be entered into as a condition of such appeal, and appellants are liable to be prevented from trying their appeals upon the merits, in consequence of imperfections in the taking of such recognizances: Be it enacted, that where any recognizance or recognizances which shall have been entered into within the time by law required before any justice or justices for the purpose of complying with any such

condition of appeal shall appear to the court before which such appeal is brought to have been insufficiently entered into, or to be otherwise defective or invalid, it shall be lawful for such court, if it shall so think fit, to permit the substitution of a new and sufficient recognizance or new and sufficient recognizances to be entered into before such court in the place of such insufficient, defective, or invalid recognizance or recognizances, and for that purpose to allow such time, and make such examination, and impose such terms as to payment of costs to the respondent or respondents, as to such court shall appear just and reasonable; and such substituted recognizance or recognizances shall be as valid and effectual to all intents and purposes as if the same had been duly entered into at any earlier time or times as required by any statute or statutes for that purpose.

Sect. 8.

9. The decisions of the court of general or quarter sessions of the peace upon the hearing of any appeal, as to the sufficiency of the statement of any ground or grounds of appeal, and as to the amending or refusing to amend any order or judgment of a justice or justices appealed against, or the statement of any ground or grounds of appeal, and as to the substitution of any new recognizance or recognizances as aforesaid, shall be final, and shall not be liable to be reviewed in any court, by means of a writ of *certiorari* or *mandamus*, or otherwise.

Decisions of sessions, when final.

An appeal from a divisional court, in which court a case stated by quarter sessions for the opinion of that court, has been decided cannot be carried further to the court of appeal without leave of the divisional court first obtained. *Hinton v. Swindon New Town Local Board*, 44 J. P. 505.

Sect. 10. **10.** Every court of general or quarter sessions of the peace, on the trial of any offence within its jurisdiction, whenever any variance or variances shall appear between any matter in writing or in print produced in evidence and the recital or setting forth thereof in the indictment, shall have the same power in all respects to cause the indictment to be amended which is given to courts of oyer and terminer and general gaol delivery with regard to offences tried before such last-mentioned courts by virtue of an Act of the twelfth year of Her Majesty's reign, intituled, "An Act for the Removal of Defects in the Administration of Criminal Justice;" and after such amendment the trial shall proceed in the same manner in all respects, both with regard to the liability of witnesses to be indicted for perjury and otherwise as if no such variance or variances had appeared.

Amendment
of indictment.

11 & 12 Vict.
c. 46.

Power to
state a
special case
without
going to the
sessions
previously.

11. At any time after notice given of appeal to any court of general or quarter sessions of the peace against any judgment, order, rate, or other matter, (except an order in bastardy, or a proceeding under or by virtue of any of the statutes relating to Her Majesty's revenue of excise or customs, stamps, taxes, or post-office,) for which the remedy is by such appeal, it shall be lawful for the parties, by consent, and by order of any judge of one of the superior courts of common law at Westminster, to state the facts of the case in the form of a special case for the opinion of such superior court, and to agree that a judgment in conformity with the decision of such court, and for such costs as such court shall adjudge, may be entered on motion by

either party at the sessions next or next but one after such decision shall have been given; and such judgment shall and may be entered accordingly, and shall be of the same effect in all respects as if the same had been given by the court of general or quarter sessions upon an appeal duly entered and continued.

Sect. 11.

The court will not take cognizance of facts stated in a case, or give any opinion upon a question reserved by a court of quarter sessions, if the sessions have not made an order either confirming or reversing the decision appealed against. *Reg. v. Sutton Coldfield*, W. N. 1874, p. 29; L. R. 9 Q. B. 153.

A case stated for the opinion of the Queen's Bench Division, under s. 11 of 12 & 13 Vict. c. 45, should contain a statement of the agreement of the parties that judgment, in conformity with the decision of the court, may be entered at quarter sessions in the manner provided by the section. *Peterborough v. Thurlby*, L. R. 8 Q. B. D. 586.

12. And whereas by a statute passed in the tenth year of King William the Third, intituled, "An Act for determining Differences by Arbitration," provision was made for rendering more effectual the awards of arbitrators in the case of controversies and disputes for which there is no other remedy but by personal action or by suit in equity: And whereas it is expedient in like manner to facilitate and render more effectual references to arbitration of controversies and disputes for which the remedy is by appeal to a court of general or quarter sessions of the peace: Be it enacted, that at any time after notice given of appeal to any court of general or quarter sessions of the peace against any order, rate, or other matter, (except a summary conviction, or an order in bastardy, or any proceeding under

References
to arbitra-
tion.
9 & 10 Will.
3, c. 15.

Sect. 12. or by virtue of any of the statutes relating to Her Majesty's revenue of excise or customs, stamps, taxes, or post-office,) for which the remedy is by such appeal, it shall be lawful for the parties, by themselves or their attornies, and by order of a judge of Her Majesty's Court of Queen's Bench, to submit the matter or matters of such appeal to the award or umpirage of any person or persons, and to agree that such submission should be made a rule of the said Court of Queen's Bench, and to insert such agreement in their submission or the condition of the bond or promise whereby they oblige themselves respectively to submit to the award or umpirage of such person or persons; and thereupon such and the like proceedings in all respects shall and may be taken with regard to submissions under this Act, and to enforcing awards or umpirages thereupon, and to setting aside the same, as are authorized by the said Act of King William the Third with regard to the cases therein provided for; and every award or umpirage duly made under this Act shall be as binding and effectual to all intents as if the same had been a regular judgment of the said court of general or quarter sessions, and shall and may, on the application of either party, be enrolled among the records of the said court of sessions.

See 9 Will. 4, c. 15, *post*, p. 190.

References
by order
of court of
sessions.

13. It shall be lawful for any court of general or quarter sessions of the peace before which any appeal (except against a summary conviction, or an order in bastardy, or any proceeding under or by virtue of any of the statutes relating to Her Majesty's revenue of excise or customs, stamps, taxes, or post-

office) shall be brought, to order, with consent of the parties or their attorneys, that the matter or matters of such appeal be referred to arbitration to such person or persons, and in such manner and on such terms as the said court shall think reasonable and proper; and such order may be made a rule of the Court of Queen's Bench, on the application of either party; and the award of the arbitrator or arbitrators, or umpirage of the umpire, may, on motion by either party, at the sessions next or next but one after such award or umpirage shall have been finally made and published, or after the decision of the Court of Queen's Bench on any motion for setting aside the same, be entered as the judgment of the court of general or quarter sessions in the appeal, and shall be as binding and effectual to all intents as if given by the said court: Provided always, that the Court of Queen's Bench may, if it think fit, on application within the term next after the making and publication of such award or umpirage, either refer the case back again to the same arbitrator, arbitrators, or umpire, or wholly set aside the award or umpirage already made, and may in the latter event order the court of general or quarter sessions to enter continuances and hear the appeal. **Sect. 13.**

14. If upon any reference to arbitration under this Act it shall be made to appear to the Court of Queen's Bench that, either from the death of the arbitrator or arbitrators or umpire, or from any other cause, it has become impossible that an award or umpirage can be made, it shall be lawful for the said court to order the court of general or quarter sessions of the peace to enter continuances and hear the appeal.

Where reference abortive, Queen's Bench may order sessions to hear the appeal.

Sect. 15. 15. The several provisions relating to arbitrations contained in an Act of the fourth year of King William the Fourth, intituled, "An Act for the further Amendment of the Law, and the better advancement of Justice," shall be deemed and taken to be applicable to arbitrations under this Act; and in every such arbitration the arbitrator or arbitrators or umpire shall have the same powers of amendment which the court of general or quarter sessions of the peace would have had on the trial of the appeal.

3 & 4 Will. 4, c. 42, to be applicable to references under this Act.

Arbitrators to have power of amendment.

See 3 & 4 Will. 4, c. 42, *post*, p. 194.

Recognizances for prosecution and trial of appeal. 16. No recognizance entered into pursuant to any statute or statutes for the prosecution and trial of any appeal shall be deemed to be forfeited by such agreement as aforesaid for the statement of a special case without previously going to the court of general or quarter sessions, or by any submission to arbitration under the provisions of this Act.

3 Geo. 4, c. 46.

Levy and recovery of fines, issues, and amer- ciaments.

17. And whereas by an Act passed in the third year of the reign of King George the Fourth, intituled, "An Act for the more speedy Return and levying of Fines, Penalties, and Forfeitures and Recognizances estreated," provision is made for authorizing the levying and recovery of fines, issues, amer- ciaments, and forfeited recognizances set, im- posed, lost, or forfeited by or before any justice or justices of the peace in England: And whereas it is expedient that the subsequent proceedings in such cases should be uniform: Be it enacted, that the proceedings subsequent to such authority given for so levying and recovering as aforesaid shall and may

be the same in all respects in the case of such Sect. 17.
 fines, issues, and ameraciements as are by the said
 Act provided, permitted, and required in the case of
 such forfeited recognizances.

See 3 Geo. 4, c. 46, *post*, p. 191.

18. In all cases where any order shall be made by Enforcing "orders of sessions."
 any court of general or quarter sessions of the peace
 it shall be lawful for the Court of Queen's Bench, or
 for any judge of that court at chambers, either in
 term or vacation, upon the application of any person
 entitled to enforce such order, and upon the produc-
 tion of a copy of such order under the hand of the
 clerk of the peace or his deputy, and upon proof of
 refusal or neglect to obey such order, to order and
 direct such order of the court of general or quarter
 sessions to be removed into the said Court of Queen's
 Bench, and thereupon such order shall be of the
 same force and effect, and may be enforced in the
 same manner, as a rule made by the said Court of
 Queen's Bench; and all the reasonable costs and
 charges attendant upon such application and re-
 moval shall be recoverable in like manner as if the
 same were part of such order.

19. Nothing in this Act contained shall extend to Not to extend to Scotland or Ireland.
 Scotland or Ireland.

Note.—By the "Arbitration Bill" introduced into the House of Lords by Lord *Bramwell*, and ordered to be printed on 24th July, 1884 (No. 210), it was proposed to repeal sections 12 to 15 inclusive of this Act, and to make other provisions in lieu thereof. However, the bill was not passed.

The following are the enactments referred to in sections 10, 12, 15, and 17 respectively of the preceding statute 12 & 13 Vict. c. 45.

9 WILL. 3, CAP. 15.

An Act for determining Differences by Arbitration.

[22nd November, 1698.]

Recital that references made by rule of court have contributed to the case of the subject.

WHEREAS it hath been found by experience that references made by rule of court have contributed much to the ease of the subject in determining of controversies, because the parties become thereby obliged to submit to the award of the arbitrators under the penalty of imprisonment for their contempt in case they refuse submission. Now, for promoting trade and rendering the awards of arbitrators the more effectual in all cases for the final determination of controversies referred to them [by (a)] merchants and traders, or others concerning matters of account or trade or other matters :

Merchants, &c., where remedy only by personal action or suit in equity, may agree that award may be made a rule of court, and may insert the same in their submission.

Be it enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in parliament assembled, and by authority of the same, that from and after the eleventh day of May, which shall be in the year of our Lord one thousand six hundred and ninety-eight, it shall and may be lawful for all merchants and traders, and others, desiring to end any controversy, suit, or quarrel, controversies, suits, or quarrels (for which there is no [other (a)] remedy, but by personal action or suit in equity) by arbitration, to agree that their submission of their suit to the award or umpirage of any person or persons should be made a rule of any of his Majesty's courts of record which the parties shall choose, and to insert such their agreement in their submission or the condition of the bond or promise, whereby they oblige themselves respectively to submit to the award or umpirage of any person or persons which agreement being so made and inserted in their submission, or promise, or condition of their respective bonds shall or may upon producing an affidavit thereof made by the witnesses thereunto or any one of them in the court of which the same is agreed to be made a rule, and reading and filing the said affidavit in court be entered of record in such court, and a rule shall thereupon be made by the said court that the parties shall submit to and finally be concluded by the arbi-

(a) Interlined on the roll.

tration or umpirage which shall be made concerning them by the arbitrators or umpire pursuant to such submission. And in case of disobedience to such arbitration or umpirage the party neglecting or refusing to perform and execute the same, or any part thereof, shall be subject to all the penalties of contemning a rule of court when he is a suitor or defendant in such court, and the court on motion shall issue process accordingly, which process shall not be stopped or delayed in its execution by any order, rule, command, or process of any other court either of law or equity unless it shall be made appear on oath to such court that the arbitrators or umpire misbehaved themselves, and that such award, arbitration, or umpirage was procured by corruption or other undue means.

And be it further enacted by the authority aforesaid, that any arbitration or umpirage procured by corruption or undue means shall be judged and esteemed void and of none effect, and accordingly be set aside by any court of law or equity, so as complaint of such corruption or undue practice be made in the court where the rule is made for submission to such arbitration or umpirage, before the last day of the next term after such arbitration or umpirage made and published to the parties, anything in this Act contained to the contrary notwithstanding.

Arbitration
unduly
procured,
void.

3 GEO. 4, CAP. 46.

An Act for the more speedy return and levying of Fines, Penalties, and Forfeitures, and Recognizances estreated.

[24th June, 1822.]

* * * * *

2. And be it further enacted, that from and after the twenty-ninth day of September, one thousand eight hundred and twenty-two, all fines, issues, amerciaments, forfeited recognizances, sum or sums of money paid or to be paid in lieu or satisfaction of them or any of them (save and except the same shall by virtue of any Act or Acts of parliament made or to be made, be otherwise directed to be levied, recovered, appropriated, or disposed of), which already are or hereafter shall be set, imposed, lost, or forfeited by or before any justice or justices of the peace in that part of the United Kingdom called England, shall be and are hereby required to

Sect. 2.

Fines, &c.,
imposed by
any justices
shall be
certified
by them
to the
clerk of the
peace, &c. ;

Sect. 2. be certified by the justice or justices of the peace, by or before whom any such fines, issues, amerciaments, forfeited recognizances, sum or sums of money paid or to be paid in lieu or satisfaction of them or any of them shall be set, imposed, lost, or forfeited, to the clerk of the peace of the county, or town clerk of the city, borough, or place, in writing, containing the names and residences, trade, profession, or calling of the parties, the amount of the sum forfeited by each respectively, and the cause of each forfeiture, signed by such justice or justices of the peace, on or before the ensuing general or quarter sessions of such county, city, borough, or place respectively; and such clerk of the peace or town clerk shall copy on a roll such fines, issues, amerciaments, forfeited recognizances, sum or sums of money paid or to be paid in lieu or satisfaction of them or any of them, together with all fines, issues, amerciaments, forfeited recognizances, sum or sums of money paid or to be paid in lieu or satisfaction of them, or any of them, imposed or forfeited at such court of general or quarter sessions, and shall, within such time as shall be fixed and determined by such court, not exceeding twenty-one days after the adjournment of such court, send a copy of such roll, with a writ of *distringas* and *capias*, or *fieri facias* and *capias*, according to the form and effect in the schedule marked (A.) annexed to this Act (a), to the sheriff of such county, or the sheriff, bailiff, or officer of such city, borough, or place having execution of process therein respectively, as the case may be; which shall be the authority to such sheriff of such county, or the sheriff, bailiff, or officer, as the case may be, for proceeding to the immediate levying and recovering of such fines, issues, amerciaments, forfeited recognizances, sum or sums of money to be paid in lieu or satisfaction of them or any of them, on the goods and chattels of such several persons, or for taking into custody the bodies of such persons, in case sufficient goods and chattels shall not be found whereon distress can be made for recovery thereof; and every person so taken shall be lodged in the common gaol until the next general or quarter sessions of the peace, there to abide the judgment of the said court.

who shall copy the same on a roll, together with fines, &c., imposed at quarter sessions, and send a copy of such roll, with writ of *distringas*, &c., to the sheriff, &c., as authority for levying such fines, &c.

Persons apprehended to be lodged in common gaol.

Clerk of the peace, &c., to make oath

3. And be it further enacted, that the clerk of the peace or town clerk shall, before he shall deliver the roll to such sheriff, bailiff, or officer, containing the fines, issues, amercia-

(a) By 22 & 23 Vict. c. 21, s. 30, the form of writ in the schedule to that Act is substituted for the form in schedule (A.) to this Act.

ments, forfeited recognizances, sum or sums of money paid or to be paid in lieu or satisfaction of them or any of them, and is hereby required, to make oath before any justice of the peace for the county, riding, city, borough, or place for which such clerk of the peace or town clerk shall act, which oath shall be indorsed on the back of the writ or of the said roll attached thereto, such clerk of the peace or town clerk stating therein all such fines, issues, amerciaments, forfeited recognizances, sum or sums of money, which shall have been paid or otherwise accounted for; and such oath shall be made in the form following:

Sect. 2.

as to fines, &c.

"I make oath, that this roll is truly and carefully made up and examined, and that all fines, issues, amerciaments, recognizances, and forfeitures, which were set, lost, imposed, or forfeited, and in right and due course of law ought to be levied and paid, are to the best of my knowledge and understanding, inserted in the said roll, and that in the said roll are also contained and expressed all such fines as have been paid to or received by me, either in court or otherwise, without any wilful or fraudulent discharge, omission, misnomer, or defect whatever. So help me GOD."

Form of oath.

* * * * *

5. Provided always, and be it enacted, that if any person, on whose goods and chattels such sheriff, bailiff, or officer shall be authorized to levy any such forfeited recognizance or sum of money to be paid in lieu or satisfaction thereof, shall give security to the said sheriff, bailiff, or officer for his appearance at the next general or quarter sessions, then and there to abide the decision of the court, and also to pay such forfeited recognizance or sum of money to be paid in lieu or satisfaction thereof, together with all such expenses as shall be ordered and adjudged by the court, it shall be lawful for such sheriff, bailiff, or officer, and he is hereby authorized and required, to discharge such person so giving such security out of custody: Provided also, that in case such party so giving security shall not appear in pursuance of his undertaking, it shall be lawful for the court forthwith to issue a writ of *distringas* and *capias*, or *feri facias* and *capias*, against the surety or sureties of the person so bound as aforesaid.

Persons may appeal to quarter sessions against levy of forfeited recognizance, &c., upon giving security.

6. And be it further enacted, that the court of general or quarter sessions before whom any person so committed to gaol or bound to appear shall be brought, is hereby authorized and required to inquire into the circumstances of the case, and shall at its discretion, be empowered to order the

Justices at quarter sessions to hear and determine such appeals.

Sect. 6. discharge of the whole of the forfeited recognizance or sum of money paid or to be paid in lieu or satisfaction thereof, or any part thereof; and such order shall be made in the form or to the effect of the schedule marked (C.) to this Act annexed, and shall be signed by the clerk of the peace; which said order shall be a discharge to such sheriff, bailiff, or officer, on the passing of his accounts at the exchequer, or before any auditor or other proper officer duly authorized to pass the same; and in all cases where the party shall have been lodged in the common gaol by such sheriff, bailiff, or other officer, the justices of the peace so assembled are hereby empowered either to remand such party to the custody of the sheriff, bailiff, or other officer, or, upon the release of such party from the whole of such forfeited recognizance, to order such party to be discharged from custody; and such order shall be a full and sufficient discharge to the said sheriff, bailiff, or officer on the passing of his accounts at the exchequer or before any auditor or other proper officer duly authorized to pass the same; and it shall and may be lawful to and for the said court of general or quarter sessions to award such costs, charges, and expenses to be paid by either party to the other, as to the said court shall seem just and reasonable.

3 & 4 WILL. 4, CAP. 42.

An Act for the further amendment of the Law, and the better advancement of Justice. [14th August, 1833.]

* * * * *

Submission to arbitration by rule of court, &c., not to be revocable without leave of the court.

39. And whereas it is expedient to render references to arbitration more effectual: Be it further enacted, that the power and authority of any arbitrator or umpire appointed by or in pursuance of any rule of court, or judge's order, or order of *nisi prius*, in any action now brought or which shall be hereafter brought, or by or in pursuance of any submission to reference containing an agreement that such submission shall be made a rule of any of his Majesty's courts of record, shall not be revocable by any party to such reference without the leave of the court by which such rule or order shall be made, or which shall be mentioned in such submission, or by leave of a judge; and the arbitrator or umpire shall and may and is hereby required to proceed with the reference notwithstanding any such revocation, and to make such award,

although the person making such revocation shall not afterwards attend the reference; and that the court or any judge thereof may from time to time enlarge the term for any such arbitrator making his award.

Sect. 39.
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40. And be it further enacted, that when any reference shall have been made by any such rule or order as aforesaid, or by any submission containing such agreement as aforesaid, it shall be lawful for the court by which such rule or order shall be made, or which shall be mentioned in such agreement, or for any judge, by rule or order to be made for that purpose, to command the attendance and examination of any person to be named or the production of any documents to be mentioned in such rule or order; and the disobedience to any such rule or order shall be deemed a contempt of court, if, in addition to the service of such rule or order, an appointment of the time and place of attendance in obedience thereto, signed by one at least of the arbitrators, or by the umpire, before whom the attendance is required, shall also be served either together with or after the service of such rule or order: Provided always, that every person whose attendance shall be so required shall be entitled to the like conduct money, and payment of expenses and for loss of time, as for and upon attendance at any trial: Provided also, that the application made to such court or judge for such rule or order shall set forth the county where such witness is residing at the time, or satisfy such court or judge that such person cannot be found: Provided also, that no person shall be compelled to produce, under any such rule or order, any writing or other document that he would not be compelled to produce at a trial, or to attend at more than two consecutive days, to be named in such order.

Attendance of witnesses and production of documents on such arbitrations.

41. And be it further enacted, that when in any rule or order of reference, or in any submission to arbitration containing an agreement that the submission shall be made a rule of court, it shall be ordered or agreed that the witnesses upon such reference shall be examined upon oath, it shall be lawful for the arbitrator or umpire, or any one arbitrator, and he or they are hereby authorized and required, to administer an oath to such witnesses, or to take their affirmation in cases where affirmation is allowed by law instead of oath; and if upon such oath or affirmation any person making the same shall wilfully and corruptly give any false evidence, every person so offending shall be deemed and taken to be guilty of perjury, and shall be prosecuted and punished accordingly.

Arbitrators to administer oaths, &c., to witnesses.

THE SUMMARY JURISDICTION ACT, 1879.

42 & 43 VICT. CAP. 49.

An Act to amend the Law relating to the Summary Jurisdiction of Magistrates.

[11th August, 1879.]

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same as follows :—

Short title. **1.** This Act may be cited for all purposes as the Summary Jurisdiction Act, 1879.

Application of Act. **2.** This Act shall not extend to Scotland or Ireland.

Commencement of Act. **3.** This Act shall come into operation on the first day of January one thousand eight hundred and eighty (which day is in this Act referred to as the commencement of this Act) :

Provided that at any time after the passing of this Act any rules may be made, and any act or thing necessary or proper for bringing this Act into operation at the commencement thereof may be done, so that such rules, act, or thing take effect only upon the said commencement. Sect. 3.

PART I.

Court of Summary Jurisdiction.

4. Subject as in this Act mentioned, and notwithstanding any enactment to the contrary, where a court of summary jurisdiction has authority under this Act, or under any other Act, whether past or future, to impose imprisonment or to impose a fine for an offence punishable on summary conviction, that court may, in the case of imprisonment, impose the same without hard labour, and reduce the prescribed period thereof, or do either of such acts; and in the case of a fine, if it be imposed as in respect of a first offence, may reduce the prescribed amount thereof. Mitigation of punishment by court.

And where in the case either of imprisonment or a fine there is prescribed a requirement for the offender to enter into his recognizance and to find sureties for keeping the peace, and observing some other condition, or to do any of such things, the court may dispense with any such requirement or any part thereof.

And where a court of summary jurisdiction has authority under an Act of Parliament other than this

Sect. 4. Act, whether past or future, to impose imprisonment for an offence punishable on summary conviction, and has not authority to impose a fine for that offence, that court when adjudicating on such offence may, notwithstanding, if the court think that the justice of the case will be better met by a fine than by imprisonment, impose a fine 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 fine, to any greater term of imprisonment than that to which he is liable under the Act authorizing the said imprisonment.

In ordinary cases the justices have a discretion to convict with or without hard labour given to them by the 19th and subsequent sections of Jervis's Act, 11 & 12 Vict. c. 43, but where the statute under which the conviction took place imposed hard labour, the justices had no discretion, but were bound to adjudge hard labour with the sentence of imprisonment; now they have a discretion in all cases as to imposing hard labour with the sentence of imprisonment, and it will be seen that a discretion is now also given to the justices to reduce the prescribed period of imprisonment, as well as the prescribed fine, and to dispense with recognizance and sureties for keeping the peace, &c.; and, further, that they may substitute a fine in lieu of imprisonment when the statute prescribes imprisonment only as the punishment for the offence.

Scale of imprisonment for non-payment of money.

5. The period of imprisonment imposed by a court of summary jurisdiction under this Act, or under any other Act, whether past or future, in respect of the non-payment of any sum of money adjudged to be paid by a conviction, or in respect of the default of a sufficient distress to satisfy any such sum, shall, notwithstanding any enactment to the contrary in any past Act, be such

period as in the opinion of the court will satisfy the justice of the case, but shall not exceed in any case the maximum fixed by the following scale; that is to say, Sect. 5.

Where the amount of the sum or sums of money adjudged to be paid by a conviction, as ascertained by the conviction,	The said period shall not exceed
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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 twenty pounds - Two months.

Exceeds twenty pounds - - Three months.

And such imprisonment shall be without hard labour, except where hard labour is authorized by the Act on which the conviction is founded, in which case the imprisonment may, if the court thinks the justice of the case requires it, be with hard labour, so that the term of hard labour awarded do not exceed the term authorized by the said Act.

6. Where under any Act, whether past or future, a sum of money claimed to be due is recoverable on complaint to a court of summary jurisdiction, and not on information, such sum shall be deemed to be a civil debt, and if recovered before a court of summary jurisdiction shall be recovered in the manner Sum recoverable by summary order to be recoverable as a civil debt.

Sect. 6. in which a sum declared by this Act to be a civil debt recoverable summarily is recoverable under this Act, and not otherwise; and the payment of any costs ordered to be paid by the complainant or defendant in the case of any such complaint shall be enforced in like manner as such civil debt, and not otherwise.

The recovery of civil debts in a court of summary jurisdiction is provided for by section 35 of this Act. The distinction upon a proceeding on an information and a complaint pointed out in the note to section 1 of 11 & 12 Vict. c. 43, s. 1, *ante*, p. 1, must be borne in mind when taking proceedings under this section for the recovery of a "civil debt."

The penalty recoverable under section 103 of the Railway Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), is not a civil debt within this section. *Reg. v. Paget*, 16 L. J. 136; L. R. 8 Q. B. D. 158; 45 L. J. (N.S.) 794; 46 J. P. 151; 51 L. J. M. C. 9.

The Summary Jurisdiction Act, 1879, does not alter or affect the procedure available by way of distress warrant for the non-payment of poor rates, as Jervis's Act did not apply to the recovery of poor rates, and 42 & 43 Vict. c. 49, s. 47, applies only to sums for which a distress warrant could have issued under Jervis's Act; as to which see section 10 of 47 & 48 Vict. c. 43, *post*, p. 286. *Reg. v. Price*, 44 J. P. 248; 42 L. T. (N.S.) 439.

Payment by instalments of or security taken for payment of money.

7. A court of summary jurisdiction, by whose conviction or order any sum is adjudged to be paid, may do all or any of the following things; namely,—

- (1.) Allow time for the payment of the said sum; and
- (2.) Direct payment to be made of the said sum by instalments; and
- (3.) Direct that the person liable to pay the said sum shall be at liberty to give to the

satisfaction of that court, or of such other court of summary jurisdiction, or such person as may be specified by that court, security with or without a surety or sureties, for the payment of the said sum or of any instalment thereof, and such security may be given and enforced in manner provided by this Act. Sect. 7.

Where a sum is directed to be paid by instalments and default is made in the payment of any one instalment, the same proceedings may be taken as if default had been made in payment of all the instalments then remaining unpaid.

A court of summary jurisdiction directing the payment of a sum or of an instalment of a sum may direct such payment to be made at such time or times, and in such place or places, and to such person or persons, as may be specified by the court; and every person to whom any such sum or instalment is paid, where not the clerk of the court of summary jurisdiction, shall as soon as may be account for and pay over the same to that clerk.

Section 21, sub-sections (2), (3), (4), *post*, p. 220, provide for the enforcement of securities taken for payment of money on convictions or orders.

8. Where a fine adjudged by a conviction by a court of summary jurisdiction to be paid does not exceed five shillings, then, except so far as the court may think fit to expressly order otherwise, an order shall not be made for payment by the defendant to the informant of any costs; and the court shall, except so far as they think fit to expressly order

Provision
asto costs in
the case of
small fines.

Sect. 8. otherwise, direct all fees payable or paid by the informant to be remitted or repaid to him ; the court may also order the fine or any part thereof to be paid to the informant in or towards the payment of his costs.

Generally, with regard to the power of justices to award costs in summary convictions or orders, see 11 & 12 Vict. c. 43, s. 18, *ante*, p. 57.

Enforcing
of recog-
nizances
by court of
summary
jurisdiction.

9. (1.) Where a recognizance is conditioned for the appearance of a person before a court of summary jurisdiction, or for his doing some other matter or thing to be done in, to, or before a court of summary jurisdiction, or in a proceeding in a court of summary jurisdiction, such court, if the said recognizance appears to the court to be forfeited, may declare the recognizance to be forfeited, and enforce payment of the sum due under such recognizance in the same manner as if the sum were a fine adjudged by such court to be paid which the statute provides no means of enforcing, and were ascertained by a conviction.

Provided that at any time before the sale of goods under a warrant of distress for the said sum, the said court of summary jurisdiction, or any other court of summary jurisdiction for the same county, borough, or place, may cancel or mitigate the forfeiture, upon the person liable applying, and giving security to the satisfaction of the court for the future performance of the condition of the recognizance, and paying or giving security for payment of the costs incurred in respect of the forfeiture, or

upon such other conditions as the court may think just. **Sect. 9.**

(2.) Where a recognizance conditioned to keep the peace or to be of good behaviour, or not to do or commit some act or thing, has been entered into by any person as principal or surety before a court of summary jurisdiction, that court or any other court of summary jurisdiction acting for the same county, borough, or place, upon proof of the conviction of the person bound as principal by such recognizance or any offence which is in law a breach of the condition of the same, may by conviction adjudge such recognizance to be forfeited, and adjudge the persons bound thereby, whether as principal or sureties, or any of such persons, to pay the sums for which they are respectively bound.

(8.) Except where a person seeking to put in force a recognizance to keep the peace or to be of good behaviour; by notice in writing, requires such recognizance to be transmitted to a court of general or quarter sessions, the recognizances to which this section applies shall be dealt with in manner in this section mentioned, and, notwithstanding any enactment to the contrary, shall not be transmitted, nor shall the forfeiture thereof be certified, to general or quarter sessions.

(4.) All sums paid in respect of a recognizance declared or adjudged by a court of summary jurisdiction in pursuance of this section to be forfeited shall be paid to the clerk of such court, and shall be paid and applied by him in the manner in which fines imposed by such court, in respect of which

Sect. 9. fines no special appropriation is made, are payable and applicable.

Sub-section (1), it will be noticed, applies to a recognizance taken before a constable for a person taken into custody and charged with a bailable offence to appear before a court of summary jurisdiction as well as to recognizances taken before the court itself. Section 21, sub-section (3), *post*, provides for the recovery of fines adjudged to be paid and ascertained by a conviction.

With regard to sub-section (2) see 11 & 12 Vict. c. 43, s. 31, and the notes thereon, *ante*, p. 81; and as to sub-section (3) see 11 & 12 Vict. c. 43, s. 20, *ante*, p. 61.

Summary trial of children for indictable offences, unless objected to by parent or guardian.

10. (1.) Where a child is charged before a court of summary jurisdiction with any indictable offence other than homicide, the court, if they think it expedient so to do, and if the parent or guardian of the child so charged when informed by the court of his right to have the child tried by a jury does not object to the child being dealt with summarily, may deal summarily with the offence, and inflict the same description of punishment as might have been inflicted had the case been tried on indictment :

Provided that—

- (a.) A sentence of penal servitude shall not be passed, but imprisonment shall be substituted therefor; and
- (b.) Where imprisonment is awarded, the term shall not in any case exceed one month; and
- (c.) Where a fine is awarded, the amount shall not in any case exceed forty shillings; and

(d.) When the child is a male the court may, **Sect. 10.**

either in addition to or instead of any other punishment, adjudge the child to be, as soon as practicable, privately whipped with not more than six strokes of a birch rod by a constable, in the presence of an inspector or other officer of police of higher rank than a constable, and also in the presence, if he desires to be present, of the parent or guardian of the child.

(2.) For the purpose of a proceeding under this section, the court of summary jurisdiction, at any time during the hearing of the case at which they become satisfied by the evidence that it is expedient to deal with the case summarily, shall cause the charge to be reduced into writing and read to the parent or guardian of the child, and then address a question to such parent or guardian to the following effect: "Do you desire the child to be tried by a jury, and object to the case being dealt with summarily?" with a statement, if the court think such statement desirable for the information of such parent or guardian, of the meaning of the case being dealt with summarily, and of the assizes or sessions (as the case may be) at which the child will be tried if tried by a jury.

(3.) Where the parent or guardian of a child is not present when the child is charged with an indictable offence before a court of summary jurisdiction, the court may, if they think it just so to do, remand the child for the purpose of causing notice to be served on such parent or guardian, with a view so far as is practicable of securing his attendance at

Sect. 10. the hearing of the charge, or the court may, if they think it expedient so to do, deal with the case summarily.

(4.) This section shall not prejudice the right of a court of summary jurisdiction to send a child to a reformatory or industrial school.

(5.) This section shall not render punishable for an offence any child who is not, in the opinion of the court before whom he is charged, above the age of seven years and of sufficient capacity to commit crime.

The expression "child" means a person who in the opinion of the court before whom he is brought is under the age of twelve years. See section 49, *post*, p. 258; and with regard to whipping, see 25 Vict. c. 18, s. 1, *post*, p. 209.

The statement referred to in section 10, sub-section (2), and in section 11, sub-section (2), and section 12, may be to the effect following:—"We think it desirable to state for your information that the meaning of the case of the prisoner who is now before us being dealt with summarily is this, that the prisoner will not be committed to prison there to await trial at the next assizes for the county of (or the next court of general or quarter sessions of the peace for the county of), but will now be dealt with by us; and if we find that he (or she) is guilty of the offence charged, we will inflict the same description of punishment as might have been inflicted had the case been tried on indictment before a jury." Or for shortness it may perhaps be sufficient to inform the prisoner to the effect stated in the note to section 13, *post*, p. 213.

With reference to the question whether it is necessary in cases under ss. 10, 11, 12 and 13 of this Act to take depositions of witnesses in writing and afterwards to file them with the clerk of the peace, the following correspondence, published in 45 J. P. 366, may be noted:—

A question having arisen as to whether it is necessary in cases under the above-mentioned sections to take depositions of witnesses in writing and afterwards to file them with the clerk of the peace, a letter was addressed to the Home Secretary, in the following terms:—

“Borough Magistrates’ Clerks’ Office,
“Bootle, 6th April, 1881.

**Note to
Sect. 10.**

“Sir,—I am directed by the justices of this borough to request your opinions and directions whether (when the court assumes the power to deal summarily with indictable offences under ss. 10, 11, 12, and 13 of the Summary Jurisdiction Act, 1879, it is necessary to take down the evidence in writing in all cases, and to file the depositions with the clerk of the peace with the conviction or order of dismissal. See section 27.

“The magistrates would also like to be informed if witnesses who attend court to give evidence in cases of indictable offences which are dealt with summarily, and are not called or examined as witnesses, can have their expenses allowed by the court, and be placed in the order of costs of prosecution.

“I have the honour to be, Sir,
“Your most obedient Servant,
“EDWARD COTTON,
“Clerk to the Justices.

“The Rt. Hon. the Secretary of State,
“Home Department.”

• The following was the reply of the Home Secretary :—

“Whitehall, 30th April, 1881.

“Sir,—In reply to your letter of the 6th instant making certain inquiries in regard to the requirements of the Summary Jurisdiction Act, I am directed to observe that the opinion of the Secretary of State upon questions of law or the construction of Acts of parliament is of no legal nor binding authority.

“Sir William Harcourt has consulted the chief police magistrate, and he is advised that it is necessary to take and file depositions only when there is a ‘dismissal of the information.’

“The 27th section, sub-sect. 4 of the Summary Jurisdiction Act, 1879, shows what is meant by dismissal of the information, ‘it is equivalent to an acquittal on indictment.’

“Trial by justices being substituted for trial by jury the court ought not to assume the power to deal with an offence summarily unless the evidence given raise a strong or probable presumption of guilt (11 & 12 Vict. c. 42, s. 25).

“The liberation of a prisoner from custody does not necessarily imply that he is acquitted, but only that the charge against him has not been proved.

**Note to
Sect. 10.**

“An order of dismissal must not be transmitted to the clerk of the peace, unless the court has assumed the power to deal with the offence summarily, and has found the defendant not guilty.

“Persons who appear to give evidence, but who are not examined, cannot have their expenses allowed unless they attend in obedience to a summons or *subpœna*.

“I am, Sir,

“Your obedient Servant,

“A. F. O. LIDDELL.

“The Clerk to the Justices,

“Bootle-cum-Linacre.”

Summary
trial with
consent of
young
persons
(Juvenile
offenders).

11. (1.) Where a young person is charged before a court of summary jurisdiction with any indictable offence specified in the first column of the first schedule to this Act, the court, if they think it expedient so to do, having regard to the character and antecedents of the person charged, the nature of the offence, and all the circumstances of the case, and if the young person charged with the offence, when informed by the court of his right to be tried by a jury, consents to be dealt with summarily, may deal summarily with the offence, and in their discretion adjudge such person, if found guilty of the offence, either to pay a fine not exceeding ten pounds, or to be imprisoned, with or without hard labour, for any term not exceeding three months; and if the young person is a male, and, in the opinion of the court, under the age of fourteen years, the court, if they think it expedient so to do, may, either in substitution for or in addition to any other punishment under this Act, adjudge such young person to be, as soon as practicable, privately whipped with not more than twelve strokes of a birch rod by a

constable, in the presence of an inspector or other officer of police of higher rank than a constable, and also in the presence, if he desires to be present, of the parent or guardian of such young person. **Sect. 11.**

(2.) For the purpose of a proceeding under this section the court, at any time during the hearing of the case at which they become satisfied by the evidence that it is expedient to deal with the case summarily, shall cause the charge to be reduced into writing and read to the young person charged, and then address a question to him to the following effect: "Do you desire to be tried by a jury, or do you consent to the case being dealt with summarily?" with a statement, if the court think such statement desirable for the information of the young person to whom the question is addressed, of the meaning of the case being dealt with summarily, and of the assizes or sessions (as the case may be) at which he will be tried if tried by a jury.

(3.) This section shall not prejudice the right of a court of summary jurisdiction to send a young person to a reformatory or an industrial school.

The expression "young person" means a person who in the opinion of the court before whom he is brought is of the age of twelve years and under the age of sixteen years. See section 49, *post*, p. 258.

By the Act to amend the laws relating to whipping of juvenile and other offenders, 25 Vict. c. 18, s. 1, it is enacted that where the punishment of whipping is awarded for any offence by order of one or more justice or justices made in exercise of his or their power of summary conviction, the order, sentence, or conviction awarding such punishment shall specify the number of strokes to be inflicted and the instrument to be used in the infliction of them, and in the case of an offender whose age does not exceed fourteen years, the number of strokes inflicted shall not exceed twelve, and

Note to Sect. 11. the instrument used shall be a birch rod. (Section 2.) No offender shall be whipped more than once for the same offence.

As to reformatory and industrial schools see 29 & 30 Vict. cc. 117, 118.

The 47 & 48 Vict. c. 43, s. 3, *post*, p. 282, repeals certain obsolete punishments by whipping.

Summary trial with consent of adult.

12. Where a person who is an adult is charged before a court of summary jurisdiction with any indictable offence specified in the second column of the first schedule to this Act, the court, if they think it expedient so to do, having regard to the character and antecedents of the person charged, the nature of the offence, and all the circumstances of the case, and if the person charged with the offence, when informed by the court of his right to be tried by a jury, consents to be dealt with summarily, may deal summarily with the offence, and adjudge such person, if found guilty of the offence, to be imprisoned, with or without hard labour, for any term not exceeding three months, or to pay a fine not exceeding twenty pounds.

For the purpose of a proceeding under this section, the court, at any time during the hearing of the case at which they become satisfied by the evidence that it is expedient to deal with the case summarily, shall cause the charge to be reduced into writing and read to the person charged, and then address a question to him to the following effect:

“Do you desire to be tried by a jury, or do you consent to the case being deal with summarily?” with a statement, if the court think such statement desirable for the information of the person to whom the question is addressed, of the meaning of the case

being dealt with summarily, and of the assizes or sessions (as the case may be) at which he will be tried if tried by a jury. Sect. 12.

The expression "adult" means a person who in the opinion of the court before whom he is brought is of the age of sixteen years or upwards. See section 49, *post*.

See note to section 10, *ante*, p. 206, and note to section 13, *post*, p. 213, as to the statement to be addressed to the prisoner.

13. (1.) Where a person who is an adult is charged before a court of summary jurisdiction with an indictable offence which is specified in the first column of the first schedule to this Act, and is not comprised in the second column of that schedule, and the court at any time during the hearing of the case become satisfied that the evidence is sufficient to put the person charged on his trial for the said offence, and further are satisfied (either after such a remand as is provided by this Act or otherwise) that the case is one which, having regard to the character and antecedents of the person charged, the nature of the offence, and all the circumstances of the case, may properly be dealt with summarily, and may be adequately punished by virtue of the powers of this Act, then the court shall cause the charge to be reduced into writing and read to the person charged, and shall then ask him whether he is guilty or not of the charge; and if such person says that he is guilty, the court shall thereupon cause a plea of guilty to be entered, and adjudge him to be imprisoned, with or without hard labour, for any term not exceeding six months.

Summary conviction on plea of guilty of adult.

Sect. 13. (2.) The court, before asking, in pursuance of this section, the person charged whether he is guilty or not, shall explain to him that he is not obliged to plead or answer, and that if he pleads guilty he will be dealt with summarily, and that if he does not plead or answer, or pleads not guilty, he will be dealt with in the usual course; with a statement, if the court thinks such statement desirable for the information of the person to whom the question is addressed, of the meaning of the case being dealt with summarily or in the usual course, and of the assizes or sessions (as the case may be) at which such person will be tried if tried by a jury. The court shall further state to such person to the effect that he is not obliged to say anything unless he desires to do so, but that whatever he says will be taken down in writing, and may be given in evidence against him upon his trial, and shall give him clearly to understand that he has nothing to hope from any promise of favour, and nothing to fear from any threat which may have been held out to him to induce him to make any admission or confession of his guilt, but that whatever he then says may be given in evidence against him upon his trial, notwithstanding such promise or threat.

(3.) If the prisoner does not plead guilty, whatever he says in answer shall be taken down in writing and read over to him, and signed by a justice constituting or forming part of the court, and kept with the depositions of the witnesses, and transmitted with them in manner required by law, and afterwards upon the trial of the prisoner may, if necessary, be given in evidence against him with-

out further proof thereof, unless it is proved that the justice purporting to have signed the same did not in fact sign the same. Se ct. 13.

Section 24, sub-section (1), *post*, p. 225, empowers a court of summary jurisdiction to remand for indictable offences.

All that is required in section 13, sub-section (2), is that the prisoner be informed that he has the option of being sent for trial or of being dealt with summarily, and that if he plead guilty he will be dealt with summarily and receive at once such sentence as the court may adjudge.

See 11 & 12 Vict. c. 42, ss. 20 and 22, *post*, as to the transmission of depositions, &c.

14. Where a person who is an adult is charged before a court of summary jurisdiction with any indictable offence specified in the first schedule to this Act, and it appears to the court that the offence is one which, owing to a previous conviction on indictment of the person so charged, is punishable by law with penal servitude, the court shall not deal with the case summarily in pursuance of this Act. Restriction on summary dealing with adult charged with indictable offence.

15. A child on summary conviction for an offence punishable on summary conviction under this Act, or under any other Act, whether past or future, shall not be imprisoned for a longer period than one month nor fined a larger sum than forty shillings. Restriction on punishment of child for summary offence.

With reference to this section, see section 10, sub-section 1), (b) and (c), *ante*, p. 204.

16. If upon the hearing of a charge for an offence punishable on summary conviction under this Power of court to discharge

Sect. 16. **Act** or under any other Act, whether past or future, the **accused without punishment.** court of summary jurisdiction think that though the charge is proved the offence was in the particular case of so trifling a nature that it is inexpedient to inflict any punishment, or any other than a nominal punishment,

- (1.) The court, without proceeding to conviction, may dismiss the information and, if the court think fit, may order the person charged to pay such damages, not exceeding forty shillings, and such costs of the proceeding, or either of them, as the court think reasonable ; or,
- (2.) The court upon convicting the person charged may discharge him conditionally on his giving security, with or without sureties, to appear for sentence when called upon, or to be of good behaviour, and either without payment of damages and costs, or subject to the payment of such damages and costs, or either of them, as the court think reasonable :

Provided that this section shall not apply to an adult convicted in pursuance of this Act of an offence of which he has pleaded guilty, and of which he could not, if he had not pleaded guilty, be convicted by a court of summary jurisdiction.

The proviso to sub-section (2) has reference to section 13, *ante*, relating to a summary conviction of an adult on plea of guilty.

17. (1.) A person when charged before a court of summary jurisdiction with an offence, in respect of the commission of which an offender is liable on summary conviction to be imprisoned for a term exceeding three months, and which is not an assault, may, on appearing before the court and before the charge is gone into but not afterwards, claim to be tried by a jury, and thereupon the court of summary jurisdiction shall deal with the case in all respects as if the accused were charged with an indictable offence and not with an offence punishable on summary conviction, and the offence shall as respects the person so charged be deemed to be an indictable offence, and, if the person so charged is committed for trial, or bailed to appear for trial, shall be prosecuted accordingly, and the expenses of the prosecution shall be payable as in cases of felony.

Sect. 17.

Right to claim trial by jury in case of offences otherwise triable summarily.

(2.) A court of summary jurisdiction, before the charge is gone into in respect of an offence to which this section applies, for the purpose of informing the defendant of his right to be tried by a jury in pursuance of this section, shall address him to the following effect: "You are charged with an offence in respect of the commission of which you are entitled, if you desire it, instead of being dealt with summarily, to be tried by a jury; Do you desire to be tried by a jury?"—with a statement, if the court think such statement desirable for the information of the person to whom the question is addressed, of the meaning of being dealt with summarily, and of the assizes or sessions (as the case may be) at which such person will be tried if tried by a jury.

(3.) This section shall not apply to the case of a

Sect. 17. child unless the parent or guardian of the child is present; but the court shall ascertain whether the parent or guardian of the child is present, and if he is, shall address the above question to such parent or guardian, and the claim under this section may be made by such parent or guardian.

When the prisoner claims to be tried by a jury, the court will deal with the case under section 25 of 11 & 12 Vict. c. 42, *post*. The court must in every case before the charge is gone into make the statutory address to the prisoner, pursuant to sub-section (2), adding thereto, if they consider it desirable, a statement of the meaning of being dealt with summarily and of the assizes or sessions at which the prisoner will be tried by a jury.

If a statute provides that an offender shall be liable to three months' imprisonment and then in default of finding sureties to an additional six months, section 17 does not apply, and the case ought to be dealt with summarily. See *In re Lake*, 46 J. P. 88.

Imprisonment in cases of cumulative sentences not to exceed six months.

18. A court of summary jurisdiction shall not, by cumulative sentences of imprisonment (other than for default of finding sureties) to take effect in succession in respect of several assaults committed on the same occasion, impose on any person imprisonment for the whole exceeding six months.

Appeal from summary conviction to general or quarter sessions.

19. Where, in pursuance of any Act, whether past or future, any person is adjudged by a conviction or order of a court of summary jurisdiction to be imprisoned without the option of a fine, either as a punishment for an offence, or, save as herein-after mentioned, for failing to do or to abstain from doing any act or thing required to be done or left undone, and such person is not otherwise authorized to appeal to a court of general or quarter sessions, and did not plead guilty, or admit the truth of the

information or complaint, he may, notwithstanding **Sect. 19.**
 anything in the said Act, appeal to a court of general or quarter sessions against such conviction or order :

Provided that this section shall not apply where the imprisonment is adjudged for failure to comply with an order for the payment of money, for the finding of sureties, for the entering into any recognizance, or for the giving of any security.

20. (1.) A case arising under this Act, or under any other Act whether past or future, shall not be heard, tried, determined, or adjudged by a court of summary jurisdiction, except when sitting in open court. Court of summary jurisdiction to sit at a petty sessional or occasional court-house, &c.

(2.) Open court means a petty sessional court-house or an occasional court-house.

(3.) A petty sessional court-house means a court-house or other place at which justices are accustomed to assemble for holding special or petty sessions, or which is for the time being appointed as a substitute for such court-house or place; and where the justices are accustomed to assemble for either special or petty sessions at more than one court-house or place in a petty sessional division means any such court-house or place.

(4.) An occasional court-house means such police station or other place as is appointed (as hereinafter provided) to be used as an occasional court-house.

(5.) The justices of a petty sessional division of a county shall from time to time, at a sessions of which notice has been given to every justice of such division, appoint police stations or other places

Sect. 20. other than the petty sessional court-house, to be used as occasional court-houses, at which cases may be heard tried determined and adjudged, and they may from time to time at such a sessions as afore-said vary any police station or place so appointed, and shall cause public notice to be given in such manner as they think expedient of every police station or place for the time being appointed to be used as an occasional court-house.

(6.) A court of summary jurisdiction consisting of two or more justices when sitting in a petty sessional court-house is in this Act referred to as a petty sessional court.

(7.) Where a case arising under this Act, or under any other Act, whether past or future, is heard tried determined and adjudged by a court of summary jurisdiction sitting in an occasional court-house, the period of imprisonment imposed by the conviction or order of such court shall not exceed fourteen days, and the sum adjudged to be paid by the conviction or order of such court shall not exceed twenty shillings; and a justice of the peace when sitting alone in a petty sessional court-house shall not have power to impose any greater term of imprisonment or adjudge any larger sum to be paid than is above mentioned.

(8.) An indictable offence dealt with summarily in pursuance of this Act shall not be heard tried determined or adjudged except by a petty sessional court sitting on some day appointed for hearing indictable offences, of which public notice has been given in such manner as to the justices of the petty sessional division seem expedient, or at some adjournment of such court.

(9.) Any case arising under this Act, other than **Sect. 20.**
 such indictable offence as aforesaid, and any case
 arising under any future Act which is triable by a
 court of summary jurisdiction, shall, unless it is
 otherwise prescribed, be heard tried determined and
 adjudged by a court of summary jurisdiction con-
 sisting of two or more justices.

(10.) The Lord Mayor of the City of London, and
 any alderman of the said city, and any metropolitan
 or borough police magistrate or other stipendiary
 magistrate, when sitting in a court-house or place
 at which he is authorized by law to do alone any
 act authorized to be done by more than one justice
 of the peace, shall, for the purposes of this Act, be
 deemed to be a court of summary jurisdiction con-
 sisting of two or more justices, and also to be a
 court of summary jurisdiction sitting in a petty ses-
 sional court-house, and is in this Act included in
 the expression "petty sessional court."

(11.) A court of summary jurisdiction, when not
 a petty sessional court, may, without prejudice to
 any other power of adjournment which the court
 may possess, adjourn the hearing of any case to the
 next practicable sitting of a petty sessional court in
 the same manner in all respects as a justice is
 authorized to adjourn the hearing of a case under
 section sixteen of the Summary Jurisdiction Act,
 1848. 11 & 12 Vict.
c. 43.

21. (1.) A court of summary jurisdiction to whom
 application is made, either to issue a warrant of
 distress for any sum adjudged to be paid by a con-
 viction or order, or to issue a warrant for commit-
 ting a person to prison for nonpayment of a sum of
 Special pro-
 visions as to
 warrants of
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 ment for
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Sect. 21. money adjudged to be paid by a conviction, or in the case of a sum not a civil debt by an order, or for default of sufficient distress to satisfy any such sum, may, if the court deem it expedient so to do, postpone the issue of such warrant until such time and on such conditions, if any, as to the court may seem just.

money, and
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rants of dis-
tress.

(2.) The wearing apparel and bedding of a person and his family, and to the value of five pounds, the tools and implements of his trade, shall not be taken under a distress issued by a court of summary jurisdiction.

(3.) Where a person is adjudged by the conviction of a court of summary jurisdiction, or in the case of a sum not a civil debt by an order of such court, to pay any sum of money, and on default of payment of such sum a warrant of distress is authorized to be issued, and it appears to the court of summary jurisdiction to whom application is made to issue such warrant that such person has no goods whereon to levy the distress, or that in the event of a warrant of distress being issued his goods will be insufficient to satisfy the money payable by him, or that the levy of the distress will be more injurious to him or his family than imprisonment, such court, instead of issuing such warrant of distress, may, if it think fit, order the said person on nonpayment of the said sum to be imprisoned for any period not exceeding the period for which he is liable under such conviction or order to be imprisoned in default of sufficient distress.

(4.) Where on application to a court of summary jurisdiction to issue a warrant for committing a person to prison for nonpayment of a sum adjudged

to be paid by a conviction of any court of summary jurisdiction, or in the case of a sum not a civil debt by an order of such court, or for default of sufficient distress to satisfy any such sum, it appears to the court to whom the application is made that either by payment of part of the said sum, whether in the shape of instalments or otherwise, or by the net proceeds of the distress, the amount of the sum so adjudged has been reduced to such an extent that the unsatisfied balance, if it had constituted the original amount adjudged to be paid by the conviction or order, would have subjected the defendant to a maximum term of imprisonment less than the term of imprisonment to which he is liable under such conviction or order, the court shall, by its warrant of commitment, revoke the term of imprisonment, and order the defendant to be imprisoned for a term not exceeding such less maximum term, instead of for the term originally mentioned in the conviction or order.

Sect. 21.

Sub-section (3) applies only to offences punishable by fine, or in default of payment by imprisonment; not to offences for which fine or imprisonment are alternative punishments, as in section 51, sub-sect. 2, of the Licensing Act, 1872. *In re Clew*, 16 L. J. 136; 46 L. T. (N.S.) 482.

A person who is committed to prison in default of distress for non-payment of a penalty under section 31 of the Vaccination Act, 1867, is a "criminal prisoner" within the meaning of the Prisons Act, 1865, 40 & 41 Vict. c. 21, and must be treated as such while in prison. *Kennard v. Simmons*, 15 C. C. C. 397.

Supplemental Provisions.

22. (1.) The clerk of every court of summary jurisdiction shall keep a register of the minutes or memorandums (*sic*) of all the convictions and orders

Register of
court of
summary
jurisdiction.

Sect. 22. of such court, and of such other proceedings as are directed by a rule under this Act to be registered, and shall keep the same with such particulars and in such form as may be from time to time directed by a rule under this Act.

(2.) Such register, and also any extract from such register certified by the clerk of the court keeping the same to be a true extract, shall be *primâ facie* evidence of the matters entered therein for the purpose of informing a court of summary jurisdiction acting for the same county, borough or place, as the court whose convictions orders and proceedings are entered in the register; but nothing in this section shall dispense with the legal proof of a previous conviction for an offence when required to be proved against a person charged with another offence.

(3.) The register kept by any particular clerk, in pursuance of this section, may be distinguished by the name of his petty sessional division, or by such name or description as may be directed by a rule under this Act.

(4.) The entries relating to each minute memorandum or proceeding shall be either entered or signed by the justice or one of the justices constituting the court by or before whom the conviction or order or proceeding referred to in the minute or memorandum was made or had, except that when a court of summary jurisdiction is not a petty sessional court a return signed as aforesaid, and made and entered in the register in manner provided by a rule under this Act, shall suffice.

(5.) Every sum paid to the clerk of a court of summary jurisdiction in accordance with the Sum-

mary Jurisdiction Acts, and the appropriation of such sum, shall be entered and authenticated in such manner as may be from time to time directed by a rule under this Act. Sect. 22.

(6.) Every such register shall be open for inspection, without fee or reward, by any justice of the peace, or by any person authorized in that behalf by a justice of the peace or by a secretary of state.

23. (1.) A person shall give security under this Act, whether as principal or surety, either by the deposit of money with the clerk of the court, or by an oral or written acknowledgment of the undertaking or condition by which and of the sum for which he is bound, in such manner and form as may be for the time being directed by any rule made in pursuance of this Act, and evidence of such security may be provided by entry thereof in the register under this Act of proceedings of a court of summary jurisdiction or otherwise as may be directed by such rule. Regulations as to securities taken in pursuance of Act.

(2.) Any sum which may become due in pursuance of a security under this Act from a surety shall be recoverable summarily, in manner directed by this Act with respect to a civil debt, on complaint by a constable or by the clerk of the court directing such security to be given, or by some other person authorized for the purpose by that court or any other court of summary jurisdiction for the same county, borough or place.

(3.) A court of summary jurisdiction may enforce payment of any sum due by a principal in

Sect. 23. pursuance of a security under this Act which appears to such court to be forfeited, in like manner as if that sum were adjudged by a court of summary jurisdiction to be paid as a fine which the statute provides no mode of enforcing, if the security was given for a sum adjudged by a conviction, and in any other case in like manner as if it were a sum adjudged by a court of summary jurisdiction to be paid as a civil debt; provided that before a warrant of distress for the sum is issued, such notice of the forfeiture shall be served on the said principal, and in such manner as may be directed for the time being by rules under this Act, and subject thereto by the court authorizing the security, or by any court to whom application is made for the issue of the warrant.

(4.) Any sum paid by a surety on behalf of his principal in respect of a security under this Act, together with all costs charges and expenses incurred by such surety in respect of that security, shall be deemed a civil debt due to him from the principal, and may be recovered before a court of summary jurisdiction in manner directed by this Act with respect to the recovery of a civil debt which is recoverable summarily.

(5.) Where security is given under this Act for payment of a sum of money the payment of such sum shall be enforced by means of such security in substitution for other means of enforcing such payment.

Section 35, *post*, p. 240, provides for the recovery of civil debts in courts of summary jurisdiction.

24. (1.) Where a person is charged before a court of summary jurisdiction with an indictable offence, with which a court of summary jurisdiction has or may have under the circumstances in this Act mentioned power to deal summarily, the court before whom such person is charged, without prejudice to any other power that it may possess,—

Sect. 24.

Power of court of summary jurisdiction to remand for indictable offences.

- (a.) may, for the purpose of ascertaining whether it is expedient to deal with the case summarily, either before or during the hearing of the case, from time to time adjourn the case and remand the person accused; and
- (b.) if such court is not at the time of the charge a petty sessional court, and the court think the case proper to be dealt with summarily, may adjourn the case and remand the person accused until the next practicable sitting of a petty sessional court.

(2.) A person may be remanded under this section in like manner in all respects as a person accused of an indictable offence may be remanded under section twenty-one of the Act of the session of the eleventh and twelfth years of the reign of her present Majesty, chapter forty-two, intituled "An Act to facilitate the performance of the duties of justices of the peace out of session within England and Wales with respect to persons charged with indictable offences," with this addition, that where he is remanded to the next practicable sitting of a petty sessional court he may be remanded for more than eight days.

See 11 & 12 Vict. c. 42, s. 21, *post*.

Sect. 25.

Procedure before court of summary jurisdiction in case of sureties to keep the peace.

25. The power of a court of summary jurisdiction, upon complaint of any person to adjudge a person to enter into a recognizance and find sureties to keep the peace or to be of good behaviour towards such first-mentioned person, shall be exercised by an order upon complaint, and the Summary Jurisdiction Acts shall apply accordingly, and the complainant and defendant and witness may be called and examined and cross-examined, and the complainant and defendant shall be subject to costs, as in the case of any other complaint.

The court may order the defendant, in default of compliance with the order, to be imprisoned for a period not exceeding, if the court be a petty sessional court, six months, and if the court be a court of summary jurisdiction other than a petty sessional court, fourteen days.

Formerly when articles of the peace were exhibited, the person against whom they were exhibited could not give evidence before the justices in contradiction of the facts stated in the articles. *Lort v. Hutton*, 45 L. J. M. C. 95; but this it will be seen is now remedied.

As to what is a petty sessional court and what a court of summary jurisdiction, see section 20, *ante*, p. 217.

Power of petty sessional court with respect to varying order for sureties.

26. Where a person has been committed to prison by a court of summary jurisdiction for default in finding sureties, any petty sessional court for the same county, borough or place, may, on application made to them in manner directed by a rule made in pursuance of this Act, by him or by some one acting on his behalf, inquire into the case of the person so committed, and if upon new evidence produced to such court or proof of a change of circumstances the court think, having regard to all the circumstances

of the case, that it is just so to do, they may reduce **Sect. 26.**
 the amount for which it is proposed the sureties or
 surety should be bound, or dispense with the sureties
 or surety, or otherwise deal with the case as the
 court may think just.

27. Where an indictable offence is under the
 circumstances in this Act mentioned authorized to
 be dealt with summarily,—

- (1.) The procedure shall, until the court assume
 the power to deal with such offence sum-
 marily, be the same in all respects as if the
 offence were to be dealt with throughout
 as an indictable offence, but when so soon
 as the court assume the power to deal
 with such offence summarily, the pro-
 cedure shall be the same from and after
 that period as if the offence were an offence
 punishable on summary conviction and
 not on indictment, and the provisions of
 the Act relating to offences punishable on
 summary conviction shall apply accord-
 ingly ; and Regulations
 as to indict-
 able offences
 dealt with
 summarily.
- (2.) The evidence of any witness taken before the
 court assumed the said power need not be
 taken again, but every such witness shall,
 if the defendant so require it, be recalled
 for the purpose of cross-examination ; and
- (3.) The conviction for any such offence shall be
 of the same effect as a conviction for the
 offence on indictment, and the court may
 make the like order for the restitution of
 property as might have been made by the

Sect. 27.

court before whom the person convicted would have been tried if he had been tried on indictment; and

- (4.) Where the court have assumed the power to deal with the case summarily, and dismiss the information, they shall, if required, deliver to the person charged a copy certified under their hands of the order of such dismissal, and such dismissal shall be of the same effect as an acquittal on a trial on indictment for the offence; and
- (5.) The conviction shall contain a statement either as to the plea of guilty of an adult, or in the case of a child as to the consent or otherwise of his parent or guardian, and in the case of any other person of the consent of such person, to be tried by a court of summary jurisdiction; and
- (6.) The order of dismissal shall be transmitted to and filed by the clerk of the peace in like manner as the conviction is required by the Summary Jurisdiction Act, 1848, to be transmitted and filed, and together with the order of dismissal or the conviction, as the case may be, there shall be transmitted to and filed by such clerk in each case the written charge, the depositions of the witnesses, and the statement, if any, of the accused.

See sections 10, 11, 12, and 13, *ante*, as to the circumstances under which indictable offences may be dealt with summarily, and 11 & 12 Vict. c. 43, s. 1, *et seq.*; and as to the procedure upon indictable offences, see 11 & 12 Vict. c. 42, *post*.

Section 14 of 11 & 12 Vict, c. 43, *ante*, p. 45, enacts that, when the conviction is drawn up by the justice or justices in proper form under his or their hand and seal, or hands and seals, he or they shall cause the same to be lodged with the clerk of the peace to be by him filed among the records of the general quarter sessions of the peace.

**Note to
Sect. 27.**

28. Where an indictable offence (the expenses of the prosecution of which would otherwise have been payable out of the local rate) is dealt with summarily in pursuance of this Act by a court of summary jurisdiction, the expenses of the prosecution of such offence shall be payable in manner provided by this section.

Cost of prosecution of indictable offences, dealt with summarily.

The court dealing summarily with any such indictable offence may, if it seem fit, grant to any person who preferred the charge, or appeared to prosecute or give evidence, a certificate of the amount of the compensation which the court may deem reasonable for his expenses, trouble and loss of time therein, subject, nevertheless, to such regulations as may be from time to time made by a secretary of state with respect to the payment of costs in the case of indictable offences; and the amount named in the certificate may include the fees payable to the clerk of the court of summary jurisdiction, and the fees payable to the clerk of the peace for filing the conviction depositions and other documents required to be filed by him under this Act, and such other expenses as are by law payable when incurred before a commitment for trial; and every certificate so granted shall have the effect of an order of court for the payment of the expenses of a prosecution for felony, made in pursuance of the Act of the seventh

Sect. 28. year of King George the Fourth, chapter sixty-four, intituled "An Act for improving the administration of criminal justice in England," and the Acts amending the same, and the amount named in such certificate shall be paid in like manner as the expenses specified in such order would have been paid.

The orders of the secretary of state prescribing scale of allowances to prosecutors and witnesses are in the Appendix, *post*.

By 7 Geo. 4, c. 64, s. 22, the court before which any person is prosecuted or tried for any felony, at the request of the prosecutor, or of any other person who shall appear on recognizance or subpoena to prosecute or give evidence, may order the treasurer of the county (*Ib.* section 24), or if the offence be committed within liberties, &c., which do not contribute to the county rates, the treasurer, overseer, or other officer having the collection and disbursement of the rate within the liberty (*Ib.* section 25) to pay to the prosecutor the costs and expenses incurred by him in preferring the indictment, and to the prosecutor and his witnesses a reasonable allowance for their expenses, and for their trouble and loss of time in attending before the examining magistrate, the grand jury, and otherwise carrying on the prosecution; and though no bill be preferred, the court may order to be paid to those who have *bonâ fide* attended the court in obedience to their recognizance or subpoena a reasonable allowance for their expenses and trouble and loss of time in attending before the examining magistrate or obeying the recognizance or subpoena, &c. The amount to be paid to the prosecutor and his witnesses for trouble and loss of time and expenses attending before the examining magistrates must be ascertained by the certificate of the magistrate granted before the trial (*Ib.* section 22).

Power of
the Lord
Chancellor
to make
rules.

29. (1.) The Lord High Chancellor of Great Britain may from time to time make, and when made, rescind alter and add to, rules in relation to the following matters, or any of them; that is to say,

- (a.) The giving security under this Act; and
- (b.) The forms to be used under the Summary Jurisdiction Acts, or any of them, includ-

ing the forms or any recognizance mentioned in this Act; and **Sect. 29.**

- (c.) The costs and charges payable under distress warrants issued by a court of summary jurisdiction; and
- (d.) Adapting to the provisions of this Act and of the Summary Jurisdiction Act, 1848, the procedure before courts of summary jurisdiction under any Act passed before the Summary Jurisdiction Act, 1848; and
- (e.) Regulating the form of the account to be rendered by clerks of courts of summary jurisdiction of fines fees and other sums received by them, and providing for the discontinuance of any existing account rendered unnecessary by the aforesaid account; and
- (f.) Any other matter in relation to which rules are authorized or required to be made under or for the purpose of carrying into effect this Act.
- (2.) The Lord Chancellor may, in the exercise of the power given him by this section, annul, alter, or add to any forms contained in the Summary Jurisdiction Act, 1848, or any forms relating to summary proceedings contained in any other Act.
- (3.) Any rule purporting to be made in pursuance of this section shall be laid before both houses of parliament as soon as may be after it is made, if parliament be then sitting, or if not then sitting,

Sect. 29. within one month after the commencement of the then next session of parliament, and shall be judicially noticed.

As regards this section see 47 & 48 Vict. c. 43, s. 12, *post*, p. 286.

Power to provide petty sessional court-house.

30. Where the justices in general or quarter sessions assembled or the council of any borough have authority to hire or otherwise provide a fit and proper place for holding petty sessions of the peace, such justices or council shall have power to provide a petty sessional court-house within the meaning of this Act, by the purchase or other acquisition of land and the erection of a proper building thereon; and all enactments relating to the provision of such place and to the raising of the money for defraying the expense of the provision of such place shall apply accordingly.

This section is extended by 47 & 48 Vict. c. 43, s. 8, *post*.

The justices in general or quarter sessions are empowered by 38 & 39 Vict. c. 89, s. 40, to provide a place for holding petty sessions of the peace, and to borrow money for the purpose. By 31 Vict. c. 22, ss. 4, 5, they are empowered to provide a common sessions-house. See note, *ante*, p. 9.

PART II.

Amendment of Procedure.

31. Where any person is authorized [*by this Act or Sect. 31. by any future Act*] (a) to appeal from the conviction or order of a court of summary jurisdiction to a court of general or quarter sessions, he may appeal to such court, subject to the conditions and regulations following :—

Procedure on appeal to general or quarter sessions.

- (1.) The appeal shall be made to the prescribed court of general or quarter sessions, or if no court is prescribed, to the next practicable court of general or quarter sessions having jurisdiction in the county, borough, or place for which the said court of summary jurisdiction acted, and holden not less than fifteen days after the day on which the decision was given upon which the conviction or order was founded ; and
- (2.) The appellant shall, within the prescribed time, or if no time is prescribed within seven days after the day on which the said decision of the court was given, give notice of appeal by serving on the other party and on the clerk of the said court of summary jurisdiction notice in writing of his intention to appeal, and of the general grounds of such appeal ; and
- (3.) The appellant shall, within the prescribed time, or if no time is prescribed within three days after the day on which he gave

(a) The words in italics and within brackets are repealed by 47 & 48 Vict. c. 43, s. 4, *post*, p. 325.

Sect. 31.

notice of appeal, enter into a recognizance before a court of summary jurisdiction, with or without a surety or sureties as that court may direct, conditioned to appear at the said sessions and to try such appeal, and to abide the judgment of the court of appeal thereon, and to pay such costs as may be awarded by the court of appeal, or the appellant may, if the court of summary jurisdiction before whom the appellant appears to enter into a recognizance think it expedient, instead of entering into a recognizance, give such other security, by deposit of money with the clerk of the court of summary jurisdiction or otherwise, as that court deem sufficient; and

- (4.) Where the appellant is in custody, the court of summary jurisdiction before whom the appellant appears to enter into a recognizance may, if the court think fit, on the appellant entering into such recognizance or giving such other security as aforesaid, release him from custody; and
- (5.) The court of appeal may adjourn the hearing of the appeal, and upon the hearing thereof may confirm, reverse, or modify the decision of the court of summary jurisdiction, or remit the matter, with the opinion of the court of appeal thereon, to a court of summary jurisdiction acting for the same county, borough, or place as the court by whom the conviction or order appealed

against was made, or may make such other order in the matter as the court of appeal may think just, and may by such order exercise any power which the court of summary jurisdiction might have exercised, and such order shall have the same effect, and may be enforced in the same manner, as if it had been made by the court of summary jurisdiction. The court of appeal may also make such order as to costs to be paid by either party as the court may think just; and

Sect. 31.
—

- (6.) Whenever a decision is not confirmed by the court of appeal, the clerk of the peace shall send to the clerk of the court of summary jurisdiction from whose decision the appeal was made, for entry in his register, and also indorse on the conviction or order appealed against, a memorandum of the decision of the court of appeal, and whenever any copy or certificate of such conviction or order is made, a copy of such memorandum shall be added thereto, and shall be sufficient evidence of the said decision in every case where such copy or certificate would be sufficient evidence of such conviction or order; and
- (7.) Every notice in writing required by this section to be given by an appellant shall be in writing signed by him, or by his agent on his behalf, and may be transmitted as a registered letter by the post in the ordinary way, and shall be deemed to

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have been served at the time when it would be delivered in the ordinary course of the post.

As to appeals under this section see 47 & 48 Vict. c. 43, s. 6, *post*, p. 284.

The Act generally known as "Baines' Act," 12 & 13 Vict. c. 45, s. 1, *post*, enacts that in every case of appeal (except appeals against orders of removal, &c.), to any court of general or quarter sessions of the peace fourteen clear days' notice of appeal shall be given, and such shall be sufficient notice, and shall be in writing signed by the person or persons giving the same, or by his, her, or their attorney on his, her, or their behalf, and the grounds of appeal shall be specified in every such notice; and it shall not be lawful for the appellant or appellants, on the trial of any such appeal, to go into or give evidence of any other ground of appeal besides those set forth in the notice.

The effect of the above sub-section (1) and of the provision of Baines' Act above quoted will be that, if the next sessions are to be held before the fifteenth day after the decision, the appeal cannot be made to those sessions. If the next sessions are to be held on the fifteenth day, and the appellant desires to appeal to those sessions, he must give his notice of appeal on the day on which the decision is given. If the next sessions are to be held on the fifteenth day, or on any day after that, and before the twenty-second day after the decision, he will be able to go either to those sessions or the next following sessions, according as he does or does not give his notice of appeal, so that there shall be fourteen clear days between the day on which he gives it and the day on which those sessions are to be held; but if the next sessions are to be held on or after the twenty-second day after the decision, those will be the only sessions to which the appeal can be made.

Section 23, sub-section (1), *ante*, p. 223, contains the regulations as to taking security by the deposit of money with the clerk of the court.

Where the notice of appeal is given by an agent on behalf of the appellant, the agent should state himself in the notice to be such agent.

A notice in writing under the Bastardy Act, 8 & 9 Vict. c. 10, s. 4, of the putative father having entered into a recognizance for payment of costs is, since sections 31 and 32

of the Summary Jurisdiction Act, unnecessary. *Reg. v. West Riding of Yorkshire JJ.*, W. N. 1882, p. 34. **Note to Sect. 31.**

An appellant against an order in bastardy is entitled under 42 & 43 Vict. c. 49, s. 32, to follow the procedure pointed out in 7 & 8 Vict. c. 101, and 8 & 9 Vict. c. 10, or the procedure pointed out in 42 & 43 Vict. c. 49, s. 31; and if he complies with either of these enactments the quarter sessions are bound to hear the appeal. *Reg. v. Montgomeryshire JJ.*, 46 J. P. 517; 51 L. J. M. C. 95.

An order made by justices for the offence of concealing goods fraudulently removed was appealed against, and the notice of appeal complied with statute 12 & 13 Vict. c. 45, but not with sections 31 and 32 of this Act. It was held that the notice was bad because the statute 11 Geo. 2, c. 19, s. 5, attached no conditions to the appeal, and therefore the case came within 42 & 43 Vict. c. 49, s. 31, requiring notice of appeal within seven days after the decision. *Reg. v. Shropshire JJ.*, 45 J. P. 236n; 46 J. P. 196; 50 L. J. M. C. 72.

At the hearing of an appeal under the Licensing Act (35 & 36 Vict. c. 91, s. 52), it appeared that notice of appeal was given on the 10th March, and the recognizance entered into on the 14th of the same month, and the sessions, no explanation of the delay having been offered, dismissed the appeal. Upon an application for a *mandamus* for the sessions to hear the appeal it was held that affidavits accounting for the delay ought not to be considered, and that the sessions upon the evidence were warranted in finding that the recognizance had not been entered into "immediately" after the notice of appeal. *Reg. v. Berkshire JJ.*, L. R. 4 Q. B. D. 469.

The following is extracted from notes of cases in the "Justice of the Peace" of the 25th June, 1881, page 420. *Reg. v. Middlesex JJ.* "The Uxbridge Local Board, as the urban sanitary authority, had been summoned before the justices for polluting the river Colne. The offence was a misdemeanor and the justices dismissed the information. The prosecutor then gave notice of appeal to the quarter sessions of Middlesex against the order or adjudication of the justices. The board contended that there was no power to appeal against the dismissal of the information though there was against a conviction. The present prohibition to the quarter sessions was now applied for. Held, the rule for prohibition must be made absolute, as the statute gave no power to the prosecutor to appeal when the information was dismissed."

Sect. 32. . **32.** Where a person is authorized by any past Act to appeal from the conviction or order of a court of summary jurisdiction to a court of general or quarter sessions, he may appeal to such court, subject to the conditions and regulations contained in this Act with respect to an appeal to a court of general or quarter sessions ;

Applica-
tion of
provisions
respecting
appeals
to quarter
sessions
to appeals
under prior
Acts.

Provided that where any such appeal is in accordance with the conditions and regulations prescribed by the Act authorizing the appeal, so far as the same is unrepealed, such appeal shall not be deemed invalid by reason only that it is not in accordance with the conditions and regulations contained in this Act (a).

Where any past Act, so far as unrepealed, prescribes that any appeal from the conviction or order of a court of summary jurisdiction shall be made to the next court of general or quarter sessions, such appeal may be made to the next practicable court of general or quarter sessions having jurisdiction in the county, borough, or place for which the court of summary jurisdiction acted, and held not less than fifteen days after the day on which the decision was given upon which the conviction or order appealed against was founded.

Appeal
from court
of summary
jurisdiction
by special
case.

33. (1.) Any person aggrieved who desires to question a conviction, order, or determination, or other proceeding of a court of summary jurisdiction, on the ground that it is erroneous in point of law, or is in excess of jurisdiction, may apply to the court to state a special case setting forth the facts of the

(a) The whole of the first two paragraphs of this section are repealed by 47 & 48 Vict. c. 43, s. 4, *post*, p. 325.

case and the grounds on which the proceeding is questioned, and if the court decline to state the case, may apply to the High Court of Justice for an order requiring the case to be stated. **Sect. 33.**

(2.) The application shall be made and the case stated within such time and in such manner as may be from time to time directed by rules under this Act, and the case shall be heard and determined in manner prescribed by rules of court made in pursuance of the Supreme Court of Judicature Act, 1875, and the Acts amending the same; and, subject as aforesaid, the Act of the session of the twentieth and twenty-first years of the reign of Her present Majesty, chapter forty-three, intituled "An Act to improve the administration of the law so far as respects summary proceedings before justices of the peace," shall, so far as it is applicable, apply to any special case stated under this section, as if it were stated under that Act :

Provided that nothing in this section shall prejudice the statement of any special case under that Act.

With reference to sub-section (2), *supra*, see Order LIX., rule 19, under the Judicature Act, 1881 (44 & 45 Vict. c. 68), which is as follows:—Every judge of the High Court of Justice for the time being shall be a judge to hear and determine appeals from inferior courts, under section 45 of the principal Act (Supreme Court of Judicature Act, 1873). All such appeals (except Probate and Admiralty appeals from inferior courts and from justices, which shall be to a divisional court of the Probate, Divorce and Admiralty Division), shall be entered in one list by the officers of the Crown-office department of the central office, and shall be heard by such divisional court of the Queen's Bench Division as the Lord Chief Justice shall from time to time direct.

34. (1.) Where a power is given by any future Act to a court of summary jurisdiction of requiring any person to do or abstain from doing any act or

Summary orders.

Sect. 34. thing other than the payment of money, or of requiring any act or thing to be done or left undone other than the payment of money, and no mode is prescribed of enforcing such requisition, the court may exercise such power by an order or orders, and may annex to any such order any conditions as to time or mode of action which the court may think just, and may suspend or rescind any such order on such undertaking being given or condition being performed as the court may think just, and generally may make such arrangement for carrying into effect such power as to the court seems meet.

(2.) A person making default in complying with an order of a court of summary jurisdiction in relation to any matter arising under any future Act other than the payment of money, shall be punished in the prescribed manner, or if no punishment is prescribed, may in the discretion of the court be ordered to pay a sum (to be enforced as a civil debt recoverable summarily under this Act) not exceeding one pound for every day during which he is in default, or to be imprisoned until he has remedied his default :

Provided that a person shall not, for non-compliance with the requisition of a court of summary jurisdiction, whether made by one or more orders, to do or abstain from doing any act or thing, be liable under this section to imprisonment for a period or periods amounting in the aggregate to more than two months, or to the payment of any sums exceeding in the aggregate twenty pounds.

Recovery of
civil debts
in court of

35. Any sum declared by this Act, or by any future Act, to be a civil debt, which is recoverable

summarily, or in respect of the recovery of which **Sect. 35.**
 jurisdiction is given by such Act to a court of sum-
 mary jurisdiction, shall be deemed to be a sum for ^{summary} jurisdiction.
 payment of which a court of summary jurisdiction
 has authority by law to make an order on complaint
 in pursuance of the Summary Jurisdiction Acts :
 Provided as follows :—

(1.) A warrant shall not be issued for apprehending any person for failing to appear to answer any such complaint ; and

(2.) An order made by a court of summary jurisdiction for the payment of any such civil debt as aforesaid or of any instalment thereof, or for the payment of any costs in the matter of any such complaint, whether ordered to be paid by the complainant or defendant, shall not, in default of distress or otherwise, be enforced by imprisonment, unless it be proved to the satisfaction of such court or of any other court of summary jurisdiction for the same county, borough, or place, that the person making default in payment of such civil debt, instalment, or costs, either has, or has had since the date of the order, the means to pay the sum in respect of which he has made default, and has refused or neglected, or refuses or neglects, to pay the same, and in any such case the court shall have the same power of imprisonment as a county court would for the time being have under the Debtors Act, 1869, for default ^{32 & 33 Vict.} of payment if such debt had been recovered _{c. 62.}

Sect. 35.

in that court, but shall not have any greater power.

Proof of the means of the person making default may be given in such manner as the court to whom application is made for the commitment to prison think just, and for the purposes of such proof the person making default, and any witnesses may be summoned and examined on oath according to the rules for the time being in force under this Act in relation to the summoning and examination of witnesses, or if no such rules are in force, to the rules for the like purpose made in pursuance of the **Employers and Workmen Act, 1875.**

38 & 39 Vict.
c. 46.

Saving of
power of
committal
for small
debts.

By the Debtors Act, 1869 (32 & 33 Vict. c. 62), section 5, it is enacted as follows:—

Subject to the provisions hereinafter mentioned, and to the prescribed rules, any court may commit to prison for a term not exceeding six weeks, or until payment of the sum due, any person who makes default in payment of any debt or instalment of any debt due from him in pursuance of any order or judgment of that or any other competent court.

Provided—

- (1.) That the jurisdiction by this section given of committing a person to prison shall, in the case of any court other than the superior courts of law and equity, be exercised only subject to the following restrictions; that is to say,
 - (a.) Be exercised only by a judge or his deputy, and by an order made in open court and showing on its face the ground on which it is issued;
 - * * * *
 - (c.) Be exercised only as respects a judgment of a county court by a county court judge or his deputy.
- (2.) That such jurisdiction shall only be exercised where it is proved to the satisfaction of the court that the

person making default either has or has had since the date of the order or judgment the means to pay the sum in respect of which he has made default, and has refused or neglected, or refuses or neglects, to pay the same.

**Note to
Sect. 35.**

Proof of the means of the person making default may be given in such manner as the court thinks just; and for the purposes of such proof the debtor and any witnesses may be summoned and examined on oath, according to the prescribed rules.

Any jurisdiction by this section given to the superior courts may be exercised by a judge sitting in chambers, or otherwise, in the prescribed manner.

For the purposes of this section any court may direct any debt due from any person in pursuance of any order or judgment of that or any other competent court to be paid by instalments, and may from time to time rescind or vary such order.

Persons committed under this section by a superior court may be committed to the prison in which they would have been confined if arrested on a writ of *capias ad satisfaciendum*, and every order of committal by any superior court shall, subject to the prescribed rules, be issued, obeyed, and executed in the like manner as such writ.

This section, so far as it relates to any county court, shall be deemed to be substituted for sections ninety-eight and ninety-nine of the County Court Act, 1846, and that Act and the Acts amending the same shall be construed accordingly, and shall extend to orders made by the county court with respect to sums due in pursuance of any order or judgment of any court other than a county court.

No imprisonment under this section shall operate as a satisfaction or extinguishment of any debt or demand or cause of action, or deprive any person of any right to take out execution against the lands, goods, or chattels of the person imprisoned, in the same manner as if such imprisonment had not taken place.

Any person imprisoned under this section shall be discharged out of custody upon a certificate

**Note to
Sect. 35.**

signed in the prescribed manner to the effect that he has satisfied the debt or instalment of a debt in respect of which he was imprisoned, together with the prescribed costs (if any).

By the Consolidated County Court Orders and Rules, 1875, Order XIX., No. 27, "all costs incurred by the plaintiff in endeavouring to procure or enforce an order or judgment shall be deemed to be due in pursuance of such order or judgment under section 5 of the Debtors Act, 1869, unless the judge shall otherwise order."

The rules relating to the summoning and examination of witnesses under the Employers and Workmen Act, 1875 (38 & 39 Vict. c. 90), are as follows:—

4. Service of a summons to appear to a plaint may be made by serving a copy of the same personally upon the defendant, or by leaving such copy with some person, apparently sixteen years old, at the house or place of dwelling or place of business or of employment of the defendant, or of one of the defendants, or at the office of his or their employer for the time being.

5. Summonses to witnesses shall be granted to either party on application and payment of the fees for the issuing and service of the same, and of the proper amount of conduct money.

6. A defendant shall not, except by leave of the court, on such terms as to it may seem fit, be permitted to set up against the claims of the plaintiff any set-off or counter-claim, unless he shall have served, or cause to be served, by registered post letter or otherwise, two clear days at least before the return-day, a notice directed to the plaintiff at his address as mentioned in the summons, stating his intention to rely upon such set-off or counter-claim as a defence to the action, and setting forth the particulars of such set-off or counter-claim.

7. Where service of any notice is made by post, it shall, unless the contrary be proved, be deemed to have been made on the day upon which the letter would have been delivered in the ordinary course of post.

8. If upon the return-day of any summons, or at any continuation or adjournment of the court, the plaintiff shall not appear, the cause may be struck out, and the court may award the defendant, by way of costs and satisfaction for his attendance, such sum as it in its discretion shall think fit; but the plaintiff may bring a fresh action in respect of the same cause of complaint.

9. If on the day named in the summons, or at any continuation or adjournment of the court, the defendant shall not appear, or sufficiently excuse his absence, or shall neglect to answer when called in court, the court, upon due proof of service of the summons, may either adjourn the cause from time to time or hear it *ex parte*, and the judgment thereupon shall be as valid as if both parties had attended; provided that the court in any such case, at the same or any subsequent court, may set aside any judgment so given in the absence of the defendant, and the execution thereupon, and may grant a new trial upon such terms, if any, as it may think fit.

**Note to
Sect. 35.**

36. Where a court of summary jurisdiction for any county, borough, or place would have power to issue a summons to a witness, if such witness were within the said county, borough, or place, and such witness is believed to be within some other county, borough, or place in England, such court may issue a summons to such witness in like manner as if such witness were within the jurisdiction of such court; and any court of summary jurisdiction for the county, borough, or place in which the witness may be, or be believed to be, may, on proof on oath, or such solemn declaration as provided by this Act, of the signature to the summons, endorse the summons, and the witness, on service of the summons so endorsed, and on payment or tender of a reasonable amount for his expenses, shall obey the summons, and in default shall be liable to be apprehended or otherwise proceeded against either in the county, borough, or place in which the summons was issued, or in that in which the witness may happen to be, in manner directed by the Summary Jurisdiction Act, 1848, as if such witness had been duly summoned by a court of summary jurisdiction for the county, borough, or place in which such witness is apprehended or proceeded against.

Summons
of witness
when out of
the jurisdic-
tion of
a court of
summary
jurisdiction.

11 & 12 Vict.
c. 43.

Note to Sect. 36. As to the manner of compelling a witness to attend a court of summary jurisdiction, see 11 & 12 Vict. c. 43, s. 7, *post*, p. 92.

As to service of process in Scotland, see 44 & 45 Vict. c. 24, s. 4, *post*.

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

37. A warrant or summons issued by a justice of the peace under the Summary Jurisdiction Act, 1848, or any other Act, whether past or future, or otherwise, shall not be avoided by reason of the justice who signed the same dying or ceasing to hold office.

When proceedings in the nature of a criminal prosecution are set on foot by a sufficient information laid before a magistrate, and he issues a summons on such information, the death of the informer causes no abatement of the proceedings. *Reg. v. Truelove*, 14 Cox C. C. 408.

Bail of person arrested without a warrant.

38. A person taken into custody for an offence without a warrant shall be brought before a court of summary jurisdiction as soon as practicable after he is so taken into custody, and if it is not or will not be practicable to bring him before a court of summary jurisdiction within twenty-four hours after he is so taken into custody, a superintendent or inspector of police, or other officer of police of equal or superior rank, or in charge of any police station, shall inquire into the case, and, except where the offence appears to such superintendent, inspector, or officer to be of a serious nature, shall discharge the prisoner, upon his entering into a recognizance, with or without sureties, for a reasonable amount, to appear before some court of summary jurisdiction at the day, time, and place named in the recognizance.

This section accords with the Metropolitan Police Act, 2 & 3 Vict. c. 47, ss. 70 and 71; further with regard to it, see 47 & 48 Vict. c. 43, s. 9, *post*, p. 286.

39. The following enactments shall apply to proceedings before courts of summary jurisdiction (that is to say,) **Sect. 39.**
Provisions as to proceedings, &c.

1. The description of any offence in the words of the Act, or any order, bye-law, regulation, or other document creating the offence, or in similar words, shall be sufficient in law; and
2. Any exception, exemption, proviso, excuse, or qualification, whether it does or does not accompany in the same section the description of the offence in the Act, order, bye-law, regulation, or other document creating the offence, may be proved by the defendant, but need not be specified or negatived in the information or complaint, and, if so specified or negatived, no proof in relation to the matter so specified or negatived shall be required on the part of the informant or complainant; and
3. A warrant of commitment shall not be held void by reason of any defect therein, if it be therein alleged that the offender has been convicted or ordered to do or abstain from doing any act or thing required to be done or left undone, and there is a good and valid conviction or order to sustain the same; and
4. A warrant of distress shall not be deemed void by reason only of any defect therein, if it be therein alleged that a conviction or order has been made, and there is a good and valid conviction or order to sustain the same, and a person acting under a warrant of distress

Sect. 39.

shall not be deemed a trespasser from the beginning by reason only of any defect in the warrant, or of any irregularity in the execution of the warrant, but this enactment shall not prejudice the right of any person to satisfaction for any special damage caused by any defect in or irregularity in the execution of a warrant of distress, so however that if amends are tendered before action brought, and if the action is brought are paid into court in the action, and the plaintiff does not recover more than the sum so tendered and paid into court the plaintiff shall not be entitled to any costs incurred after such tender, and the defendant shall be entitled to costs, to be taxed as between solicitor and client; and

5. All forfeitures not pecuniary which are incurred in respect of an offence triable by a court of summary jurisdiction, or which may be enforced by a court of summary jurisdiction, may be sold or disposed of in such manner as the court having cognizance of the case or any other court of summary jurisdiction for the same county, borough, or place may direct, and the proceeds of such sale shall be applied in the like manner as if the proceeds were a fine imposed under the Act on which the proceeding for the forfeiture is founded.

The "forfeitures not pecuniary" mentioned in sub-section 5 refer to the forfeiture of goods under the special Act under which the proceedings are taken, as for instance, goods forfeited for smuggling, &c.

40. A writ of *certiorari* or other writ shall not be required for the removal of any conviction, order, or other determination, in relation to which a special case is stated by a court of general or quarter sessions for obtaining the judgment or determination of a superior court. Sect. 40.
Case from
quarter
sessions
without
certiorari.

As to this section, see 12 & 13 Vict. c. 45, s. 11, *post*.
A special case from quarter sessions is a civil proceeding; and the court can give costs to the successful appellant. *Clark v. Assessment Committee of the Alderbury Union*, 45 J. P. 359.

41. In a proceeding within the jurisdiction of a court of summary jurisdiction, without prejudice to any other mode of proof, service on a person of any summons, notice, process, or document required or authorized to be served, and the handwriting and seal of any justice of the peace or other officer or person on any warrant, summons, notice, process, or document may be proved by a solemn declaration taken before a justice of the peace, or before a commissioner to administer oaths in the supreme court of judicature, or before a clerk of the peace or a registrar of a county court; and any declaration purporting to be so taken shall, until the contrary is shown, be sufficient proof of the statements contained therein, and shall be received in evidence in any court or legal proceeding, without proof of the signature or of the official character of the person or persons taking or signing the same; and the fee, if any, for taking such declaration shall be such sum, not exceeding one shilling, as may be directed by rules made in pursuance of this Act, and any such Proof by
declaration
of service of
process,
hand-
writing, &c.

Sect. 41. fee shall be costs in the matter or proceeding to which it relates.

The declaration may be in the form provided by a rule under this Act, and if any declaration made under this section is untrue in any material particular, the person wilfully making such false declaration shall be guilty of wilful and corrupt perjury.

With regard to the above section, see 44 & 45 Vict. c. 24, s. 4, *post*.

By the Metropolitan Police Act, 2 & 3 Vict. c. 47, s. 12, "all summonses and warrants to be issued in any criminal proceeding within the metropolitan police district, or by any magistrate within the said district, shall be served and executed by a constable of the metropolitan police force, *and by none other.*" Consequently proof by declaration of service of process at a distance will not be available when the process issues from a metropolitan police court, so as to do away with the necessity of service by a constable of the metropolitan police force.

Recogni-
zances
taken out of
court.

42. When a court of summary jurisdiction has fixed, as respects any recognizance, the amount in which the principal and the sureties (if any) are to be bound, the recognizance, notwithstanding anything in this or any other Act, need not be entered into before such court, but may, subject to any rules made in pursuance of this Act, be entered into by the parties before any other court of summary jurisdiction or before any clerk of a court of summary jurisdiction, or before a superintendent or inspector of police or other officer of police of equal or superior rank or in charge of any police station, or where any of the parties is in prison, before the governor or other keeper of such prison; and thereupon all the consequences of law shall ensue, and the provisions of this Act with respect to recognizances

taken before a court of summary jurisdiction shall **Sect. 42.**
 apply, as if the recognizance had been entered
 into before the said court as heretofore by law
 required.

43. The following regulations shall be enacted with respect to warrants of distress issued by a court of summary jurisdiction :

Procedure
 on the
 execution of
 distress
 warrants.

- (1.) A warrant of distress shall be executed by or under the direction of a constable ; and
- (2.) Save so far as the person against whom the distress is levied otherwise consents in writing, the distress shall be sold by public auction, and five clear days at the least shall intervene between the making of the distress and the sale, and where written consent is given as aforesaid the sale may be made in accordance with such consent ; and
- (3.) Subject as aforesaid, the distress shall be sold within the period fixed by the warrant, and if no period is so fixed then within the period of fourteen days from the date of the making of the distress, unless the sum for which the warrant was issued, and also the charges of taking and keeping the said distress, are sooner paid ; and
- (4.) Subject to any directions to the contrary given by the warrant of distress, where the distress is levied on household goods

Sect. 43.

the goods shall not, except with the consent in writing of the person against whom the distress is levied, be removed from the house until the day of sale, but so much of the goods shall be impounded as are in the opinion of the person executing the warrant sufficient to satisfy the distress, by affixing to the articles impounded a conspicuous mark; and any person removing any goods so marked, or defacing or removing the said mark, shall on summary conviction be liable to a fine not exceeding five pounds; and

- (5.) Where a person charged with the execution of a warrant of distress wilfully retains from the produce of any goods sold to satisfy the distress, 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 summary conviction to a fine not exceeding five pounds; and
- (6.) A written account of the costs and charges incurred in respect of the execution of any warrant of distress shall be sent by the constable charged with the execution of the warrant as soon as practicable to the clerk of the court of summary jurisdiction issuing the warrant; and it shall be lawful for the person upon whose goods the distress was levied, within one month after the levy of the distress, to inspect such account without fee or reward at any

reasonable time to be appointed by the court, and to take a copy of such account ; and Sect. 43.

- (7.) A constable charged with the execution of a warrant of distress shall cause the distress to be sold, and may deduct out of the amount realized by such sale all costs and charges actually incurred in effecting such sale, and shall render to the owner the overplus, 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 ; and
- (8.) Where a person pays or tenders to the constable charged with the execution of a warrant of distress the sum mentioned in such warrant, or produces the receipt for the same of the clerk of the court of summary jurisdiction issuing the warrant, and also pays the amount of the costs and charges of such distress up to the time of such payment or tender, the constable shall not execute the warrant.

The privilege of goods to be sold by auction from distress is confined to the auctioneer's premises. The ground of the privilege is one of public policy for the protection of trade, and does not extend to goods taken by the auctioneer for purposes of sale to the premises of a third person, for payment of whose rent they are seized. *Lyons v. Elliott*, W. N. 1876, p. 35.

See also 44 & 45 Vict. c. 24, s. 5, *post*, as to warrants of distress.

44. Where any property has been taken from a person charged before a court of summary juris- Return by order of court of

Sect. 44. **diction** with any offence punishable either on indictment or on summary conviction, a report shall be made by the police to such court of summary jurisdiction of the fact of such property having been taken from the person charged and of the particulars of such property, and the court shall, if of opinion that the property or any portion thereof can be returned consistently with the interests of justice and with the safe custody of the person charged, direct such property, or any portion thereof, to be returned to the person charged or to such other person as he may direct.

property
taken from
prisoner.

Local juris-
diction of
court under
this Act.

45. Where a person is charged with an indictable offence mentioned in the First Schedule to this Act, before a court of summary jurisdiction for any county, borough, or place, and the court have jurisdiction to commit such person for trial in such county, borough, or place, although the offence was not committed therein, such court shall also have jurisdiction to deal with the offence summarily in pursuance of this Act.

With reference to this section, see section 2 of 11 & 12 Vict. c. 42, *post*, and the notes thereon.

General
provision as
to local
jurisdiction
of courts of
summary
jurisdiction.

46. For the purposes of the trial of any offence punishable on summary conviction under this Act or under any other Act, whether past or future, the following provisions shall have effect:—

- (1.) Where the offence is committed in any harbour, river, arm of the sea, or other water, tidal or other, which runs between or forms the boundary of the jurisdiction of two or more courts of summary juris-

diction, such offence may be tried by any Sect. 46.
one of such courts.

- (2.) Where the offence is committed on the boundary of the jurisdiction of two or more courts of summary jurisdiction, or within the distance of five hundred yards of any such boundary, or is begun within the jurisdiction of one court and completed within the jurisdiction of another court of summary jurisdiction, such offence may be tried by any one of such courts.
- (3.) Where the offence is committed on any person or in respect of any property in or upon any carriage, cart, or vehicle whatsoever employed in a journey, or on board any vessel whatsoever employed in a navigable river, lake, canal, or inland navigation, the person accused of such offence may be tried by any court of summary jurisdiction through whose jurisdiction such carriage, cart, vehicle, or vessel passed in the course of the journey or voyage during which the offence was committed; and where the side, bank, centre, or other part of the highway, road, river, lake, canal, or inland navigation along which the carriage, cart, vehicle, or vessel passed in the course of such journey or voyage is the boundary of the jurisdiction of two or more courts of summary jurisdiction a person may be tried for such offence by any one of such courts.

- Sect. 46.** (4.) Any offence which is authorized by this section to be tried by any court of summary jurisdiction may be dealt with, heard, tried, determined, adjudged, and punished as if the offence had been wholly committed within the jurisdiction of such court.

PART III.

DEFINITIONS, SAVINGS, AND REPEAL OF ACTS.

Special Definitions.

Application of Act to sums leviable by distress or payable under order.

11 & 12 Vict. c. 43.

47. The provisions of this Act with respect to a sum adjudged to be paid by an order shall apply, so far as circumstances admit, to a sum in respect of which a court of summary jurisdiction can issue a warrant of distress without an information or complaint under the Summary Jurisdiction Act, 1848, in like manner as if the said sum were a civil debt; and the provisions of this Act with respect to the hearing, trying, determining, and adjudging of a case by a court of summary jurisdiction when sitting in open court shall apply to the hearing, trying, determining, and adjudging by a court of summary jurisdiction of an application for the issue of any such warrant.

The provisions of this Act with respect to the period of imprisonment to be imposed in respect of the non-payment of a sum of money adjudged to be paid by a conviction or in respect of the default of

a sufficient distress to satisfy any such sum, shall **Sect. 47.**
 apply to the period of imprisonment to be imposed
 in respect of the non-payment of any sum of money
 adjudged to be paid by an order of a court of sum-
 mary jurisdiction or in respect of the default of a
 sufficient distress to satisfy any such sum, where
 such sum is not a civil debt nor enforceable as a
 civil debt.

48. Anything required by this Act to be done by As to clerk
of court
of summary
jurisdiction.
 to or before a clerk of a court of summary jurisdic-
 tion shall be done by to or before the salaried clerk
 to a petty sessional divisional under section five of
 the Justices Clerks Act, 1877, and where there is 40 & 41 Vict-
c. 43.
 more than one such clerk, by either of such clerks
 or by such of those clerks as a court of summary
 jurisdiction for such division from time to time
 direct; and if any other person acts as the clerk to
 a court of summary jurisdiction acting in and for
 such division, such person, subject to any rules
 made under this Act, shall be deemed for the pur-
 poses of this Act to have acted as the deputy of
 the said salaried clerk, and shall make a return to
 such salaried clerk of all matters done by such court
 and of all matters which the clerk of the court is
 required to enter in a register or otherwise to
 record:

Provided, that nothing in this section shall apply
 where the court of summary jurisdiction is a court
 to whose clerk section five of the Justices Clerks 40 & 41 Vict.
c. 43.
 Act, 1877, does not apply; that is to say, the jus-
 tices of a borough, or a metropolitan police court, or
 any stipendiary or other magistrate the salary of
 whose clerk is regulated under any Act of parlia-

Sect. 48. ment, other than the Justices Clerks Act, 1877, and the principal Act therein mentioned.

40 & 41 Vict.
c. 43.

See the Justices Clerks Act, 1877, in the Appendix, *post*.

Special
definitions
for pur-
poses of
the Act.

49. In this Act, if not inconsistent with the context, the following expressions have the meanings herein-after respectively assigned to them ; that is to say,

The expression " secretary of state " means one of Her Majesty's principal secretaries of state :

The expression " child " means a person who in the opinion of the court before whom he is brought is under the age of twelve years :

The expression " young person " means a person who in the opinion of the court before whom he is brought is of the age of twelve years and under the age of sixteen years :

The expression " adult " means a person who, in the opinion of the court before whom he is brought is of the age of sixteen years or upwards :

The expression " person " includes a child, young person, and adult, and also includes a body corporate :

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

The expression " prescribed " means prescribed or provided by any Act which relates to any offences, penalties, fines, costs, sums of money

orders, proceedings, or matters, to the punish- **Sect. 49.**
 ment, recovery, making, or conduct of which
 the Summary Jurisdiction Acts expressly or
 impliedly apply or may be applied :

The expression "past Act" means any Act passed
 before the commencement of this Act exclusive
 of this Act :

The expression "future Act" means any Act
 passed after the commencement of this Act :

The expression "fine" includes any pecuniary
 penalty or pecuniary forfeiture or pecuniary
 compensation payable under a conviction :

The expression "county" includes any county,
 riding, division, parts, or liberty of a county
 having a separate court of quarter sessions :

The expression "borough" means a borough sub- ^{5 & 6 Will. 4.}
 ject to the provisions of the Municipal Cor- ^{c. 76.}
 porations Act, 1835, and the Acts amending
 the same :

The expression "local rate" means as respects
 any county borough or place, any county rate,
 borough rate, or other local rate out of which
 the costs of the prosecution of any felony com-
 mitted within such county borough or place are
 payable :

The expression "sum adjudged to be paid by a
 conviction" and "sum adjudged to be paid by
 an order" respectively include any costs ad-
 judged to be paid by the conviction or order,
 as the case may be, of which the amount is
 ascertained by such conviction or order.

Sect. 50.*General Definitions.*

General definitions applicable to this and future Acts.

50. In this Act and any future Act, if not inconsistent with the context, the following expressions shall have the meanings hereinafter respectively assigned to them ; that is to say,

11 & 12 Vict. c. 43.

The expression "The Summary Jurisdiction Act, 1848," shall mean the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled "An Act to facilitate the performance of the duties of justices of the peace out of sessions, within England and Wales, with respect to summary convictions and orders :"

11 & 12 Vict. c. 43.

The expression "The Summary Jurisdiction Acts" and the expression "The Summary Jurisdiction (English) Acts" shall respectively mean the Summary Jurisdiction Act, 1848, this Act and any Act past or future amending the Summary Jurisdiction Act, 1848, or this Act :

11 & 12 Vict. c. 43.

The expression "court of summary jurisdiction" shall mean—

Any justice or justices of the peace or other magistrate, by whatever name called, to whom jurisdiction is given by or who is or are authorized to act under the Summary Jurisdiction Acts or any of such Acts (a) :

In any future Act if not inconsistent with the context—

The expression "petty sessional court" shall have the same meaning as it has in this Act :

The expression "occasional court-house" **Sect. 50.**
 shall mean such police station or other
 place as is for the time being appointed in
 pursuance of this Act to be used as an
 occasional court-house.

(a) This definition is extended by 47 & 48 Vict. c. 43, s. 7,
post, p. 284.

Application of Acts.

51. The following regulations shall be made for the purpose of facilitating the application of the Summary Jurisdiction Acts to any future Act; that is to say,

Application
 of Summary
 Jurisdiction
 Acts to
 future Acts.

- (1.) Where in any future Act, any offence is directed or authorized to be prosecuted summarily or on summary conviction, or any fine is directed or authorized to be recovered summarily or on summary conviction, or any other words are used implying that such offence is to be prosecuted or fine is to be recovered in manner provided by the Summary Jurisdiction Acts, the Summary Jurisdiction Acts shall apply accordingly; and
- (2.) Where in any future Act any sum of money is directed or authorized to be recovered before a court of summary jurisdiction, or on complaint made to a court of summary jurisdiction, or words are used (whether by authorizing the sum to be recovered summarily or in a summary manner or otherwise), which imply that such sum of

Sect. 51.

money is to be recovered before a court of summary jurisdiction or in manner provided by the Summary Jurisdiction Acts, the Summary Jurisdiction Acts shall apply accordingly ;

- (8.) Where in any future Act a court of summary jurisdiction is authorized to order or require a person to do or abstain from doing any act or thing other than the payment of a sum of money ; or where in pursuance of any such Act any Act or thing other than the payment of a sum of money is required or authorized by an order of a court of summary jurisdiction to be done, or is declared capable of being enforced summarily, or by summary order ; or where in any such Act any words are used implying that such act or thing is to be enforced in manner provided by the Summary Jurisdiction Acts, the Summary Jurisdiction Acts shall apply accordingly.

Savings and Construction.

Saving for
Army, Navy,
Marine, and
Militia Acts.

52. The provisions of this Act which enable a court of summary jurisdiction, notwithstanding any enactment to the contrary, to impose imprisonment without hard labour, and reduce the prescribed period thereof, or do either of such acts, and in the case of a fine, if it be imposed as in respect of a first offence, to reduce the prescribed amount thereof, and in the case of imprisonment, to impose a fine in lieu of imprisonment, shall not apply to any proceedings

taken under any Act relating to any of Her Majesty's **Sect. 52.**
regular or auxiliary forces.

With reference to this section, see the Regulation of the Forces Act, 1881 (44 & 45 Vict. c. 57), and the Army Act, 1881 (44 & 45 Vict. c. 58).

53. The Summary Jurisdiction Acts shall apply to all informations, complaints, and other proceedings before a court of summary jurisdiction under the statutes relating to the post office.

Application of Summary Jurisdiction Acts to post office, Inland Revenue, and Customs.

Every offence under the statutes relating to the post office for which a person is liable to forfeit a sum not exceeding twenty pounds may be prosecuted before a court of summary jurisdiction in manner provided by the Summary Jurisdiction Acts.

The Summary Jurisdiction Acts shall, notwithstanding any special provisions to the contrary contained in any of the statutes relating to Her Majesty's revenue under the control of the commissioners of inland revenue or the commissioners of customs, apply to all informations, complaints, and other proceedings before a court of summary jurisdiction under or by virtue of any of the said statutes ;

Provided, that where the sum adjudged by conviction under or by virtue of any of the said statutes to be paid exceeds fifty pounds, the period of imprisonment imposed by a court of summary jurisdiction in respect of the non-payment of such sum, or in respect of the default of a sufficient distress to satisfy such sum, may exceed three months but shall not exceed six months.

The following enactments, contained in the Customs and Inland Revenue Acts, 1878 (41 Vict. c. 15) and 1879 (42 & 43 Vict. c. 21), relate to the subject of the above section.

Note to Sect. 53.

Provision
as to
penalties.

41 Vict. c. 15.

23. Notwithstanding the provisions in the Excise Acts relating to the recovery and application of excise penalties, any penalty imposed by the said Act of the thirtieth and thirty-first years of Her Majesty's reign, chapter five, or this part of this Act, may be either sued for and applied in the manner prescribed by such provisions, or recovered and enforced upon information of a police-constable before a court of summary jurisdiction, subject in the latter case to the following provisions:

- (1.) The court of summary jurisdiction shall have power to award costs and to mitigate the penalty to such an amount as the court may in its discretion think fit:
- (2.) The penalty, when recovered, shall, notwithstanding anything in the Acts relating to the metropolitan police courts, or any other Act, as to one half be paid to the commissioners of inland revenue, and applied in the manner in which excise penalties are by law applicable; and as to the other half be paid and applied in England and Wales for the benefit of the superannuation fund of the police force to which the police-constable who instituted the prosecution belonged, and in Scotland to the treasurer of the police assessment of the county or burgh to the police force of which such police constable belonged.

42 & 43 Vict. c. 21.

Police
proceedings
for penalties
in
relation
to dogs.

26. Where under the provisions of the twenty-third section of the Customs and Inland Revenue Act, 1878, the proceedings for any penalty therein referred to or taken in England upon information of a police-constable, such proceedings shall be in accordance with the provisions of the Act of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, and any Acts amending the same, including the Small Penalties Act, 1865, notwithstanding anything contained in the seventh section thereof.

It will be seen, however, that the Small Penalties Act, 1865, is repealed by section 55 of the present Act; and that the provision with reference to small penalties is embodied in section 5, *ante*, p. 198.

Application
and con-
struction of
Act.

54. This Act shall apply to the levying of sums adjudged to be paid by an order in any matter of bastardy, or by an order which is enforceable as an

order of affiliation, and to the imprisonment of a defendant for non-payment of such sums, in like manner as if an order in any such matter or so enforceable were a conviction on information, and shall apply to the proof of the service of any summons, notice, process, or document in any matter of bastardy, and of any handwriting or seal in any such matter, and to an appeal from an order in any matter of bastardy. Sect. 54.

Nothing in this Act shall authorize a court of summary jurisdiction to reduce the amount of a fine where the Act prescribing such amount carries into effect a treaty convention or agreement with a foreign state, and such treaty convention or agreement stipulates for a fine of a minimum amount.

This Act shall be construed as one with the Summary Jurisdiction Act, 1848, so far as is consistent with the tenour of such Acts respectively, and save as aforesaid shall be subject to the exceptions specified in section thirty-five of the Summary Jurisdiction Act, 1848; 11 & 12 Vict.
c. 43.

Provided that the provisions contained in sections thirty-three and thirty-four of the Summary Jurisdiction Act, 1848, as to the Acts relating to the police in the metropolis and in the city of London, and relating to the powers of justices within the metropolitan police district, shall not apply to or restrict the operation of this Act. 11 & 12 Vict.
c. 43.

This Act shall not apply to any information, complaint, or other summary proceeding laid, made, or instituted before the commencement of this Act, or in respect of any offence committed, or any act done, or any cause which arose before the commencement of this Act, and any such information,

Sect 54. complaint, or other proceeding as aforesaid may be laid, made, instituted, and proceeded with in the same manner as if this Act had not been passed.

With respect to the enforcement of orders in bastardy the Secretary of State has given instructions that in such cases, and in all cases within section 54 of this Act, all persons shall be treated as ordinary prisoners sentenced to simple imprisonment. See 46 J. P. 122.

As to bastardy proceedings in England and Scotland see 44 & 45 Vict. c. 24, s. 6, *post*, p. 278.

Repeal.

Repeal of
Acts.

55. There shall be repealed as from the commencement of this Act—

- (1.) The Acts mentioned in the second schedule to this Act to the extent in the third column of that schedule mentioned; and
- (2.) So much of any other Act as is inconsistent with this Act.

Provided that this repeal shall not affect—

- (1.) Anything duly done or suffered before the commencement of this Act under any enactment hereby repealed; or
- (2.) Any right or privilege acquired or any liability incurred before the commencement of this Act under any enactment hereby repealed;
o
- (3.) Any imprisonment, fine, forfeiture, or other punishment incurred or to be incurred in respect of any offence committed before the commencement of this Act under any enactment hereby repealed; or

- (4.) The institution or prosecution to its termination of any investigation or legal proceeding or any other remedy for prosecuting any such offence or ascertaining, enforcing, or recovering any such liability, imprisonment, fine, forfeiture, or punishment as aforesaid, and any such investigation, legal proceeding, and remedy may be carried on as if this repeal had not been enacted. Sect. 55.
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Where any unrepealed Act of parliament incorporates or refers to any provisions of any Act hereby repealed, such unrepealed Act shall be deemed to incorporate or refer to the corresponding provisions of this Act.

Sched. 1.

SCHEDULES.

FIRST SCHEDULE.

Indictable Offences which can be dealt with Summarily under this Act.

FIRST COLUMN. Young Persons consenting and Adults pleading Guilty.	SECOND COLUMN. Adults consenting.
<p>1. Simple larceny.</p> <p>2. Offences declared by any Act for the time being in force to be punishable as simple larceny.</p> <p>3. Larceny from or stealing from the person.</p>	<p>1. Simple larceny, where the value of the whole of the property alleged to have been stolen does not in the opinion of the court before whom the charge is brought exceed forty shillings.</p> <p>2. Offences declared by any Act for the time being in force to be punishable as simple larceny, where the value of the whole of the property alleged to have been stolen, destroyed, injured, or otherwise dealt with by the offender does not in the opinion of the court before whom the charge is brought exceed forty shillings.</p> <p>3. Larceny from or stealing from the person, where the value of the whole of the property alleged to have been stolen does not in the opinion of the court before whom the charge is brought exceed forty shillings.</p>

Sched. 1.

<p style="text-align: center;">FIRST COLUMN.</p> <p>Young Persons consenting and Adults pleading Guilty.</p>	<p style="text-align: center;">SECOND COLUMN.</p> <p>Adults consenting.</p>
<p>4. Larceny as a clerk or servant.</p>	<p>4. Larceny as a clerk or servant, where the value of the whole of the property alleged to have been stolen does not in the opinion of the court before whom the charge is brought exceed forty shillings.</p>
<p>5. Embezzlement by a clerk or servant.</p>	<p>5. Embezzlement by a clerk or servant, where the value of the whole of the property alleged to have been embezzled does not in the opinion of the court before whom the charge is brought exceed forty shillings.</p>
<p>6. Receiving stolen goods, that is to say, committing any of the offences relating to property specified in the ninety-first and ninety-fifth sections of the Larceny Act, 1861, (being the Act of the session of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter ninety-six,) or in either of such sections.</p>	<p>6. Receiving stolen goods, that is to say, committing any of the offences relating to property specified in the ninety-first and ninety-fifth sections of the Larceny Act, 1861, (being the Act of the session of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter ninety-six,) or in either of such sections, where the value of the whole of the property alleged to have been received does not in the opinion of the court before whom the charge is brought exceed forty shillings.</p>
<p>7. Aiding, abetting, counselling, or procuring the commission of simple larceny, or of an offence declared by any Act for the time being in</p>	<p>7. Aiding, abetting, counselling, or procuring the commission of simple larceny, or of an offence declared by any Act for the time being in</p>

Sched. 1

FIRST COLUMN. Young Persons consenting and Adults pleading Guilty.	SECOND COLUMN. Adults consenting.
<p>force to be punishable as simple larceny, or of larceny or stealing from the person, or of larceny as a clerk or servant.</p> <p>8. Attempt to commit simple larceny, or an offence declared by any Act for the time being in force to be punishable as simple larceny, or to commit larceny from or steal from the person, or to commit larceny as a clerk or servant.</p>	<p>force to be punishable as simple larceny, or of larceny or stealing from the person, or of larceny as a clerk or servant, where the value of the whole of the property which is the subject of the alleged offence does not in the opinion of the court before whom the charge is brought exceed forty shillings.</p> <p>8. Attempt to commit simple larceny, or an offence declared by any Act for the time being in force to be punishable as simple larceny, or to commit larceny from or steal from the person, or to commit larceny as a clerk or servant.</p>

This Act shall apply to any of the following offences when alleged to have been committed by a young person in like manner as if such offence were included in the first column of the schedule; that is to say,

- (1.) To any offence in relation to railways and railway carriages mentioned in sections thirty-two and thirty-three of the Act of the session of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter one hundred, intituled "An Act to consolidate and amend the statute law of England and Ireland relating to offences against the person;" and
- (2.) To any offence relating to railways mentioned in section thirty-five of the Act of the session of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter ninety-seven, intituled "An Act to consolidate and amend the statute law of England and Ireland relating to malicious injuries to property;" and

- (3.) To any indictable offence, either under the Post Office Laws or prosecuted by Her Majesty's Postmaster-General; and for the purpose of this provision the expression "Post Office Laws" has the same meaning as it has in the Act of the session of the seventh year of the reign of King William the Fourth and the first year of the reign of Her present Majesty, chapter thirty-six, intituled "An Act for consolidating the laws relative to offences against the post office of the United Kingdom, and for regulating the judicial administration of the Post Office Laws, and for explaining certain terms and expressions employed in those laws," and the Acts amending the same. Sched. 1.

The following are the enactments above referred to:—

(1.)

LARCENY ACT, 1861.

24 & 25 Vict. c. 96.

91. Whosoever shall receive any chattel, money, valuable security, or other property whatsoever, the stealing, taking, extorting, obtaining, embezzling, or otherwise disposing whereof shall amount to a felony, either at common law or by virtue of this Act, knowing the same to have been feloniously stolen, taken, extorted, obtained, embezzled, or disposed of, shall be guilty of felony, and may be indicted and convicted either as an accessory after the fact or for a substantive felony, and in the latter case, whether the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to justice; and every such receiver, howsoever convicted, shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and if a male under the age of sixteen years, with or without whipping: Provided, that no person howsoever tried for receiving as aforesaid, shall be liable to be prosecuted a second time for the same offence. Receiving, where the principal is guilty of felony.

95. Whosoever shall receive any chattel, money, valuable security, or other property whatsoever, the stealing, taking, obtaining, converting, or disposing whereof is made a misdemeanor by this Act, knowing the same to be unlawfully Receiving, where the principal has been guilty of

Note to Sched. 1. **a misdemeanor.** stolen, taken, obtained, converted, or disposed of, shall be guilty of a misdemeanor, and may be indicted and convicted thereof, whether the person guilty of the principal misdemeanor shall or shall not have been previously convicted thereof, or shall or shall not be amenable to justice; and every such receiver, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding seven years and not less than three years,—or to be imprisoned for any term not exceeding two years with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

(2.)

OFFENCES IN RELATION TO RAILWAYS AND RAILWAY CARRIAGES.

24 & 25 Vict. c. 100.

Placing wood, &c., on a railway, with intent to endanger passengers.

32. Whosoever shall unlawfully and maliciously put or throw upon or across any railway any wood, stone, or other matter or thing, or shall unlawfully and maliciously take up, remove, or displace any rail, sleeper, or other matter or thing belonging to any railway, or shall unlawfully and maliciously turn, move, or divert any points or other machinery belonging to any railway, or shall unlawfully and maliciously make or show, hide or remove, any signal or light upon or near to any railway, or shall unlawfully and maliciously do or cause to be done any other matter or thing with intent, in any of the cases aforesaid, to endanger the safety of any person travelling or being upon such railway, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and, if a male under the age of sixteen years, with or without whipping.

Casting stone, &c., upon a railway carriage, with intent to endanger the safety of any person therein.

33. Whosoever shall unlawfully and maliciously throw, or cause to fall or strike, at, against, into, or upon any engine, tender, carriage, or truck used upon any railway, any wood, stone, or other matter or thing, with intent to injure or endanger the safety of any person being in or upon such engine, tender, carriage, or truck, or in or upon any other engine, tender, carriage, or truck of any train of which such first-mentioned engine, tender, carriage, or truck shall form part, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in

penal servitude for life or for any term not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour. **Note to Sched. 1.**

(3.)

OFFENCES RELATING TO RAILWAYS.

24 & 25 Vict. c. 97.

35. Whosoever shall unlawfully and maliciously put, place, cast, or throw upon or across any railway any wood, stone, or other matter or thing, or shall unlawfully and maliciously take up, remove, or displace any rail, sleeper, or other matter or thing belonging to any railway, or shall unlawfully and maliciously turn, move, or divert any points or other machinery belonging to any railway, or shall unlawfully and maliciously make or show, hide or remove any signal or light upon or near to any railway, or shall unlawfully and maliciously do or cause to be done any other matter or thing, with intent, in any of the cases aforesaid, to obstruct, upset, overthrow, injure, or destroy any engine, tender, carriage, or truck using such railway, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and, if a male under the age of sixteen, with or without whipping.

Placing wood, &c., on railway with intent to obstruct or overthrow any engine, &c.

SECOND SCHEDULE.

Session and Chapter.	Title.	Extent of Repeal.
10 & 11 Vict. c. 82	An Act for the more speedy trial and punishment of juvenile offenders.	The whole Act.
11 & 12 Vict. c. 48	An Act to facilitate the performance of the duties of justices of the peace out of sessions, within England and Wales, with respect to summary convictions and orders.	The following words in section thirty-five: "Nor to any information or complaint or other proceeding under or by virtue of any of the statutes relating to Her Majesty's Revenue of Excise or Customs, Stamps, Taxes, or Post Office."

Sched. 2.

Sched. 2.

Session and Chapter.	Title.	Extent of Repeal.
13 & 14 Vict. c. 37	An Act for the further extension of summary jurisdiction in cases of Larceny.	The whole Act, in so far as relates to England.
18 & 19 Vict. c. 126	An Act for diminishing expense and delay in the administration of Criminal Justice in certain cases.	The whole Act, in so far as relates to England, except sections eighteen, twenty, twenty-two, twenty-three, and twenty-four.
27 & 28 Vict. c. 80	An Act to extend the provisions of the Criminal Justice Act, 1865, to the Liberties of the Cinque Ports, and to the district of Romney Marsh in the county of Kent.	The whole Act.
27 & 28 Vict. c. 110	An Act for the amendment of the law relating to the mitigation of penalties.	The whole Act, so far as relates to England.
28 & 29 Vict. c. 127	An Act to amend the law relating to small penalties.	The whole Act.
31 & 32 Vict. c. 116	An Act to amend the law relating to Larceny and Embezzlement.	Section two, in so far as relates to England.
34 & 35 Vict. c. 78	An Act to amend the law respecting the Inspection and Regulation of Railways.	Section thirteen, in so far as relates to England.

THE SUMMARY JURISDICTION (PROCESS)
ACT, 1881.

44 & 45 VICT. CAP. 24.

*An Act to amend the Law respecting the Service of
Process of Courts of Summary Jurisdiction in
England and Scotland. [18th July, 1881.]*

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited as the Summary Jurisdiction (Process) Act, 1881. Short title.

This Act shall be deemed to be included in the expressions "Summary Jurisdiction Acts" and "Summary Jurisdiction (English) Acts."

2. This Act shall not apply to Ireland. Extent of Act.

3. This Act shall come into operation on the first day of October, one thousand eight hundred and eighty-one (which day is in this Act referred to as the commencement of this Act). Commencement of Act.

4. Subject to the provisions of this Act, any process issued under the Summary Jurisdiction Acts Service of process of English

Sect. 4. court in Scotland and of Scotch court in England. may, if issued by a court of summary jurisdiction in England and endorsed by a court of summary jurisdiction in Scotland, or issued by a court of summary jurisdiction in Scotland and endorsed by a court of summary jurisdiction in England, be served and executed within the jurisdiction of the endorsing court in like manner as it may be served and executed within the jurisdiction of the issuing court, and that by an officer either of the issuing or of the endorsing court.

For the purposes of this Act—

(1.) Any process may be issued and endorsed under the hand of any such person as is declared by this Act to be a court of summary jurisdiction, and may be endorsed upon proof alone of the handwriting of the person issuing it, and such proof may be either on oath or by such solemn declaration as is mentioned in section forty-one of the Summary Jurisdiction Act, 1879, or by any like declaration taken in Scotland before a sheriff, justice of the peace, or other magistrate having the authority of a justice of the peace. Such indorsement may be in the form contained in the schedule to this Act annexed, or in a form to the like effect :

(2.) Where any process requiring the appearance of a person to answer any information or complaint has been served in pursuance of this section, the court, before issuing a warrant for the apprehension of such person for failure so to appear, shall be

satisfied on oath that there is sufficient *prima facie* evidence in support of such information or complaint :

Sect. 4.

- (3.) If the process is to procure the attendance of a witness, the court issuing the process shall be satisfied on oath of the probability that the evidence of such witness will be material, and that the witness will not appear voluntarily without such process, and the witness shall not be subject to any liability for not obeying the process unless a reasonable amount for his expenses has been paid or tendered to him :
- (4.) This Act shall not apply to any process requiring the appearance of a person to answer a complaint if issued by an English court of summary jurisdiction for the recovery of a sum of money which is a civil debt within the meaning of the Summary Jurisdiction Act, 1879, or if issued by a Scotch court in a case which falls within the definition of "civil jurisdiction" contained in the Summary Procedure Act, 1864.

5. Where a person is apprehended under any process executed in pursuance of this Act, such person shall be forthwith taken to some place within the jurisdiction of the court issuing the process, and be there dealt with as if he had been there apprehended.

Provision as to execution of process.

A warrant of distress issued in England when endorsed in pursuance of this Act shall be executed in Scotland as if it were a Scotch warrant of poinding and sale, and a Scotch warrant of poinding and

Sect. 5. sale when endorsed in pursuance of this Act shall be executed in England as if it were an English warrant of distress, and the enactments relating to the said warrants respectively shall apply accordingly, except that any account of the costs and charges in connection with the execution, or of the money levied thereby, or otherwise relating to the execution, shall be made, and any money raised by the execution shall be dealt with in like manner as if the warrant had been executed within the jurisdiction of the court issuing the warrant.

Provision as to bastardy proceedings in England and Scotland.

6. A court of summary jurisdiction in England and a sheriff court in Scotland shall respectively have jurisdiction by order or decree to adjudge a person within the jurisdiction of the court to pay for the maintenance and education of a bastard child of which he is the putative father, and for the expenses incidental to the birth of such child, and for the funeral expenses of such child, notwithstanding that such person ordinarily resides, or the child has been born, or the mother of it ordinarily resides, where the court is English, in Scotland, or where the court is Scotch, in England, in like manner as the court has jurisdiction in any other case.

Any process issued in England or Scotland to enforce obedience to such order or decree may be endorsed and executed in Scotland and England respectively in manner provided by this Act with respect to process of a court of summary jurisdiction.

Any bastardy order of a court of summary jurisdiction in England may be registered in the books of a sheriff court in Scotland, and thereupon a warrant

of arrestment may be issued in like manner as if **Sect. 6.**
such order were a decree of the said sheriff court.

Stat. 44 & 45 Vict. c. 24, s. 6, does not enable a summons under the 35 & 36 Vict. c. 65, issued by the justices in England to be served on the putative father in Scotland; and, therefore, where such summons is served in Scotland, and the person so served does not appear at the hearing, the justices have no jurisdiction to make an affiliation order. *Reg. v. Thompson and others J.J., and Duncan*, L. R. 12 Q. B. D. 261; 47 J. P. 820 n.; 48 J. P. 324, Court of Appeal; 20 L. T. (N.S.) 187.

7. This Act shall be in addition to and not in **Saving.**
derogation of any power existing under any other Act relating to the execution of any warrant or other process in England and Scotland respectively.

8. In this Act, unless the context otherwise **Definitions.**
requires,—

The expression “process” includes any summons or warrant of citation to appear either to answer any information or complaint, or as a witness; also any warrant of commitment, any warrant of imprisonment, any warrant of distress, any warrant of poinding and sale, also any order or minute of a court of summary jurisdiction or copy of such order or minute, also an extract decree, and any other document or process, other than a warrant of arrestment, required for any purpose connected with a court of summary jurisdiction to be served or executed.

The expression “Summary Jurisdiction Acts,” as **42 & 43 Vict.**
regards England, has the same meaning as in the **c. 49.**
Summary Jurisdiction Act, 1879, and as regards **27 & 28 Vict.**
Scotland, means the Summary Procedure Act, **c. 53.**
1864, and any Act, past or future, amending that Act.

Sect. 8. The expression "sheriff" shall include sheriff substitute.

The expression "court of summary jurisdiction" means any justice of the peace, also any officer or other magistrate having the authority in England or Scotland of a justice of the peace, also in Scotland the sheriff.

The expression "officer of a court of summary jurisdiction" means the constable, officer, or person to whom any process issued by the court is directed, or who is by law required or authorized to serve or execute any process issued by the court.

SCHEDULE.

Indorsement in backing a Process.

Whereas proof hath this day been made before me, one of Her Majesty's justices of the peace [sheriff or other magistrate] for the [county or burgh] of _____, that the name of *A. B.* to the within warrant [or summons or order or minute, or copy of order or minute or other document] subscribed is of the handwriting of the justice of the peace [sheriff or other magistrate] within mentioned, I do therefore hereby authorize *C. D.* who bringeth to me this warrant [or summons or order or minute, or copy of order or minute or other document,] and all other persons by whom the same may be lawfully served [or executed], and also all constables and other peace officers of the said [county or burgh] of _____ to serve and execute the same within the said last-mentioned [county or burgh].

Given under my hand this _____ day of

18 .

THE SUMMARY JURISDICTION ACT, 1884.

47 & 48 VICT. CAP. 43.

An Act to repeal divers Enactments rendered unnecessary by the Summary Jurisdiction Acts and other Acts relating to Proceedings before Courts of Summary Jurisdiction, and to make further provision for the uniformity of Proceedings before those Courts.
[7th August, 1884.]

WHEREAS the Summary Jurisdiction Acts regulate the procedure before courts of summary jurisdiction and on appeals from those courts to courts of quarter sessions, and it is expedient to provide for uniformity of procedure in all such cases :

11 & 12 Vict.
c. 43.
12 & 13 Vict.
c. 45.
42 & 43 Vict.
c. 49.

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited as the Summary Jurisdiction Act, 1884.

Short title.

2. This Act shall come into operation on the first day of December one thousand eight hundred and eighty-four.

Commencement of Act.

3. Whereas the Summary Jurisdiction Acts provide for the imprisonment of a person for the nonpayment in certain cases of a sum of money adjudged to be paid by the conviction or order of a court of summary jurisdiction, and it is expedient to repeal so much of any enactment as provides the

Repeal of obsolete punishments for nonpayment of fines and other sums of money.

Sect. 3. punishment of whipping or any punishment other than imprisonment, with or without hard labour, provided for such nonpayment: Be it therefore enacted that—

So much of any Act as enacts that a person on nonpayment of a sum of money adjudged to be paid by the conviction or order of a court of summary jurisdiction in England shall be liable to be whipped or to any other punishment than imprisonment, with or without hard labour, is hereby repealed.

With reference to this section see 42 & 43 Vict. c. 49, s. 21, *ante*, p. 219.

Repeal of
Acts in
schedule.

4. The Acts contained in the schedule to this Act are hereby repealed to the extent in the third column of that schedule mentioned.

Provided that—

- (1.) Where an enactment extends beyond England that enactment shall be repealed only as regards England ; and
- (2.) The expression in the said schedule “ conviction or order of a court of summary jurisdiction ” shall mean a conviction or order made in pursuance of the Summary Jurisdiction Acts ; and
- (3.) This repeal shall not revive any enactment repealed by any of the repealed Acts, nor shall it affect—
 - (a.) Anything duly done or suffered before the commencement of this Act under any enactment hereby repealed ; or
 - (b.) Any legal proceeding or appeal commenced, or any writ, warrant, or instrument made

or issued before the commencement of **Sect. 4**
this Act ;

and any such legal proceeding, appeal, writ, warrant, and instrument may be carried on and executed as if this Act had not passed.

A reference in any Act of parliament or other document to any enactment repealed by this Act, whether incorporating or applying such enactment or otherwise, shall be construed to refer to the corresponding enactment in the Summary Jurisdiction Acts, and so far as there is no such corresponding enactment shall be repealed.

5. Whereas doubts may arise as to whether the Summary Jurisdiction Acts apply, or will, after the repeal enacted by this Act takes effect, apply to the proceedings before justices referred to in the sections mentioned in the third column of the schedule to this Act, and it is expedient to remove such doubts : Be it therefore enacted that—

Removal of doubts as to application of Summary Jurisdiction Acts.

The repeal enacted by this Act shall not take away any jurisdiction of any justices to act summarily in any matter referred to in an enactment hereby repealed, and the Summary Jurisdiction Acts shall, so far as is consistent with the tenor thereof, apply to every proceeding before justices as to which the procedure is wholly or partly repealed by this Act in substitution for the procedure so repealed.

And for the further removal of doubts it is hereby declared that where by virtue of the repeal enacted by this Act or otherwise any statute authorizing the infliction by any justice or justices of a penalty or fine, either as a sole punishment or as an alternative punishment for imprisonment, provides no method

Sect. 6. for the recovery of such penalty or fine, sections 11 & 12 Vict. c. 43. 42 & 43 Vict. c. 49. nineteen and twenty-one of the Summary Jurisdiction Act, 1848, as amended by section twenty-one of the Summary Jurisdiction Act, 1879, shall apply to the recovery of such penalty or fine.

Application of provisions of 42 & 43 Vict. c. 49, respecting appeals to appeals under prior Acts.

6. Where a person is authorized by any Act passed before the commencement of the Summary Jurisdiction Act, 1879, to appeal from the conviction or order of a court of summary jurisdiction made in pursuance of the Summary Jurisdiction Acts, or from the refusal to make any conviction or order in pursuance of those Acts, to a court of general or quarter sessions, he shall after the passing of this Act appeal to such court subject to the conditions and regulations contained in the Summary Jurisdiction Act, 1879, with respect to an appeal to a court of general or quarter sessions.

See 42 & 43 Vict. c. 49, s. 31, *ante* p. 233.

Removal of doubt as to 42 & 43 Vict. c. 49, s. 50.

7. Whereas by section fifty of the Summary Jurisdiction Act, 1879, it is enacted that the expression "court of summary jurisdiction" shall in that Act and any future Act mean "any justice or justices of the peace or other magistrate by whatever name called to whom jurisdiction is given by or who is or are authorized to act under the Summary Jurisdiction Acts or any of such Acts."

And whereas doubts have arisen as to whether the said section extends to such justice, justices, or magistrate when acting under some Act other than the Summary Jurisdiction Acts, and it is expedient to remove such doubts: Be it therefore enacted as follows:

It is hereby declared that the above recited definition of court of summary jurisdiction in section

fifty of the Summary Jurisdiction Act, 1879, includes such justice, justices, or magistrate as therein mentioned, whether acting under the Summary Jurisdiction Acts, or any of them, or under any other Act, or by virtue of his or their commission or by the common law. **Sect. 7.**

8. Whereas doubts have arisen whether under the thirtieth section of the Summary Jurisdiction Act, 1879, the justices or council therein mentioned have power to provide more than one petty sessional court-house, and it is expedient that such doubts should be removed: Be it therefore enacted as follows: Extension of 42 & 43 Vict. c. 49, s. 30.

It is hereby declared that the power of the thirtieth section of the Summary Jurisdiction Act, 1879, given to the justices or council therein mentioned to provide a petty sessional court-house shall be deemed to extend to providing more than one such petty sessional court-house if the justices or council shall think it necessary or expedient so to do.

And for the further removal of doubts it is hereby declared that a petty sessional court-house or occasional court-house for the use of the justices of any county may be outside the limits of the petty sessional division for which such court-house is provided or appointed, and may be either in the said county, or in any adjoining county or borough, and for the purpose of the jurisdiction of any justices acting in such court-house the same shall be deemed to be within the county and the petty sessional division for which such justices act.

9. Nothing in section two hundred and twenty-seven of the Municipal Corporations Act, 1882, shall Removal of doubts as to effect of

Sect. 10. be taken to have repealed section thirty-eight of the Summary Jurisdiction Act, 1879.

45 & 46 Vict.
c. 50, s. 227,
on 43 & 43
Vict. c. 49,
s. 38.

The provision referred to in 45 & 46 Vict. c. 50, s. 227, is as to the power of borough constables to take bail.

Saving for
the recovery
of poor
rates, &c.

10. Nothing in this Act shall alter the procedure for the recovery of or any remedy for the nonpayment of any poor rate, or of any rate or sum the payment of which is not adjudged by the conviction or order of a court of summary jurisdiction.

Recovery of
payments
certified by
district
auditors.

11. The payment of any sum certified by a district auditor to be due in accordance with the Poor Law Amendment Act, 1844, and the Acts amending the same, or with any other Act may, together with the costs of the proceedings for the recovery thereof, be enforced in like manner as if it were a sum due in respect of the poor rate.

By 7 & 8 Vict. c. 101, s. 32, the certified sums were to be recovered in the same manner as penalties and forfeitures may be recovered under the 4 & 5 Will. 4, c. 76.

Effect of
forms.

12. Whereas by section twenty-nine of the Summary Jurisdiction Act, 1879, the Lord Chancellor is authorized from time to time to make rules in relation to the forms to be used under the Summary Jurisdiction Acts or any of them, and to annul and to add to forms in relation to summary proceedings contained in other Acts, and doubts have arisen with respect to the effect of the forms altered by such rules, and it is expedient to remove such doubts: Be it therefore enacted that—

A form authorized by any rules for the time being in force in pursuance of the said section shall be of the same effect as if it were contained in the Summary Jurisdiction Act, 1848, or in any other Act to which the form is made applicable.

11 & 12 Vict.
c. 43.

SCHEDULE.

ENACTMENTS REPEALED.

This Schedule, down to the year 1868, refers to the Statutes, Revised Edition, published by authority under the direction of the Statute Law Committee.

A description or citation of a portion of an Act in this schedule is inclusive of the word section, or other part first and last mentioned or otherwise referred to as forming the beginning or as forming the end of the portion described in the description or citation.

Year and Chapter.	Title or Short Title.	Extent of Repeal.
3 Will. & Mar. c. 11	An Act for the better explanation and supplying the defects of the former laws for the settlement of the poor.	Section nine from "to be levied" to end of section.
7 & 8 Will. 3, c. 6 -	An Act for the more easy recoverie of small tythes	Section two from "and alsoe" to end of section. Section three. Section four. Section seven from "to be held" to "just and reasonable." Section nine. Section ten, and Section twelve.
1 Anne, Stat. 2, c. 22	An Act for the more effectual preventing the abuses and frauds of persons employed in the working up the woollen, linen, fustian, cotton, and iron manufactures of this kingdom.	In section one the words "publicly whipped and," and Section four from "which shall be held" to end of section.

Year and Chapter.	Title or Short Title.	Extent of Repeal.
9 Geo. 1, c. 27	- An Act for preventing journeymen shoemakers selling, exchanging, or pawning boots, shoes, slippers, cut leather, or other materials for making boots, shoes, or slippers, and for better regulating the said journeymen.	Section one from "and upon the neglecting" to "offence shall be committed," and from "nor less than fourteen days" to end of section. Section two from "or else be subject" to end of section, and Section five from "to be holden" to "appeal."
12 Geo. 1, c. 34	- An Act to prevent unlawful combinations of workmen employed in the woollen manufactures, and for better payment of their wages.	Section two from "by warrant" to "respective jurisdictions," and from "for any time" to end of section. Section three from "and for want of sufficient" to end of section, and Section five from "to be holden" to end of section.
11 Geo. 2, c. 19	- An Act for the more effectual securing the payment of rents and preventing frauds by tenants.	Section four from "without bail" to end of section, and Section five from "to be held" to end of section.
12 Geo. 2, c. 28	- An Act for the more effectual preventing of excessive and deceitful gaming.	Section five from "for the said county" to end of section. Section six from "be set aside" to "conviction or judgment" and Section eight.
13 Geo. 2, c. 8	- An Act to explain and amend an Act made in the first year of the reign of Her late Majesty Queen Anne, intituled "An Act for	In section one, the words "whipped and," and from "for any time not exceeding three months" to end of section.

Year and Chapter.	Title or Short Title.	Extent of Repeal.
13 Geo. 2, c. 8— (continued).	the more effectual preventing the abuses and frauds of persons employed in the working up the woollen, linen, fustian, cotton, and iron manufactures of this kingdom," and for extending the said Act to the manufactures of leather.	Section four from "and shall be there likewise" to "order and direct," and from "for any time not exceeding three months" to end of section, and Section nine from "to be held" to end of section.
15 Geo. 2, c. 27	- An Act for the more effectual preventing any cloth or woollen goods remaining upon the rack or tenters, or any woollen yarn or wool left out to dry, from being stolen or taken away in the night time.	Section one from "and in default of payment" to "they pay the same," and Section two from "which shall happen" to end of section.
19 Geo. 2, c. 21	- An Act more effectually to prevent profane cursing and swearing.	Section two. Section five. Section six. Section seven, the words "for the space of one month." Section eight from "in the words and form" down to "day and year aforesaid," and the words "said form and" and from "and the said justice" to the end of the section. Section ten from "and that all charges" to end of section, and Section fourteen.
22 Geo. 2, c. 27	- An Act for the more effectual preventing of frauds and abuses committed by persons em-	Section one from "there to be kept to hard labour for the space" to end of section.

Year and Chapter.	Title or Short Title.	Extent of Repeal.
22 Geo. 2, c. 27— (continued).	<p>ployed in the manufacture of hats, and in the woollen, linen, fustian, cotton, iron, leather, fur, hemp, flax, mohair, and silk manufactures; and for preventing unlawful combinations of journeymen dyers and journeymen hot pressers, and of all persons employed in the said several manufactures, and for the better payment of their wages.</p>	<p>Section two from “and in case the said forfeiture” to end of section.</p> <p>Section six from “notice in writing” to end of section.</p> <p>Section eight, and So much of section twelve as applies any enactment repealed by this Act.</p>
27 Geo. 2, c. 7	<p>An Act for the more effectual preventing of frauds and abuses committed by persons employed in the manufacture of clocks and watches.</p>	<p>Section one from “unless such forfeiture” to the first “respectively committed,” and from “for any time not exceeding three months” to end of section.</p> <p>Section two from the first “unless the said forfeiture” to the first “appear reasonable,” and from “for any time not exceeding three months” to “appear reasonable.”</p> <p>Section three from “the person so convicted” to end of section.</p> <p>Section four from “in the form and words” down to “day and year aforesaid,” the words “said form and” and from “and the said justice” to the end of the section, and</p> <p>Section five.</p>

Year and Chapter.	Title or Short Title.	Extent of Repeal.
5 Geo. 3, c. 51	An Act for repealing several laws relating to the manufacture of woollen cloth in the county of York, and also so much of several other laws as prescribes particular standards of width and length of such woollen cloths; and for substituting other regulations of the cloth trade within the West Riding of the said county, for preventing frauds in certifying the contents of the cloth, and for preserving the credit of the said manufacture at the foreign market.	In section eleven the words "nor less than forty shillings." In section twenty-four the words "for any time not exceeding three months," and Section twenty-five from "to be held" to end of section.
14 Geo. 3, c. 25	An Act for the more effectual preventing frauds and embezzlements by persons employed in the woollen manufactory.	Section seven from "to be held" to end of section. Section eight, and Section nine.
14 Geo. 3, c. 44	<i>An Act the title of which begins with the words—"An Act to amend an Act" and ends with the words—"payment of their wages."</i>	Section two, the words "nor less than five shillings." Section three. Section four, and In section five, the words "at the time of such conviction," and from "abide the order of" down to "adjudged by the justices of such sessions," and from "and may affirm" to "all intents and purposes."

Year and Chapter.	Title or Short Title.	Extent of Repeal.
15 Geo. 3, c. 14.	<i>An Act the title of which begins with the words—"An Act to explain and amend," and ends with the words—"payment of their wages."</i>	The whole Act.
17 Geo. 3, c. 11	An Act for more effectually preventing frauds and abuses committed by persons employed in the manufactures of combing wool, worsted, yarn, and goods made from worsted in the counties of York, Lancashire, and Chester.	So much of section twelve as applies any enactment repealed by this Act. Section twenty. Section twenty-one from "to be held for the county" to the end of the section. Section twenty-two, down to "judgment be affirmed and," and Section twenty-three.
17 Geo. 3, c. 29	An Act for the more effectual prevention of the manufacturing of ash, elder, sloe, and other leaves in imitation of tea, and to prevent frauds in the revenue of excise in respect to tea.	Section one from "there to remain" to end of section. Section two from "there to remain" to end of section. Section three from "there to remain" to end of section. Section eight, and Section nine, from "shall be certified by" down to "which said conviction."
17 Geo. 3, c. 55	An Act for the better regulating the hat manufactory.	Section three, and Section eight from "to be held" to end of section.
17 Geo. 3, c. 56	An Act for amending and rendering more effectual the several	Section three from "for any time" to end of section.

Year and Chapter.	Title or Short Title.	Extent of Repeal.
17 Geo. 3, c. 56— (continued).	laws now in being for the more effectual preventing of frauds and abuses by persons employed in the manufacture of hats, and in the woollen, linen, fustian, cotton, iron, leather, fur, hemp, flax, mohair, and silk manufactures, and also for making provisions to prevent frauds by journeymen dyers.	Section four from "for any time" to end of section. Section fourteen from "all which said respective forfeitures" to "adjudged guilty" and from "and if no sufficient distress" to end of section. Section seventeen from "to remain for any time" to end of section. Section twenty from "to be holden" to end of section. Section twenty-one, and Section twenty-two from "and the justices before whom" to the end of the section.
24 Geo. 3, sess. 2, c. 3.	An Act for more effectually preventing frauds and abuses committed by persons employed in the manufactures of combing wool, worsted yarn, and goods made from worsted, in the county of Suffolk.	Section twenty-two. Section twenty-three from "to be held" to end of section. Section twenty-four, down to "judgment be affirmed and," and Section twenty-five.
25 Geo. 3, c. 40	An Act for more effectually preventing frauds and abuses committed by persons employed in the manufactures of combing wool, worsted yarn, and goods made from worsted, in the counties of Bedford, Hunt-	Section thirty. Section thirty-one from "to be held" to end of section. Section thirty-two down to "judgment be affirmed and," and Section thirty-three.

Year and Chapter.	Title or Short Title.	Extent of Repeal.
25 Geo. 3, c. 40— (continued).	ingdon, Northampton, Leicester, Rutland, and Lincoln, and the Isle of Ely.	
26 Geo. 3, c. 71	An Act for regulating houses and other places kept for the purpose of slaughtering horses.	Section five from "to be raised by distress" to end of section. Section ten the words "nor less than ten pounds," and from "for any time" to end of section. Section eleven. Section thirteen, the words "nor less than ten pounds," and from "there to remain" to end of section. Section fifteen, the words "nor less than ten pounds," and Section sixteen.
31 Geo. 3, c. 56	An Act more effectually to prevent abuses and frauds committed by persons employed in the manufactures of combing wool and worsted yarn in the county of Norfolk and city of Norwich and county of the said city.	Section twenty-six from "for any term" to end of section. Section twenty-seven. Section twenty-eight from "to be held" to "judgment be affirmed," and Section twenty-nine.
32 Geo. 3, c. 56	An Act for preventing the counterfeiting of certificates of the characters of servants.	Section six, the words "the sum of ten shillings for" and from "without bail" to end of section. Section nine, and Section ten from "to be held" to "all intents and purposes."

Year and Chapter.	Title or Short Title.	Extent of Repeal.
32 Geo. 3, c. 57	- An Act for the further regulation of parish apprentices.	Section eleven, Section twelve, and Section thirteen.
33 Geo. 3, c. 55	- An Act to authorize justices of the peace to impose fines upon constables, overseers, and other peace or parish officers for neglect of duty, and on masters of apprentices for ill-usage of such their apprentices, and also to make provision for the execution of warrants of distress granted by magistrates.	Section one from "and by warrant" to "offender or offenders," and from "to be held" to end of section, and Section two.
36 Geo. 3, c. 60	- An Act to regulate the making and vending of metal buttons, and to prevent the purchasers thereof from being deceived in the real quality of such buttons.	Section eight from "and to award" to end of section. Section nine from "upon giving" to "affirmed," and from "for the county" to end of section. Section ten from "Provided that such penalties." Section eleven, Section twelve, and Section thirteen.
36 Geo. 3, c. 85	- An Act for the better regulation of mills.	Section eight from "and in case" to "paid and satisfied," and from "upon giving security" to "judgment shall be affirmed," and from "for the county" to "themselves shall seem meet," and Section ten.

Year and Chapter.	Title or Short Title.	Extent of Repeal.
36 Geo. 3, c. 88	An Act to regulate the buying and selling of hay and straw, and for repealing so much of two Acts made in the second year of the reign of King William and Queen Mary, and in the thirty-first year of the reign of King George the Second, as relate to the buying and selling of hay and straw within the limits therein mentioned.	Section twenty-two from "without bail" to end of section. Section twenty-six from "to summon the person" down to "authorized and required," and from "to be ascertained" to end of section. Section twenty-eight, to "person shall reside," and from "and if it shall" to end of section, and Section twenty-nine from "of the county" to "such appeal with effect."
39 Geo. 3, c. 79	An Act for the more effectual suppression of societies established for seditious and treasonable purposes, and for better preventing treasonable and seditious practices.	Section eight from "and in case such sum" to "three calendar months." Section nine from "so as such punishment" to end of section. Section thirty-five from "and in case such last-mentioned penalty" to end of section. In section thirty-eight, the words "convictions by any justice or justices of the peace for offences against this Act, and," and Form of conviction in schedule.
39 & 40 Geo. 3, c. 77	An Act for the security of collieries and mines, and for the better re-	Section eight, and

Year and Chapter.	Title or Short Title.	Extent of Repeal.
39 & 40 Geo. 3, c. 77— (continued).	gulation of colliers and miners.	Section ten from “to be held in and for” to “as they shall judge reasonable.”
41 Geo. 3, c. 109, U.K. - - -	An Act for consolidating in one Act certain provisions usually inserted in Acts of Inclosure; and for facilitating the mode of proving the several facts usually required on the passing of such Acts.	Section thirty-nine from “for which purpose” to “reasonable costs.”
42 Geo. 3, c. 46	An Act to require overseers and guardians of the poor to keep a register of the several children who shall be bound or assigned by them as apprentices; and to extend the provisions of an Act passed in the twentieth year of the reign of His present Majesty to the binding of apprentices by houses of industry or establishments for the poor which have been authorized so to do by subsequent Acts.	Section two from “to be recovered” to “selling such distress,” and from “and in case sufficient distress” to end of section. Section four, and Section seven, the word “first,” and from “to be holden” to end of section.
42 Geo. 3, c. 56	An Act to repeal an Act passed in the twenty-fifth year of the reign of His present Majesty for granting stamp duties on certain medicines, and for charging other duties	Section twenty-five from “at any time” to “paid and satisfied,” from “upon giving” to the first “affirmed,” and from “for the county” to end of section.

Year and Chapter.	Title or Short Title.	Extent of Repeal.
42 Geo. 3, c. 56— (continued).	in lieu thereof; and for making effectual provision for the better collection of the said duties.	Section twenty-six; and Section twenty-seven.
42 Geo. 3, c. 119	An Act to suppress certain games and lotteries not authorized by law.	Section six from "any space of time" to end of section.
44 Geo. 3, c. 54	An Act to consolidate and amend the provisions of the several Acts relating to corps of yeomanry and volunteers in Great Britain, and to make further regulations relating thereto.	Section forty-five from "and if such offender" to end of section, and Section fifty-two from "to be levied" to "two months."
48 Geo. 3, c. 75	An Act for providing suitable interment in churchyards or parochial burial grounds in England for such dead human bodies as may be cast on shore from the sea in cases of wreck or otherwise.	Section eight from "if not paid on conviction" to the first "such penalties and forfeitures," and from "and in case sufficient distress" to end of section. Section nine. Section ten, the word "first," and from "to be holden" to "judge proper." Section eleven.
52 Geo. 3, c. 155	An Act to repeal certain Acts and amend other Acts relating to religious worship and assemblies, and persons teaching or preaching therein.	Section fifteen from "and in case" to end of section, and Section sixteen from "holden next" to "prefer such appeal."

Year and Chapter.	Title or Short Title.	Extent of Repeal.
54 Geo. 3, c. 159	- An Act for the better regulation of the several ports, harbours, roadsteads, sounds, channels, bays, and navigable rivers in the United Kingdom, and of his Majesty's docks, dockyards, arsenals, wharfs, moorings, and stores therein; and for repealing several Acts passed for that purpose.	Section twenty-one from "there to remain" to end of section. Section twenty-three from "according to the following form" down to "division or place." Section twenty-four, and Section twenty-six from "holden" to end of section.
55 Geo. 3, c. 137	- <i>An Act the title of which begins with the words — "An Act to prevent" and ends with the words, —"relating to the poor."</i>	Section eight from "in the following form" down to "first above written," and Section nine from "to be held" to end of section.
56 Geo. 3, c. 139	- An Act to regulate the binding of parish apprentices.	Section fourteen. Section fifteen. Section sixteen, and Section seventeen from "to be holden" to "shall think fit," so far as relates to an appeal against a conviction or order of a court of summary jurisdiction.
57 Geo. 3, c. 19	- An Act for the more effectually preventing seditious meetings and assemblies.	Section thirty from "and in case such last-mentioned penalty" to the first "three calendar months." Section thirty-four from "convictions" to "against this Act and," and Forms I. and III. in Schedule.

Year and Chapter.	Title or Short Title.	Extent of Repeal.
57 Geo. 3, c. 93	An Act to regulate the costs of distresses levied for payment of small rents.	Section two from "and in case of non-payment" to end of section. Section three. Section four to "original complaint." Section five and the Forms of order in schedule.
59 Geo. 3, c. 7	An Act to regulate the cutlery trade in England.	Section eight from "and all such justices" to end of section. Section nine from "upon giving" to "affirmed," and from "for the county" to end of section. Section ten from "provided that" to end of section. Section eleven. Section twelve. Section thirteen, and Section fifteen.
3 Geo. 4, c. 126	An Act to amend the general laws now in being for regulating turnpike roads in that part of Great Britain called England.	Section one hundred and thirty-eight. Section one hundred and forty-one from beginning of section to "sooner paid and satisfied." Section one hundred and forty-four so far as relates to a proceeding before a court of summary jurisdiction, and The forms numbered 17, 18, 19, 20, 21, 22 in the schedule.

Year and Chapter.	Title or Short Title.	Extent of Repeal.
4 Geo. 4, c. 60	- An Act for granting His Majesty a sum of money to be raised by lotteries.	Section thirty-eight, and Section sixty-seven, the words "nor less than one calendar month," and from "and any such adjudication" to "et cetera."
4 Geo. 4, c. 80	- <i>An Act the title of which begins with the words — "An Act to consolidate," and ends with the words — "registered in India."</i>	Section twenty nine, and Section thirty.
4 Geo. 4, c. 95	- An Act to explain and amend an Act passed in the third year of the reign of His present Majesty, to amend the general laws now in being for regulating turnpike roads in that part of Great Britain called England.	Section eighty-three, and Section eighty-seven, from "to be held" to "intents and purposes," and from "Provided always that in case" to "determined," so far as relates to an appeal against a conviction or order of a court of summary jurisdiction.
5 Geo. 4, c. 83	- An Act for the punishment of idle and disorderly persons, and rogues and vagabonds, in that part of Great Britain called England.	Section seven. Section eleven from "and in case such offender" to end of section. Section fourteen from "for the county" to end of section, and Section seventeen.
6 Geo. 4, c. 50	- An Act for consolidating and amending the laws relative to jurors and juries.	Section fifty-six, and Section fifty-seven, from "and that where any distress" to the end of the section.

Year and Chapter.	Title or Short Title.	Extent of Repeal.
9 Geo. 4, c. 69	An Act for the more effectual prevention of persons going armed by night for the destruction of game.	Section three. Section four so far as relates to an offence punishable upon summary conviction. Section five. Section six from "which shall be holden" to end of section, and Section seven from "and no warrant" to end of section.
1 & 2 Will. 4, c. 22	An Act to amend the laws relating to hackney carriages, and to waggons, carts, and drays used in the metropolis; and to place the collection of the duties on hackney carriages and on hawkers and pedlars in England under the Commissioners of Stamps.	Section twenty-seven from "there to remain" to end of section. Section fifty-six, the words "for any time not exceeding two calendar months." Section sixty-five and Schedule D. Section sixty-nine, and Section seventy from "provided that" to end of section.
1 & 2 Will. 4, c. 32	An Act to amend the laws in England relative to game.	Section thirty-eight from "and for any term" to end of section. Section thirty-nine. Section forty. Section forty-one from "and that where" to end of section. Section forty-three. Section forty-four from "to be holden" to end of section, and Section forty-five from "and that no warrant" to end of section.

Year and Chapter.	Title or Short Title.	Extent of Repeal.
1 & 2 Will. 4, c. 37 -	An Act to prohibit the payment in certain trades of wages in goods, or otherwise than in the current coin of the realm.	<p>In section nine the words "nor less than five pounds."</p> <p>Section ten from "and in case of a second offence" to "court and jury."</p> <p>Section eleven.</p> <p>Section twelve.</p> <p>Section fifteen.</p> <p>Section sixteen.</p> <p>Section seventeen from "and no warrant of distress" to end of section, and Schedule.</p>
1 & 2 Will. 4, c. 41 -	An Act for amending the laws relative to the appointment of special constables, and for the better preservation of the peace.	<p>Section sixteen to "such distress; and"</p> <p>Section seventeen, and Section eighteen from "and that no warrant" to end of section.</p>
2 & 3 Will. 4, c. 120	An Act to repeal the duties under the management of the Commissioners of stamps, and on horses let for hire in Great Britain, and to grant other duties in lieu thereof, and also to consolidate and amend the laws relating thereto.	<p>Section one hundred and three from "and it shall be lawful" to "paid and satisfied," and from "for the county" to "affirmed on the hearing of such appeal."</p> <p>Section one hundred and five from "provided that" to end of section.</p> <p>Section one hundred and eight.</p> <p>Section one hundred and ten.</p> <p>Section one hundred and eleven.</p>

Year and Chapter.	Title or Short Title.	Extent of Repeal.
2 & 3 Will. 4, c. 120— (continued).		Section one hundred and thirteen, and Schedule B.
3 & 4 Will. 4, c. 90-	An Act to repeal an Act of the eleventh year of His late Majesty King George the Fourth, for the lighting and watching of parishes in England and Wales, and to make other provisions in lieu thereof.	Section sixty-two, and Section sixty-three from "who are hereby" to "seized and detained," from "it shall be lawful" to "otherwise, but," and from "without bail" to end of section.
4 & 5 Will. 4, c. 76-	An Act for the amendment and better administration of the laws relating to the poor in England and Wales.	Section ninety-two from "or house of correction" to end of section. Section ninety-three from "or house of correction" to "unless such penalty shall be sooner paid." Section one hundred and two, and Section one hundred and three from "either of which court of sessions" to end of section.
5 & 6 Will. 4, c. 50-	An Act to consolidate and amend the laws relating to highways in that part of Great Britain called England.	Section seventy-five from "for any time" to end of section. Section ninety-seven. Section one hundred and one. Section one hundred and two. Section one hundred and three from "by warrant under" to "nulla bona returned thereon," and from "for

Year and Chapter.	Title or Short Title.	Extent of Repeal.
5 & 6 Will. 4, c. 50— (continued).		<p>any term" to "paid and satisfied."</p> <p>Section one hundred and four.</p> <p>Section one hundred and five from "to be held" to end of section so far as regards an appeal from a conviction or order of a court of summary jurisdiction, and The forms numbered 20, 21, 22, 23, 24, 25, in the schedule.</p>
6 & 7 Will. 4, c. 11-	<p>An Act for the registration of aliens, and to repeal an Act passed in the seventh year of the reign of His late Majesty for that purpose.</p>	<p>Section ten from "prosecuted within six" to "offences shall be," and from "for any time" to "twenty pounds."</p>
6 & 7 Will. 4, c. 37-	<p>An Act to repeal the several Acts now in force relating to bread to be sold out of the city of London and the liberties thereof, and beyond the weekly bills of mortality and ten miles of the Royal Exchange; and to provide other regulations for the making and sale of bread, and for preventing the adulteration of meal, flour, and bread beyond the limits aforesaid.</p>	<p>In section eight, the words "nor less than five pounds" and "for any time not exceeding six calendar months."</p> <p>In section nine from "nor less than five pounds" to end of section.</p> <p>Section twelve, the words "nor less than forty shillings," and "for any time not exceeding six calendar months."</p> <p>Section thirteen from "nor less than ten days" to end of section.</p> <p>Section seventeen from "which warrant such</p>

Year and Chapter.	Title or Short Title.	Extent of Repeal.
6 & 7 Will. 4, c. 37— (continued).		<p>magistrate" to "recognizance or otherwise," and from "and the other moiety" to end of section.</p> <p>Section eighteen. Section nineteen. Section twenty. Section twenty-one. Section twenty-two. Section twenty-three. Section twenty-four from "and where any distress" to end of section, and Section twenty-five from "the person or persons so convicted" to end of section, and Section twenty-six.</p>
6 & 7 Will. 4, c. 86-	An Act for registering births, deaths, and marriages in England.	<p>Section forty-six from "which shall be holden" to end of section, and Section forty-seven from "and no warrant" to end of section.</p>
7 Will. 4 & 1 Vict. c. 36 - - -	An Act for consolidating the laws relative to offences against the Post Office of the United Kingdom, and for regulating the judicial administration of the Post Office laws, and for explaining certain terms and expressions employed in those laws.	<p>Section eleven. Section thirteen from "and any such justice" to "sooner paid," and from "for the county" to "affirmed on the hearing of such appeal." Section fourteen from "provided that" to end of section. Section seventeen. Section nineteen. Section twenty.</p>

Year and Chapter.	Title or Short Title.	Extent of Repeal.
7 Will. 4 & 1 Vict. c. 36 (continued).		Section twenty-one. Section twenty-two, and Section forty-five, and Schedule.
2 & 3 Vict. c. 71	An Act for regulating the police courts in the metropolis.	Section forty-four. Section forty-five. Section forty-eight. Section fifty from "to be holden" down to "by the last-mentioned justices awarded." Section fifty-one, so far as relates to a convic- tion or order.
3 & 4 Vict. c. 50	An Act to provide for keeping the peace on canals and navigable rivers.	Section fifteen from "for a term" to "recovery thereof." Section sixteen. Section seventeen from "and that no warrant" to end of section, and Section nineteen from "to be holden" to "by the last-mentioned jus- tices awarded."
3 & 4 Vict. c. 84	An Act for better de- fining the powers of justices within the Metropolitan police district.	Section eight from "and when the information" to end of section, and Schedule.
3 & 4 Vict. c. 85	An Act for the regu- lation of chimney sweepers and chim- neys.	Section ten. Section eleven from "which shall be hold- en" to "process for enforcing such judg- ment," and Section twelve from "and no warrant" to end of section.

Year and Chapter.	Title or Short Title.	Extent of Repeal.
3 & 4 Vict. c. 97	An Act for regulating railways.	Section thirteen from "for such period" to end of section, and Section sixteen from "for any term" to end of section.
4 & 5 Vict. c. 30	An Act to authorize and facilitate the completion of a survey of Great Britain, Berwick-upon-Tweed, and the Isle of Man.	Section eight from "and not less than" to end of section. Section eleven from "and not less than" to end of section, and Section thirteen from "to them for that purpose exhibited" to "paid or satisfied."
5 & 6 Vict. c. 100	An Act to consolidate and amend the laws relating to the copyright of designs for ornamenting articles of manufacture.	Section eight from "and if the amount of such penalty" to the end of the Form of Conviction, and Section thirteen.
5 & 6 Vict. c. 109	An Act for the appointment and payment of parish constables.	Section twenty-four.
6 & 7 Vict. c. 30	An Act to amend the law relating to pound-breach and rescue in certain cases.	Section one from "for any time" to "sooner paid." Section three, and Section four.
6 & 7 Vict. c. 40	An Act to amend the laws for the prevention of frauds and abuses by persons employed in the woollen, worsted, linen, cotton, flax, mohair, and silk hosiery manufactures, and for the further	Section two from "and in default" to "over to the person convicted," and from "for any term" to end of section. Section eleven from "and in default" to "over to the person con-

Year and Chapter.	Title or Short Title.	Extent of Repeal.
6 & 7 Vict. c. 40— (continued).	securing the property of the manufacturers and the wages of the workmen engaged therein.	victed," and from "for any term" to end of section. Section twenty from "for any term" to end of section. Section twenty-two. Section twenty-three. Section twenty-four from "and that" to end of section. Section twenty-seven from "for any term not exceeding two" to end of section. Section twenty-eight. Section twenty-nine from "which shall be held" to end of section, and Section thirty from "and that no warrant" to end of section.
6 & 7 Vict. c. 68	An Act for regulating theatres.	Section nineteen from "by the oath or oaths" to end of section.
7 & 8 Vict. c. 101	An Act for the further amendment of the Laws relating to the Poor in England.	Section four from "if within twenty-four hours" down to "some one justice of the peace," and from "to be holden after" to the end of the section.
7 & 8 Vict. c. 87	An Act to amend the law for regulating places kept for slaughtering horses.	Section seven from "or prison" to end of section, and Section nine from "to be holden" to "by the last-mentioned justices awarded."

Year and Chapter.	Title or Short Title.	Extent of Repeal.
8 & 9 Vict. c. 10	An Act to make certain Provisions for Proceedings in Bastardy.	Section three.
8 & 9 Vict. c. 16	The Companies Clauses Consolidation Act, 1845.	<p>Section one hundred and forty-seven from "and on complaint" to end of section.</p> <p>Section one hundred and forty-eight.</p> <p>Section one hundred and forty-nine.</p> <p>Section one hundred and fifty-three.</p> <p>Section one hundred and fifty-five, so far as relates to any matter to which the Summary Jurisdiction Acts apply.</p> <p>Section one hundred and fifty-seven.</p> <p>Section one hundred and fifty-nine from "for the county" to the end of the section, and Schedule G.</p>
8 & 9 Vict. c. 18	The Lands Clauses Consolidation Act, 1845.	<p>Section one hundred and thirty-six from "and on complaint" to end of section.</p> <p>Section one hundred and thirty-seven.</p> <p>Section one hundred and forty-two.</p> <p>Section one hundred and forty-three, so far as relates to any matter to which the Summary Jurisdiction Acts apply.</p> <p>Section one hundred and forty-four.</p> <p>Section one hundred and forty-six from "for</p>

Year and Chapter.	Title or Short Title.	Extent of Repeal.
8 & 9 Vict. c. 18— (continued).		the county” to end of section, and Schedule C.
8 & 9 Vict. c. 20	The Railways Clauses Consolidation Act, 1845.	Section one hundred and forty-five from “and on complaint” to end of section. Section one hundred and forty-six. Section one hundred and forty-seven. Section one hundred and fifty-one. Section one hundred and fifty-three so far as relates to any matter to which the Summary Jurisdiction Acts apply. Section one hundred and fifty-five. Section one hundred and fifty-seven, from “for the county” to end of section, and Schedule.
8 & 9 Vict. c. 77	An Act to make further regulations respecting the tickets of work to be delivered to persons employed in the manufacture of hosiery in certain cases.	Section five. Section six. Section seven to “over to the person convicted,” and Section eight from “and that when any distress” to the end of the section.
8 & 9 Vict. c. 100	An Act for the regulation of the care and treatment of lunatics.	Section one hundred and two from “and shall and may issue” to “sooner paid,” and from “and the over-plus” to the end of the section.

Year and Chapter.	Title or Short Title.	Extent of Repeal.
8 & 9 Vict. c. 100— (continued).		Section one hundred and three, and Section one hundred and four from "the person appealing" to end of section.
8 & 9 Vict. c. 109 -	An Act to amend the law concerning games and wagers.	Section eleven from "and on non-payment" to "convicting justices," and Section twenty, from "to be holden" to "by the last-mentioned court awarded."
9 & 10 Vict. c. 95 -	An Act for the more easy recovery of small debts and demands in England.	Section one hundred and thirty-one. Section one hundred and thirty-two. Section one hundred and thirty-four. Section one hundred and thirty-five, and Section one hundred and thirty-six, so far as it relates to any order, judgment, or proceeding before a court of Summary Jurisdiction.
10 & 11 Vict. c. 16 -	The Commissioners Clauses Act, 1847.	Section seventy-one from "and if he fail" to end of section.
10 & 11 Vict. c. 38 -	An Act to facilitate the drainage of land in England and Wales.	Section sixteen, and Section seventeen.
10 & 11 Vict. c. 62 -	An Act for the establishment of naval prisons, and for the vention of desertion	Section thirteen from "for any term" to "costs." Section fourteen, except so far as it applies to a

Year and Chapter.	Title or Short Title.	Extent of Repeal.
10 & 11 Vict. c. 62— (continued).	from Her Majesty's Navy.	proceeding under section nine; and
11 & 12 Vict. c. 48 -	An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders.	<p>Section fifteen.</p> <p>Section nine from "provided always that in all cases" to the end of the section.</p> <p>Section twelve from "and if there be" to "shall have arisen," so far as the same relates to a case arising under the Summary Jurisdiction Acts or any future Act.</p> <p>Section thirteen from "and if such defendant shall not afterwards appear" down to "evidence of such non-appearance of the said defendant."</p> <p>Section sixteen from "provided always that in all cases" to the end of the section.</p> <p>So much of section seventeen as specifies any form of conviction or order for which another form is provided by a rule under the Summary Jurisdiction Acts.</p> <p>Section nineteen from "provided always" to the end of the section.</p> <p>Section twenty from "provided always that in all cases" to the end of the section.</p> <p>The references (S. 1.) and (S. 2.) in section twenty-seven, and the forms (S. 1.) and (S. 2.) in the schedule.</p>

Year and Chapter.	Title or Short Title.	Extent of Repeal.
12 & 13 Vict. c. 14 -	An Act to enable overseers of the poor and surveyors of the highways to recover the costs of distraining for rates.	Section nine.
12 & 13 Vict. c. 45 -	An Act to amend the procedure in courts of general and quarter sessions of the peace in England and Wales, and for the better advancement of justice in cases within the jurisdiction of those courts.	Section one so far as relates to any appeal against an order of a court of Summary Jurisdiction.
12 & 13 Vict. c. 92 -	An Act for the more effectual prevention of cruelty to animals.	Section fourteen from "upon the complaint of any person" to end of section. Section fifteen. Section sixteen. Section seventeen. Section twenty-three. Section twenty-four. Section twenty-five from "which shall be holden" to end of section, and Section twenty-six from "and no warrant" to end of section.
15 & 16 Vict. c. 81 -	An Act to consolidate and amend the statutes relating to the assessment and collection of county rates in England and Wales.	Section forty-six.

47 & 48 Vict. c. 49, *Schedule.*

Year and Chapter.	Title or Short Title.	Extent of Repeal.
16 & 17 Vict. c. 33 -	An Act for the better regulation of metropolitan stage and hackney carriages, and for prohibiting the use of advertising vehicles.	In section three words "for any not exceeding month." In section seventeen words "for any not exceeding calendar month," In section nineteen: "for any time" to of section.
16 & 17 Vict. c. 73 -	An Act for the establishment of a body of Naval Coast Volunteers, and for the temporary transfer to the Navy in case of need of seafaring men employed in other public services.	In section twenty- the words "for time not exceeding months."
16 & 17 Vict. c. 97 -	The Lunatic Asylums Act, 1853.	In section one hundred and twenty-eight words "within calendar months: such order or determination made given," and from person appealing: "thereupon," "upon proof" "quarter sess and," and from "may order" to end section.
16 & 17 Vict. c. 119	An Act for the suppression of betting houses.	So much of section three and four as describes the term of imprisonment for payment of per and costs. Section thirteen from

Year and Chapter.	Title or Short Title.	Extent of Repeal.
16 & 17 Vict. c. 119— (continued).		<p>be holden" to "by the last-mentioned court awarded."</p> <p>Section fourteen down to "merits of the case, and," and</p> <p>Section fifteen.</p>
16 & 17 Vict. c. 128	An Act to abate the nuisance arising from the smoke of furnaces in the metropolis, and from steam vessels above London Bridge.	<p>Section one, the words "nor less than forty shillings."</p> <p>Section two, the words "nor less than forty shillings."</p>
17 & 18 Vict. c. 38 -	An Act for the suppression of gaming houses.	<p>So much of sections one, three, and four as prescribes the term of imprisonment for nonpayment of penalty and costs.</p> <p>Section ten from "to be holden" to "by the last-mentioned court awarded."</p> <p>Section eleven down to "merits of the case and," and</p> <p>Section twelve.</p>
17 & 18 Vict. c. 104	The Merchant Shipping Act, 1854.	Section five hundred and eighteen, sub-section (4), from "which is holden" to end of such sub-section.
18 & 19 Vict. c. 119	The Passengers Act, 1855.	Section eighty-five, the words "according to the form in the Schedule (N.) hereto annexed," from "or the justice before whom" to "costs of the proceedings," and from

Year and Chapter.	Title or Short Title.	Extent of Repeal.
18 & 19 Vict. c. 119— (continued).		“for any term not exceeding three calendar months” to “satisfied.” Section eighty-seven, and Schedules (N.) and (O.).
18 & 19 Vict. c. 120	The Metropolis Management Act, 1855.	Section two hundred and thirty-one from “but no such appeal” to the end of the section, and Section two hundred and thirty-two, from “or they may confirm” to end of section.
22 & 23 Vict. c. 40 -	An Act for the establishment of a reserve volunteer force of seamen, and for the government of the same.	In section twenty-four the words “for any time not exceeding six months.”
22 & 23 Vict. c. 66 -	An Act for regulating measures used in sales of gas.	Section twenty-two from “to be held” to “such city, borough, or county,” and from “and may order” to the end of the section, so far as relates to any order, judgment, or determination of a justice of the peace, mayor, or chief magistrate.
23 & 24 Vict. c. 32 -	An Act to abolish the jurisdiction of the ecclesiastical courts in Ireland in cases of defamation, and in England and Ireland in certain cases of brawling.	Section four from “which shall be holden” to end of section.

Year and Chapter.	Title or Short Title.	Extent of Repeal.
24 & 25 Vict. c. 96 -	The Larceny Act, 1861.	<p>Section one hundred and five.</p> <p>Section one hundred and seven from "for any term not exceeding two months" to end of section.</p> <p>Section one hundred and ten from "which shall be holden" to the first "and the costs of the appeal;" and from "and the court at such sessions" to end of section.</p> <p>Section one hundred and eleven from "and no warrant" to end of section, and</p> <p>Section one hundred and twelve.</p>
24 & 25 Vict. c. 97 -	<p>An Act to consolidate and amend the Statute Law of England and Ireland relating to malicious injuries to property.</p>	<p>Section sixty-two.</p> <p>Section sixty-five from "for any term not exceeding two months" to end of section.</p> <p>Section sixty-eight from "which shall be holden" to the first "and the costs of the appeal;" and from "and the court at such sessions" to end of section.</p> <p>Section sixty-nine from "and no warrant" to end of section, and</p> <p>Section seventy.</p>
24 & 25 Vict. c. 99 -	<p>An Act to consolidate and amend the Statute Law of the United Kingdom against offences relating to the coin.</p>	<p>Section thirty-two from "and no warrant" to end of section.</p>

Year and Chapter.	Title or Short Title.	Extent of Repeal.
24 & 25 Vict. c. 110	The Old Metal Dealers Act, 1861.	Section eleven from "which is holden" to "seem meet."
25 & 26 Vict. c. 61 -	An Act for the better management of highways in England.	Section forty-seven from "in manner provided" to end of section.
25 & 26 Vict. c. 114	An Act for the prevention of poaching.	Section five from "and no warrant" to end of section, and Section six from "which shall be holden" to end of section.
26 & 27 Vict. c. 65 -	The Volunteer Act, 1863.	Section forty-eight from "held not less" in sub-section (1) to "and of the appeal" at end of sub-section (3); and from "the court" at beginning of sub-section (5) to "Metropolitan Police District;" and from "and a warrant of commitment" to "sustain the same."
26 & 27 Vict. c. 103	An Act to amend the law in certain cases of misappropriation by servants of the property of their masters.	In section one the words "for any term not exceeding three months, unless such penalty be sooner paid." Section two from "which shall be holden" to "and the costs of the appeal;" and from "and the court at such sessions" to "evidence of such conviction," and Section three from "and no warrant" to end of section.

Year and Chapter.	Title or Short Title.	Extent of Repeal.
28 & 29 Vict. c. 121	The Salmon Fishery Act, 1865.	Section sixty-six from "for the county" to end of section.
31 & 32 Vict. c. 45 -	The Sea Fisheries Act, 1868.	Section fifty-eight from "in manner directed" to "be made," and from "for the county" to "either party."
32 & 33 Vict. c. 112	The Adulteration of Seeds Act, 1869.	Section six from "held not less" to "the said Act," and from "and a warrant of commitment" to end of section.
34 & 35 Vict. c. 31 -	The Trade Union Act, 1871.	Section twenty from "for the county" to end of section.
34 & 35 Vict. c. 105	The Petroleum Act, 1871.	Section fifteen from "the description of any offence" to "informant or prosecutor" (being sub-sections 4 and 5), and from "moreover" in sub-section (6), to "direct" in sub-section (7).
34 & 35 Vict. c. 112	The Prevention of Crime Act, 1871.	Section seventeen from "the description of any offence" to "prosecutor or complainant" (being sub-sections 2 and 3).
35 & 36 Vict. c. 38 -	The Infant Life Protection Act, 1872.	Section eleven from "the description" to "prosecutor."

Year and Chapter.	Title or Short Title.	Extent of Repeal.
35 & 36 Vict. c. 50 -	The Railway Rolling Stock Protection Act, 1872.	Section six from "for the county" to end of section.
35 & 36 Vict. c. 76 -	The Coal Mines Regulation Act, 1872.	Section sixty-one from "for the county" to "party as the court thinks just," and Section sixty-three from "the description of any offence" to "of the informant" (being sub-sections 2 and 3).
35 & 36 Vict. c. 77 -	The Metalliferous Mines Regulation Act, 1872.	Section thirty-two from "for the county" to "party as the court thinks just," and Section thirty-four from "the description of any offence" to "part of the informant" (being sub-sections 2 and 3).
35 & 36 Vict. c. 93 -	The Pawnbrokers Act, 1872.	Section fifty-two from "for the county" to end of section, except so far as relates to an appeal against the refusal of a certificate for a license, and Section fifty-four.
35 & 36 Vict. c. 94 -	The Licensing Act, 1872	Section fifty-one from "where the court" to "complainant; and," (being sub-sections (2) and (3) and part of sub-section (4),) and Section fifty-two from "for the county" to end of section, and

Year and Chapter.	Title or Short Title.	Extent of Repeal.
35 & 36 Vict. c. 94— (continued).		Section fifty-four from "moreover" to end of section.
36 & 37 Vict. c. 77 -	The Naval Artillery Volunteer Act, 1873.	Section thirty-six from "the description of any offence" to "in- formant or complain- ant" (being sub-sec- tions 1 and 2). Section thirty-eight from "the condi- tions" to "this Act," and from "for the county" to end of section, and Section forty from "moreover" to end of section.
36 & 37 Vict. c. 86 -	The Elementary Educa- tion Act, 1873.	Section twenty-four from "the description of the offence" to "part of the infor- mant" (being sub-sec- tions 1 and 2).
37 & 38 Vict. c. 67 -	The Slaughter-houses, &c. (Metropolis) Act, 1874.	Section six from "sub- ject to" to "be made," and from "for the county" to end of section.
38 & 39 Vict. c. 17 -	The Explosives Act, 1875.	Section ninety-three from "in manner pro- vided" to end of sec- tion.
38 & 39 Vict. c. 55 -	The Public Health Act, 1875.	Section two hundred and fifty-two, and Section two hundred and sixty-nine from "for the county" in

Year and Chapter.	Title or Short Title.	Extent of Repeal.
38 & 39 Vict. c. 55— (continued).		sub-section one to "release him from custody" at the end of sub-section four, and from "In the case" in sub-section six to the end of the section, so far as relates to an appeal against an order or conviction of a court of summary jurisdiction.
38 & 39 Vict. c. 60 -	The Friendly Societies Act, 1875.	Section thirty-three from "In any information" to "negatived" (being sub-section 5), and from "for the county" in sub-section (6) to end of such sub-section.
38 & 39 Vict. c. 63 -	The Sale of Food and Drugs Act, 1875.	Section twenty-three from "which shall be held" to "think proper."
38 & 39 Vict. c. 86 -	The Conspiracy and Protection of Property Act, 1875.	Section twelve from "for the county" to end of section.
39 & 40 Vict. c. 45 -	The Industrial and Provident Societies Act, 1876.	Section nineteen from "in any information" to "negatived," being sub-section (5), and from "for the county" in sub-section (6) to end of such sub-section.
39 & 40 Vict. c. 77 -	The Cruelty to Animals Act, 1876.	Section sixteen from "subject to the conditions" to "shall be

Year and Chapter.	Title or Short Title.	Extent of Repeal.
39 & 40 Vict. c. 77— (continued).		made," and from "for the county" to end of section.
41 & 42 Vict. c. 16 -	The Factory and Workshop Act, 1878.	Section ninety from "having jurisdiction" to end of section, and Section ninety-one from "the description of an offence" to "part of the informant" (being sub-sections 2 and 3); and from "a conviction" at the beginning of sub-section (6) to "form and".
41 & 42 Vict. c. 49 -	The Weights and Measures Act, 1878.	Section fifty-seven from "the description of an offence" to "sustain the same," being sub-sections 1, 2, and 3, and Section sixty from "having jurisdiction" to end of section.
41 & 42 Vict. c. 74 -	The Contagious Diseases (Animals) Act, 1878.	Section sixty-four from "for the county" to end of section, and Section sixty-six from "a warrant of commitment" to "convicted" (being sub-section 3).
41 & 42 Vict. c. 77 -	The Highways and Locomotives (Amendment) Act, 1878.	Section thirty-seven from "subject to the conditions" to "shall be made," and from "for the county" to end of section.

Year and Chapter.	Title or Short Title.	Extent of Repeal.
42 & 43 Vict. c. 49 -	The Summary Jurisdiction Act, 1879.	In section thirty-one, the words "by this Act or by any future Act." Section thirty-two, down to "in accordance with the conditions and regulations contained in this Act."
45 & 46 Vict. c. 50 -	The Municipal Corporations Act, 1882.	Sub-sections five and six of section two hundred and twenty-seven.

THE INDICTABLE OFFENCES ACT, 1848.

11 & 12 VICT. CAP. 42.

An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales, with respect to Persons charged with Indictable Offences. [14th August, 1848.]

Sect. 1. WHEREAS it would conduce much to the improvement of the administration of criminal justice within England and Wales if the several statutes and parts of statutes relating to the duties of Her Majesty's justices of the peace therein with respect to persons charged with indictable offences were consolidated, with such additions and alterations as may be deemed necessary, and that such duties should be clearly defined by positive enactment: Be it therefore declared and enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, that in all cases where a charge or complaint (A.) shall be made before any one or more of Her Majesty's justices of the peace for any county, riding, division, liberty, city, borough, or place within England or Wales, that any person has committed, or is suspected to

For what offences a justice of the peace may grant a warrant or summons to cause a person

have committed any treason, felony, or indictable misdemeanor, or other indictable offence whatsoever, within the limits of the jurisdiction of such justice or justices of the peace, or that any person guilty or suspected to be guilty of having committed any such crime or offence elsewhere out of the jurisdiction of such justice or justices is residing or being or is suspected to reside or be within the limits of the jurisdiction of such justice or justices, then and in every such case, if the person so charged or complained against shall not then be in custody, it shall be lawful for such justice or justices of the peace to issue his or their warrant (B.) to apprehend such person, and to cause him to be brought before such justice or justices, or any other justice or justices for the same county, riding, division, liberty, city, borough, or place, to answer to such charge or complaint, and to be further dealt with according to law: Provided always, that in all cases it shall be lawful for such justice or justices to whom such charge or complaint shall be preferred, if he or they shall so think fit, instead of issuing in the first instance his or their warrant to apprehend the person so charged or complained against, to issue his or their summons (C.) directed to such person, requiring him to appear before the said justice or justices at a time and place to be therein mentioned, or before such other justice or justices of the same county, riding, division, liberty, city, borough, or place as may then be there, and if after being served with such summons in manner hereinafter mentioned he shall fail to appear at such time and place, in obedience to such summons, then and in every such case the said justice or justices, or any other justice or justices of

Sect. 1.

charged therewith to be brought before him.

In what cases the party may be summoned instead of issuing a warrant in the first instance.

If the summons be not obeyed then a warrant may be issued.

Sect. 1. the peace for the same county, riding, division, liberty, city, borough, or place, may issue his or their warrant (D.) to apprehend such person so charged or complained against, and cause such person to be brought before him or them, or before some other justice or justices of the peace for the same county, riding, division, liberty, city, borough, or place, to answer to the said charge or complaint, and to be further dealt with according to law: Provided nevertheless, that nothing herein contained shall prevent any justice or justices of the peace from issuing the warrant hereinbefore first-mentioned at any time before or after the time mentioned in such summons for the appearance of the said accused party.

As to service of process in Scotland, see 44 & 45 Vict. c. 24, s. 4, *post*.

By statute 31 & 32 Vict. c. 107. *post*, p. 441, this Act may be cited for all purposes as "The Indictable Offences Act, 1848."

It is now provided by the Act, 42 & 43 Vict. c. 22, *post*, p. 445, that the secretary of state may appoint an officer, to be called the director of public prosecutions, who under regulations to be made in pursuance of the Act shall take action in cases which appear to be of importance or difficulty, or in which special circumstances, or the refusal or failure of a person to proceed with a prosecution appear to render the action of such director necessary and secure the due prosecution of an offender.

The authority of justices of the peace extends to all treasons, felonies, or indictable misdemeanors, or other indictable offences whatsoever, committed within the limits of their respective jurisdictions; and also to the causing to be apprehended all persons guilty or suspected to be guilty of having committed any such crime or offence elsewhere out of their jurisdiction, when such person is or is suspected to be residing within the limits of their jurisdiction. By the commission of the peace, as originally settled, (Michaelmas Term, 1590,) in the reign of Queen Elizabeth, by Sir Charles Wrey, then Lord Chief Justice of the Queen's Bench, and the other

judges and barons, and not since altered, the duties of justices of the peace are defined in the following terms:—

Note to Sect. 1.

“VICTORIA, by the grace of God, &c., to greeting (a).

“Know ye, that we have assigned you jointly and severally and every one of you our justices to keep our peace in our county of _____; and to keep and cause to be kept all the ordinances and statutes for the good of our peace, and for preservation of the same, and for the quiet rule and government of our people made, in all and singular their articles, in our said county (as well within liberties as without), according to the force, form, and effect of the same; and to chastise and punish all persons that offend against the form of those ordinances or statutes, or any one of them, in the aforesaid county, as it ought to be done, according to the form of those ordinances and statutes;—and to cause to come before you, or any of you, all those who, to any one or more of our people concerning their bodies or the firing of their houses, have used threats, to find sufficient security for the peace or their good behaviour, towards us and our people; and if they shall refuse to find such security, then them in our prisons until they shall find such security to cause to be safely kept.

Jurisdiction of justices out of sessions.

“We have also assigned to you, and every two or more of you (of whom any one of you the aforesaid A. B., C. D., &c., we will shall be one) our justices to inquire the truth more fully, by the oath of good and lawful men of the aforesaid county, by whom the truth of the matter shall be the better known, of all and all manner of felonies, poysonings, enchantments, sorceries, art magick (b), trespasses, forestallings, regratings, ingrossings (c) and extortions whatsoever;—and of all and singular other crimes and offences, of which the

Jurisdiction of justices in sessions.

(a) If any gentleman is afterwards added to the commission, which is done by appointment from the Lord Chancellor, the clerk of the peace sends the commission to London to the crown office at Westminster, where the name is inserted, and the commission re-sealed.

(b) The late Lord *Westbury*, when Lord Chancellor, had intended to omit “enchantments,” “sorceries,” and “art magick” from the commission of the peace when he had an opportunity of revising it.

(c) The offences of forestalling, regrating, and ingrossing were abolished by 7 & 8 Vict. c. 24.

Note to Sect. 1.

justices of our peace may or ought lawfully to inquire, by whomsoever and after what manner soever in the said county done or perpetrated, or which shall happen to be there done or attempted;—and also of all those who in the aforesaid counties in companies against our peace, in disturbance of our people, with armed force have gone or rode, or hereafter shall presume to go or ride;—and also of all those who have there lain in wait, or hereafter shall presume to lie in wait, to maim or cut or kill our people; and also of all victuallers, and all and singular other persons, who in the abuse of weights and measures, or in selling victuals, against the form of the ordinances and statutes or any one of them therefore made for the common benefit of England, and our people thereof, have offended or attempted, or hereafter shall presume in the said county to offend or attempt:—and also of all sheriffs, bailiffs, stewards, constables, keepers of gaols, and other officers, who in the execution of their offices about the premises or any of them, have unduly behaved themselves, or hereafter shall presume to behave themselves unduly, or have been or shall happen hereafter to be careless, remiss, or negligent in our aforesaid county;—and of all and singular articles and circumstances, and all other things whatsoever, that concern the premises or any of them by whomsoever and after what manner soever in our aforesaid county done or perpetrated, or which hereafter shall there happen to be done or attempted in what manner soever;—and to inspect all indictments whatsoever so before you or any of you taken or to be taken, or before others late our justices of the peace in the aforesaid county made or taken, and not yet determined;—and to make and continue processes thereupon against all and singular the persons so indicted, or who before you hereafter shall happen to be indicted, until they can be taken, surrender themselves, or be outlawed;—and to hear and determine all and singular the felonies, poysonings, enchantments, sorceries, art magick, trespasses, forestallings, regratings, ingrossings, extortions, unlawful assemblies, indictments aforesaid, and all and singular other the premises, according to the laws and statutes of England, as in the like case it has been accustomed, or ought to be done;—and the same offenders and every one of them for their offences by fines, ransoms, americiaments, forfeitures, and other means, as according to the law and custom of England, or form of the ordinances and statutes aforesaid, it has been accustomed, or ought to be done, to chastise and punish.

“ Provided always, that if a case of difficulty upon the determination of any of the premises before you or any two or more of you shall happen to arise, then let judgment in

nowise be given thereon before you or any two or more of you, unless in the presence of one of our justices of the one or other bench, or of one of our justices appointed to hold the assizes in the aforesaid county.

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Sect. 1.**

“And therefore we command you and every of you, that to keeping the peace, ordinances, statutes, and all and singular other the premises, you diligently apply yourselves; and that at certain days and places which you or any such two or more of you as is aforesaid shall appoint for these purposes, into the premises ye make inquiries; and all and singular the premises hear and determine, and perform and fulfil them in the aforesaid form, doing therein what to justice appertains, according to the law and custom of England; saving to us the ameraciements and other things to us therefrom belonging.

“And we command by the tenor of these presents our sberiff of the said county of _____, that at certain days and places, which you or any such two or more of you as is aforesaid shall make known to him, he cause to come before you or such two or more of you as is aforesaid, so many and such good and lawful men of his bailiwick (as well within liberties as without), by whom the truth of the matter in the premises shall be the better known and inquired into.

“Lastly, we have assigned you the aforesaid A. B. keeper of the rolls of our peace in our said county; and therefore you shall cause to be brought before you and your said fellows, at the days and places aforesaid, the writs, precepts, processes, and indictments aforesaid, that they may be inspected, and by a due course determined as is aforesaid.

Custos
Rotulorum.

“In witness whereof we have caused these our letters to be made patent. Witness ourself at Westminster, &c.”

By 18 Geo. 2, c. 20, s. 1, no person shall be capable of being a justice of the peace or of acting as such for any county, riding, or division, who shall not have, either in law or equity, to and for his own use and benefit in possession, a freehold, copyhold, or customary estate for life, or for some greater estate, or an estate for some long term of years, determinable upon one or more life or lives, or for a certain term originally created for 21 years or more, in lands, tenements, or hereditaments, lying or being in that part of Great Britain called England, or the Principality of Wales, of the clear yearly value of £100 over and above what will satisfy and discharge all incumbrances that affect the same, and over and above all rents and charges payable out of or in respect of the same; or who shall not be seised of or entitled unto, in law or equity, to and for his own use and benefit, the immediate reversion or remainder of and in lands, tenements, or hereditaments, lying or being as aforesaid, which are leased for one, two, or

Qualifica-
tion of a
justice of
the peace.

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three lives, or for any term of years determinable upon the death of one, two, or three lives, upon reserved rents, and which are of the clear yearly value of £300; and who shall not, before he takes upon himself to act as a justice of the peace at some general or quarter sessions for the county, riding, or division for which he does or shall intend to act, first take and subscribe the oath following, *videlicet* :—

Form of
oath.

“ I, A. B., do swear that I truly and *bonâ fide* have such an estate in law or equity, to and for my own use and benefit, consisting of _____, as doth qualify me to act as a justice of the peace for the county of _____, according to the true intent and meaning of an Act of Parliament made in the 18th year of the reign of his Majesty King George the Second, intituled, &c.; and that the same is lying, or being, or issuing, out of lands, tenements, or hereditaments, being within the jurisdiction, township, or precinct of _____, or in the several parishes, townships, or precincts of _____, in the county of _____, or in the several counties of _____,” (*as the case may be*).

This oath, so taken and subscribed, is to be kept by the clerk of the peace for the county, among the records of the sessions for the county, &c.

Qualifica-
tion for a
justice of
the peace.

By statute 38 & 39 Vict. c. 54, s. 1, notwithstanding the Act of 18 Geo. 2, or anything therein contained, every person of full age and who has during the two years immediately preceding his appointment been the occupier of a dwelling-house assessed to the inhabited house duty at the value of not less than £100 within any county, riding, or division in England or Wales, and shall during that time have been rated to all rates and taxes in respect of the said premises, and who is otherwise eligible, shall be deemed to be qualified to be appointed a justice of the peace for such county, riding, or division.

Provided always, that no justice appointed in respect of the qualification in this section mentioned shall continue to act as a justice of the peace for any county, riding, or division, after he shall have ceased for twelve calendar months to have within such county, riding, or division such qualification.

As to enact-
ments
respecting
qualifica-
tion.

By section 2 the enactments concerning the description of property qualification and other provisions and penalties having reference to the qualifications now required by law shall be applicable with reference to the qualifications required by this Act.

By statute 34 Vict. c. 18, section 33 of 6 & 7 Vict. c. 73, and so much as remains in force of section 2 of 5 Geo. 4, c. 18, are repealed; but no person shall be capable of becoming or

being a justice of the peace for any county in England or Wales (not being a county of a city or county of a town) in which he shall practise and carry on the profession or business of a solicitor or proctor, and where any person practises and carries on such profession or business in any city or town being a county of itself, he shall for the purpose of the Act be deemed to carry on the same in the county within which such city or town or any part thereof is situate.

Note to
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By section 2 of 34 Vict. c. 18, for the purposes of the Act a person shall be deemed to practise and carry on his profession or business in the county, city, or town in which he maintains an office or place of business; and the word "county" shall mean and include a riding or division of a county having a separate commissioner of the peace.

Statute 1 Mary, sess. 2, c. 8, s. 2, has not been affected by any subsequent addition to the duties of justices of the peace, and continues to disqualify a justice from acting as such while he holds the office as sheriff. *Ex parte Colville*, L. R. 1 Q. B. D. 133; 45 L. J. M. C. 108.

But a justice of the peace is not disqualified from acting as such by reason of his being elected coroner for the county or division for which he so acts as justice. *Davis v. Pembrokeshire J.J.*, L. R. 7 Q. B. 513.

By the Bankruptcy Act, 1883, 46 & 47 Vict. c. 52, s. 32, (1) where a debtor is adjudged a bankrupt he shall be disqualified for (c) being appointed or acting as a justice of the peace; but (2) the disqualification shall be removed and cease if and when (a) the adjudication of bankruptcy against him is annulled; or (b) he obtains from the court his discharge, with a certificate to the effect that his bankruptcy was caused by misfortune, without any misconduct on his part.

As to the disqualification of justices see also the Parliamentary Elections Act, 1868, 31 & 32 Vict. c. 125, s. 45 (c).

The following is the form of the commission of the peace as used in Boroughs:—"VICTORIA, &c. To the Mayor, &c. Know ye that we have assigned to you and every of you jointly and severally our justices to keep our peace in and throughout the said Borough of _____, and to keep and cause to be kept all ordinances and statutes made for the good of our peace, and for the conservation of the same, and to chastise and punish all persons that offend against the form of these ordinances or statutes or any one of them, in the aforesaid borough, as it ought to be done, according to the form of those ordinances and statutes; and to cause to come before you or any one of you all those who, to any one or more of our people concerning their bodies or the firing of their houses, have used threats, to find sufficient security for

Note to Sect. 1.**Powers of Justices**

the peace or their good behaviour towards us and our people, and if they refuse to find such security then imprison them in our prisons until they shall find such security, to cause and be safely kept. And therefore We command you that you diligently apply yourselves to the keeping of our Peace Ordinances, Statutes, and all and singular other the premises, and perform and fulfil the same in the form aforesaid, doing therein what to justice appertains, according to the laws and customs of England. In witness, &c."

Properly speaking the powers of justices of the peace are of two kinds, judicial and ministerial. Their judicial powers extend to the trial of general or quarter sessions of persons charged with offences; and also to the hearing of informations and complaints at petty sessions, and adjudicating thereupon. Their ministerial powers relate to the receiving of informations and complaints as to indictable offences, as well as other offences which they may be empowered by statute to determine in a summary way; to the signing of poor rates; making orders of removal; orders under the Lunacy Acts; and to the enforcing of convictions or orders by commitment, or by warrant of distress; summoning offenders, taking bail, and the like. Not only is the authority of the justices by this statute extended to all indictable offences without exception, but it is also extended as regards the place where the offence may have been committed; that is to say, they may under this section issue their warrant for the apprehension of a person charged with or suspected of having committed any indictable offence either within or beyond the limits of their jurisdiction, provided in the latter case the person charged is within or suspected to be within the limits of their jurisdiction, but in the former case it is immaterial where the person may be at the time of the issue of the warrant. If the person charged be beyond the limits of the justices' jurisdiction the warrant may be backed in the manner directed by section 11, *post*, and be then executed if the offender be found within the jurisdiction of the justices by whom it is backed. It may be necessary to observe here that a constable at common law is not justified in imprisoning a person in the belief that he has committed a misdemeanor. *Griffin v. Colman*, 28 L. J. (N.S.) Exch. 134. Neither can a constable legally take a person into custody on a charge of felony made by another if the charge rests on no reasonable grounds, or on grounds which are unreasonable. *Hogg v. Ward*, 3 H. & N. 417; 27 L. J. (N.S.) Exch. 443; 4 Jur. (N.S.) 885; 22 J. P. 626; but a police officer is protected if he acts upon a warrant, even though that warrant be informal, and if he be killed when so acting by a premeditated attack, with a view to rescue, the

crime will be murder, the proper course being to apply to a court of law for a *habeas* to have the prisoner discharged from custody. *Reg v. Allen*, 17 L. T. (N.S.) 222.

As to the jurisdiction of justices for offences against the customs, see 16 & 17 Vict. c. 107, ss. 275-277. That Act provides for the purpose of giving jurisdiction under it, any offence shall be deemed to have been committed, and every cause of complaint to have arisen, in the place in which it was actually committed or arose, or in any place on land where the person or offender complained of may be brought.

The 11 & 12 Vict. c. 42, by section 32, is not to extend to Scotland or Ireland, or to the Isles of Man, Jersey, or Guernsey, save and except the provisions contained in it respecting the backing of warrants. As to backing Scotch or Irish warrants in England, see sections 12-15, *post*. As to the apprehension of persons who have committed offences in any English colony and have escaped therefrom into England, or *vice versa*, see 6 & 7 Vict. c. 34, *post*.

With regard to vexatious indictments, see 22 & 23 Vict. c. 17, and 30 & 31 Vict. c. 35, in the Appendix.

By section 37 of the Summary Jurisdiction Act, 1879, *ante*, p. 246, a warrant or summons issued by a justice of the peace under that or any other Act shall not be avoided by reason of the justice who signed the same dying or ceasing to hold office.

2. In all cases of indictable crimes or offences of any kind or nature whatsoever committed 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, and in all cases of crimes or offences committed on land beyond the seas, for which an indictment may legally be preferred in any place within England or Wales, it shall be lawful for any one or more of Her Majesty's justices of the peace for any county, riding, division, liberty, city, borough, or place within England or Wales in which any person charged with having committed or with being suspected to have committed any such crime or offence shall reside or be, or shall be supposed or suspected to reside or be, to issue his or their war-

**Note to
Sect. 1.**

Warrant to apprehend for offences committed on the high seas or abroad.

Sect. 2. rant (E.) to apprehend the person so charged, and to cause him to be brought before him or them, or some other justice or justices of the peace for the same county, riding, division, liberty, city, borough, or place, to answer to the said charges, and to be further dealt with according to law.

Jurisdiction over offence committed out of Great Britain by officer of the government :

By 11 & 12 Will. 3, c. 12, and 42 Geo. 3, c. 85, offences committed out of Great Britain by governors of colonies and officers of the government under colour of, or in exercise of, their offices, may be prosecuted or inquired of, heard and determined in Her Majesty's Court of Queen's Bench here in England, either upon information or indictment, and the offence may be laid to have been committed in Middlesex:—*Held*, that the power conferred upon justices by 11 & 12 Vict. c. 42, ss. 2, 17, 20, of binding over the prosecutor and witnesses to prosecute or give evidence against any person charged with an indictable offence, committed on land beyond the sea, at the next court of oyer and terminer or gaol delivery, or superior court of a county palatine, or court of general or quarter sessions of the peace, extends to cases where the offence is one of those specified in 42 Geo. 3, c. 85, and that the description "court of oyer and terminer," in 11 & 12 Vict. c. 32, s. 20, applies to the Court of Queen's Bench. *Reg. v. Eyre*, 37 L. J. M. C. 159; L. R. 3 Q. B. 487; 18 L. T. (N.S.) 511; 32 J. P. 518.

Offences on the high seas, &c.

The jurisdiction of the admiralty extends to the high seas, and the harbours, creeks, and havens of foreign countries, but not the harbours, creeks, and havens of this country; in the latter the ordinary common law courts have exclusive jurisdiction; and by the common law of nations every country exercises rights of jurisdiction within three miles of the coast. The boundaries of the respective jurisdictions are thus described by Mr. Archbold, in his work on the office of a Justice of the Peace: "If an imaginary line were drawn across the mouth of such creek, &c., from one point of land to the other, of all offences committed within such line, the common law would have jurisdiction; but all offences committed without the line would be within the jurisdiction of the admiral. As to the sea-shore, below low water mark, the admiral has exclusive jurisdiction; above high water mark the courts of common law have exclusive jurisdiction; and between high and low water mark, the courts of common law and the admiral have alternate jurisdiction,—the courts of common law have jurisdiction of all offences

committed on the strand when the tide is out, the admiral jurisdiction of offences committed on the water when the tide is in." But in a recent case it has been decided that the part of the sea-shore which lies between high and low water mark is within and part of the adjoining county; so that the justices of the county have jurisdiction to take cognizance of offences committed thereon, whether the land be covered with water or not at the time the offence is committed. *Embleton v. Brown*, 30 L. J. (N.S.) M. C. 1; 25 J. P. 38. In a later case three prisoners were indicted for feloniously cutting and wounding. The venue was laid in Glamorganshire, and the indictment was preferred and tried at the assizes for that county. The offence was committed on board an American ship, anchored in the Penarth Roads, in the Bristol Channel, three quarters of a mile from the coast of Glamorganshire, at a part never left dry by the tide, but within a quarter of a mile from the land which is left dry. The place in question is situated between the shore of the county of Glamorgan and two islands, which islands have always been treated as part of the county of Glamorgan. It was also about ten miles from the opposite shore of Somersetshire, and the Penarth Roads are ninety miles from the mouth of the Bristol Channel. Under these circumstances, the court held that the part of the sea where the vessel was when the offence was committed, formed part of the body of the county of Glamorgan. *Reg. v. Cunningham*, 5 Jur. (N.S.) 202.

By the Act to amend the Merchant Shipping Act, 1854, 18 & 19 Vict. c. 91, s. 21, it is provided that "If any person, being a British subject, charged with having committed any crime or offence on board any British ship on the high seas or in a foreign port or harbour, or if any person, not being a British subject, charged with having committed any crime or offence on board any British ship on the high seas, is found within the jurisdiction of any court of justice in Her Majesty's dominions, which would have had cognizance of such crime or offence if committed within the limits of its ordinary jurisdiction, such court shall have jurisdiction to hear and try the case as if such crime or offence has been committed within such limits: provided that nothing contained in this section shall be construed to alter or interfere with the Act of the thirteenth year of Her present Majesty, chapter ninety-six."

The criminal jurisdiction of the admiralty of England extends over British ships not only on the high seas but also in rivers below the bridges, where the tide ebbs and flows, and where great ships go to though at a spot where the municipal authorities of a foreign country might exercise

Note to
Sect. 2.

Offences on
the high
seas.

Note to Sect. 2. concurrent jurisdiction if invoked. *Reg. v. Anderson*, 38 L. J. M. C. 12.

An English ship upon the high seas is to be considered as part of the territory of England; and therefore a foreigner who, whilst on board such ship, commits an offence against the English laws, is amenable to those laws; and it makes no difference whether he has gone on board voluntarily or has been taken and detained there against his will. A person is "found" within the jurisdiction of a court of justice, within the meaning of 18 & 19 Vict. c. 91, s. 21, when he is actually present there, whether he has come within such jurisdiction voluntarily, or has been brought there against his will. *Reg. v. Lopez*; *Reg. v. Sattler*, 27 L. J. R. (N.S.) M. C. 48; 4 Jur. (N.S.) 98; 22 J. P. 84.

In the case of the German steamer *Franconia* which ran into the British steamer *Strathclyde* off Dover while she was under the command and immediate direction of her captain who was a foreigner, and whereby the latter steamer was sunk and one of the passengers on board drowned under such circumstances as to amount to manslaughter by English law, it was held by the majority of the court that the Central Criminal Court had no jurisdiction to try the prisoner for the offence charged. *Reg. v. Keyn*, L. R. 2 Exch. D. 63. In consequence of this decision an Act was passed to regulate the law relating to the trial of offences committed on the sea within a certain distance of the coasts of Her Majesty's dominions (41 & 42 Vict. c. 78) which is as follows:—

Short title.

1. This Act may be cited as the Territorial Waters Jurisdiction Act, 1878.

Amendment of the law as to the jurisdiction of the admiral.

2. An offence committed by a person, whether he is or is not a subject of Her Majesty, on the open sea within the territorial waters of Her Majesty's dominions, is an offence within the jurisdiction of the admiral, although it may have been committed on board or by means of a foreign ship, and the person who committed such offence may be arrested, tried, and punished accordingly.

Restriction on institution of proceedings for punishment of offence.

3. Proceedings for the trial and punishment of a person who is not a subject of Her Majesty, and who is charged with any such offence as is declared by this Act to be within the jurisdiction of the admiral, shall not be instituted in any court of the United Kingdom, except with the consent of one of Her Majesty's principal secretaries of state, and on his certificate that the institution of such proceedings is in his opinion expedient, and shall not be instituted in any of the dominions of Her Majesty out of the United Kingdom, except with the leave of the governor of the part of the dominions in which such proceedings are proposed to be instituted, and on

his certificate that it is expedient that such proceedings should be instituted.

Note to Sect. 2.

4. On the trial of any person who is not a subject of Her Majesty for an offence declared by this Act to be within the jurisdiction of the admiral, it shall not be necessary to aver in any indictment or information on such trial that such consent or certificate of the secretary of state or governor as is required by this Act has been given, and the fact of the same having been given shall be presumed unless disputed by the defendant at the trial; and the production of a document purporting to be signed by one of Her Majesty's principal secretaries of state as respects the United Kingdom, and by governor as respects any other part of Her Majesty's dominions, and containing such consent and certificate, shall be sufficient evidence for all the purposes of this Act of the consent and certificate required by this Act.

Provisions as to procedure.

Proceedings before a justice of the peace or other magistrate previous to the committal of an offender for trial or to the determination of the justice or magistrate that the offender is to be put upon his trial shall not be deemed proceedings for the trial of the offence committed by such offender for the purposes of the said consent and certificate under this Act.

5. Nothing in this Act contained shall be construed to be in derogation of any rightful jurisdiction of Her Majesty, her heirs or successors, under the law of nations, or to affect or prejudice any jurisdiction conferred by Act of parliament or now by law existing in relation to foreign ships or in relation to persons on board such ships.

Saving as to jurisdiction.

6. This Act shall not prejudice or affect the trial in manner heretofore in use of any act of piracy as defined by the law of nations, or affect or prejudice any law relating thereto; and where any act of piracy as defined by the law of nations is also any such offence as is declared by this Act to be within the jurisdiction of the admiral, such offence may be tried in pursuance of this Act, or in pursuance of any other Act of parliament, law, or custom relating thereto.

Saving as to piracy.

7. In this Act, unless there is something inconsistent in the context, the following expressions shall respectively have the meanings hereinafter assigned to them; that is to say,

Definitions.

"The jurisdiction of the admiral," as used in this Act, includes the jurisdiction of the admiralty of England and Ireland, or either of such jurisdictions as used in any Act of parliament; and for the purpose of arresting any person charged with an offence declared by this Act to be within the jurisdiction of the admiral, the territorial waters adjacent to the United Kingdom, or any other

"Jurisdiction of the admiral:"

Note to Sect. 2.

- part of Her Majesty's dominions, shall be deemed to be within the jurisdiction of any judge, magistrate, or officer having power within such United Kingdom, or other part of Her Majesty's dominions, to issue warrants for arresting or to arrest persons charged with offences committed within the jurisdiction of such judge, magistrate, or officer :
- "United Kingdom :"
"Territorial waters of Her Majesty's dominions :"
"Governor :"
"Offence :"
"Ship :"
"Foreign ship." Offences against the customs.
- "United Kingdom" includes the Isle of Man, the Channel Islands, and other adjacent islands :
- "The territorial waters of Her Majesty's dominions," in reference to the sea, means such part of the sea adjacent to the coast of the United Kingdom, or the coast of some other part of Her Majesty's dominions, as is deemed by international law to be within the territorial sovereignty of Her Majesty; and for the purpose of any offence declared by this Act to be within the jurisdiction of the admiral, any part of the open sea within one marine league of the coast measured from low-water mark shall be deemed to be open sea within the territorial waters of Her Majesty's dominions :
- "Governor," as respects India, means the governor general or the governor of any presidency; and where a British possession consists of several constituent colonies, means the governor general of the whole possession or the governor of any of the constituent colonies; and as respects any other British possession, means the officer for the time being administering the government of such possession; also any person acting for or in the capacity of governor shall be included under the term "governor:"
- "Offence" as used in this Act means an act, neglect, or default of such a description as would, if committed within the body of a county in England, be punishable on indictment according to the law of England for the time being in force :
- "Ship" includes every description of ship, boat, or other floating craft :
- "Foreign ship" means any ship which is not a British ship. With respect to offences against the customs, see the Customs Consolidation Act, 16 & 17 Vict. c. 107, ss. 269-289. As regards the jurisdiction of the justices, in offences under that Act, section 275 enacts, "that where any offence shall be committed in any place upon the water not being within any county of the United Kingdom, or where the officers have any doubt whether such place is within the boundaries or limits of any such county, such offence shall for the purposes of this Act be deemed and taken to be an offence committed on the high seas; and for the purpose of giving jurisdiction

**Note to
Sect. 2.**

under this Act, every offence shall be deemed to have been committed, and every cause of complaint to have arisen, either in the place in which the same actually was committed or arose, or in any place on land where the offender or person complained against may be or be brought." The 7 Vict. c. 2, for the more speedy trial of offences committed on the high seas (section 3), also provides, with reference to the place where offenders shall be tried, that the justice or justices by whom any information shall be taken touching any offence committed within the jurisdiction of the admiralty of England under 7 Geo. 4, c. 38, if he or they shall see cause thereupon to commit such person to take his trial for such offence, "shall commit him to the same prison to which he would have been committed to take his trial at the next court of oyer and terminer and general gaol delivery, if the offence had been committed on land within the jurisdiction of the same justice or justices, and shall have authority to bind by recognizance all persons who shall know or declare anything material touching the said offence, to appear at the next court of oyer and terminer and general gaol delivery, then and there to prosecute or give evidence against the party accused, and shall return all such informations and recognizances to the proper officer of the court in which the trial is to be, at or before the opening of the court."

As regards the trial of British subjects in England for offences committed abroad, it is enacted by 24 & 25 Vict. c. 100, s. 9: "Where any murder or manslaughter shall be committed on land out of the United Kingdom, whether within the Queen's dominions or without, and whether the person killed were a subject of Her Majesty or not, every offence committed by any subject of Her Majesty, in respect of any such case, whether the same shall amount to the offence of murder or of manslaughter, or of being accessory to murder or manslaughter, may be dealt with, inquired of, tried, determined, and punished in any county or place in England or Ireland in which such person shall be apprehended or be in custody, in the same manner in all respects as if such offence had been actually committed in that county or place; provided that nothing herein contained shall prevent any person from being tried in any place out of England or Ireland for any murder or manslaughter committed out of England or Ireland, in the same manner as such person might have been tried before the passing of this Act."

And by section 10 of the same Act: "Where any person, being feloniously stricken, poisoned, or otherwise hurt upon the sea, or at any place out of England or Ireland, shall die of such stroke, poisoning, or hurt in England or Ireland, or,

Note to Sect. 2.

being feloniously stricken, poisoned, or otherwise hurt at any place in England or Ireland, shall die of such stroke, poisoning, or hurt upon the sea, or at any place out of England or Ireland, every offence committed in respect of any such case, whether the same shall amount to the offence of murder or of manslaughter, or of being accessory to murder or manslaughter, may be dealt with, inquired of, tried, determined, and punished in the county or place in England or Ireland in which such death, stroke, poisoning, or hurt shall happen in the same manner in all respects as if such offence had been wholly committed in that county or place."

The 12 & 13 Vict. c. 96, provides for the prosecution and trial in Her Majesty's colonies of offences committed within the jurisdiction of the admiralty, and for the purposes of the Act, the word "colony" shall mean any island, plantation, colony, dominion, fort, or factory of Her Majesty, except the United Kingdom and the Islands of Man, Guernsey, Jersey, Alderney, and Sark, and the islands adjacent thereto respectively; and by the Act of 23 & 24 Vict. c. 88, the word "colony" shall include and apply to every part and place heretofore under the government of the East India Company, or which may be under the government of Her Majesty in India, and all the provisions of 12 & 13 Vict. c. 96, shall be construed and take effect accordingly.

Warrant to apprehend.

In proceedings under section 2 of 11 & 12 Vict. c. 42, any justice for the county or other district in which the person charged shall reside or be, or shall be supposed or suspected to reside or be, may issue his warrant to apprehend, and proceed in the same manner, both as to backing the warrant and otherwise, as if the offence were committed within his jurisdiction.

A practice has sprung up amongst metropolitan police magistrates of refusing both warrants and summonses in cases of alleged felony, as they prefer always leaving the prosecutor to his common law remedy of giving the offender into custody.

With reference to the trial summarily of indictable offences committed in any harbour, river, arm of the sea, or other tidal water, see section 46 (1) of the Summary Jurisdiction Act, 1879, *ante*, p. 254.

A justice of the county can sit and act on any petty sessions within the county.

Jurisdiction of county justices at petty sessions.

Warrant to apprehend a party against whom an

3. Where any indictment shall be found by the grand jury in any court of oyer and terminer or general gaol delivery, or in any court of general or

quarter sessions of the peace, against any person who shall then be at large, and whether such person shall have been bound by any recognizance to appear to answer to the same or not, the person who shall act as clerk of the indictments at such court of oyer and terminer or gaol delivery, or as clerk of the peace at such sessions, at which the said indictment shall be found, shall at any time afterwards, after the end of the sessions of oyer and terminer or gaol delivery or sessions of the peace at which such indictment shall have been found, upon application of the prosecutor, or of any person on his behalf, and on payment of a fee of one shilling, if such person shall not have already appeared and pleaded to such indictment, grant unto such prosecutor or person a certificate (F.) of such indictment having been found; and upon production of such certificate to any justice or justices of the peace for any county, riding, division, liberty, city, borough, or place in which the offence shall in such indictment be alleged to have been committed, or in which the person indicted in and by such indictment shall reside or be, or be supposed or suspected to reside or be, it shall be lawful for such justice or justices, and he and they are hereby required, to issue his or their warrant (G.) to apprehend such person so indicted, and to cause him to be brought before such justice or justices, or any other justice or justices for the same county, riding, division, liberty, city, borough or place, to be dealt with according to law, and afterwards, if such person be thereupon apprehended and brought before any such justice or justices, such justice or justices upon its being proved upon oath or affirmation before him or them that the per-

Sect. 3.

indictment
is found.

Sect. 3. son so apprehended is the same person who is charged and named in such indictment, shall, without further inquiry or examination commit (H.) him for trial, or admit him to bail, in manner hereinafter mentioned; or if such person so indicted shall be confined in any gaol or prison for any other offence than that charged in the said indictment, at the time of such application, and production of the said certificate to such justice or justices as aforesaid, it shall be lawful for such justice or justices, and he and they are hereby required, upon it being proved before him or them upon oath or affirmation that the person so indicted and the person so confined in prison are one and the same person, to issue his or their warrant (I.) directed to the gaoler or keeper of the gaol or prison in which the person so indicted shall then be confined as aforesaid, commanding him to detain such person in his custody until by Her Majesty's writ of *habeas corpus* he shall be removed therefrom, for the purpose of being tried upon the said indictment, or until he shall otherwise be removed or discharged out of his custody by due course of law.

If person indicted be already in prison for some other offence, justice may order him to be detained until removed by writ of *habeas*.

With respect to vexatious indictments, see 22 & 23 Vict. c. 17, and 30 & 31 Vict. c. 35, in the Appendix.

The Prosecution of Offences Act, 1879 (42 & 43 Vict. c. 22) s. 5, *post*, p. 447, provides for the delivery of certificates, &c., to the director of public prosecutions in cases in which he has undertaken or is carrying on any criminal prosecution.

Power to justice to issue warrants on Sundays.

4. It shall be lawful for any justice or justices of the peace to grant or issue any warrant as aforesaid or any search warrant on a *Sunday* as well as on any other day.

This section has removed the doubt which formerly ex-

isted as to whether a warrant could be issued by a justice of the peace on a Sunday. But it should be borne in mind that it is only a warrant for the apprehension of a person charged with an indictable offence that can be so issued. A writ cannot be issued on a Sunday; and it will be void if it bear date on a Sunday (*Hanson v. Shackleton*, 4 Dowl. 48); therefore a warrant to apprehend for non-payment of a penalty, or of money under a justice's order, as a poor rate, it being in the nature of a civil proceeding, cannot be issued on a Sunday. As to the execution of a warrant on a Sunday, see 29 Car. 2, c. 7, s. 6, and note to section 10, *post*.

**Note to
Sect. 4.**

5. In cases where a justice of the peace for any county, riding, division, liberty, city, borough, or place shall be also justice of the peace for a county, riding, division, liberty, city, borough, or place next adjoining thereto or surrounded thereby, it shall and may be lawful for such justice of the peace to act as such justice for the one county, riding, division, liberty, city, borough, or other place whilst he is residing or happens to be in the other such county, riding, division, liberty, city, borough, or other place, in all matters and things hereinbefore or hereafter in this Act mentioned; and that all such acts of such justice, and the acts of any constable or other officer in obedience thereto, shall be as valid, good and effectual in the law to all intents and purposes as if such justice at the time he shall so act as aforesaid, were in the county, riding, division, liberty, city, borough, or other place for which he shall so act; and all constables and other officers for the county, riding, division, liberty, city, borough, or place for which such justice shall so act as aforesaid are hereby authorized and required to obey the warrants, orders, directions, act or acts of such justice which in that behalf shall be granted, given, or done, and to do and perform their several offices and duties in respect

Justices for adjoining counties, &c., may act as such for one county, &c., while residing in another.

All acts of justice, &c., to be valid.

Sect. 5. thereof, under the pains and penalties to which any constable or other officer may be liable for a neglect of duty; and any such constable or other peace officer, or any other person, apprehending or taking into custody any person offending against law, and whom he lawfully may and ought to apprehend or take into custody, by virtue of his office or otherwise, in any such county, riding, division, liberty, city, borough, or place, may lawfully take and convey such person so apprehended and taken as aforesaid to and before any such justice of the peace, for such county, riding, division, liberty, city, borough, or place, whilst such justice shall be in such adjoining county, riding, division, liberty, city, borough, or place as aforesaid, and the said constables and other peace officers, and all such other persons as aforesaid, are hereby authorized and required in all such cases so to act in all things as if the said justice of the peace were within the said county, riding, division, liberty, city, borough, or place for which he shall so act.

Constables, &c., apprehending offenders in one such county, &c., may take them before such justice in the adjoining county, &c., if he act as a justice in both.

Proof of offence.

This section enables a justice of the peace for two or more districts adjoining each other, as two counties, ridings, or divisions of a county, or a borough and a county, or for a district surrounded by another, as a borough surrounded by a county, &c., to act, whilst he is in one of these districts, for the other district, and has remedied a defect in the law, as it formerly existed, in this respect. It is one of the oldest rules of law that although a thing is alleged with greater particularity than it need to have been, yet it must be proved as alleged, for the party is bound by his description. Thus, if it be alleged that an act was done by a person in one capacity and it appears that he did it in another, that would not be sufficient. In an action for breaking and entering a stable of the plaintiff, the defendant justified under a search warrant alleged to have been issued by a justice of the peace for the county of S. in which the stable was situated. At the trial the search warrant produced

appeared to have been issued by a justice of the peace for the borough of W., situated in the county of S., of which county he was also a justice of the peace; this was held to be a fatal variance, but that it might be amended. *Webb v. Ross*, 5 Jur. (N.S.) 126; 23 J. P. 167.

Note to Sect. 5.

With regard to the duties of constables, 22 & 23 Vict. c. 32, s. 2, enacts that "no county constable shall, as such constable, be required to act in any borough having a separate police establishment, except in execution of warrants of justices of such county, or by the order of his chief constable or superintendent; and in all cases of special emergency the chief constable or superintendent, when required so to do by the watch committee of any borough having a separate police establishment, shall have power to direct the county constables to act within such borough; and no constable of any borough having a separate police establishment shall as such constable be required to act out of his borough, except in execution of warrants of justices of such borough, or in pursuance of directions from the watch committee in case of special emergency."

Constables.

6. It shall be lawful for any justice or justices of the peace acting for any county at large, or for any riding or division of such county, to act as such at any place within any city, town, or other precinct, being a county of itself, or otherwise having exclusive jurisdiction, and situated within, surrounded by, or adjoining to any such county, riding, or division respectively, and that all and every such act and acts, matters and things, to be so done by such justice or justices within such city, town, or precinct, as justice or justices for such county, riding, or division respectively, shall be as valid and effectual in law as if the same had been done within such county, riding, or division respectively, to all intents and purposes whatsoever: Provided always, that nothing in this Act contained shall extend to give power to the justices of the peace for any county, riding, or division, not being also justices for such city, town, or other precinct, or not having

Justices for a county, &c., may act for it in an adjoining city or place of exclusive jurisdiction.

Not to give power to act, &c., in any matters, &c. arising within the same.

Sect. 6. authority as justices of the peace therein, or any constable or other officer acting under them, to act or intermeddle in any matters or things arising within any such city, town, or precinct, in any manner whatsoever.

Jurisdiction
of justices.

The effect of this section is to enable any justice acting for any county, riding, or division to act for it within any city, town, or other precinct within it or adjoining to it, not only in respect of indictable offences, but in respect to all proceedings within the jurisdiction of a justice of the peace. Their powers in this respect were formerly regulated by 28 Geo. 3, c. 49, s. 4, and 1 & 2 Geo. 4, c. 63; and the proviso is the same as the proviso to those enactments. See also the proviso in 11 & 12 Vict. c. 43, s. 6, *ante*, on the same subject, and notes thereon.

With respect to the jurisdiction of county justices in boroughs, it is enacted by 5 & 6 Will. 4, c. 76, s. 111 (the Municipal Corporations Act), that after the 31st day of May, 1836, the "justices assigned, or hereafter to be assigned to keep the peace in and for the county in which any borough is situated, to which His Majesty shall not have granted that a separate court of quarter sessions of the peace shall be holden in and for the same, shall exercise the jurisdiction of justices of the peace in and for such borough as fully as by law they and each of them can or ought to do in and for the said county, and no part of any borough in and for which a separate court of quarter sessions of the peace shall be holden, shall be within the jurisdiction of the justices of any county from which such borough before the passing of this Act, was exempt, any law, statute, letters patent, charter, grant, or custom to the contrary notwithstanding."

For removal
of doubts
as to
powers
given to
justices,
&c., in
detached
parts of
counties
under
2 & 3 Vict.
c. 82.

7. And whereas doubts have arisen whether the powers given to justices by an Act passed in the session of Parliament held in the second and third years of the reign of Her present Majesty, intituled "An Act for the better Administration of Justice in detached Parts of Counties," are applicable to cases of summary jurisdiction and to acts merely *ministerial*: Be it hereby declared and enacted, that all

the acts of any justice or justices, and of any constable or officer in obedience thereto, shall be as good in relation to any detached part of any county which is surrounded in whole or in part by the county for which such justice or justices acts or act as if the same were to all intents and purposes part of the said county; and all constables and other officers of such detached part are hereby required to obey the warrants, orders, and acts of such justice or justices, and to perform their several duties in respect thereof, under the pains and penalties to which any constable or other officer may be liable for a neglect of duty. Sect. 7.

With reference to this section, see 2 & 3 Will. 4, c. 64, 2 & 3 Vict. c. 82, and 7 & 8 Vict. c. 61.

8. In all cases where a charge of complaint for any indictable offence shall be made before such justice or justices as aforesaid, if it be intended to issue a warrant in the first instance against the party or parties so charged, an information and complaint thereof (A.) in writing, on the oath or affirmation of the informant or of some witness or witnesses in that behalf, shall be laid before such justice or justices: Provided always that in all cases where it is intended to issue a summons instead of a warrant in the first instance, it shall not be necessary that such information and complaint shall be in writing, or be sworn to or affirmed in manner aforesaid, but in every such case such information and complaint may be by parol merely, and without any oath or affirmation whatsoever to support or substantiate the same: provided also, that no objection shall be taken or allowed to any such information or complaint for any

When charge, &c., is made, if a warrant is to be issued, information, &c., on oath, to be laid before justices.

If summons to be issued instead, in formation, &c., not necessary to be on oath.

No objection allowed for alleged defect in form.

Sect. 8. alleged defect therein in substance or in form, or for any variance between it and the evidence adduced on the part of the prosecution before the justice or justices who shall take the examination of the witnesses in that behalf, as hereinafter mentioned.

Information on oath.

Before this enactment there was no statute which expressly required that upon the issue of a warrant in the first instance the information should be in writing on the oath or affirmation of the informant, though it was the practice to require it to be in writing. Now it is expressly required to be in writing, and upon oath or affirmation. When it is intended to issue a summons instead of a warrant in the first instance, the Act provides that the information or complaint may be by parol merely, and without any oath or affirmation. The justices, however, are not precluded from requiring that the information shall be in writing if they deem it expedient to do so.

As the information is merely for the guidance of the justice in issuing his warrant, and is in fact no portion of the proceedings so far as the defendant is concerned in his defence, any objection to the form or substance of the information is absolutely prohibited by the last proviso. As regards objections to the summons, see the proviso to section 9.

Any person may lay the information for an indictable offence; and the most usual course is to take an information in the form of a deposition, stating shortly the facts, and not an information of the offence couched in the technical language on indictment or commitment.

The Prosecution of Offences Act, 1879 (42 & 43 Vict. c. 22), s. 5, *post*, p. 447, provides for the delivery of informations, &c., to the director of public prosecutions in cases in which he has instituted or undertaken, or is carrying on any criminal prosecution.

When a justice has refused to issue a summons upon complaint, other justices may subsequently refuse to hear an information and take the recognizances of the prosecutor to prosecute in the same matter; and the Vexatious Indictments Act, 22 & 23 Vict. c. 17, s. 2 (*post*), does not apply to such proceedings unless a summons or a warrant has been granted. *Reg. v. Bather*, 42 L. T. (N.S.) 532.

Where justices entertain an application for a summons for a criminal offence, and have considered the materials on which the application is based, and refused to hear more or to grant a summons, the High Court of Justice will not interfere

by *mandamus* to order them to hear the application again. *Ex parte MacMahon*, 48 J. P. 70.

Note to
Sect. 8.

An application being made to the stipendiary magistrate of Leeds to hear a charge of perjury alleged to have been committed by a defendant in a suit in Chancery, and to issue a warrant against the defendant on the charge, after hearing the application and reading the information the magistrate declined to issue a summons or warrant, and on an application for a *mandamus* on the ground that the magistrate had really declined to exercise his jurisdiction, as he had refused to hear the case, the Lord Chief Justice said the magistrate had not declined to exercise his jurisdiction, and had indeed exercised it, having heard the charge, and on hearing it declined to issue his warrant. That was an exercise of jurisdiction, and even if he had exercised it wrongly, that did not give this court any jurisdiction to interpose. The magistrate had a discretion to exercise in such cases, and was not bound on every application for a warrant or summons to issue it. The preliminary inquiry as to whether he should issue his summons or not was as much a judicial inquiry as the hearing of the charge or the summons would be; and he having exercised his judicial discretion on the matter, this court could neither reverse his decision nor force him to decide the matter again. If this application were acceded to, then in every case in which a magistrate refused a summons, this court must rehear the case and review the decision. The application was therefore refused. *In the matter of the Stipendiary Magistrate for Leeds*, 43 J. P. 743.

9. Upon such information and complaint being so laid as aforesaid the justice or justices receiving the same may, if he or they shall think fit, issue his or their summons or warrant respectively as hereinbefore is directed to cause the person charged as aforesaid to be and appear before him or them, or any other justice or justices of the peace for the same county, riding, division, liberty, city, borough, or place, to be dealt with according to law; and every such summons (C.) shall be directed to the party so charged in and by such information, and shall state shortly the matter of such information, and shall

Upon complaint being laid, justices receiving the same may issue summons or warrant for appearance of person charged.

Sect. 9. require the party to whom it is so directed to be and appear at a certain time and place therein mentioned before the justice who shall issue such summons, or before such other justice or justices of the peace of the same county, riding, division, liberty, city, borough or place, as may then be there, to answer to the said charge, and to be further dealt with according to law; and every such summons shall be served by a constable or other peace officer upon the person to whom it is so directed by delivering the same to the party personally, or if he cannot conveniently be met with then by leaving the same with some person for him at his last or most usual place of abode; and the constable or other peace officer who shall have served the same 'in manner aforesaid shall attend at the time and place and before the justices in the said summons mentioned, to depose, if necessary, to the service of such summons; and if the person so served shall not be and appear before the justice or justices at the time and place mentioned in such summons, in obedience to the same, then it shall be lawful for such justice or justices to issue his or their warrant (D.) for apprehending the party so summoned and bringing him before such justice or justices, or some other justice or justices of the peace for the same county, riding, division, liberty, city, borough, or place, to answer the charge in the said information and complaint mentioned, and to be further dealt with according to law: Provided always, that no objection shall be taken or allowed to any such summons or warrant for any alleged defect therein in substance or in form, or for any variance between it and the evidence adduced on

How sum-
mons to
be served.

If party
summoned
do not
attend
justice may
issue a
warrant
to compel
attendance.

No objec-
tion allowed
for alleged
defect in
form, &c.

the part of the prosecution before the justice or justices who shall take the examinations of the witnesses in that behalf, as hereinafter mentioned; but if any such variance shall appear to such justice or justices to be such that the party charged has been thereby deceived or misled, it shall be lawful for such justice or justices, at the request of the party so charged, to adjourn the hearing of the case to some future day, and in the meantime to remand the party so charged, or admit him to bail, in manner hereinafter mentioned. Sect. 9.

The summons must be addressed to the person accused, and not, as was formerly the practice, to the constable; and it must also be served by a constable or other peace officer by delivering it personally to the accused, or if he cannot conveniently be found, by leaving it with some person for him at his last or most usual place of abode. It should not be left with any person indifferently; but should be given to the wife, servant, parent, or other person likely to give it to the accused. If at the time appointed in the summons the accused do not appear, the justice, on the constable proving the service of the summons, will issue a warrant for his apprehension. Address and service of summons.

If on application to justices for a summons for an indictable offence they have heard and determined the application and on the merits have declined to grant it, the court will not grant a *mandamus* to compel them to review their decision. *Reg. v. Fawcett and Others, JJ. of Durham*, 19 L. T. (N.S.) 396; 32 J. P. 776. Discretion of justices to issue summons.

The justices, if they refuse to issue a summons under 11 & 12 Vict. c. 42, s. 9, must exercise a discretion as shown by the following case. Upon an application to justices for summonses against certain persons to answer a charge of conspiracy to break the peace and do grievous bodily harm at a public meeting, evidence was given that a disturbance had arisen at the meeting in which the defendants took part, and that one or other of them had previously offered money to different persons if they would commit acts of violence at the meeting; the justices after hearing evidence declined to issue the summonses, and a rule nisi for a *mandamus* having been obtained, they stated in their affidavit that upon the facts brought before them they

Note to Sect. 9.

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did not feel justified in granting the application, but did not say that they thought the witnesses unworthy of credit. The court made the rule absolute, for although under this section the justices are to issue their summons "if they shall think fit," it was evident that in this particular case they had not exercised a discretion. *Reg. v. Adamson*, L. R. 1 Q. B. D. 201; *S. C. Reg. v. Justices of Tynemouth*, 32 L. T. (N.S.) 840; 40 J. P. 182. See also 44 & 45 Vict. c. 24, s. 5, *ante*, p. 277.

Warrant to apprehend parties to be under hand and seal of justice.

How warrant to be directed and to whom.

10. And be it declared and enacted that every warrant (B.) hereafter to be issued by any justice or justices of the peace to apprehend any person charged with any indictable offence shall be under the hand and seal or hands and seals of the justice or justices issuing the same, and may be directed either to any constable or other person by name, or generally to the constable of the parish or other district within which the same is to be executed without naming him, or to such constable and all other constables or peace officers in the county or other district within which the justice or justices issuing such warrant has or have jurisdiction, or generally to all the constables or peace officers within such last-mentioned county or district, and it shall state shortly the offence on which it is founded, and shall name or otherwise describe the offender, and it shall order the person or persons to whom it is directed to apprehend the offender, and bring him before the justice or justices issuing the said warrant, or before some other justice or justices of the peace for the same county, riding, division, liberty, city, borough, or place, to answer to the charge contained in the said information, and to be further dealt with according to law; and it shall not be necessary to make such warrant returnable at any particular time, but the same may remain in force

until it shall be executed ; and such warrant may be executed by apprehending the offender at any place within the county, riding, division, liberty, city, borough, or place within which the justice or justices issuing the same shall have jurisdiction, or in case of fresh pursuit at any place in the next adjoining county or place, and within seven miles of the border of such first-mentioned county, riding, division, liberty, city, borough, or place without having such warrant backed as hereinafter mentioned ; and in all cases where such warrant shall be directed to all constables or other peace officers within the county or other district within which the justice or justices issuing the same shall have jurisdiction, it shall be lawful for any constable, headborough, tithingman, borsholder, or other peace officer for any parish, township, hamlet, or place within such county or district to execute the said warrant within any parish, township, hamlet, or place situate within the jurisdiction for which such justice or justices shall have acted when he or they granted such warrant, in like manner as if such warrant were directed specially to such constable by name, and notwithstanding the place in which such warrant shall be executed shall not be within the parish, township, hamlet, or place for which he shall be such constable, headborough, tithingman, borsholder, or other peace officer : Provided always, that no objection shall be taken or allowed to any such warrant for any defect therein in substance or in form, or for any variance between it and the evidence adduced on the part of the prosecution before the justice or justices who shall take the examinations of the witnesses in that behalf, as hereinafter men-

Sect. 10.

How and where warrant may be executed.

No objection allowed for alleged defect in form, &c.

Sect. 10. tioned ; but if any such variance shall appear to such justice or justices to be such that the party charged has been thereby deceived or misled, it shall be lawful for such justice or justices, at the request of the party so charged, to adjourn the hearing of the case to some future day, and in the meantime to remand the party so charged, or to admit him to bail, in manner hereafter mentioned.

The warrant must be under the hand and seal of the justice issuing it, and it may be directed to any constable or "other person by name ;" and in this respect no change has been made in the law. If the person to whom it is addressed be not a constable or peace officer, he is not compellable to execute the warrant, and of course is not punishable if he refuses to execute it. 2 *Hawk.* c. 13, s. 27. But if it be directed to the constable or other peace officer, the constable or officer is bound to execute it, and may do so at any place within the jurisdiction of the justices granting the warrant ; or if the offender cannot be found therein, the warrant may be backed by a justice having jurisdiction in the place where the offender is supposed to be, and then executed (see s. 11). Usually the warrant is directed to the constable without naming him, and to all other constables and peace officers within the county or other jurisdiction of the justices issuing it, and any one of such persons may execute it in the same manner as if it were addressed by name to all or to each of them.

**Execution
of warrant.**

The warrant remains in force until it is executed ; and when executed the constable cannot discharge himself of the offender otherwise than by taking him before a magistrate. 2 *Hawk.* c. 13, s. 7. In case of fresh pursuit, that is, in case of the escape of the offender out of custody into the next adjoining county or place, and within seven miles of the border of the county, &c., within which the justices issuing the warrant have jurisdiction, the warrant may be executed without being backed as in ordinary cases, but if the offender be beyond seven miles from the border, he cannot be apprehended until the warrant is backed in the ordinary manner. This provision is of great practical advantage in securing the more speedy apprehension of criminals.

The distance of seven miles of the border of the county referred to in this section will be measured not by the nearest practicable road, but by a straight line from point to point on

the horizontal plain, "as the crow flies." *Lake v. Butler*, 24 L. J. R. (N.S.) Q. B. 273; 19 J. P. 692; *Stokes v. Grissell*, 23 L. J. R. (N.S.) C. P. 141; 18 J. P. 378; *Reg. v. Saffron Walden*, 9 Q. B. 76; 15 L. J. R. (N.S.) M. C. 115; 10 J. P. 499; *Duignan v. Walker*, 5 Jur. (N.S.) 976.

Note to
Sect. 10.

The 29 Car. 2. c. 7, s. 6, enacts "that no person upon the Lord's day shall serve or execute any writ, process, warrant, order, judgment, or decree, (except in cases of treason, felony, or breach of the peace,) but that the serving of any such writ, process, warrant, order, judgment, or decree, shall be void to all intents and purposes whatsoever."—This statute authorizes the arrest on a Sunday of all persons who have been guilty of indictable offences; therefore a person guilty of an indictable offence may be apprehended on a Sunday, whether such offence involve an actual or only a constructive breach of the peace. *Rawlins v. Ellis*, 16 L. J. (N.S.) Exch. 5; 16 M. & W. 172.

Arrest on
Sunday.

With regard to an arrest without a warrant.—It has been held that a constable is not justified in arresting without warrant, a person who is charged by another with having committed a felony unless the charge be reasonable. If he arrest upon an unreasonable charge he is answerable for the injury in an action at the suit of the person so arrested. *Hogg v. Ward*, 22 J. P. 626. So a magistrate has no authority to arrest a person guilty on his own view of a misdemeanor, where there is no breach of the peace, and where it is not necessary to arrest the offender to prevent a renewal of the act. *King v. Poe*, 30 J. P. 678. Further on this point see note, *ante*, p. 334.

Arrest
without
warrant.

The proviso to this section is the same as the proviso at the end of section 9.

11. If the person against whom any such warrant shall be issued as aforesaid shall not be found within the jurisdiction of the justice or justices by whom the same shall be issued, or if he shall escape, go into, reside, or be or be supposed or suspected to be, in any place in England or Wales out of the jurisdiction of the justice issuing such warrant, it shall and may be lawful for any justice of the peace for the county or place into which such person shall so escape or go, or in which he shall reside or be, or be supposed or suspected to be, upon proof alone

Regulations
as to the
backing of
warrants.

Sect. 11. being made on oath of the handwriting of the justices issuing such warrant, to make an indorsement (K.) on such warrant, signed with his name, authorizing the execution of such warrant within the jurisdiction of the justice making such indorsement, and which indorsement shall be sufficient authority to the person bringing such warrant, and to all other persons to whom the same was originally directed, and also to all constables and other peace officers of the county or place where such warrant shall be so indorsed, to execute the same in such other county or place, and to carry the person against whom such warrant shall have issued, when apprehended, before the justice or justices of the peace who first issued the said warrant, or before some other justice or justices of the peace in and for the same county, riding, division, city, liberty, borough, or place, or before some justice or justices of the county, riding, division, liberty, city, borough, or place where the offence in the said warrant mentioned appears therein to have been committed: Provided always, that if the prosecutor, or any of the witnesses upon the part of the prosecution, shall then be in the county or place where such person shall have been so apprehended, the constable or other person or persons who shall have so apprehended such person may, if so directed by the justice backing such warrant, take and convey him before the justice who shall have so backed the said warrant, or before some other justice or justices of the same county or place; and the said justice or justices may thereupon take the examinations of such prosecutor or witnesses, and proceed in every respect in manner hereinafter directed with respect to persons charged before a justice or justices

Proviso.

of the peace with an offence alleged to have been committed in another county or place than that in which such persons have been apprehended. **Sect. 11.**

This section relates exclusively to the backing of warrants to be executed in some county in England to which the offender may have fled, or in which he may be. The form of indorsement in backing a warrant is usually printed on the back of the warrant, and the magistrate backing it has only to fill in the name of the constable and the name of the county or other jurisdiction, and to sign it. After being backed, not only the constable who brings the warrant, and all constables and other peace officers of the county where it is issued, but also all constables and other peace officers of the county where it is backed, may execute it. If, after being backed, the offender be not found within the jurisdiction, the constable may go to any other county or jurisdiction in which he may be supposed to be, and get it backed by a justice of that county, &c., and then execute it, and so on in any county, &c., in England, until the offender is taken. Or if the offender have gone back to the original county, &c., it may be there executed notwithstanding its having been backed in other counties. **Backing warrants in England.**

Supposing the offender to have been apprehended, the constable will take him before a justice of the county in which the offence was committed, there to be dealt with, unless the justice backing the warrant by a special indorsement shall have directed otherwise, in which case the offender must be taken before a justice of the county, &c., in which the warrant was backed. Unless, however, there are any witnesses within the jurisdiction of the justices backing the warrant, it is not usual to have such special indorsement; the fact that there are any such witnesses should therefore be communicated to the justice when the warrant is backed, in order that he may exercise his discretion in the matter.

If the backing be specially indorsed, the offender, if apprehended within the jurisdiction of a justice making the indorsement, must be taken before that justice or some other justice of the county, &c., who will then proceed in the manner directed by section 22, *post*.

By 6 & 7 Vict. c. 34, s. 1, if any person be charged with having committed against the laws of any part of Her Majesty's dominions, not being part of the United Kingdom of Great Britain and Ireland, any felony (16 & 17 Vict. c. 118), and against whom a warrant shall have been issued for such offence, by any person having lawful authority to issue the **Apprehension of offenders in colonies escaping into England.**

**Note to
Sect. 12.**Backing
warrants in
Ireland.

This section relates to the backing of English warrants in Ireland, or the converse. The only difference between this and the case provided for by the previous section is, that the justice in Ireland backing the warrant cannot direct the offender to be taken before him or any other justice of the same county, &c. The constable, on apprehending the accused in Ireland, must forthwith convey him to England, and take him before the justice who issued the warrant, or before some justice of the same county, there to be dealt with.

Irish war-
rants.

By the Petty Sessions (Ireland) Act, 14 & 15 Vict. c. 93, s. 27, whenever any warrant addressed to the sub-inspector of constabulary, or to any head or other constable, shall be certified and transmitted to the inspector-general, the manner in which it shall be backed for execution elsewhere shall be as follows:

“Whenever it shall appear that the said person or his goods are to be found in some place in England or Scotland, or in the Isles of Man, Guernsey, Jersey, Alderney, or Sark, it shall be lawful for the said inspector-general, or for either of the said deputy-inspectors-general, in like manner as before, to indorse the warrant, according to form (G. C.,) and it shall thereupon be lawful for any justice or officer having power to issue any warrant, or process in the nature of a warrant, for the arrest of offenders in any of the said places, upon proof on oath of the handwriting either of the inspector or deputy-inspector-general by whom the same shall have been indorsed, or of the justice by whom the warrant shall have been issued, to indorse the same, according to the form (G. C.,) authorizing its execution within the jurisdiction of the said justice or officer by the person bringing the same, or by any constable or other peace officer of the county or place where it shall be so indorsed.”

By 30 Vict. c. 19, s. 1, in the absence of the inspector-general and deputy-inspector-general of constabulary, it shall be lawful for any one of the assistant inspectors-general of constabulary, in Ireland, to back, indorse, and transmit for execution, all warrants issued under the 14 & 15 Vict. c. 93, in like manner as the inspector-general and deputy-inspector-general were thereby authorized to do; and thereupon the same shall be executed in like manner as a warrant backed by the inspector-general or deputy-inspector-general.

English
warrants
may be
backed in
the Isles of

13. If any person against whom a warrant shall be issued in any county, riding, division, liberty, city, borough, or place in England or Wales, by

Sect. 13. diction, and to convey such offender, when apprehended, into the county or district wherein the justice or person who issued such warrant or process shall have jurisdiction, and carry him before such justice or person, or before some other justice or person within the same county or district who shall have jurisdiction to commit such offender to prison for trial, and such justice or person may thereupon proceed in such and the same manner as if the said offender had been apprehended within his jurisdiction.

Backing warrants in Channel Islands.

This section provides for the backing of English warrants in the Isles of Man, Guernsey, Jersey, Alderney, or Sark; and the converse in regard to each of those islands. The note to section 12 is equally applicable to this section.

Doubts having arisen as to the proper authority to indorse warrants in the Channel Islands, it was enacted by the 14 & 15 Vict. c. 55, s. 18, as follows:—"And whereas by section thirteen of the Act of the session holden in the eleventh and twelfth years of Her Majesty, chapter forty-two, provision is made for indorsing such warrants as therein mentioned by any officer within any of the Isles of Guernsey, Jersey, Alderney, and Sark, who shall have jurisdiction to issue any warrant, or process in the nature of a warrant, for the apprehension of offenders, and other provisions are made in the same Act, and in the Act of the same year of Her Majesty, chapter forty-three, by reference to the enactment of the said session, and doubts have arisen by whom warrants should be indorsed in the said isles pursuant to the said provisions: Be it enacted, that the bailiffs of Jersey and Guernsey respectively, or in their respective absence the lieutenant bailiffs of such isles respectively, within their respective bailiwicks or jurisdictions, the Judge of Alderney, or in his absence any jurat of such island within such island, and the Seneschal of Sark, or in his absence his deputy within such island, shall have all such power and authority to indorse warrants as by the said Acts respectively is given or expressed or intended to be given to any officer within any of such isles having jurisdiction to issue any warrant or process in the nature of a warrant for the apprehension of offenders, and for such purpose shall have authority to administer an oath, and all the provisions of the said Acts shall be construed as if the officers

authorized to indorse warrants by this enactment had been so authorized by the said section of the first-mentioned Act of the eleventh and twelfth years of Her Majesty."

**Note to
Sect. 13.**

The statute 31 & 32 Vict. c. 107, s. 4, *post*, page 442, makes provision for backing Irish warrants in the Channel Islands, and for backing Channel Island warrants in Ireland.

Further, with respect to this section, see 11 & 12 Vict. c. 43, ss. 3 and 37, and notes thereon.

14. And be it declared and enacted, that if any person against whom a warrant shall be issued by any justice of the peace for any county or place within England or Wales or Ireland, or by any judge of Her Majesty's Court of Queen's Bench or justice of oyer and terminer or gaol delivery in England or Ireland, for any crime or offence against the laws of those parts respectively of the United Kingdom of Great Britain and Ireland, shall escape, go into, reside, or be, or be supposed or suspected to be, in any place in that part of the said United Kingdom called Scotland, it shall be lawful for the sheriff or steward depute or substitute, or any justice of the peace of the county or place where such person or persons shall go into, reside, or be, or be supposed or suspected to be, to indorse (K.) the said warrant in manner hereinbefore mentioned, or to the like effect, which warrant so indorsed shall be a sufficient authority to the person or persons bringing such warrant, and to all persons to whom such warrant was originally directed, and also to all sheriffs officers, stewards officers, constables and other peace officers of the county or place where such warrant shall be so indorsed, to execute the same within the county or place where it shall have been so indorsed, by apprehending the person against whom such warrant shall have been granted, and to convey him

English or
Irish war-
rants may
be backed
in Scotland.

Warrant so
indorsed to
be valid.

Sect. 14. into the county or place in England, Wales, or Ireland, where the justice or justices who first issued the said warrant shall have jurisdiction in that behalf, and to carry him before such justice or justices or before any other justice or justices of the peace of and for the same county or place, to be there dealt with according to law, and which said justice or justices are hereby authorized and required thereupon to proceed in such and the same manner as if the said offender had been apprehended within his or their jurisdiction.

Backing warrants in Scotland.

This section provides for the backing of English warrants and also for the backing of Irish warrants in Scotland. As regards the former, the observations in the note to section 12 apply also to this section.

The 31 & 32 Vict. c. 107, s. 4, *post*, p. 442, makes provision for backing Scotch warrants in the Channel Islands, and for backing Channel Island warrants in Scotland.

Scotch warrants may be backed in England or Ireland.

15. If any person against whom a warrant shall be issued by the lord justice general, lord chief justice clerk, or any of the lords commissioners of judiciary, or by any sheriff or steward depute or substitute, or justice of the peace, of that part of the United Kingdom of Great Britain and Ireland called Scotland, for any crime or offence against the laws of that part of the United Kingdom, shall escape, go into, reside, or be, or shall be supposed or suspected to be, in any county or place in England or in Ireland, it shall be lawful for any justice of the peace in and for the county or place into which such person shall escape or go, or where he shall reside or be, or shall be supposed or suspected to be, to indorse (K.) the said warrant in manner hereinbefore mentioned, and which said warrant so

indorsed shall be a sufficient authority to the person or persons bringing the same, and to all persons to whom the same was originally directed, and also to all constables and other peace officers of the county or place where the justice so indorsing such warrant shall have jurisdiction, to execute the said warrant in the county or place where it is so indorsed, by apprehending the person against whom such warrant shall have been granted, and to convey him into the county or place in Scotland next adjoining to that part of the United Kingdom called England, and carry him before the sheriff or steward depute or substitute, or one of the justices of the peace of such county or place, and which said sheriff, steward depute or substitute, or justice of the peace, is hereby authorized and required thereupon to proceed in such and the same manner, according to the rules and practice of the law of Scotland, as if the said offender had been apprehended within such county or place in Scotland last aforesaid.

Sect. 15.

Warrants so
indorsed to
be valid.

16. If it shall be made to appear to any justice of the peace, by the oath or affirmation of any credible person, that any person within the jurisdiction of such justice is likely to give material evidence for the prosecution, and will not voluntarily appear for the purpose of being examined as a witness at the time and place appointed for the examination of the witnesses against the accused, such justice may and is hereby required to issue his summons (L.) to such person, under his hand and seal, requiring him to be and appear at a time and place mentioned in such summons, before the said justice, or before such other justice or justices of the peace

Power to
justices to
summon
witnesses to
attend and
give evi-
dence.

Sect. 16. for the same county, riding, division, liberty, city, borough, or place as shall then be there, to testify what he shall know concerning the charge made against such accused party; and if any person so summoned shall neglect or refuse to appear at the time and place appointed by the said summons, and no just excuse shall be offered for such neglect or refusal, then (after proof upon oath or affirmation of such summons having been served upon such person, either personally or by leaving the same for him with some person at his last or most usual place of abode), it shall be lawful for the justice or justices before whom such person should have appeared to issue a warrant (L. 2) under his or their hands and seals to bring and have such person at a time and place to be therein mentioned before the justice who issued the said summons, or before such other justice or justices of the peace for the same county, riding, division, liberty, city, borough, or place as shall then be there, to testify as aforesaid, and which said warrant may, if necessary, be backed as hereinbefore is mentioned, in order to its being executed out of the jurisdiction of the justice who shall have issued the same; or if such justice shall be satisfied by evidence upon oath or affirmation that it is probable that such person will not attend to give evidence without being compelled so to do, then, instead of issuing such summons, it shall be lawful for him to issue his warrant (L. 3) in the first instance, and which, if necessary, may be backed as aforesaid; and if on the appearance of such person so summoned before the said last-mentioned justice or justices, either in obedience to the said summons or upon being brought before him or them by virtue

If summons not obeyed, warrant may be issued to compel attendance.

In certain cases warrant may be issued in the first instance.

Persons appearing on summons &c., refusing to be examined may be committed.

of the said warrant, such person shall refuse to be examined upon oath or affirmation concerning the premises, or shall refuse to take such oath or affirmation, or, having taken such oath or affirmation, shall refuse to answer such questions concerning the premises as shall then be put to him, without offering any just excuse for such refusal, any justice of the peace then present, and having there jurisdiction, may by warrant (L. 4) under his hand and seal commit the person so refusing to the common gaol or house of correction for the county, riding, division, liberty, city, borough, or place where such person so refusing shall then be, there to remain and be imprisoned for any time not exceeding seven days, unless he shall in the meantime consent to be examined and to answer concerning the premises. Sect. 16.

This section provides for four possible circumstances:—
 Summons L. 1, for compelling by summons the attendance of an unwilling witness. Warrant L. 2, for the apprehension of such witness if he do not obey the summons. Warrant L. 3, for the bringing of such witness before the justices to be examined on a warrant in the first instance without a previous summons. Warrant L. 4, for the commitment of a witness who refuses to be examined or to be sworn without offering any just excusal. Summoning witnesses.

The justices can summon a witness only when such witness is within their jurisdiction. When the witness is beyond their jurisdiction and will not attend without a summons, a Crown office subpoena should be obtained. But if a warrant be issued (L. 2 and L. 3), the witness may be taken under it out of the jurisdiction of the justices, on its being backed, in the same manner as an ordinary warrant to apprehend. See sections 11—15.

L. 4 applies to a witness who attends upon a summons or a warrant; but apparently makes no provision for the possible case of a witness who is present without either a summons or a warrant. It would seem however that the justices have power in such a case to commit on a refusal to give evidence or to be sworn. As to a witness refusing to enter into a re-

Note to Sect. 16. cognizance to attend at the trial and give evidence, see section 20, *post*.

Service of summons. A summons for the attendance of a witness is served personally, or, if that cannot be effected, by being left with some person, as his wife or servant, or other adult member of his family, at his last known place of abode; and a witness cannot refuse to attend on being summoned or subpoenaed until his expenses are paid. *Rex v. James*, 1 C. & P. 322.

How when witness is in gaol. By section 9 of 16 & 17 Vict. c. 30, the secretary of state or any judge of the Queen's Bench, Common Pleas, or Exchequer, upon application by affidavit, may issue a warrant or order for bringing up any prisoner confined in any gaol or under any sentence, or under commitment for trial or otherwise (except under process in any civil action, suit, or proceeding), before any court of justice, to be examined as a witness in any cause or matter, civil or criminal.

Swearing witnesses. A witness cannot be sworn unless he have a religious belief, and no one can give evidence without being sworn unless he belongs to one of the classes for whom special provision is made by the legislature. *Maden v. Catanach*, 7 Jur. (N.S.) 1107.

As to the examination of witnesses.

17. In all cases where any person shall appear or be brought before any justice or justices of the peace charged with any indictable offence, whether committed in England or Wales, or upon the high seas, or on land beyond the sea, or whether such person appear voluntarily upon summons or have been apprehended, with or without warrant, or be in custody for the same or any other offence, such justice or justices, before he or they shall commit such accused person to prison for trial, or before he or they shall admit him to bail, shall in the presence of such accused person, who shall be at liberty to put questions to any witness produced against him, take the statement (M.) on oath or affirmation of those who shall know the facts and circumstances of the case, and shall put the same into writing, and such depositions shall be read over to and signed respectively by the witnesses who shall have been so examined,

and shall be signed also by the justice or justices taking the same; and the justice or justices before whom any such witness shall appear to be examined as aforesaid shall, before such witness is examined, administer to such witness the usual oath or affirmation, which such justice or justices shall have full power and authority to do; and if upon the trial of the person so accused as first aforesaid, it shall be proved, by the oath or affirmation of any credible witness, that any person whose depositions shall have been taken as aforesaid is dead, or so ill as not to be able to travel, and if also it be proved that such deposition was taken in the presence of the person so accused, and that he or his counsel or attorney had a full opportunity of cross-examining the witness, then, if such deposition purport to be signed by the justice by or before whom the same purports to have been taken, it shall be lawful to read such deposition as evidence in such prosecution, without further proof thereof unless it shall be proved that such deposition was not in fact signed by the justice purporting to sign the same.

Sect. 17.
Justice to administer oath or affirmation.

Depositions of persons who have died, or who are absent, may, in certain cases, be read in evidence.

Under this section the mode of proceeding in the examination of witnesses is the same in all indictable offences, whether they be treason, felony, or misdemeanors, and wherever they may be committed, whether in England, on the high seas, or beyond the seas. The examinations must be taken in the presence of the prisoner after the witnesses have been sworn or have made an affirmation,—be reduced into writing, and read over to the witness, and be signed by him and also by the justice before whom they were taken; and no question or answer can be inserted on the depositions unless it be asked and the answer given in the presence of the prisoner.

Examination of witnesses, how taken.

It would be always desirable when a person of weak intellect is examined before a magistrate in a case of felony, that the magistrate's clerk should take down in the depositions

Note to Sect. 17.

How if an *alibi* be set up.

Caption.

Right of prisoner to compare depositions.

Reading depositions before jury

the questions put by the magistrate and the answers given by the witness, as to the witness's capacity to take an oath. *Reg. v. Painter*, 2 Car. & K. 319, per *Wilde*, C. J. See also *Reg. v. Johnson*, 2 Car. & K. 355.

In a case tried before Mr. Justice *Hannan* at the Hampshire Assizes it was sought to prove an *alibi*, and it appearing that the witnesses called for the purpose had not been examined before the magistrate, the learned judge remarked: "In such cases it was a grievous mistake that these witnesses were not called before the magistrates; and the attorney engaged in the defence acted very wrongly in not calling them, as it left their evidence open to grave suspicion."—*Vide Law Times*, 12 March, 1870, page 367.

The depositions of each witness should have a separate caption, showing on what charge it was taken, otherwise it will be inadmissible in evidence. *Reg. v. Newton*, 1 F. & F. 641.

The prisoner has a right to compare the written depositions with the verbal statements of the witnesses; and therefore in *Reg. v. Christopher*, 19 L. J. R. (N.S.) 103, M. C.; 14 J. P. 83, in which the prisoner being charged with felony before a magistrate, minutes of the examination and of the examination of the witnesses were taken in writing under the inspection of the magistrate,—these minutes were taken to the magistrate's office to a clerk, who proceeded to draw up the depositions,—the witnesses attended at the office, and the clerk in order to make the depositions complete, put questions to the witnesses and inserted their answers in the depositions, neither the magistrate nor the prisoner being present,—the depositions having been so written out the witnesses again appeared before the magistrate, and in the presence of the prisoner were resworn, and the depositions were read over to them, and a full opportunity was given for examination before the depositions were signed by the witnesses,—it was held that the counsel for the prisoner was entitled without putting in the depositions to ask a witness whether he had made a certain statement to the clerk in answer to a question put by the latter in the course of writing the depositions, although, according to the evidence, the answer would have appeared on the depositions.

The word "trial," as used in the sentence, "if upon the trial of the person so accused," coupled with the word "prosecution" in the latter part of the sentence, shows that it was intended that the depositions might be read as evidence before the grand jury; and therefore the deposition of a witness who is too ill to travel to attend at the trial of a prisoner may be read as evidence before the grand jury as well as

before the petit jury, by virtue of this section. *Reg. v. Clements*, 20 L. J. R. (N.S.) 193 M. C.; 15 J. P. 338.

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If the deposition of a witness on a charge for an indictable offence has been regularly taken before a magistrate, and at the time of trial the witness is dead, or so ill as not to be able to travel, the deposition may be read as evidence against the prisoner. So also if it be proved that the witness is kept away by the prisoner's procurement. Such deposition however is not admissible on the ground merely that the prosecutor, after using every possible endeavour, cannot find the witness. Again, if procurement of the absence be shown, and there are several prisoners, the deposition is evidence against those only who are proved to have procured the absence. *Reg. v. Scalf, Smith and Rooke*, 17 A. & E. 238; 20 L. J. R. (N.S.) M. C. 222; 2 Den. C. C. 281; 15 J. P. 581.

Admissibility of depositions in evidence.

This section merely specifies two cases in which the depositions may be admitted in evidence without the attendance of the witnesses; and the case of a witness abroad is not one of those cases. Therefore a deposition taken before a magistrate on a charge of felony against a prisoner cannot be read in evidence against him on his trial, merely because the witness is absent and resident in a foreign country. *Reg. v. Austin*, 25 L. J. R. (N.S.) M. C. 48; 20 J. P. 54; 1 Dears. & Bell, C. C. 612. But per *Coleridge, J.*, the statute is not to be taken as limiting the admissibility of depositions to the cases mentioned in it, for it merely specifies two cases. There may be many other cases. *Id.*

The deposition of a witness taken on one charge may be used in an indictment for another, as in *Reg. v. Beeston*, 24 L. J. R. M. C. (N.S.) 5, where the prisoner was charged before a magistrate with wounding A. with intent, &c., and A.'s deposition was taken; A. afterwards died of the wound, and the prisoner was indicted for his murder; when it was held that on the trial for the murder the deposition of A. might be read in evidence, as, although it was not on the same technical charge, it was taken in the same case, and the prisoner had had a full opportunity of cross-examination.

As to the deposition of an absent witness who is ill, see *Reg. v. Mark Cockburn*, 3 Jur. (N.S.) 447; 26 L. J. R. (N.S.) M. C. 136; 21 J. P. 358; 1 Dears. & Bell, C. C. 203; 7 Cox, C. C. 265. In that case it was held that the deposition of a witness who has an attack of paralysis, and is unable to hear or speak, or give evidence, might be received, though it would not endanger his life to travel or to be brought into the court.

But in a case reserved it was held that the deposition of a witness ought not to have been received under 11 & 12 Vict.

**Note to
Sect. 17.**

c. 42, s. 17, under the following state of circumstances: The deposition, properly taken before the committing magistrate, with full opportunity of cross-examination by the accused, was allowed to be read at the trial under the following circumstances in the absence of the witness who was alive. It was proved by a medical man that the witness was seventy-four years of age, and that he thought that she would faint at the idea of coming into court, and that seeing so many faces would be dangerous to her, and that she was so nervous that it might be dangerous to her to be examined at all, but that he thought she could go to London to see a doctor without difficulty or danger. *Reg. v. Farrall*, 30 L. T. (N.S.) 404; 38 J. P. 390; L. R. 2 C. C. R. 116.

Where a prisoner is charged before a magistrate with obtaining money by false pretences, and is afterwards indicted for uttering a forged promissory note, the charges arising out of one and the same transaction, and being, in fact, identical, and the prisoner having had the opportunity of cross-examination before the magistrate, the deposition of a witness, taken at such hearing, and who was afterwards unfit to travel to give evidence, was held admissible and might be read at the trial for uttering the forged promissory note. *Reg. v. Jenkin Williams*, 12 C. C. C. 101.

Signature
of deposi-
tions.

It is the magistrate's duty when the deposition has been made and signed by the witness, to put his signature to it, and to do so as each deposition is made. Per Lord *Denman*, C. J., in *Ex parte Joshua Fletcher*, 13 L. J. (N.S.) M. C. 70; 8 J. P. 854; and it is sufficient if the signature of the committing magistrate be attached to the conclusion of the depositions of the several witnesses in the form in schedule M. of 11 & 12 Vict. c. 42, and his signature need not be subscribed to the depositions of each witness separately. *Reg. v. Wm. Parker*, 21 L. T. (N.S.) 724; 39 L. J. M. C. 60; 39 J. P. 148; 11 C. C. C. 478; *W. N.*, 1870, p. 24; he however must sign the deposition of a witness at the foot of such deposition. *Reg. v. Richards*, 4 F. & F. 860.

Admis-
sibility of
depositions
in evidence.

A witness, who had been examined before the justices, came up five miles from the country, and gave her evidence before the grand jury. She went back at night and returned in the morning for two days, during which she was waiting for the trial to come on. At the trial, on the third day, it was proved that she had been attacked that morning with a bowel complaint, and that when the police left her residence on that day she was unable to travel. Held, that her deposition was not admissible. *Reg. v. Harris*, 4 Cox, C. C. 440.

A witness, who had been examined before the justices, was proved at the trial to have been in bed the night before with

a cold and inflammation, and that on a person calling at his house that morning he had been told that he was very bad. Held, that the deposition could not be received. *Reg. v. Ulmer and Hooper*, 4 Cox, C. C. 442.

A witness, who had been examined before the justices, was proved at the trial to have been delivered of a child a week before that day, and that she was unable to travel. Held that, under section 17, her depositions might be received. *Reg. v. Harvey*, 4 Cox, C. C. 441.

Where it was proved, but not by a medical man, that a witness was daily expecting her confinement, that she was poorly otherwise, and that she was, therefore, too ill to travel from her residence to the place of trial, a distance of twenty-five miles, and her deposition was admitted in evidence, under 11 & 12 Vict. c. 42, s. 17, it was held that it was for the presiding judge, in his discretion, to determine whether the evidence was sufficient to admit the deposition in evidence under the statute, and that in this case he had properly exercised such discretion. *Reg. v. Stevenson*, 8 Jur. (N.S.) 522.

A police constable, whose deposition was tendered, was proved to have been seen by another constable ill in bed on the morning before, and on the morning of the trial. The witness did not know how long he had been confined to his bed, or how long he had been off duty, but a medical man, not present, had given a certificate as to his state of health; but in the absence of the medical man it was held that there was not sufficient proof, on oath, of the witness being "so ill as not to be able to travel" to let in the deposition of the constable under 11 & 12 Vict. c. 42, s. 17. *Reg. v. Welton*, 27 J. P. 24.

Depositions
of absent
witness.

So a deposition of a witness taken in the following manner, upon the committal of a prisoner for trial, was held irregular and inadmissible in evidence at the trial. A note of the evidence before the committing magistrate, consisting of the witnesses' names and the heads of what each could prove, was taken in open court. Then the prisoner and the witnesses were taken into a room, and another clerk examined the witnesses from the note in the absence of the magistrate, and there wrote down the answers, and the witnesses then signed the paper, and the prisoner was not asked if he would then cross-examine the witnesses, but he did cross-examine them by his attorney in court. The prisoner and witnesses were then again taken into court before the magistrate, and the depositions read over to them; the magistrate then asked the prisoner in the usual way what he had to say, and signed the depositions. *Reg. v. Watts*, 9 L. T. (N.S.) 453; 33 L. J., M. C., 63; 27 J. P. 821.

Note to
Sect. 17.

Note to Sect. 17.

The following very pertinent remarks in reference to the case of *Reg. v. Watts, supra*, are taken from the "Law Times":—"There is no duty devolving upon justices of greater practical importance than that of seeing that the depositions of the witnesses, upon whose evidence they commit a party to trial, are carefully, impartially, and formally taken. By a neglect of this duty the cruellest injustice may be done, and the innocent may be involved in the punishment due alone to the guilty. Those who are at all familiar with the practice of the criminal law, are aware that the depositions taken by the committing justice may, in the event of the subsequent death or absence through illness of the witnesses, be read upon the trial as evidence against the prisoner, and that here, even in a capital case, an accused may be convicted entirely upon the proof contained in the depositions alone:" 39 L. T. 173.

Before, however, the depositions of a witness who is too ill to travel can be given in evidence before the grand jury, the judge who presides must, by evidence in the presence of the accused, satisfy himself of the existence of the facts which, under section 17 of 11 & 12 Vict. c. 42, make such depositions evidence. *Reg. v. Beaver*, 10 C. C. C. 274.

Pregnancy may create an "illness" within the meaning of 11 & 12 Vict. c. 42, s. 17, so as to give the presiding judge discretionary power to admit in evidence upon a criminal trial the deposition of a witness duly taken, who, owing to pregnancy, is proved to be unable to travel. *Reg. v. Wellings*, 26 W. R. 592; L. R. 3 Q. B. D. 426; 47 L. J. M. C. 100; and *Reg. v. Goodfellow*, 14 C. C. C. 326.

Power to take deposition of person dangerously ill, and not likely to recover, and to make same evidence in certain events, after death of such person.

Now, by 30 & 31 Vict. c. 35, s. 6, whenever it shall be made to appear to the satisfaction of any justice of the peace that any person dangerously ill, and in the opinion of some registered medical practitioner not likely to recover from such illness, is able and willing to give material information relating to any indictable offence, or relating to any person accused of any such offence, and it shall not be practicable for any justice or justices of the peace to take an examination or deposition in accordance with the provisions of the said Act of the person so being ill, it shall be lawful for the said justice to take in writing the statement on oath or affirmation of such person so being ill, and such justice shall thereupon subscribe the same, and shall add thereto by way of caption a statement of his reason for taking the same, and of the day and place when and where the same was taken, and of the names of the persons (if any) present at the taking thereof, and, if the same shall relate to any indictable offence for which any accused person is already committed or

bailed to appear for trial, shall transmit the same with the said addition to the proper officer of the court for trial at which such accused person shall have been so committed or bailed; and in all other cases he shall transmit the same to the clerk of the peace of the county, division, city, or borough in which he shall have taken the same, who is hereby required to preserve the same, and file it of record; and if afterwards, upon the trial of any offender or offence to which the same may relate, the person who made the same statement shall be proved to be dead, or if it shall be proved that there is no reasonable probability that such person will ever be able to travel or to give evidence, it shall be lawful to read such statement in evidence, either for or against the accused, without further proof thereof, if the same purports to be signed by the justice by or before whom it purports to be taken, and provided it be proved to the satisfaction of the court that reasonable notice of the intention to take such statement has been served upon the person (whether prosecutor or accused) against whom it is proposed to be read in evidence, and that such person, or his counsel or attorney, had or might have had, if he had chosen to be present, full opportunity of cross-examining the deceased person who made the same.

The provision to 30 & 31 Vict. c. 35, s. 6, overrides the whole section, and the statute cannot be read in evidence without proof of notice having been given to the accused before it is taken; and the statute has no operation in the case of a deposition taken while the accused person is keeping out of the way, as the notice is required to be given to the accused before the taking of the statement and not simply before reading it. *Reg. v. Thomas Quigley*, 18 L. T. (N.S.) 211.

The deceased at the time of making the declaration must have no hope of recovery, and the declaration will be inadmissible at the trial if the words "at present" be introduced, as they would be a qualification of the previous statement that the deceased had no hope of recovery. *Reg. v. Jenkins*, 20 L. T. (N.S.) 372.

By section 7 of the same Act, whenever a prisoner in actual custody shall have served or shall have received notice of an intention to take such statement as hereinbefore mentioned, the judge or justice of the peace by whom the prisoner was committed, or the visiting justices of the prison in which he is confined, may, by an order in writing, direct the gaoler 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 gaoler shall convey the prisoner accordingly, and the expenses of such con-

**Note to
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Provision
for the
prisoner
being present
at
taking of
statement.

**Note to
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veyance shall be paid out of the funds applicable to the other expenses of the prison from which the prisoner shall have been conveyed.

Where it is proved that the prisoner was present when the depositions of the deceased were taken, although the law will presume that as he was present he had a "full opportunity" within 11 & 12 Vict. c. 42, s. 17, evidence may nevertheless be offered to prove that he had not a "full opportunity" within the meaning of the section, so as to render the depositions inadmissible. *Reg. v. Peacock*, 12 C. C. C. 21.

Competence
of wit-
nesses.

With regard to the examination of parties to any proceeding before the justices, it is enacted by the Act to amend the law of evidence, 14 & 15 Vict. c. 99, s. 2, that, "on the trial of any issue joined, or of any matter or question, or on any inquiry arising in any suit, action, or other proceeding in any court of justice, or before any person having by law, or by consent of parties, authority to hear, receive, and examine evidence, the parties thereto, and the person in whose behalf any such suit, action, or other proceeding may be brought or defended, shall, except as hereinafter excepted, be competent and compellable to give evidence, either *vidé voce* or by deposition, according to the practice of the court, on behalf of either or any of the parties to the said suit, action, or other proceeding. But (section 3) nothing herein contained shall render any person who in any criminal proceeding is charged with the commission of any indictable offence, or any offence punishable on summary conviction, competent or compellable to give evidence for or against himself or herself, or shall render any person compellable to answer any question tending to criminate himself or herself, or shall in any criminal proceeding render any husband competent or compellable to give evidence for or against his wife, or any wife competent or compellable to give evidence for or against her husband." An information under 1 & 2 Will. 4, c. 32, s. 25, for unlawfully using snares for taking game is a criminal proceeding for an offence punishable on summary conviction within section 3 of 14 & 15 Vict. c. 99, and therefore the party charged is not rendered a competent witness by that statute. *Cattell, app., Ireson, resp.*, 4 Jur. (N.S.) 560; 22 J. P. 672.

As regards justices' jurisdiction over offences committed out of Great Britain by an officer of the government, see *Reg. v. Eyre, post*, p. 336.

The Prosecution of Offences Act, 1879 (42 & 43 Vict. c. 22), s. 5, *post*, p. 355, provides for the delivery of depositions, &c., to the director of public prosecutions in cases in which he has undertaken or is carrying on any criminal prosecution.

Libel.

Where one is charged with libel before a magistrate, and

offers to give evidence as to the truth of the alleged libel, and that the alleged facts were proper to be commented upon in a newspaper, the magistrates were held to have rightly rejected the evidence, as it was only proper to be received at the trial before a jury. *Reg. v. Flowers*, 44 J. P. 377; see also *Reg. v. Carden*, W. N. 1879, p. 183; 41 L. T. (N.S.) 504; 44 J. P. 119, on the same point.

**Note to
Sect. 17.**

18. After the examination of all the witnesses on the part of the prosecution as aforesaid shall have been completed, the justice of the peace or one of the justices by or before whom such examination shall have been so completed as aforesaid shall, without requiring the attendance of the witnesses, read or cause to be read to the accused the depositions taken against him and shall say to him these words, or words to the like effect: "*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, but whatever you say will be taken down in writing, and may be given in evidence against you upon your trial;*" and whatever the prisoner shall then say in answer thereto shall be taken down in writing (N.), and read over to him, and shall be signed by the said justice or justices, and kept with the deposition of the witnesses, and shall be transmitted with them as hereinafter mentioned; and afterwards upon the trial of the said accused person the same may, if necessary, be given in evidence against him without further proof thereof, unless it shall be proved that the justice or justices purporting to sign the same did not in fact sign the same: Provided always, that the said justice or justices before such accused person shall make any statement shall state to him, and give him clearly to understand, that he has nothing to hope from any

After examination of the accused, justice to read depositions taken against him, and caution him as to any statement he may make;

Sect. 18. promise of favour, and nothing to fear from any threat which may have been holden out to him to induce him to make any admission or confession of his guilt, but that whatever he shall then say may be given in evidence against him upon his trial notwithstanding such promise or threat: Provided nevertheless, that nothing herein enacted or contained shall prevent the prosecutor in any case from giving in evidence any admission or confession or other statement of the person accused or charged, made at any time, which by law would be admissible as evidence against such person.

and inform him that he has nothing to hope or fear from either promise or threat.

Prisoner's statement.

It was always previous to this statute the custom to make a statement to the prisoner to the effect of the first clause of this section before asking him if he wished to say anything in answer to the charge against him; but it was never before made the subject of legislative enactment. The statement is made to every prisoner, and if it be not made, any statement which he may make in answer to the charge cannot be entered on the depositions and received in evidence against him. The last proviso to the section, however, seems to override the whole section, and to render admissible in evidence against a prisoner any statement made by him either before a magistrate or on any other occasion, which, independently of the statute, would by law be admissible as evidence against him. *Reg. v. Sansome*, 19 L. J. R. (N.S.) 143 M. C.; 14 J. P. 273. In all cases where the prisoner's statement appears to have been taken down by the magistrate after the caution has been given, and in the manner directed by the statute, and there is no evidence that any threat or promise has been held out to induce a confession from the prisoner, the depositions may without further proof be read in evidence against the prisoner, although the magistrate did not comply with the direction in the first proviso, and give the prisoner to understand before he made his statement that he had no hope from any promise of favour, &c. *Id.*

The proviso which directs the justice before whom a prisoner shall make any statement to state to him and give him clearly to understand that he has nothing to hope from any promise of favour, and nothing to fear from any threat,

Note to
Sect. 18.

&c., was introduced because any confession which a prisoner might be induced by any promise or threat to make, could not be given in evidence against him. *Reg. v. Kingston*, 4 Car. & P. 387; *Reg. v. Dunn*, 4 Car. & P. 543; *Reg. v. Parratt*, 4 Car. & P. 570; *Reg. v. Mills*, 6 Car. & P. 146. It has been holden in *Reg. v. Sansome*, *supra*, that a statement made by the prisoner, amounting to a confession, after the ordinary caution mentioned in the first part of this section had been given to him, could be received in evidence against him because the latter caution was not a condition precedent to the admissibility of a confession before the committing magistrate, and was necessary only where there had been a previous threat or promise. If given it has the effect of rendering the confession admissible in evidence, notwithstanding such previous threat or promise; and if not given the case remains as at common law, and the confession is admissible in evidence unless the person were influenced by some previous threat or promise. So also in *Reg. v. Bond*, 19 L. J. R. (N.S.) 138 M. C., where, after taking the examinations of the witnesses on a charge of felony, the magistrate cautioned the prisoner in the language prescribed by this section, but did not, as the proviso requires, tell him that he had nothing to hope from any promise of favour or to fear from any threat. The prisoner then made a statement, which was taken down, but was not signed by him or by the magistrate. On his being again brought before the magistrate after a remand some questions were put to the witnesses by his attorney, who then objected to the statement being treated as the prisoner's statement, as an addition had been made to the evidence, and the prisoner being then asked if he wished to make any statement declined doing so: it was held that the prisoner's statement was admissible in evidence against him at the trial. So also in *Reg. v. Baldry*, 21 L. J. R. (N.S.) M. C. 130; 16 J. P. 276, in which a policeman who had a prisoner in custody said to him, "You need not say anything to criminate yourself; what you do say will be taken down, and used as evidence against you." This was held not to amount to a promise or threat so as to render a subsequent confession inadmissible. See also *Reg. v. Hannah Moore*, 21 L. J. R. (N.S.) 199; 16 J. P. 744, in which a maid servant made a confession on the inducement of her mistress, and it was received in evidence against her, because the offence charged (child murder) was not in any way connected with the management of the house, and the mistress could not be considered as a person having authority over the prosecution. In *Reg. v. Jane Sleeman*, 23 L. J. R. (N.S.) M. C. 19; 17 J. P. 776, the same principle was upheld. Whether an exhortation

Note to Sect. 18. to tell the truth is a mere exhortation to confess, is a question for the judge at the trial : per *Erle, J.*, in *Reg. v. Garner*, 18 L. J. R. (N.S.) M. C. 1; 12 J. P. 758.

This section does not render inadmissible in evidence on the trial a statement voluntarily made by the prisoner before a magistrate when brought up on application for a remand. *Reg. v. Stripp*, 25 L. J. R. (N.S.) M. C. 109; 1 Dear. C. C. 648; 20 J. P. 279. The caution and warning prescribed by the statute are intended to apply to the final proceeding only, when, after all the witnesses have been examined, the prisoner is asked whether he has anything to say in answer to the charge, and the statute does not exclude any declaration or voluntary statement made by the person accused before, during, or after the inquiry.

A prisoner's statement before the magistrates cannot, when tendered generally, be received as evidence on his behalf; it is evidence against him, but not for him. *Reg. v. Haines*, 1 F. & F. 86.

With reference to the caution to be given to the accused, the following may be noticed:—C. was examined on oath as a witness before commissioners having jurisdiction to inquire into the origin of fires, there being no charge against any individual, and no caution was given to the witness. C. signed his depositions, and he was afterwards charged with arson. On appeal to the Judicial Committee of the Privy Council from a judgment of the Queen's Bench for Quebec, Canada, it was held that the depositions of C. were admissible in evidence against C. on the trial, and that the caution required to be given to accused persons by 11 & 12 Vict. c. 42, s. 18, does not apply to witnesses who are asked questions tending to criminate them. *Reg. v. Coote*, 37 J. P. 708.

With reference to section 18 and the preceding section, the following opinion, which is understood to have been given on a case submitted by the Leeds justices to the then attorney-general, Sir A. E. Cockburn (late C. J.), and Crompton (afterwards Mr. Justice Crompton), Ellis and Hall, is inserted from 15 J. P. 463.

"1. The language of section 17 admits of the construction, and the interests of justice require, that magistrates should hear and examine such of the witnesses offered by a prisoner as appear (in the language of the statute) to know the facts and circumstances of the case.

"2. The time for calling on the prisoner to make his statement is when the examination of the witnesses for the prosecution is completed, and this will in general be the most rational and convenient time for taking the examinations of

the prisoner's witnesses, which ought to be taken *viva voce* and reduced to writing, and signed and certified in the same way as examinations taken on the part of the prosecution.

**Note to
Sect. 18.**

"3. The examination of the prisoner's witnesses should be transmitted to the sessions or assizes, with the examinations of witnesses for the prosecution.

"4. It is not the duty of the magistrates to bind over the prisoner's witnesses, with the exception of any who, though adduced for the prisoner, appear to be material for the prosecution.

"5. It is incumbent on the prosecutor to have in readiness at the trial all who have been bound over as witnesses for the prosecution.

"6. The costs of the prisoner's witnesses (*i.e.*, those of them not bound over for the prosecution) cannot be included in the examining magistrate's certificate of expenses;" and with regard to the admissibility of the depositions of witnesses deceased or disabled by illness from attending at the trial, the inclination of the learned counsel's opinion was that such admissibility is confined to the depositions of witnesses examined against the prisoner.

Now, by 30 & 31 Vict. c. 53, s. 3, the justice or justices, before he or they shall commit the accused person for trial or admit him to bail shall, immediately after obeying the directions of the 18th section of 11 & 12 Vict. c. 42, demand and require of the accused person whether he desires to call any witness; and if the accused person shall in answer to such demand, call or desire to call any witness or witnesses, such justice or justices shall, in the presence of such accused person, take the statement on oath or affirmation, both examination and cross-examination of those who shall be so called as witnesses by such accused person, and who shall know anything relating to the facts and circumstances of the case or anything tending to prove the innocence of such accused person, and shall put the same into writing; and such depositions of such witnesses shall be read over to and signed respectively by the witnesses who shall have been so examined, and shall be signed also by the justice or justices taking the same, and transmitted in due course of law with the depositions, and such witnesses not being witnesses merely to the character of the accused, as shall in the opinion of the justice or justices give evidence in any way material to the case, or tending to prove the innocence of the accused person, shall be bound by recognizance to appear and give evidence at the said trial; and afterwards, upon the trial of such accused person, all the laws now in force relating to the depositions of witnesses for the prosecution shall extend and

Accused person to be asked by justice if he desire to call witnesses.

Their depositions to be taken and returned to court of trial if accused person call any.

Note to Sect. 18. be applicable to the depositions of witnesses hereby directed to be taken.

As to the allowance of the expenses of witnesses, see section 5 of 30 & 31 Vict. c. 35, in the Appendix, *post*.

Place where examination taken to be deemed an open court, and no person to remain without consent.

19. And be it declared and enacted, that the room or building in which such justice or justices shall take such examinations and statement as aforesaid shall not be deemed an open court for that purpose; and it shall be lawful for such justice or justices, in his or their discretion, to order that no person shall have access to or be or remain in such room or building without the consent or permission of such justice or justices, if it appear to him or them that the ends of justice will be the best answered by so doing.

Right of accused to legal assistance.

This section only applies to the taking of the depositions, &c., against a prisoner, upon which occasion the justice may, if he deem it necessary to secure the ends of justice, exclude all strangers from the room. A justice of the peace acting under this statute does not act as a court of justice to determine the guilt or innocence of a defendant, but as an officer deputed by the law to enter upon a preliminary inquiry whether the defendant ought to be committed for trial or not. Therefore, a prisoner when examined before a magistrate on a charge of felony is not entitled as of right to have a person skilled in the law present as an advocate. It is in the discretion of the magistrates in each particular case whether they will admit or exclude an advocate for the accused. *Cox v. Coleridge*, 2 D. & R. 86; 1 B. & C. 37; *Rex v. Borrow*, 3 B. & A. 432; *Rex v. Staffordshire JJ.*, 1 Chit. 218; *Collier v. Hicks*, 2 B. & Ad. 663. Upon other occasions, when the justice acts judicially, as in hearing a charge for an offence punishable upon summary conviction, he does so in public, and in open court, to which every person has a right to resort. See 11 & 12 Vict. c. 43, s. 12; and also 42 & 43 Vict. c. 49, s. 20.

Power to justice to bind over the prosecutors and

20. It shall be lawful for the justice or justices before whom any such witness shall be examined as aforesaid to bind by recognizance (O. 1) the prose-

cutor and every such witness to appear at the next court of oyer and terminer or gaol delivery, or superior court of a county palatine, or court of general or quarter sessions of the peace, at which the accused is to be tried, then and there to prosecute, or to prosecute and give evidence, or to give evidence, as the case may be, against the party accused, which said recognizance shall particularly specify the profession, art, mystery, or trade of every such person entering into or acknowledging the same, together with his christian and surname, and the parish, township, or place of his residence, and if his residence be in a city, town, or borough, the recognizance shall also particularly specify the name of the street, and the number (if any) of the house in which he resides, and whether he is owner or tenant thereof or a lodger therein; and the said recognizance being duly acknowledged by the person so entering into the same, shall be subscribed by the justice or justices before whom the same shall be acknowledged, and a notice (O. 2) thereof signed by the said justice or justices shall at the same time be given to the person bound thereby; and the several recognizances so taken, together with the written information (if any), the depositions, the statement of the accused, and the recognizances of bail (if any) in every such case, shall be delivered by the said justice or justices, or he or they shall cause the same to be delivered to the proper officer of the court in which the trial is to be had, before or at the opening of the said court on the first day of the sitting thereof, or at such other time as the judge, recorder, or justice who is to preside in such court at the said trial shall order and appoint: Provided always, that

Sect. 20.

witnesses by
 recogni-
 zance.

Recogni-
 zance, depo-
 sitions, &c.,
 to be trans-
 mitted to
 the court in
 which the
 trial is to
 be had.

Sect. 20. if any such witness shall refuse or enter into or acknowledge such recognizance as aforesaid it shall be lawful for such justice or justices of the peace by his or their warrant (P. 1) to commit him to the common gaol or house of correction for the county, riding, division, liberty, city, borough, or place in which the accused party is to be tried, there to be imprisoned and safely kept until after the trial of such accused party, unless in the mean time such witness shall duly enter into such recognizance as aforesaid before some one justice of the peace for the county, riding, division, liberty, city, borough, or place in which such gaol or house of correction shall be situate : Provided nevertheless, that if afterwards, from want of sufficient evidence in that behalf or other cause, the justice or justices before whom such accused party shall have been brought shall not commit him or hold him to bail for the offence with which he is charged, it shall be lawful for such justice or justices, or any other justice or justices of the same county, riding, division, liberty, city, borough, or place, by his or their order (P. 2) in that behalf, to order and direct the keeper of such common gaol or house of correction where such witness shall be so in custody to discharge him from the same, and such keeper shall thereupon forthwith discharge him accordingly.

Witnesses refusing to enter into recognizance, may be committed.

Recognizance.

The prosecutor and witnesses are to be bound by recognizance (which may be taken out of court, see section 42 of Summary Jurisdiction Act, 1879, *ante*, p. 50) to appear at the next court of oyer and terminer or gaol delivery, or superior court of a county palatine, or court of general or quarter sessions of the peace at which the accused is to be tried, then and there to prosecute, &c. In preparing the recognizance, the court at which the prisoner is to be tried must therefore

be borne in mind, and the recognizance be filled up in accordance therewith. By 5 & 6 Vict. c. 38, s. 1, the sessions have no jurisdiction to try for any of the offences undermentioned, namely:—Abduction of women or girls; bigamy, and offences against the law relating to marriage; blasphemy, and offences against religion; bribery; concealing or endeavouring to conceal the birth of a child; conspiracy or combination—except conspiracies or combinations to commit an offence of which the sessions have jurisdiction, when committed by one person; deeds, &c., stealing or fraudently taking or injuring or destroying any document or written instrument, being or containing evidence of the title to any real estate, or any interest in lands, tenements, or hereditaments; felony, punishable with death; felony, which (when committed by a person not previously convicted of felony) is punishable with transportation for life; fire, setting, to crops of corn, grain or pulse, or to any part of a wood, coppice or plantation of trees, or to any heath, gorze, furze, or fern; composing, printing, or publishing libel, blasphemous, seditious, or defamatory; misprision of treason; murder, oaths, unlawful, administering or taking; parliament, offences against either house of; perjury and subornation of perjury; also, making or suborning any other person to make a false oath, affirmation or declaration, punishable as perjury or a misdemeanor; præmunire, offences subject to the penalty of; Queen's title, prerogative, person, or government, offences against; stealing, or fraudently taking, or injuring, or destroying records or documents belonging to any court of law or equity, or relating to any proceeding therein; treason; wills or testamentary papers, stealing, or fraudently destroying or concealing.

By the Debtors' Act, 1869, 32 & 33 Vict. c. 62, s. 20, any offence under that Act shall be deemed to be within the jurisdiction of the justices and recorders in general and quarter sessions of the peace.

The 4 & 5 Will. 4, c. 36, which established the Central Criminal Court, previously enacted (section 17), that the justices of the peace acting in and for the cities of London and Westminster, the liberty of the Tower of London, the borough of Southwark, and the counties of Middlesex, Essex, Kent, and Surrey, shall not, at their respective general or quarter sessions of the peace, or at any adjournment thereof, try any person or persons charged with any capital offence or with any of the following offences committed or alleged to be committed within the limits of this Act:—Abduction; abortion,—administering drugs or other things, or doing anything, with intent to cause or procure; assault with intent

Note to Sect. 20.

Jurisdiction of sessions as to trials for offence.

Jurisdiction of Central Criminal Court.

**Note to
Sect. 20.**

to commit a felony; bankrupts not surrendering or concealing their effects; breaking of buildings within the curtilage of a dwelling-house; breaking down bridges, or banks of rivers; breaking of shops, warehouses, or counting-houses; capital offences; cattle, stealing; cattle, wounding; coin, offences relating to, in 24 & 25 Vict. c. 99; conspiracy; embezzlement; forgery, and the uttering of forged instruments, and the other offences enumerated in the Forgery Act, 24 & 25 Vict. c. 98; horse stealing; house breaking; larceny, above £5 in a dwelling-house; larceny of goods in the progress of manufacture; larceny of goods on navigable rivers or canals; larceny by clerks and servants; larceny after a previous conviction; manslaughter; manufacture, goods in progress of, stealing or destroying; perjury; personating any officer, seaman, or other person, in order to receive any wages, pay, allowance, or prize money due or supposed to be due; personating any out-pensioner of Greenwich Hospital, in order to receive any out-pension allowance due or supposed to be due; poison, administering or attempting to administer, with intent to kill, or to do some grievous bodily harm; receivers of stolen goods; rewards, taking, for helping to stolen goods; sheep, stealing; sheep, killing, with intent to steal the carcases; ships or vessels, destroying or damaging; threatening letters, sending, and using threats to extort money; accessories before or after the fact to any of these offences. An accessory before the fact is one who, being absent at the time of the felony committed, doth let, procure, counsel, command or abet another to commit a felony. An accessory after the fact is one who, knowing a felony to have been committed by another, receives, relieves, comforts or assists the felon, whether he be a principal or accessory before the fact merely. 1 *Hale*, 616.

Accessories.

As regards justices' jurisdiction over offences committed out of Great Britain by an officer of the government, see *Reg. v. Eyre*, ante, pp. 336, 337.

**Distinction
between
sections
16 and 17.**

Section 16 of 11 & 12 Vict. c. 42, relates to a witness refusing to be sworn or to give evidence before the justices; section 17, to his refusal to be bound over to give evidence at the trial; and the distinction in the two sections should be carefully borne in mind.

As regards the expenses on charges of felony and misdemeanor before examining magistrates, see 29 & 30 Vict. c. 52, in the Appendix.

The Prosecution of Offences Act, 1879 (42 & 43 Vict. c. 22), section 5, *post*, p. 447, provides for the delivery of recognizances, depositions, &c., to the director of public prose-

ctions in cases in which he has instituted, or undertaken, or is carrying on any criminal prosecution.

As to the recognizances to prosecute in such cases, see section 7 of the same Act.

Note to Sect. 20.

21. If from the absence of witnesses, or from any other reasonable cause, it shall become necessary or advisable to defer the examination or further examination of the witnesses for any time, it shall be lawful to and for the justice or justices before whom the accused shall appear or be brought, by his or their warrant (Q. 1) from time to time to remand the party accused for such time as by such justice or justices in their discretion shall be deemed reasonable, not exceeding eight clear days, to the common-gaol or house of correction, or other prison, lock-up house, or place of security in the county, riding, division, liberty, city, borough, or place for which such justice or justices shall then be acting; or if the remand be for a time not exceeding three clear days, it shall be lawful for such justice or justices verbally to order the constable or other person in whose custody such party accused may then be, or any other constable or person to be named by the said justice or justices in that behalf, to continue or keep such party accused in his custody and to bring him before the same or such other justice or justices as shall be there acting at the time appointed for continuing such examination: Provided always, that any such justice or justices may order such accused party to be brought before him or them, or before any other justice or justices of the peace for the same county, riding, division, liberty, city, borough, or place, at any time before the expiration of the time for which such accused party shall be so remanded,

Power to justice to remand the accused from time to time, not exceeding eight days by warrant.

If remand be for three days only, by verbal order.

Sect. 21. and the gaoler or officer in whose custody he shall then be shall duly obey such order: Provided also, that instead of detaining the accused party in custody during the period for which he shall be so remanded, any one justice of the peace before whom such accused party shall so appear or be brought as aforesaid may discharge him, upon his entering into a recognizance (Q. 2, 3), with or without a surety or sureties, at the discretion of such justice, conditioned for his appearance at the time and place appointed for the continuance of such examination; and if such accused party shall not afterwards appear at the time and place mentioned in such recognizance, then the said justice or any other justice of the peace who may then and there be present, upon certifying (Q. 4) on the back of the recognizance the non-appearance of such accused party, may transmit such recognizance to the clerk of the peace of the county, riding, division, liberty, city, borough, or place within which such recognizances shall have been taken, to be proceeded upon in like manner as other recognizances, and such certificate shall be deemed sufficient *prima facie* evidence of such non-appearance of the said accused party.

Party accused may be admitted to bail, on the examination being adjourned.

If party does not appear upon recognizance, justice may transmit the same to the clerk of the peace.

Remand of accused.

Under this section the justices may, in their discretion, remand the accused for any period not exceeding eight days, and at the expiration of that time may again remand him, and so on from time to time as long as a remand may be considered necessary. Or, instead of detaining the accused in custody, the justice may discharge him upon a recognizance, with or without sureties, conditioned to appear at an appointed time and place for the continuance of the examination.

The accused, on being remanded, may be taken to the common gaol or house of correction or other prison, lock-up house, or place of security in the county, &c., for which the justice shall be acting, as may be thought convenient: or, if the remand be for a period not exceeding three days,

the accused may be directed to be detained in the custody of a constable to be named by the justice or justices in that behalf.

**Note to
Sect. 21.**

The Prosecution of Offences Act, 1879 (42 & 43 Vict. c. 22), section 5, *post*, p. 355, provides for the delivery of certificates, &c., to the director of public prosecutions in cases in which he has undertaken, or is carrying on, any criminal prosecution.

It seems, from 44 J. P. 801, that the Home Office authorities have expressed an opinion that the power of a justice of the peace to remand without evidence given by the 21st section of 11 & 12 Vict. c. 42, is not affected by the Summary Jurisdiction Act, 1879.

Before the hearing the justice may remand at his private house. After it has been determined to deal with the case summarily, all proceedings must be heard in open court.

22. And whereas it often happens that a person is charged before a justice of the peace with an offence alleged to have been committed in another county or place than that in which such person has been apprehended or in which such justice has jurisdiction, and it is necessary to make provision as to the manner of taking the examinations of the witnesses, and of committing the party accused, or admitting him to bail, in such a case: Be it therefore enacted, that whenever any person shall appear or shall be brought before a justice or justices of the peace in the county, riding, division, liberty, city, borough, or place wherein such justice or justices shall have jurisdiction, charged with an offence alleged to have been committed by him in any county or place within England or Wales wherein such justice or justices shall not have jurisdiction, it shall be lawful for such justice or justices and he and they are hereby required to examine such witnesses, and receive such evidence in proof of such charge as shall be produced before him or them, within his or their

If a person be apprehended in one county on charge of an offence committed in another he may be examined in the former;

Sect. 22. jurisdiction; and if in his or their opinion such testimony and evidence shall be sufficient proof of the charge made against such accused party, such justice or justices shall thereupon commit him to the common gaol or house of correction for the county, riding, division, liberty, city, borough, or place where the offence is alleged to have been committed, or shall admit him to bail, as hereinafter mentioned, and shall bind over the prosecutor (if he have appeared before him or them) and the witnesses by recognizances accordingly, as is hereinbefore mentioned; but if such testimony and evidence shall not in the opinion of such justice or justices be sufficient to put the accused party upon his trial for the offence with which he is so charged, then such justice or justices shall bind over such witnesses as he shall have examined, by recognizance, to give evidence, as hereinbefore is mentioned, and such justice or justices shall, by warrant (R. 1), under his or their hand and seal or hands and seals, order such accused party to be taken before some justice or justices of the peace in and for the county, riding, division, liberty, city, borough, or place where and near unto the place where the offence is alleged to have been committed, and shall at the same time deliver the information and complaint, and also the depositions and recognizances so taken by him or them, to the constable who shall have the execution of such last-mentioned warrant, to be by him delivered to the justice or justices before whom he shall take the accused in obedience to the said warrant, and which said depositions and recognizances shall be deemed to be taken in the case, and shall be treated to all intents and purposes as if they had been taken by

—
and if evidence be deemed sufficient may be committed to prison.

If insufficient, to be brought before some justice in the latter county.

Sect. 22.

or before the said last-mentioned justice or justices, and shall, together with such depositions and recognizances, as such last-mentioned justice or justices shall take in the matter of such charge against the said accused party, be transmitted to the clerk of the court where the said accused party is to be tried, in the manner and at the time hereinbefore mentioned, if such accused party shall be committed for trial upon the said charge, or shall be admitted to bail; and in case such accused party shall be taken before the justice or justices last aforesaid by virtue of the said last-mentioned warrant, the constable or other person or persons to whom the said warrant shall have been directed, and who shall have conveyed such accused party before such last-mentioned justice or justices, shall be entitled to be paid his costs and expenses of conveying the said accused party before the said justice or justices; and upon the said constable or other person producing the said accused party before such justice or justices, and delivering him into the custody of such person as the said justice or justices shall direct or name in that behalf, and upon the said constable delivering to the said justice or justices the warrant, information (if any), depositions, and recognizances aforesaid, and proving by oath the handwriting of the justice or justices who shall have subscribed the same, such justice or justices to whom the said accused party is so produced shall thereupon forthwith ascertain the sum which ought to be paid to such constable or other person for conveying such accused party and taking him before such justice or justices, as also his reasonable costs and expenses of returning, and thereupon such justice or justices shall make an

As to payment of expenses of conveying the accused into the proper county, &c.

Sect. 22. order (R. 2) upon the treasurer of the county, riding, division, or liberty, city, borough, or place, or if such city, borough, or place shall be contributory to the county rate of any county, riding, division, or liberty, then upon the treasurer of such county, riding, division, or liberty respectively to which it is contributory, for payment to such constable or other person of the sum so ascertained to be payable to him in that behalf, and the said treasurer, upon such order being produced to him, shall pay the amount to the said constable or other person producing the same, or to any person who shall present the same to him for payment: Provided always, that if such last-mentioned justice or justices shall not think the evidence against such accused party sufficient to put him upon his trial, and shall discharge him without holding him to bail, every such recognizance so taken by the said first-mentioned justice or justices as aforesaid shall be null and void.

Procedure on apprehension on backed warrant.

When a prisoner is apprehended on a backed warrant (as to which see section 11 and note thereon), and taken before a justice of the county, &c., within which the warrant was backed, such justice, if the evidence be sufficient proof of the charge, shall thereupon commit (T. 1) the prisoner to the common gaol, &c., of the county, &c., where the offence is alleged to have been committed, or may admit him to bail, to await his trial. If, on the other hand, the evidence be not sufficient to prove the charge, the justice may bind over the witnesses whom he may have examined, and order (R. 1) the accused to be taken before some justice or justices of the county, &c., where the offence was committed.

The costs of the constable in taking the prisoner before the justice of the county where the offence was committed, is provided for by the latter part of the section. As to the constable's costs in ordinary cases, see section 25, *post*.

Costs.

The Prosecution of Offences Act, 1879 (42 & 43 Vict. c. 22), section 5, *post*, p. 447, provides for the delivery of depositions, &c., to the director of public prosecutions in cases in which he has undertaken, or is carrying on any criminal prosecution.

23. Where any person shall appear or be brought before a justice of the peace charged with any felony, or with any assault with intent to commit any felony, or with any attempt to commit any felony, or with obtaining or attempting to obtain property by false pretences, or with a misdemeanor in receiving property stolen, or obtained by false pretences, or with perjury or subornation of perjury, or with concealing the birth of a child by secret burying or otherwise, or with wilful or indecent exposure of the person, or with riot, or with assault in pursuance of a conspiracy to raise wages, or assault upon a peace officer in the execution of his duty, or upon any person acting in his aid, or with neglect or breach of duty as a peace officer, or with any misdemeanor for the prosecution of which the costs may be allowed out of the county rate, such justice of the peace may, in his discretion admit such person to bail, upon his procuring and producing such surety or sureties as in the opinion of such justice will be sufficient to ensure the appearance of such accused person at the time and place when and where he is to be tried for such offence; and thereupon such justice shall take the recognizance (S. 1, 2) of the said accused person and his surety or sureties, conditioned for the appearance of such accused person at the time and place of trial, and that he will then surrender and take his trial, and not depart the court without leave; and in all cases where a person charged with any indictable offence shall be committed to prison to take his trial for the same, it shall be lawful, at any time afterwards, and before the first day of the sitting or session at which he is to be tried, or before the day to which such

Sect. 23.

Powers to justice to admit to bail persons charged with felony and certain misdemeanors.

Justices may admit to bail in the like cases after commitment for trial.

Sect. 23. sitting or session may be adjourned for the justice or justices of the peace who shall have signed the warrant for his commitment, in his or their discretion, to admit such accused person to bail in manner aforesaid ; or if such committing justice or justices shall be of opinion that for any of the offences hereinbefore mentioned the said accused person ought to be admitted to bail, he or they shall in such cases, and in all other cases of misdemeanors, certify (S. 3) on the back of the warrant of commitment his or their consent to such accused party being bailed, stating also the amount of bail which ought to be required, it shall be lawful for any justice of the peace, attending or being at the gaol or prison where such accused party shall be in custody, on production of such certificate, to admit such accused person to bail in manner aforesaid ; or if it shall be inconvenient for the surety or sureties in such a case to attend at such gaol or prison to join with such accused person in the recognizance of bail, then such committing justice or justices may make a duplicate of such certificate (S. 4) as aforesaid, and upon the same being produced to any justice of the peace for the same county, riding, division, liberty, city, borough, or place, it shall be lawful for such last-mentioned justice to take the recognizance of the surety or sureties in conformity with such certificate, and upon such recognizance being transmitted to the keeper of such gaol or prison, and produced, together with the certificate on the warrant of commitment as aforesaid to any justice of the peace attending or being at such gaol or prison, it shall be lawful for such last-mentioned justice thereupon to take the recognizance of such accused party,

and to order him to be discharged out of custody as to that commitment, as hereinafter mentioned; and where any person shall be charged before any justice of the peace with any indictable misdemeanor other than those hereinbefore mentioned, such justice after taking the examinations in writing as aforesaid, instead of committing him to prison for such offence, shall admit him to bail in manner aforesaid, or if he have been committed to prison, and shall apply to any one of the visiting justices of such prison, or to any other justice of the peace for the same county, riding, division, liberty, city, borough, or place, 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 may be adjourned, to be admitted to bail, such justice shall accordingly admit him to bail in manner aforesaid; and in all cases where such accused person in custody shall be admitted to bail by a justice of the peace other than the committing justice or justices as aforesaid, such justice of the peace so admitting him to bail shall forthwith transmit the recognizance or recognizances of bail to the committing justice or justices, or one of them, to be by him or them transmitted, with the examinations, to the proper officer: provided nevertheless, that no justice or justices of the peace shall admit any person to bail for treason, nor shall such person be admitted to bail, except by order of one of Her Majesty's secretaries of state, or by Her Majesty's court of Queen's Bench at Westminster, or a judge thereof in vacation: [*Provided also, that when, in cases of misdemeanor, the defendant shall be entitled to a traverse at the next assizes or quarter sessions, and shall not be bound to take his trial until the second*

Sect. 23.

Justice may admit to bail persons charged with other misdemeanors.

Certain recognizance to be transmitted to committing justices.

No bail in cases of treason but by order of secretary of state, &c.

Where defendant entitled to traverse.

Sect. 23. *assizes or sessions, in every such case the recognizance (S. 1) of bail shall be conditioned that he shall appear and plead at the next assizes or sessions, and then traverse the indictment, and that he shall surrender and take his trial at such second assizes or sessions unless such accused party shall, before he enter into such recognizance, choose and consent to take his trial at such first assizes or sessions, in which case the recognizance may be in the ordinary form hereinbefore mentioned.]*

Bailable offences.

The words at the end of this section within brackets, and which are printed in italics, were repealed by the Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66).

The statute enumerates the following offences in which justices may in their discretion take bail, namely: all felonies; assault with intent to commit a felony; attempt to commit a felony; obtaining or attempting to obtain property by false pretences; misdemeanor in receiving property stolen or obtained by false pretences; perjury or subornation of perjury; concealing the birth of a child by secret burying or otherwise; wilful or indecent exposure of the person; riot; assault upon a peace officer in the execution of his duty, or upon any person acting in his aid; neglect or breach of duty as a peace officer; any misdemeanor for the prosecution of which the costs may be allowed out of the county rate. For all other offences, except treason, being indictable misdemeanors, the justices must accept bail, if sufficient sureties be tendered.

Duty of justices as to bail.

If the justices refuse bail in any case where by law it ought to be taken, they are guilty of a misdemeanor (2 *Hawk.* c. 15, s. 13); and they may also be punished if they admit to bail a person who is not bailable (2 *Hawk.* c. 15, s. 7), and may be fined for taking insufficient bail, if the accused do not surrender according to the condition of the recognizance. *Id.* s. 16. On the other hand excessive bail is against the policy of the law, and ought not to be taken. 1 Will. & M. sess. 2, c. 2.

It was laid down by Blackstone in his *Commentaries*—

“Where the imprisonment is only for safe custody before conviction, and not for punishment afterwards, in such cases bail is ousted or taken away wherever the offence is of a very enormous nature; for then the public is entitled to demand

nothing less than the highest security that can be given—viz., the body of the accused—in order to insure that justice shall be done upon him if guilty. Such persons, therefore, have no other sureties but the four walls of the prison.” (Vol. 4, p. 298.)

**Note to
Sect. 23.**

In *The Queen v. Scaife*, 9 Dowling's Cases, Mr. Justice Coleridge said,—“I conceive the principle on which parties are committed to prison before trial is to insure the certainty of their appearing to take their trial. It seems to me that the same principle is to be adopted on an application for bailing a person committed to take his trial, and it is not a question as to the guilt or innocence of the prisoner. It is on that account alone that it becomes necessary to see whether the offence is serious, whether the evidence is strong, and whether the punishment for the offence heavy.”

The principles of the law upon the subject were very clearly and correctly laid down by Mr. Justice Coleridge in the case of *Etienne Barronet and Edmond Allain*, 1 E. & B. 1, a subsequent case to the other, but in which the principles laid down were the same, though in one case they resulted in bail being taken and in the other case refused.

According to the last-mentioned case, the court has a discretion to admit accused persons to bail in all cases; but in exercising that discretion the nature of the charge, the evidence by which it is supported, and the sentence which by law may be passed in the event of a conviction, are, in general, the most important ingredients for the guidance of the court; and where those are weighty, the court will not interfere. *Etienne Barronet and Edmond Allain*, 1 E. & B. 1.

If the justices refuse to take bail, the prisoner may apply to the Court of Queen's Bench; and the judges there may, on a consideration of the case as disclosed by the depositions taken before the justices, either award a *habeas corpus* to bring him into court to be bailed (*Rex v. Grieffenburgh*, 4 Burr. 2179; *Rex v. Homer*, Cald. 295; *Rex v. Marks*, 5 East, 157), or if the person be too poor to bear the expense of being brought up, they will grant a rule to show cause why he should not be bailed by a justice in the county. *Rex v. Jones*, 1 B. & A. 209; *Rex v. Massey*, 6 M. & S. 108.

The power of a justice to accept or refuse bail in cases of misdemeanor is a judicial duty, and an action will not lie against him for refusing to take bail in such cases without proof of express malice, even though the sureties tendered are found by the jury to have been sufficient. *Linford v. Fitzroy*, 18 L. J. (N.S.) M. C. 108; 13 J. P. 119, 474. Bail is taken by stating verbally to the accused and his sureties

Bail by
Judges.

Justices
refusing
bail.

Statement
of bail.

Note to Sect. 23. the substance of the recognizance, thus: *You A. B. of _____, and you C. D. of _____, and you E. F. of _____, severally acknowledge yourselves to owe to our Sovereign Lady the Queen the several sums following, that is to say, you the said A. B. the sum of _____, &c.:* and the recognizance is then

Notice of bail.

stated in the second person also. In suspicious cases twenty-four hours', and sometimes forty-eight hours' notice of bail is usually required; when the bail appears, whether such notice has been given or not, the justice or prosecutor, or any professional person on his behalf, may examine them on oath as to their sufficiency.

The Prosecution of Offences Act, 1879 (42 & 43 Vict. c. 22), section 5, *post*, p. 447, provides for the delivery of certificates, &c., to the director of public prosecutions in cases in which he has instituted or undertaken, or is carrying on any criminal prosecution.

When justice admits a person to bail after commitment a writ of deliverance shall be sent to him if not detained for any other offence.

24. In all cases where a justice or justices of the peace shall admit to bail any person who shall then be in any prison charged with the offence for which he shall be so admitted to bail, such justice or justices shall send to or cause to be lodged with the keeper of such prison a warrant of deliverance (S. 5) under his or their hand and seal or hands and seals, requiring the said keeper to discharge the person so admitted to bail if he be detained for no other offence, and upon such warrant of deliverance being delivered to or lodged with such keeper he shall forthwith obey the same.

If, after hearing evidence against the accused, it is not thought sufficient to warrant commitment he shall be discharged; but if evidence

25. When all the evidence offered upon the part of the prosecution against the accused party shall have been heard, if the justice or justices of the peace then present shall be of opinion that it is not sufficient to put such accused party upon his trial for any indictable offence, such justice or justices shall forthwith order such accused party, if in custody, to be discharged as to the information

then under inquiry ; but if, in the opinion of such justice or justices, such evidence is sufficient to put the accused party upon his trial for an indictable offence, or if the evidence given raise a strong or probable presumption of the guilt of such accused party, then such justice or justices shall, by his or their warrant (T. 1), commit him to the common gaol or house of correction for the county, riding, division, liberty, city, borough, or place to which by law he may now be committed, or, in the case of an indictable offence committed on the high seas, or on land beyond the sea, to the common gaol of the county, riding, division, liberty, city, borough, or place within which such justice or justices shall have jurisdiction, to be there safely kept until he shall be thence delivered by due course of law, or admit him to bail as hereinbefore mentioned.

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 considered sufficient, justice shall by warrant commit the accused for trial.

The following are the provisions of the Prisons Act, 1877 (40 & 41 Vict. c. 21), as to classification and commitment of prisoners.

24. The secretary of state may from time to time by any general or special rule appoint in any county a convenient prison or prisons in which prisoners are to be confined before and during trial, or at either of such times, and any prisoner who might, if this Act had not passed, have been lawfully confined in a prison situate within the area of such county may be lawfully confined in any prison or prisons so appointed : Moreover, the secretary of state may by any general or special rule from time to time appoint any convenient prison or prisons in any adjoining county to which prisoners may be committed for trial, safe custody, or otherwise, and any prisoners may be committed to such prison accordingly.

Confinement of prisoners before and during trial.

25. The secretary of state may from time to time by any general or special rule appropriate either wholly or partially particular prisons within his jurisdiction to particular classes of convicted criminal prisoners, and may remove any convicted criminal prisoner from any one prison to any other prison within his jurisdiction for the purpose of his undergoing the whole or any portion of his punishment in such

Confinement of prisoners after conviction.

Note to Sect. 25.

Confinement of debtors and prisoners who are not criminal prisoners.

Saving as to commitment of prisoners.

Legal custody of prisoner.

Allowance to discharged prisoners.

prison; provided that a prisoner who is confined in a prison situate beyond the limits of the county, borough, or place in which he was convicted of his offence shall, at the time of his discharge, be taken back at the public expense to the county, borough, or place in which he was so convicted.

26. The secretary of state may from time to time by any general or special rule appoint in any county a prison or prisons in which debtors and prisoners who are not criminal prisoners are to be confined during the period of their imprisonment, and it shall be lawful to confine in any prison so appointed during the period of his imprisonment any debtor or prisoner who is not a criminal prisoner who might, if this Act had not passed, have been confined during such period in any prison situate within the area of the county.

27. Subject to this Act, and any rules made in pursuance thereof, prisoners may be committed to the same prison to which they might have been committed if this Act had not passed.

The committal or imprisonment of a prisoner to or in a prison, if otherwise valid, shall not be illegal by reason only that such prisoner ought, according to the law for the time being in force, to have been committed to or imprisoned in some other prison, but any such prisoner as is mentioned in this section shall, on application made on his behalf in a summary manner to any judge of the High Court of Justice, be entitled to be removed at the public expense to such other prison as aforesaid.

28. A prisoner shall be deemed to be in legal custody whenever he is being taken to or from, or whenever he is confined in, any prison in which he may be lawfully confined, or whenever he is working outside or is otherwise beyond the walls of any such prison in the custody or under the control of a prison officer belonging to such prison, and any constable or other officer acting under the order of any justice of the peace or magistrate having power to commit a prisoner to prison, may convey a prisoner to or from any prison to or from which he may be legally committed or removed, notwithstanding such prison may be beyond the constablewick or other jurisdiction of such constable or officer, in the same manner and with the same incidents as if such prison were within such constablewick or other jurisdiction.

29. Where any prisoner is discharged from prison, the prison commissioners may, on the recommendation of the visiting committee or otherwise, order a sum of money, not exceeding two pounds, to be paid by the gaoler to the prisoner himself, or to the treasurer of a certified prisoners' aid society or

refuge, on the gaoler receiving from such society an undertaking in writing, signed by the secretary thereof, to apply the same for the benefit of the prisoner.

Note to Sect. 25.

The "Evidence Further Amendment Act, 1869" (32 & 33 Vict. c. 68), reciting, "Whereas the discovery of truth in courts of justice has been signally promoted by the removal of restrictions on the admissibility of witnesses, and it is expedient to amend the law of evidence with the object of still further promoting such discovery:" enacts (section 4), if any person called to give evidence in any court of justice, whether in a civil or criminal proceeding, shall object to take an oath, or shall be objected to as incompetent to take an oath, such person shall, if the presiding judge is satisfied that the taking of an oath would have no binding effect on his conscience, make the following promise and declaration;—

Persons objecting to take oath may be allowed to make declaration, and be triable for perjury.

"I solemnly promise and declare that the evidence given by me to the court shall be the truth, the whole truth, and nothing but the truth."

And any person who, having made such promise and declaration, shall wilfully and corruptly give false evidence, shall be liable to be indicted, tried, and convicted for perjury as if he had taken an oath.

If after hearing all the evidence brought forward against the accused, the justice determine upon discharging him, no documentary writing is necessary to authorize the discharge. A direction by word of mouth to discharge the prisoner in such case is all that is necessary.

Discharge of accused.

If, on the other hand, the justice determine upon committing the accused to take his trial for the offence alleged against him, the committal may be either to the common gaol (prison) of the county or to the house of correction (prison) near to the place where the assizes or sessions are to be holden, and at which the prisoner is intended to be tried (5 & 6 Will. 4, c. 38, s. 3). In drawing out the warrant of commitment, care must be taken not to commit for trial at the sessions for an offence of which the sessions have not jurisdiction, as to which, see section 20 and *note*. As to the committal for offences on the high seas, &c., see section 2 and *note*.

Commitment.

The justices in a criminal charge brought before them have a discretion as to what course they will adopt under the circumstances; therefore, where, upon a charge of perjury before two justices, it appeared that the perjury was alleged to have been committed in a deposition made in a suit then pending in the ecclesiastical court, to which both the informant and the person charged were parties, and the justices declined further to proceed in the matter, the court refused to

Discretion of justices.

**Note to
Sect. 25.**

compel them to proceed, as they had a discretion in the matter which they had properly exercised. *Reg. v. Ingham*, 19 L. J. R. (N.S.) M. C. 69; 13 J. P. 379. A commitment for perjury, stating that "H. B., in a certain affidavit made and sworn to by him before one C. C., a competent authority by law to administer the same, did falsely, wickedly, wilfully, and corruptly commit wilful and corrupt perjury," was held to be bad, as not stating that the oath was administered in a judicial proceeding, or before a competent authority to administer an oath in a judicial proceeding. *Reg. v. Bartlett*, 12 L. J. (N.S.) M. C. 127; 8 J. P. 578. Justices, it may be added, have no jurisdiction to commit to prison for perjury by the common law. Touching the administration of oaths by justices, see 5 & 6 Will. 4, c. 62, s. 1, and *Reg. v. Nott*, 12 L. J. (N.S.) M. C. 143; 8 J. P. 351.

Accomplices.

With respect to accomplices, it is necessary to observe that it is the duty of a magistrate in all cases to commit an accomplice, and not to admit him to bail, notwithstanding that it may be intended to call him as a witness on the trial. See the remarks of *Patteson, J.*, in *Rex v. Beardmore*, 7 Car. & P. 497.

**Duty of
justices to
dismiss or
commit
accused.**

Where a complaint of a criminal nature is made before justices, which, upon the evidence, amounts to an offence not within their jurisdiction to determine, it is their duty either to dismiss the complaint, or to commit the person charged for trial by a jury. Therefore, where an information charged a man with unlawfully assaulting and abusing a woman, and the only evidence was that of the woman, who swore to a rape, it was held that the justices ought either to have committed for trial, or, if they disbelieved the woman, to have dismissed the case; and that they were not justified in convicting the man under 16 & 17 Vict. c. 30, of an aggravated assault. In *Re Thompson*, 30 L. J. (N.S.) M. C. 19; 7 Jur. (N.S.) 48; 25 J. P. 166, the judges being equally divided, the *rule nisi*, which had been granted in the case for a *habeas corpus ad subjiciendum*, dropped.

Where a prisoner has been lodged in a gaol under a bad warrant of commitment, even in the nature of a conviction (as where the commitment is under the Vagrant Act, 5 Geo. 4, c. 83, s. 4), a good warrant of commitment subsequently delivered to the gaoler, but before a rule for a *habeas corpus* has been obtained, will be a good answer to that rule; so held in *ex parte Cross*, 26 L. J. (N.S.) M. C. 201; 2 H. & N. 354, confirming *Reg. v. Richards*, 5 Q. B. 926. Where, however, a warrant of commitment setting out a conviction is good on the face of it, it is doubtful whether, on the return to a writ of *habeas corpus*, affidavits are admissible raising objections not appearing upon the warrant, as for instance, disclosing a

former conviction for the same offence. *Ex parte Baker*, 26 L. J. (N.S.) M. C. 155; 21 J. P. 486. **Note to Sect. 25.**

With regard to the commitment of prisoners in certain counties of cities and towns corporate to be tried at assizes held for adjoining county, it is enacted by 14 & 15 Vict. c. 55, s. 19, as follows: "Whenever any justice or justices of the peace, or coroner, acting for any county of a city or county of a town corporate within which Her Majesty has not been pleased for five years next before the passing of this Act to direct a commission of oyer and terminer and gaol delivery to be executed, and until Her Majesty shall be pleased to direct a commission of oyer and terminer and gaol delivery to be executed within the same, shall commit for safe custody to the gaol or house of correction of such county of a city or town any person charged with any offence committed within the limits of such county of a city or town not triable at the court of quarter sessions of the said county of a city or county of a town, the commitment shall specify that such person is committed pursuant to this Act, and the recognizances to appear to prosecute and give evidence taken by such justice, justices, or coroner shall in all such cases be conditioned for appearance, prosecution, and giving evidence at the court of oyer and terminer and gaol delivery for the next adjoining county; and whenever any such person shall be so committed, the keeper of such gaol or house of correction shall deliver to the judges of assize for such next adjoining county a calendar of all prisoners in his custody so committed, in the same way that the sheriff of the county would be by law required to do if such prisoners had been committed to the common gaol of such adjoining county; and the justice, justices, or coroner by whom persons charged as aforesaid may be committed, shall deliver or cause to be delivered to the proper officer of the court the several examinations, informations, evidence, recognizances, and inquisitions relative to such persons at the time and in the manner that would be required in case such persons had been committed to the gaol of such adjoining county by a justice or justices, or coroner, having authority so to commit, and the same proceedings shall and may be had thereupon at the sessions of oyer and terminer or general gaol delivery for such adjoining county as in the case of persons charged with offences of the like nature committed within such county." And by section 24—"For the purposes of this Act the counties named in the second column of schedule (C.) to the Act of the session holden in the fifth and sixth years of King William the Fourth, chapter seventy-six, shall be considered next adjoining the counties of cities and towns corporate in the first column of the same schedule in conjunction with which they are respectively named. The following are the

Commitment for trial.

Commitment for trial.

Note to Sect. 25. counties, &c., named in schedule (C.) to 5 & 6 Will. 4, c. 76 (The Municipal Corporation Act).

Berwick-upon-Tweed	-	Northumberland.
Bristol	- -	Gloucestershire.
Chester	- -	Cheshire.
Exeter	- -	Devonshire.
Kingston-upon-Hull	-	Yorkshire.
Newcastle-upon-Tyne	-	Northumberland.

By the 6th schedule of the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), the same boroughs are to be considered adjoining the counties named for the purposes of criminal trials.

With regard to the execution of warrants of commitment by county constables, see 3 & 4 Vict. c. 88, s. 33.

The following explanatory notice has been issued by one of the judges with regard to commitment for trial :

The object of the winter session of gaol delivery being to deliver the county gaol of prisoners in custody charged with offences over which the court of quarter sessions has no jurisdiction, it is desirable that prisoners triable at quarter sessions should not (unless from the circumstances of any particular case the committing magistrate deem it expedient) be committed for trial at the winter gaol delivery.

Much inconvenience having arisen by the omission from the warrants of commitment (either in the body or the margin) of the session at which it is intended the prisoner should be tried, it is expedient, to prevent future uncertainty and confusion, that the following suggestion should be generally adopted in the preparation of warrants of commitment.

Where the prisoner is to be committed to actual custody, if the offence be triable at quarter sessions, the warrant should definitely state that the detention is to be "until the next session of the peace," or, should the committing magistrate deem it expedient, "the next session of oyer and terminer and gaol delivery," adding in each case, "or until delivered by due course of law." If the offence be "not triable at quarter sessions," the commitment should be "to the next session of oyer and terminer and gaol delivery," adding "or until delivered by due course of law." Bail cases.—If the prisoner be admitted to bail, the recognizances of the defendant, and also of the prosecutor and the witnesses for the prosecution, should be to appear at the assizes and general session of oyer and terminer and gaol delivery to be holden for the said county (not being a winter or special session of oyer and terminer and gaol delivery). See 37 L. T. 89.

With regard to offences not triable at sessions, see note to section 20, *ante*, p. 386.

The following Table shows the several counties which have Separate Divisions for Quarter Sessions.

Note to Sect. 25.

Counties.	Divisions.
Lincoln - - -	Parts of Holland. Kesteven. Lindsey.
Sussex - - -	East Division. West Division.
York - - -	East Riding. North Riding. West Riding.
Cambridge - -	Isle of Ely.
Herts - - -	Liberty of St. Alban's.
Northampton -	Liberty or Soke of Peterborough.

Counties having separate divisions for quarter sessions.

26. The constable or any of the constables or other persons to whom the said warrant of commitment shall be directed shall convey such accused person therein named or described to the gaol or other prison mentioned in such warrant, and there deliver him, together with such warrant, to the gaoler, keeper, or governor of such gaol or prison, who shall thereupon give such constable or other person so delivering such prisoner into his custody a receipt (T. 2) for such prisoner, setting forth the state and condition in which such prisoner was when he was delivered into the custody of such gaoler, keeper, or governor; and in all cases where such constable or other person shall be entitled to his costs or expenses for conveying such person to such prison as aforesaid it shall be lawful for the justice or justices who shall have committed the accused party, or for any justice of the peace in and for the said county, riding, division, or other place of exclu-

Regulations for conveying prisoners to gaol.

As to payment of costs of conveying prisoners to prison.

Sect. 26. sive jurisdiction wherein the offence is alleged in the said warrant to have been committed, to ascertain the sum which ought to be paid to such constable or other person for conveying such prisoner to such gaol or prison, and also the sum which should reasonably be allowed him for his expenses in returning, and thereupon such justice shall make an order (T. 2) upon the treasurer of such county, riding, division, liberty, or place of exclusive jurisdiction, or if such place of exclusive jurisdiction shall be contributory to the county rate of any county, riding, or division, then upon the treasurer of such county, riding, or division, respectively, or in the county of Middlesex, upon the overseers of the poor of the parish or place within which the offence is alleged to have been committed, for payment to such constable or other person of the sums so ascertained to be payable to him in that behalf; and the said treasurer or overseers, upon such order being produced to him or them respectively, shall pay the amount thereof to such constable or other person producing the same, or to any person who shall present the same to him or them for payment: Provided nevertheless, that if it shall appear to the justice or justices by whom any such warrant of commitment against such prisoner shall be granted as aforesaid that such prisoner hath money sufficient to pay the expenses, or some part thereof, of conveying him to such gaol or prison, it shall be lawful for such justice or justices, in his or their discretion, to order such money or a sufficient part thereof to be applied to such purpose.

Expenses of conveying Under this section it has been held that the treasurer of a county partly included within the metropolitan district, is

liable to pay out of the county rate, expenses which the prisoner may have no means of defraying, of a metropolitan police constable incurred in conveying a prisoner to the county gaol under a warrant directed to the police constable and delivered for execution to the police constable under 2 & 3 Vict. c. 47, s. 12; and also the like expenses incurred by a metropolitan police constable under warrants of committal made by metropolitan police magistrates sitting at police courts. *Leverick v. Mercer*, 22 L. J. R. (N.S.) 81 M. C.; 17 J. P. 196.

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Sect. 26.**

prisoners to
prison.

But the county treasurer is not liable to pay to a police constable the expenses of conveying to a police court from the county gaol a prisoner who had been previously committed for re-examination, when the warrant to bring the prisoner up again was made, not on the police constable, but upon the gaoler who had employed the police constable to re-convey the prisoner. *Id.*

The statutes 27 Geo. 2, c. 3, s. 1, and 11 & 12 Vict. c. 42, s. 26, do not impose upon the prison authorities as defined by section 5 of the Prison Act, 1865, the expenses of conveying prisoners summarily convicted, or committed for trial from the police office to the prison, and, therefore, these expenses are not included amongst those of the maintenance of a prisoner mentioned in section 57 of the Prisons Act, 1877. *Mullins v. Treasurer of the County of Surrey*, 42 L. J. (N.S.) 128; 44 J. P. 456; affirmed on appeal, 45 L. T. (N.S.) 625.

As regards the proviso enabling the justices to order money which the prisoner may have in his possession to be applied for the purpose of defraying the expenses of conveying him to gaol or prison, see the more extensive powers in that respect given by 3 Jac. 1, c. 10, s. 1.

With reference to the provision in this section regarding the payment by overseers of the poor of the costs of conveying prisoners to prison, the following provision in the first section of 27 Geo. 2, c. 3, may be quoted: "When any person not having goods or money within the county where he is taken, sufficient to bear the charges of himself and of those who convey him, is committed to gaol or the house of correction by warrant from any justice or justices of the peace, then, on application by any constable or other officer who conveyed him, to any justice of the peace for the same county or place [*there is clearly an omission here, but the roll of parliament is so*], shall, upon oath, examine into and ascertain the reasonable expenses to be allowed to such constable or other officer, and shall forthwith, without fee or reward, by warrant under his hand and seal, order the treasurer of the county or place to pay the same, which the said treasurer is hereby required to do as soon as he receives such warrant, and any sum

**Note to
Sect. 26.**

so paid shall be allowed in his accounts." It would seem that according to the wording of 11 & 12 Vict. c. 42, s. 26, if in the county of Middlesex, the overseers must pay the costs; but there is no provision for the reimbursement out of the county rates.

The Prosecution of Offences Act, 1879 (42 & 43 Vict. c. 22), s. 5, *post*, p. 447, provides for the delivery of certificates, &c., to the director of public prosecutions in cases in which he has undertaken or is carrying on any criminal prosecution.

After examinations are completed defendant entitled to copies of the depositions.

27. At any time after all the examinations aforesaid shall have been completed, and before the first day of the assizes or sessions or other first sitting of the court at which any person so committed to prison or admitted to bail as aforesaid is to be tried, such person may require and shall be entitled to have, of and from the officer or person having the custody of the same, copies of the depositions on which he shall have been committed or bailed, on payment of a reasonable sum for the same, not exceeding at the rate of three halfpence for each folio of ninety words.

Right to copy of depositions.

Until the examinations are completed, and the prisoner finally committed for trial or admitted to bail, he is not entitled to copies of the depositions. Moreover, the enactment gives the right to such copy only when the person has been bailed or committed to prison for some offence for which he is to be tried, and with the view of enabling him to prepare for trial. Therefore, a person who has been committed to prison for default of sureties to keep the peace, and who has been discharged at the sessions, is not afterwards entitled to demand a copy of the examination on which the commitment proceeded. *Reg. v. Humphreys*, 19 L. J. R. (N.S.) 189 M. C.

The 6 & 7 Will. 4, c. 114, s. 3, which is still in force in this respect, makes provision for the judge at the assizes, or the person presiding at the court where the prisoner is to be tried, allowing him to have copies of the depositions, when he has not applied for them previous to the first day of the assizes or sessions. The present enactment is, however, quite distinct from 6 & 7 Will 4, c. 114, s. 3, which enacts "that all persons who shall be held to bail or committed to prison for any offence against the law, shall be entitled to require and have

on demand (from the person who shall have the lawful custody thereof, and who is hereby required to deliver the same), copies of the examinations of the witnesses respectively upon whose depositions they have been so held to bail or committed to prison, on payment of a reasonable sum for the same, not exceeding three-halfpence for each folio of ninety words: Provided always, that if such demand shall not be made before the day appointed for the commencement of the assize or sessions at which the trial of the person on whose behalf such demand shall be made is to take place, such person shall not be entitled to have any copy of such examinations of witnesses, unless the judge or other person to preside at such trial shall be of opinion that such copy may be made and delivered without delay or inconvenience to such trial; but it shall nevertheless be competent for such judge or other person so to preside at such trial, if he shall think fit, to postpone such trial on account of such copy of the examination of witnesses not having been previously had by the party charged." Under this enactment, however, persons committed to prison for re-examination, on charges on felony, are not entitled to demand copies of the depositions; for the right to copies does not attach until the prisoner is held to bail, or committed to prison for trial. *Ex parte Joshua Fletcher*, 13 L. J. (N.S.) M. C. 67; and *Reg. v. Lord Mayor of London*, 5 Q. B. 555; 8 J. P. 854. Neither is the defendant entitled to copies when the charge against him is dismissed. *Reg. v. Humphreys*, 4 N. S. C. 79; 19 L. J. R. (N.S.) M. C. 189.

Note to Sect. 27.

28. The several forms in the schedule to this Act contained, or forms to the same or the like effect, shall be deemed good, valid, and sufficient in law.

Forms in schedule deemed valid.

This section has only the effect of legalizing the particular forms contained in the schedule to the Act. The justices may, if they think fit, adopt any other forms; but generally it would be very inexpedient for them to do so, or to depart, to any material extent, from the forms thus legalized.

Forms.

29. Any one of the magistrates appointed or hereafter to be appointed to act at any of the police courts of the metropolis, and sitting at a police court within the metropolitan police district, and every stipendiary magistrate appointed or to be appointed for any

Metropolitan police magistrates and stipendiary magistrates in other places may act alone.

Sect. 29. other city, town, liberty, borough, or place, and sitting at a police court or other place appointed in that behalf, shall have full power to do alone whatsoever is authorized by this Act to be done by any one or more justice or justices of the peace; and that the several forms in the schedule to this Act contained may be varied, so far as it may be necessary to render them applicable to the police courts aforesaid, or to the court or other place of sitting of such stipendiary magistrate; and that nothing in this Act contained shall alter or affect in any manner whatsoever any of the powers, provisions, or enactments contained in an Act passed in the tenth year of the reign of his late Majesty King George the Fourth, intituled "An Act for Improving the Police in and near the Metropolis," or in an Act passed in the third year of the reign of Her present Majesty, intituled "An Act for further Improving the Police in and near the Metropolis," or in an Act passed in the same year of the reign of Her present Majesty, intituled "An Act for Regulating the Police Courts in the Metropolis," or in an Act passed in the fourth year of the reign of Her present Majesty, intituled "An Act for better Defining the powers of Justices within the Metropolitan Police District."

Nothing to affect powers, &c., contained in 10 Geo. 4, c. 44.

2 & 3 Vict. c. 47, 2 & 3 Vict. c. 71, and 3 & 4 Vict. s. 84.

See note to 11 & 12 Vict. c. 43, s. 33, *ante*, p. 85.

The following towns in England and Wales have stipendiary magistrates; placing London first, the other sixteen towns are Birkenhead, Birmingham, Brighton, Cardiff, Chatham and Sherness, Kingston-upon-Hull, Leeds, Liverpool, Manchester, Manchester Division, Merthyr, Middlesbrough, Pontypridd, Salford, Sheffield, Stoke-upon-Trent, Swansea, West Ham, Worcester, and Wolverhampton.

30. It shall be lawful for the Lord Mayor of the city of London, or for any alderman of the said city, for the time being, sitting at the Mansion House or Guildhall, Justice Rooms in the said city, to do alone any act, at either of the said justice rooms, which by any law now in force, or by any law not containing an express enactment to the contrary hereafter to be made, is or shall be directed to be done by more than one justice; and that nothing in this Act contained shall alter or affect in any manner whatsoever any of the powers, provisions, or enactments contained in an Act passed in the third year of the reign of Her present Majesty, intituled "An Act for Regulating the Police in the City of London."

Sect. 30

The Lord Mayor, or any alderman of London, may act alone.

Nothing to affect powers, &c., contained in 2 & 3 Vict. c. 94.

31. The chief magistrate of the metropolitan police court at Bow Street for the time being shall be a justice of the peace of and for the county of Berks, if his name be inserted in the commission of the peace for that county, without possessing the qualification by estate required by law in that behalf, and without taking any oath of qualification.

Chief magistrate of Bow Street may be a justice for Berks, without qualification.

32. The town of Berwick-upon-Tweed shall be deemed to be within England for all the purposes of this Act, but nothing in this Act shall be deemed or taken to extend to Scotland or Ireland, or the Isles of Man, Jersey, or Guernsey, save and except the several provisions respectively hereinbefore contained respecting the backing of warrants, and also nothing in this Act shall be deemed to alter or affect the jurisdiction or practice of Her Majesty's Court of Queen's Bench.

Act to extend to Berwick-upon-Tweed, but not to Scotland, Ireland, &c., except as to backing of warrants.

Note to Sect. 32. The 20 Geo. 2, c. 42, s. 3, enacts that "in all cases where the Kingdom of England, or that part of Great Britain called England, hath been or shall be mentioned in any Act of parliament, the same hath been and shall from henceforth be deemed and taken to comprehend and include the dominion of Wales and the town of Berwick-upon-Tweed." But even previous to 20 Geo. 2, the point that Berwick-upon-Tweed is parcel of the realm of England, was well established. See Hale's History of the Common Law, c. 9, 22 Ed. 4, c. 8; 27 Hen. 8, c. 26; 34 & 35 Hen. 8, c. 26; 2 Jac. 1, c. 28; *Rex v. Cowle*, 2 Burr. 850; *Mayor of Berwick v. Shanks*, 3 Bing. 459; and Com. Dig. Scotland (B). See also Blackstone's Comm. (1 Introd. s. 4).

Note that sections 33 to 35 of this Act were repealed by the Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66).

Sched. C.

(C.)

*Summons to a Person charged with an Indictable Offence.*To *A. B.* of [labourer].

Whereas you have this day been charged before the undersigned, [one] of Her Majesty's justices of the peace in and for the said [county] of , for that you on , at [&c., stating shortly the offence]: These are therefore to command you, in Her Majesty's name, to be and appear before me on at o'clock in the forenoon at , or before such other justice or justices of the peace for the same [county] as may then be there, to answer the said charge, and to be further dealt with according to law. Herein fail not.

Given under my hand and seal this day of in the year of our Lord , at in the [county] aforesaid. J. S. (L.S.)

(D.)

Warrant where a Summons is disobeyed.

To the constable of and to all other peace officers in the said [county] of .

Whereas on the last past *A. B.* of [labourer], was charged before the undersigned, [one] of Her Majesty's justices of the peace in and for the said [county] of , for that [&c., as the summons]: And whereas [I] then issued [my] summons to the said *A. B.*, commanding him, in Her Majesty's name, to be and appear before [me] on , at o'clock in the forenoon, at , or before such other justice or justices of the peace for the same [county] as might then be there, to answer to the said charge, and to be further dealt with according to law: And whereas the said *A. B.*

hath neglected to be or appear at the time and place appointed in and by the said summons, although it hath now been proved to me upon oath that the said summons was duly served upon the said *A. B.* These are therefore to command you, in Her Majesty's name, forthwith to apprehend the said *A. B.*, and to bring him before me, or some other of Her Majesty's justices of the peace in and for the said [county], to answer to the said charge, and to be further dealt with according to law. Sched. D.

Given under my hand and seal, this day of
 in the year of our Lord , at in
 the [county] aforesaid. *J. S.* (L.S.)

(E.)

Warrant to apprehend a Person charged with an Indictable Offence committed on the High Seas or Abroad.

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 the body of any county of this realm, and within the jurisdiction of the Admiralty of England."

For offences committed abroad for which the parties may be indicted in this country, the warrant also may be the same as in ordinary cases, but describing the offence to have been committed "on land out of the United Kingdom, to wit, at , in the kingdom of ," or "at , in the East Indies," or "at in the island of , in the West Indies," or as the case may be.

(F.)

Certificate of Indictment being found.

I hereby certify, that at [a court of oyer and terminer and general gaol delivery, or a court of general quarter sessions of the peace,] holden in and for the [county] of , at , in the said [county],

Sched. F. on a bill of indictment was found by the grand jury against *A. B.*, therein described as *A. B.*, late of [labourer], for that he [*&c.*, stating shortly the offence], and that the said *A. B.* hath not appeared or pleaded to the said indictment.

Dated this day of , 186 .
J. D.

Clerk of the indictments
on the circuit, or
clerk of the peace of
and for the said
[*county*].

(G.)

Warrant to apprehend a Person indicted.

To the constable of , and to all other peace officers in the said [*county*] of .

Whereas it hath been duly certified by *J. D.*, clerk of the indictments on the circuit [*or* clerk of the peace of and for the [*county*] of] [*that, &c.*, stating the certificate]: These are therefore to command you, in Her 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 in and for the said [*county*] to be dealt with according to law.

Given under my hand and seal, this day of in the year of our Lord , at , in the [*county*] aforesaid. J. S. (L.S.)

(H.)

Warrant of Commitment of a Person indicted.

To the constable of and to the keeper of the [common gaol or house of correction,] at , in the said [*county*] of .

Whereas by [*my*] warrant under my hand and seal, dated the day of , after reciting

that it had been certified by *J. D.* [*&c.*, as in the Sched. H. certificate], [*I*] command the constable of _____, and all other peace officers of the said county, in Her Majesty's name, forthwith to apprehend the said *A. B.*, and to bring him before [*me*], the undersigned [*one*] of Her Majesty's justices of the peace in and for the said [*county*], or before some other justice or justices of the peace in and for the said [*county*], to be dealt with according to law. And whereas the said *A. B.* hath been apprehended under and by virtue of the said warrant, and being now brought before [*me*], it is hereupon duly proved to [*me*] upon oath that the said *A. B.* is the same person who is named and charged in and by the said indictment: These are therefore to command you the said constable, in Her Majesty's name, forthwith to take and safely convey the said *A. B.* to the said [*house of correction*] at _____ in the said [*county*], and there to deliver him to the keeper thereof, together with this precept: And I hereby command you the said keeper to receive the said *A. B.* into your custody in the said house of correction, and him there safely to keep until he shall be thence delivered by due course of law.

Given under my hand and seal, this _____ day of _____ in the year of our Lord _____, at _____, in the [*county*] aforesaid. *J. S.* (L.S.)

(I.)

Warrant to detain a Person indicted who is already in Custody for another Offence.

To the keeper of the [common gaol or house of correction,] at _____, in the said [*county*] of _____.

Whereas it hath been duly certified by *J. D.*, clerk of the indictments on the _____ circuit [*or* clerk of the peace of and for the county of _____], that

Sched. I. [*&c.*, *stating the certificate*]: And whereas [*I am*] informed that the said *A. B.* is in your custody in the said [*common gaol*] at _____ aforesaid, charged with some offence or other matter; and it being now duly 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 Her Majesty's name, to detain the said *A. B.* in your custody in the [*common gaol*] aforesaid, until by Her Majesty's writ of habeas corpus he shall be removed therefrom for the purpose of being tried upon the said indictment, or until he shall otherwise be removed or discharged out of your custody by due course of law.

Given under my hand and seal, this _____ day of _____ in the year of our Lord _____, at _____ in the [*county*] aforesaid. J. S. (L.S.)

(K.)

Indorsement in backing a Warrant.

} Whereas proof upon oath hath this day to wit. } been made before me, one of Her Majesty's justices of the peace for the said [*county*] of _____, that the name of *J. S.*, to the within warrant subscribed, is of the handwriting of the justice of the peace within mentioned; I do therefore hereby authorize *W. T.*, who bringeth to me this warrant, and all other persons to whom this warrant was originally directed, or by whom it may lawfully be executed, and also all constables and other peace officers of the said [*county*] of _____, to execute the same within the said last-mentioned [*county*],* and

* *The words following this Asterisk are to be used only where the justice backing the warrant shall think fit, and may be omitted in backing English warrants in Ireland, Scotland, &c., or in backing Irish or Scotch warrants, &c., in England.*

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L. 2.

to appear to [me] upon oath that *E. F.* of _____, [labourer] was likely to give material evidence for the prosecution, I did duly issue my summons to the said *E. F.*, requiring him to be and appear before me on _____ at _____, or before such other justice or justices of the peace for the same county as might then be there, to testify what he should know respecting the said charge so made against the said *A. B.* as aforesaid: And whereas proof hath this day been made before me upon oath of such summons having been duly served upon the said *E. F.*: And whereas the said *E. F.* hath 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 to bring and have the said *E. F.* before me on _____ at _____ o'clock in the forenoon at _____, or before such other justice or justices of the peace for the same [county] as may then be there, to testify what he shall know concerning the said charge so made against the said *A. B.* as aforesaid.

Given under my hand and seal, this _____ day of _____, in the year of our Lord _____, at _____, in the [county] aforesaid. *J. S.* (L.S.)

(L. 3.)

Warrant for a Witness in the first instance.

To the constable of _____ and to all other peace officers in the said [county] of _____.

Whereas information hath been laid before the undersigned, [one] of Her Majesty's justices of the peace in and for the said [county] of _____, that [&c., as in the summons]; and it having been made to appear to [me] upon oath that *E. F.* of _____, [labourer] is likely to give material evidence for the prosecution, and that 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 to bring and have the said *E. F.* before me on at o'clock in the forenoon at , or before such other justice or justices of the peace for the same [county] as may then be there, to testify what he shall know concerning the said charge so made against the said *A. B.* as aforesaid.

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Given under my hand and seal, this day of , in the year of our Lord , at , in the [county] aforesaid. J. S. (L.S.)

(L. 4.)

Warrant of Commitment of a Witness for refusing to be sworn or to give evidence.

To the constable of and to the keeper of the [house of correction] at , in the said [county] of .

Whereas *A. B.* was lately charged before the undersigned, [one] of Her Majesty's justices of the peace in and for the said [county] of , for that [&c., as in the summons]; and it having been made to appear to [me] upon oath that *E. F.* of was likely to give material evidence for the prosecution, I duly issued my summons to the said *E. F.*, requiring him to be and appear before me on at , or before such other justice or justices of the peace as should then be there, to testify what he should know concerning the said charge so made against the said *A. B.* as aforesaid ; and the said *E. F.* now appearing before me [or being brought before me by virtue of a warrant in that behalf, to testify as aforesaid], and being required to make oath or affirmation as a witness in that behalf, hath now refused so to do [or being duly sworn as a witness doth now refuse to answer certain questions concerning the premises which are here put to him], without offering any just excuse for such his refusal : These are therefore to command you the said con-

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stable to take the said *E. F.*, and him safely to convey to the [house of correction] at _____, in the county aforesaid, and there deliver him to the said keeper thereof, together with this precept; and I do hereby command you the said keeper of the said [house of correction] to receive the said *E. F.* into your custody in the said [house of correction], and him there safely keep for the space of _____ days for his said contempt, unless he shall in the meantime consent to be examined and to answer concerning the premises; and for your so doing this shall be your sufficient warrant.

Given under my hands and seal, this _____ day of _____, in the year of our Lord _____, at _____ in the [county] aforesaid. J. S. (L.S.)

(M.)

Depositions of Witnesses.

to wit. } The examination of *C.D.* of [farmer] and *E. F.* of [labourer], taken on [oath] this _____ day of _____, in the year of our Lord _____, at _____ in the [county] aforesaid, before the undersigned, [one] of Her Majesty's justices of the peace for the said [county], in the presence and hearing of *A. B.* who is charged this day before [me], for that he the said *A. B.* on _____, at _____, [&c., describing the offence as in a warrant of commitment.]

This deponent *C. D.* on his [oath] saith as follows, [&c., stating the deposition of the witness as nearly as possible in the words he uses. When his deposition is complete let him sign it.]

And this deponent *E. F.* upon his oath, saith as follows [&c.]

The above depositions of *C. D.* and *E. F.* were taken and [sworn] before me at _____, on the day and year first above mentioned.

J. S.

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N.

(N.)

Statement of the Accused.

: *A. B.* stands charged before the undersigned, [one] of Her Majesty's justices of the peace in and for the [county] aforesaid, this day of in the year of our Lord , for that he the said *A. B.* on , at , [*&c.*, as in the caption of the depositions]; and the said 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; but whatever you say will be taken down in writing, and may be given in evidence against you upon your trial;" whereupon the said *A. B.* saith 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.*]

A. B.

Taken before me at the day and year first above mentioned.

J. S.

(O. 1.)

Recognizance to Prosecute or give Evidence.

: Be it remembered that on the day of , in the year of our Lord , *C. D.* of , in the township of , in the said county, farmer, [*or C. D. of No. 2,* street, in the parish of , in the borough of , surgeon, of which said house he is tenant], personally came before me one of Her Majesty's justices of the peace for the said county, and acknowledged himself to owe to our Sovereign Lady the Queen the sum of of good and lawful money of Great Britain, to be made and levied of his goods and chattels, lands and

Sched. tenements, to the use of our said Lady the Queen,
O. 1. her heirs and successors, if he the said *C. D.* shall
 — fail in the condition endorsed.

Taken and acknowledged, the day and year first
 above mentioned, at _____, before me. *J. S.*

Condition to Prosecute.

The condition of the within written recognizance is such, that whereas one *A. B.* was this day charged before me *J. S.*, justice of the peace within mentioned, for that [*&c.*, as in the caption of the depositions], if therefore he the said *C. D.* shall appear at the next court of oyer and terminer or general gaol delivery [or at the next court of general or quarter sessions of the peace] to be holden in and for the [county] of _____ * and there prefer or cause to be preferred a bill of indictment for the offence aforesaid against the said *A. B.*, and there also duly prosecute such indictment, then the said recognizance to be void, or else to stand in full force and virtue.

Condition to Prosecute and give Evidence.

Same as the last form to the asterisk*, and then thus :—“and there prefer or cause to be preferred a bill of indictment against the said *A. B.* for the offence aforesaid, and duly prosecute such indictment, and give evidence thereon as well to the jurors who shall then inquire of the said offence as also to them who shall pass upon the trial of the said *A. B.*, then the said recognizance to be void, or else to stand in full force and virtue.”

Condition to give Evidence.

Same as the last form but one to the asterisk,* and then thus :—“and there give such evidence as he knoweth upon a bill of indictment to be then and there preferred against the said *A. B.* for the

offence aforesaid, as well to the jurors who shall there inquire of the said offence as also to the jurors who shall pass upon the trial of the said *A. B.*, if the said bill shall be found a true bill, then the said recognizance to be void, or else to stand in full force and virtue."

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O. 1.

(O. 2.)

*Notice of the said Recognizance to be given to the
Prosecutor and his Witnesses.*

Take notice, that you *C. D.* of _____, are
to wit. } bound in the sum of _____ to appear at
the next court of [general quarter sessions of the peace],
in and for the county of _____, to be holden at _____,
in the said county, and then and there [prosecute
and] give evidence against *A. B.*; and unless you
then appear there, and [prosecute and] give evidence
accordingly the recognizances entered into by you
will be forthwith levied on you. Dated this
day of _____, 186 .

J. S.

(P. 1.)

*Commitment of Witness for refusing to enter into the
Recognizance.*

To the constable of _____, and to the keeper
of the [house of correction] at _____, in the
said [county] of _____.

Whereas *A. B.* was lately charged before the undersigned [one] of Her Majesty's justices of the peace in and for the said [county] of _____, for that [etc., as in the summons to the witness], and it having been made to appear to [me], upon oath that *E. F.* of _____ was likely to give material evidence for the prosecution, [I] duly issued [my summons to the said *E. F.* requiring him to be and

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appear] before [me] on _____, at _____, or before such other justice or justices of the peace as should then be there, to testify what he should know concerning the said charge so made against the said *A. B.* as aforesaid; and the said *E. F.* now appearing before [me], [or] being brought before [me] by virtue of a warrant in that behalf, to testify as aforesaid, hath been now examined by [me] touching the premises, but being by [me] required to enter into a recognizance conditioned to give evidence against the said *A. B.* hath now refused so to do: These are therefore to command you the said constable to take the said *E. F.*, and him safely to convey to the [house of correction] at _____, in the [county] aforesaid, and there deliver him to the said keeper thereof, together with this precept; and I do hereby command you the said keeper of the said [house of correction] to receive the said *E. F.* into your custody in the said [house of correction] there to imprison and safely keep him until after the trial of the said *A. B.* for the offence aforesaid, unless in the meantime such *E. F.* shall duly enter into such recognizance as aforesaid in the sum of _____ pounds, before some one justice of the peace for the said [county] conditioned in the usual form to appear at the next court of [oyer and terminer or general gaol delivery, or general quarter sessions of the peace] to be holden in _____ and for the [county] of _____, and there to give evidence before the grand jury upon any bill of indictment which may then and there be 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, if a true bill should be found against him for the same.

Given under my hand and seal this _____ day of _____, in the year of our Lord _____, at _____ in the [county] aforesaid.

(P. 2.)

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P. 2.

Subsequent Order to Discharge the Witness.

To the keeper of the [house of correction] at
 , in the [county] of .

Whereas by [my] order dated the day of
 [instant], reciting that *A. B.* was lately before
 them, charged before [me] for a certain offence
 therein mentioned, and that *E. F.* having appeared
 before [me], and being examined as a witness for
 the prosecution in that behalf, refused to enter into
 a recognizance to give evidence against the
 said *A. B.*, and [I] therefore thereby committed
 the said *E. F.* to your custody, and required you
 safely to keep him until after the trial of the said
A. B. for the offence aforesaid, unless in the mean-
 time he should enter into such recognizance as
 aforesaid: And whereas, for want of sufficient evi-
 dence against the said *A. B.*, the said *A. B.* has not
 been committed by or holden to bail for the said
 offence, but on the contrary thereof has been since
 discharged, and it is therefore not necessary that
 the said *E. F.* should be detained longer in your
 custody: These are therefore to order and direct you
 the said keeper to discharge the said *E. F.* out of
 your custody as to the said commitment, and suffer
 him to go at large.

Given under [my] hand and seal, this day
 of , in the year of our Lord , at
 , in the [county] aforesaid.

J. S. (L.S.)

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Q. 1.

(Q. 1.)

Warrant Remanding a Prisoner.

To the constable of _____, and to the [keeper
of the house of correction], at _____, in the
said [county] of _____.

Whereas *A. B.* was this day charged before the undersigned [one] of Her Majesty's justices of the peace in and for the said [county] of _____, 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 constable, in Her Majesty's name, forthwith to convey the said *A. B.* to the [house of correction] at _____, in the said [county], and there to deliver him to the keeper thereof, together with this precept; and [I] hereby command you the said keeper to receive the said *A. B.* into your custody in the said house of correction, and there safely keep him until the day of _____ instant, when [I] hereby command you to have him at _____, at _____, o'clock in the forenoon of the same day before [me], or before such other justice or justices of the peace for the said [county] as may then be there, to answer further to the said charge, and to be further dealt with according to law, unless you shall be otherwise ordered in the meantime.

Given under my hand and seal, this _____ day of _____, in the year of our Lord _____, at _____ in the [county] aforesaid.

J. S. (L.S.)

(Q. 2.)

Recognizance of Bail instead of Remand on an Adjournment of Examination.

Be it remembered, that on the _____ day of _____ in the year of our Lord _____, *A. B.* of _____

labourer, *L. M.* of _____, *grocer*, and *N. O.* of _____, *butcher*, personally came before me, one of Her Majesty's justices of the peace for the said [county], and severally acknowledged themselves to owe to our Lady the Queen the several sums following; that is to say, the said *A. B.* the sum of _____, and the said *L. M.* and *N. O.* the sum of _____ each of good and lawful money of Great Britain, to be made and levied of their several goods and chattels, lands and tenements respectively, to the use of our said Lady the Queen, her heirs and successors, if he the said *A. B.* fail in the condition indorsed.

Taken and acknowledged, the day and year first above mentioned at _____, before me,

J. S.

Condition.

The condition of the within-written recognizance is such, that whereas the within bounden *A. B.* was this day [or on _____ last past] charged before me, for that [*&c.*, as in the warrant]; And whereas the examination of the witnesses for the prosecution in this behalf is adjourned until the _____ day of _____ instant; if therefore the said *A. B.* shall appear before me on the said _____ day of _____ instant at _____ o'clock in the forenoon, or before such other justice or justices of the peace for the said [county] as may then be there, to answer [further] to the said charge, and to be further dealt with according to law, then the said recognizance to be void, or else to stand in full force and virtue.

(Q. 3.)

Notice of such Recognizance to be given to the Accused and his Sureties.

: Take notice, that you *A. B.* of _____ are bound in the sum of _____, and your sureties *L. M.* and *N. O.* in the sum _____ each, that

Sched.
Q. 2.

Sched. you *A. B.* appear before me *J. S.* one of Her Majesty's
Q. 3. justices of the peace for the [county] of _____, on
 _____, the _____ day of _____ instant, at
 o'clock in the forenoon, at _____, or before such
 other justice or justices of the peace for the same
 [county] as may then be there, to answer further to
 the charge made against you by *C. D.*, and to be
 further dealt with according to law; and unless you
A. B. personally appear accordingly the recogni-
 zances entered into by yourself and sureties will be
 forthwith levied on you and them.

Dated this _____ day of _____ 186 .

J. S.

(Q. 4.)

*Certificate of Non-appearance to be endorsed on the
 Recognizance.*

I hereby certify that the said *A. B.* hath not ap-
 peared at the time and place in the above condition
 mentioned, but therein hath made default by reason
 whereof the within-written recognizance is forfeited.

J. S.

(R. 1.)

*Warrant to convey the Accused before a Justice of the
 County, &c., in which the Offence was committed.*

To *W. T.* constable of _____, and to all other
 peace officers in the said [county] of _____.

Whereas *A. B.*, of _____, labourer, hath this day
 been charged before the undersigned [one] of Her
 Majesty's justices of the peace in and for the said
 county of _____, for that [&c., as in the warrant to
 apprehend]: And whereas [I] have taken the deposi-
 tion of *C. D.*, a witness examined by [me] in this
 behalf; but inasmuch as [I] am informed that the

principal witnesses to prove the said offence against the said *A. B.* reside in the [county] of *C.*, where the said offence is alleged to have been committed: These are therefore to command you the said constable, in Her Majesty's name, forthwith to take and convey the said *A. B.* to the said [county] of *C.*, and there carry him before some justice or justices of the peace in and for that [county], and near unto the [parish of *D.*], where the offence is alleged to have been committed, to answer further to the said charge before him or them, and to be further dealt with according to law; and [I] hereby further command you the said constable to deliver to the said justice or justices the information in this behalf, and also the said deposition of *C. D.* now given into your possession for that purpose, together with this precept.

Given under my hand and seal, this day of
 in the year of our Lord , at , in
the [county] aforesaid.

J. S. (L.S.)

(R. 2.)

Order for Payment of the Constable's Expenses.

To *R. W.*, Esquire, treasurer of the said county of *C.*

Whereas *W. T.*, constable of , in the county of *A.*, hath by virtue of and in obedience to a certain warrant of *J. S.*, Esquire, [one] of Her Majesty's justices of the peace in and for the said county of *A.*, taken and conveyed one *A. B.*, charged before the said *J. S.* with having [etc., stating shortly the offence], from in the said county of *A.* to in the said county of *C.*, a distance of miles, and produced the said *A. B.* before me, *S. P.*, one of Her Majesty's justices of the peace in and

Sched.
Q. 3.

you *A. B.* appear before me *J. S.* one
justices of the peace for the [county]
, the day of in
o'clock in the forenoon, at ,
other justice or justices of the pea-
[county] as may then be there, to an-
the charge made against you by *C.*
further dealt with according to law ;
A. B. personally appear according to
stances entered into by yourself and
forthwith levied on you and them.
Dated this day of 18

(Q. 4.)

*Certificate of Non-appearance to l.
Recognizance.*

I hereby certify that the said *A*
peared at the time and place in th
mentioned, but therein hath mad
whereof the within-written recog

(R. 1.)

*Warrant to convey the Accuse
County, &c., in which the*

To *W. T.* constable of
peace officers in the s

Whereas *A. B.*, of
been charged before the
Majesty's just
county

... of the sum of ...
... of the sum of ...

Sched. for the said county of *C.*, and delivered him into
R. 2. the custody of _____ by [my] direction to answer to
 the said charge, and further to be dealt with accord-
 ing to law; And whereas the said *W. T.* hath also
 delivered to [me] the said warrant, together with
 the information in that behalf, and also the deposi-
 tions of *C. D.* in the said warrant mentioned, and
 hath proved to [me] upon oath the handwriting of
 the said *J. S.* subscribed to the same: And whereas
 [I] have ascertained that the sum which ought to
 be paid to the said *W. T.* for conveying the said
A. B. from the said county of *A.* to the said county
 of *C.*, and taking him before [me], is the sum of
 _____, and that the reasonable expenses of the
 said *W. T.* in returning will amount to the further
 sum of _____, making together the sum of _____:
 These are therefore to order you, as such treasurer
 of the said county of *C.*, to pay unto the said *W. T.*
 the said sum of _____, according to the form of the
 statute in such case made and provided, for which
 payment this order shall be your sufficient voucher
 and authority.

Given under my hand, this _____ day of _____ 186 .
 J. P.

(S. 1.)

Recognizance of Bail.

Be it remembered, that on the _____ day of _____,
 in the year of our Lord _____, *A. B.* of _____,
labourer, *L. M.* of _____, *grocer*, and *N. O.* of _____
butcher, personally came before [us] the un-
 dersigned, two of Her Majesty's justices of the
 peace for the said [county], and severally acknow-
 ledged themselves to owe to our Lady the Queen
 the several sums following; (that is to say,) the said
A. B. the sum of _____, and the said *L. M.* and
N. O. the sum of _____ each, of good and lawful

money of Great Britain, to be made and levied of their several goods and chattels, lands and tenements respectively, to the use of our said Lady the Queen, her heirs and successors, if he the said *A. B.* fail in the condition endorsed.

Sched.
S. 1.

Taken and acknowledged, the day and year first above mentioned, at _____, before us, *J. S.*
J. N.

Condition in ordinary Cases.

The condition of the within-written recognizance is such, that whereas the said *A. B.* was this day charged before [*us*], the justices within mentioned, for that [*&c., as in the warrant*]; if therefore the said *A. B.* will appear at the next court of oyer and terminer and general gaol delivery [*or court of general quarter sessions of the peace*] to be holden in and for the county of _____, and there surrender himself into the custody of the keeper of the [*common gaol*] there, and plead to such indictment as may be found against him by the grand jury, for or in respect of the charge aforesaid, and take his trial upon the same, and not depart the said court without leave, then the said recognizance to be void, or else to stand in full force and virtue.

Conditions where the Defendant is entitled to a Traverse.

The condition of the within-written recognizance is such, that whereas the said A. B. was this day charged before [me], the justice within mentioned, for that [&c., as in the warrant or summons]; if therefore the said A. B. will appear at the next court of general quarter sessions of the peace [or court of oyer and terminer and general gaol delivery] to be holden in and for the county of _____, and there plead to such

Sched.
S. 1.

indictment as may be found against him by the grand jury for or in respect of the charge aforesaid, and shall afterwards at the then next court of general quarter sessions of the peace [or court of oyer and terminer and general gaol delivery] surrender himself into the custody of the keeper of the [house of correction] there, and take his trial upon the said indictment, and not depart the said court without leave, then the said recognizance to be void or else to stand in full force and virtue (a).

(S. 2.)

Notice of the said Recognizance to be given to the Accused and his Bail.

Take notice, that you *A. B.* of _____, are bound in the sum of _____ and your [sureties *L. M.* and *N. O.*] in the sum of _____ each, that you *A. B.* appear, &c. [as in the condition of the recognizance], and not depart the said court without leave; and unless you the said *A. B.* personally appear and plead, and take your trial accordingly, the recognizance entered into by you and your sureties shall be forthwith levied on you and them.

Dated this _____ day of _____, 186 .

J. S.

(S. 3.)

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 recognizance, himself in _____, and [two] sureties in _____ each.

J. S.

(a) The words in italics were repealed by the Statute Law Revision Act, 1875 (38 & 39 Vic. c. 76).

Sched.
T. 1.

(T. 1.)

Warrant of Commitment.

To the constable of _____, and to the keeper of the [house of correction] at _____, in the said [county] of _____.

Whereas *A. B.* was this day charged before me, *J. S.* one of Her Majesty's justices of the peace in and for the said [county] of _____, on the oath of *C. D.* of _____, farmer, and others, for that [*&c.*, stating shortly the offence]: These are therefore to command you the said constable of _____ to take the said *A. B.*, and him safely to convey to the [house of correction] at _____ aforesaid, and there to deliver him to the keeper thereof, together with this precept; and I do hereby command you the said keeper of the said [house of correction] to receive the said *A. B.* into your custody in the said [house of correction], and there safely keep him until he shall be thence delivered by due course of law.

Given under my hand and seal, this _____ day of _____, in the year of our Lord _____, at _____, in the [county] aforesaid. *J. S.* (L.S.)

(T. 2.)

Gaoler's Receipt to the Constable for the Prisoner, and Justice's Order thereon for Payment of the Constable's Expenses in executing the Commitment.

I hereby certify, that I have received from *W. T.*, constable of _____, the body of *A. B.*, together with a warrant under the hand and seal of *J. S.*, Esquire, one of Her Majesty's justices of the peace for the [county] of _____, 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 house of correction [or common gaol] at .

Sched.
T. 2.

CONSTABLE'S EXPENSES:	£	s.	d.
For conveying the above <i>A. B.</i> from to [by railway], at per mile - - -	}		
For conveying him to and from the railway station - - -			
For subsistence of prisoner whilst in custody after commitment days, at per day -	}		
For his lodging nights, at per night - - -			
Constable days, at per day - - -	}		
[One] assistant [if necessary] days, at per day - - -			
Total £			

To *R. W.*, Esquire, treasurer of the said [county] of

Whereas *W. T.*, constable of , in the county of , hath produced unto me, *J. P.*, one of Her Majesty's justices of the peace in and for the said county of (wherein the offence hereinafter mentioned is alleged to have been committed), the above receipt of *P. K.*, keeper of the [house of correction] at : And whereas, in pursuance of the statute in such case made and provided, I have ascertained that the sum which ought to be paid to the said *W. T.* for conveying the said *A. B.* from in the said county of to the said house of correction is , and that the reason-

THE INDICTABLE OFFENCES ACT AMEND-
MENT ACT, 1868.

81 & 82 VICT. CAP. 107.

An Act to amend the Law relating to the Indorsing of Warrants in Scotland, Ireland, and the Channel Islands. [31st July, 1868.]

WHEREAS it is expedient to amend the law relating to the indorsing of warrants in *Scotland, Ireland, and the Channel Islands* :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, as follows :

1. The Act of the session holden in the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-two, intituled "An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales with respect to persons charged with Indictable Offences," is hereinafter referred to and may be cited for all purposes as "The Indictable Offences Act, 1848."

11 & 12 Vict|
c. 42, to be
cited as
"The In-
dictable
Offences
Act, 1848."

2. This Act may be cited for all purposes as "The Indictable Offences Act Amendment Act, 1868."

Short title.

3. This Act, so far as is consistent with the tenor thereof, shall be construed as one with the said Indictable Offences Act, 1848, and any Act amending the same.

Construc-
tion of Act.

4. In the following cases, that is to say,
Where a warrant is issued against any person by any competent magistrate in *Scotland or Ireland,*

Warrants
issued in
Scotland or
Ireland how
to be backed

Sect. 4.

in the Chan-
nel Islands,
and *vice*
versâ.

and such person goes or is supposed to have gone into any of the *Channel Islands*; or

Where a warrant is issued against any person by any competent magistrate in any of the *Channel Islands*, and such person goes or is supposed to have gone into *Scotland* or *Ireland*;

any competent magistrate having jurisdiction over the place where such person is or is supposed to be may indorse such warrant in manner provided by "The Indictable Offences Act, 1848," or as near thereto as circumstances admit.

Any such warrant when so indorsed shall be a sufficient authority to the person or persons bringing the same, and to all persons to whom the same was originally directed, and also to all constables within the limits of the jurisdiction of the magistrate who indorsed the same, to execute such warrant within such last-mentioned limits, and to convey the person when apprehended to any place or places within the limits of the jurisdiction of the magistrate who issued the warrant, and to bring him before that magistrate or before any other magistrate having jurisdiction over such place or places as aforesaid; and any magistrate before whom the person so apprehended is brought may proceed in the same manner as if such person had been apprehended within his jurisdiction.

With regard to backing English warrants in *Scotland*, *Ireland*, the *Isle of Man*, and the *Channel Islands*, see 11 & 12 Vict. c. 42, ss. 12, 13, 14; and section 15 as to the backing of Scotch warrants in *England* or *Ireland*.

The Acts of parliament relative to the granting and backing of warrants which are in force in *Jersey* and registered there are the

6 & 7 Vict. c. 34	...	...	1843
11 & 12 Vict. c. 42	}	...	...
" c. 43			
14 & 15 Vict. c. 55	...	...	1851
31 & 32 Vict. c. 107	...	...	1868

By virtue of these several Acts warrants issued in England, Scotland, or Ireland may be backed in Jersey, or *vice versa*, provided the person whose apprehension is sought be accused (to use the terms of 6 & 7 Vict. c. 34) of an offence amounting to treason or some other felony, such as the justices of the peace in general or quarter sessions assembled have no authority to try, or (according to the terms of 1 & 12 Vict. c. 42) of an indictable offence.

**Note to
Sect. 4.**

5. For the purposes of this Act "competent magistrate" shall mean—

Definition
of terms.

In *Scotland*,—

The Lord Justice General, the Lord Justice Clerk, any of the Lords Commissioners of Justiciary, any Sheriff or Steward Depute or Substitute, or any Justice of the Peace :

In *Ireland*,—

Any Justice of the Peace, or any judge of Her Majesty's Court of Queen's Bench, or any Justice of Oyer and Terminer or of Gaol Delivery :

In the *Channel Islands*,—

In *Jersey*, the Bailiff or any Lieutenant Bailiff within his Bailiwick or Jurisdiction :

In *Guernsey*, the Bailiff or any Lieutenant Bailiff within his Bailiwick or Jurisdiction :

In *Alderney*, the Judge of *Alderney*, or in his absence any Jurat of such Island :

In *Sark*, the Seneschal of *Sark*, or in his absence his Deputy within such Island :

"Constable" shall include any peace officer or person authorized to apprehend persons charged with offences :

"Warrant" shall include any process in the nature of a warrant.

PROSECUTION OF OFFENCES ACT, 1879.

42 & 48 VICT. CAP. 22.

An Act for more effectually providing for the Prosecution of Offences in England, and for other purposes.

[3rd July, 1879.]

WHEREAS it is expedient to provide more effectually for the prosecution of offences in England, and for other purposes :

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, as follows :—

Short title.

1. This Act may be cited as the "Prosecution of Offences Act, 1879."

Duty of director of public prosecutions.

2. . . . It shall be the duty of the director of public prosecutions, under the superintendence of the attorney-general, to institute, undertake, or carry on such criminal proceedings (whether in the court for crown cases reserved, before sessions of oyer and terminer or of the peace, before magistrates, or otherwise), and to give such advice and assistance to chief officers of police, clerks to justices, and other persons, whether officers or not, concerned in any criminal proceeding respecting the conduct of that proceeding, as may be for the time being prescribed by regulations under this Act, or may be directed in a special case by the attorney-general.

The regulations under this Act shall provide for the director of public prosecutions taking action in

cases which appear to be of importance or difficulty, or in which special circumstances, or the refusal or failure of a person to proceed with a prosecution, appear to render the action of such director necessary to secure the due prosecution of an offender, and shall also fix the areas or districts for which the assistants of such director shall respectively be appointed and act. Sect. 2.

* * * * *

5. Where the director of public prosecutions gives notice to any justice or coroner that he has instituted, or undertaken, or is carrying on any criminal proceeding, such justice and coroner shall at the time and in the manner prescribed by the regulation under this Act, or directed in any special case by an order of the attorney-general, transmit to the said director every recognizance, information, certificate, inquisition, deposition, document, and thing which is connected with the said proceeding and which the justice or coroner is required by law to deliver to the proper officer of the court in which the trial is to be had, and the said director shall, subject to the regulations under this Act, cause the same to be delivered to the said proper officer of the court, and shall be under the same obligation, on the same payment, to deliver to an applicant copies thereof as the said justice, coroner, or officer.

Delivery of recognizances, inquisitions, &c., to director of public prosecutions.

It shall be the duty of every clerk to a justice or to a police court to transmit, in accordance with the regulations under this Act, to the director of public prosecutions, a copy of the information and of all depositions and other documents relating to any case in which a prosecution for an offence instituted

Sect. 5. before such justice or court is withdrawn or is not proceeded with within a reasonable time.

A failure on the part of any justice or coroner to comply with this section shall be deemed to be a failure to comply with the said requirement to deliver to the proper officer of the court, and any clerk to a justice or to a police court failing to comply with this section shall be liable to the same penalty to which a justice or coroner is liable for such failure as aforesaid.

With reference to the provisions of this section, see 11 & 12 Vict. c. 42, ss. 3, 8, 17, 20, 21, 22, 23, and 26, *ante*.

If director abandon prosecution aggrieved parties may proceed.

6. Where any criminal proceeding has been instituted or undertaken by the director of public prosecutions, any person having the right to institute and carry on such proceedings may, if he have good cause for so doing, show, by affidavit to any judge of the high court of justice, that such director of public prosecutions has abandoned such proceedings, or has neglected duly to carry on the same, and such judge, after hearing such director of public prosecutions, may give such directions as to the mode in which such proceedings shall be continued by such person so applying, or by the said director of public prosecutions, as to such judge shall appear right.

Saving as to private prosecutors, and binding over persons to prosecute.

7. Nothing in this Act shall interfere with the right of any person to institute, undertake, or carry on any criminal proceeding.

Where any criminal proceeding is instituted, undertaken, or carried on by the director of public prosecutions, such director shall not be bound over to prosecute or conduct such proceeding, or required

to give security for costs, and it shall not be necessary to bind over any person to prosecute or conduct such proceeding, and if any person is so bound over, or has given security for costs, he shall, upon the director of public prosecutions undertaking the case, be released from such obligation, and the security shall be deemed to have been cancelled, and the director of public prosecutions shall be liable to costs in lieu of such person.

Sect. 7.

The prosecution of an offender by the director of public prosecutions shall, for the purpose of enabling a person to obtain a restitution of property, or obtaining, exercising, or enforcing any right, claim, or advantage whatsoever, have the same effect as if such person had been bound over to prosecute and had prosecuted the offender, subject to this proviso, that such person shall give all reasonable information and assistance to the said director in relation to the prosecution.

8. The attorney-general, with the approval of the Lord Chancellor and a secretary of state, may from time to time make, and when made rescind, vary, and add to, regulations for carrying into effect this Act.

Regulations may be made, &c., and to be laid before parliament.

The draft of all such regulations proposed to be approved as aforesaid shall be laid before both houses of parliament and shall not be finally approved as aforesaid until the draft has lain before each house of parliament for not less than forty days upon which such house has sat.

**Note to
Sect. 8.**

REGULATIONS made by the ATTORNEY-GENERAL, with the Approval of the LORD CHANCELLOR and a SECRETARY of STATE, for carrying into effect "THE PROSECUTION OF OFFENCES ACT, 1879."

A. F. O. LIDDELL.

Whitehall,

5th February, 1880.

RULES as to PROSECUTIONS under 42 & 43 Vict. c. 22, s. 8.

THE director of public prosecutions shall be required to take action in such class of cases as have hitherto been conducted by the solicitor of the treasury by order of the secretary of state, and in other cases for the proper conducting of which, in his opinion, the ordinary mode of prosecution is insufficient.

The following rules are to be applied only to such cases:—

1. It shall be the duty of the director of public prosecutions to give advice in cases of importance and difficulty to justices of the peace, to clerks of justices of the peace, and to chief officers of police who may apply for his advice in such cases, and to other persons in his discretion, subject to any special instruction which he may receive from the attorney-general. Advice so given may, at the discretion of the director of public prosecutions, be given verbally or in writing.

2. The director of public prosecutions may assist prosecutors by authorizing them to incur special costs for the purpose of—

- (a.) The preparation of scientific evidence.
- (b.) The remuneration of scientific witnesses.
- (c.) The payment of extra fees to counsel.
- (d.) The preparation of plans or models.
- (e.) And in respect of any special matters in such cases as the attorney-general may sanction.

So much of the costs that are thus authorized by the director of public prosecutions as shall not be allowed on taxation and paid by the authority that defrays the costs of the prosecution, and are found after examination by the solicitor of Her. Majesty's Treasury to be reasonable and proper, shall be paid by the said solicitor.

3. Upon every application made by a prosecutor to withdraw from a prosecution, the clerk to the justices or to the police court before whom the prosecution has been in which such application is made, shall forthwith give notice to the

director of public prosecutions of such application, and of the reasons for making it.

**Note to
Sect. 8.**

If any prosecution instituted before a justice of the peace or a police magistrate be not carried on within reasonable time, or be not proceeded with in consequence of an apparent proper refusal or failure of any one who ought to proceed therewith, the clerk shall forthwith give notice to the director of public prosecutions of any such delay, refusal, or failure, and of the cause of the same, if it be known. And in all cases to which this rule applies he shall also, when required, forthwith transmit to the director of public prosecutions by post a copy of the information and of all depositions and other documents relating to the case in which such notice is given.

4. In all cases in which any delay in proceeding with a prosecution, or in which good cause is shown for any refusal or failure to proceed, and which appear to the director of public prosecutions to be of importance or difficulty, or in which special circumstances seem to him to render his action necessary to secure the due prosecution of an offender, he shall take action therein. And in these cases all expenses not allowed on taxation and paid by the authority that defrays the costs of the prosecution, and which are found after examination by the solicitor to Her Majesty's Treasury to be reasonable and proper, shall be paid by the said solicitor.

5. The assistant to the director of public prosecutions shall act for the whole of England and Wales.

6. In the conduct of any prosecution the director of public prosecutions and his assistant shall, as a rule, employ and instruct the solicitor of Her Majesty's Treasury, but under special circumstances may employ any solicitor or firm of solicitors to act as agents for the director in the conduct of a prosecution, in getting up evidence, preparing instructions for and instructing counsel as is usually done by a solicitor, and for so doing such agent or agents shall be paid such costs and charges as the solicitor to Her Majesty's Treasury shall after examination find to be reasonable and proper.

7. In instructing counsel the director of public prosecutions shall act under the directions of the attorney-general.

8. The director of public prosecutions, in cases reserved for the opinion of the Court of Crown Cases Reserved which are brought to his notice, and in which no counsel for the prosecution is instructed, shall, when he thinks fit, or when so directed by the attorney-general, cause counsel as named by the attorney-general to be instructed, and the expenses of so doing to be defrayed by the solicitor to Her Majesty's Treasury.

9. Every justice of the peace or coroner to whom a notice has been given under section 5 of the Prosecution of Offences

Note to Sect. 8. Act, 1879, shall within three days transmit by post, in a registered letter, to the director of public prosecutions every document which he is by the said section required to transmit.

The director of public prosecutions shall deliver or transmit by post such documents to the proper officers of the court in which the trial is to be had a reasonable time before such trial.

If he transmits such documents by post he shall transmit them in a registered letter addressed to such officer.

Settled and approved,

Temple, 15th January, 1880. JOHN HOLKER.

CAIRNS, C.

R. ASSHETON CROSS.

Interpreta-
tion.

9. In this Act, unless the context otherwise requires, the following terms have the meanings hereinafter respectively assigned to them; that is to say,

The term "the treasury" means the commissioners of Her Majesty's treasury :

The term "secretary of state" means one of Her Majesty's principal secretaries of state :

The term "person" includes a body of persons corporate or unincorporate :

The term "attorney-general" means Her Majesty's attorney-general for England, and Her Majesty's solicitor-general for England whenever such solicitor-general can by reason of a vacancy in the office of attorney-general or otherwise act as the attorney-general.

Commence-
ment of Act.

10. This Act shall come into operation on the first day of January one thousand eight hundred and eighty, which day is in this Act referred to as the commencement of this Act.

PROSECUTION OF OFFENCES ACT, 1884.

47 & 48 VICT. CAP. 58.

An Act for Amending the Prosecution of Offences Act, 1879. [14th August, 1884.]

WHEREAS it is expedient to amend the Prosecution of Offences Act, 1879 (in this Act referred to as the principal Act): 43 & 43 Vict. c. 22.

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Prosecution of Offences Act, 1884, and this Act and the principal Act may be together cited as the Prosecution of Offences Acts, 1879 and 1884. Short title of Act.

2. On and after the passing of this Act, all appointments made in pursuance of the principal Act are revoked, and the person for the time holding the office of solicitor for the affairs of Her Majesty's Treasury shall be director of public prosecutions, and perform the duties and have the powers of such director. Solicitor of the Treasury to be director of public prosecutions.

Section three of the Treasury Solicitor Act, 1876, shall extend to authorize any assistant solicitor for the affairs of Her Majesty's Treasury to act on behalf of the said solicitor in his capacity of director of public prosecutions. 39 & 40 Vict. c. 18.

The following is the enactment which is extended by the above section:—"An assistant solicitor for the affairs of Her Majesty's Treasury may, on behalf of the Treasury solicitor, take any oath, make any declaration, verify any account, execute any deed, or do any act or thing whatsoever which the Treasury solicitor is required or authorized under any Act of Parliament or otherwise to take, make, verify, execute, or do for the purpose of an administration granted to him, or

Note to Sect. 2. for the purpose of any Act of Parliament, or otherwise in the execution of his duties as the Treasury solicitor."

Returns as to crimes by chief officer of police.

3. The chief officer of every police district in England shall, from time to time, give to the director of public prosecutions information with respect to indictable offences alleged to have been committed within the district of such chief officer, and to the dealing with those offences, and the said information shall contain such particulars and be in such form as may be for the time being required by regulations under the principal Act.

Definitions of "police district" and "chief officer of police."

4. The expression "police district" means—

- (1.) The city of London and the liberties thereof; and
- (2.) The metropolitan police district; and
- (3.) Any county or riding, parts, division, or liberty of a county or borough, town, or place maintaining a separate police force:

The expression "chief officer of police" means—

- (1.) In the city of London the commissioner of police of the city; and
- (2.) In the metropolitan police district the commissioner or any assistant commissioner of the police of the metropolis or any district superintendent of the metropolitan police force; and
- (3.) Elsewhere the chief constable, or head constable, or other officer, by whatever name called, having the chief command of the police in a police district as defined by this Act.

Repeal of part of principal Act.

5. There shall be repealed the first paragraph of section two of the principal Act, beginning with the words "a Secretary of State," and ending with the word "fix," also sections three and four of the principal Act.

APPENDIX.

I. EXPENSES OF PROSECUTIONS.

14 & 15 VICT. CAP. 55.

An Act to amend the Law relating to the Expenses of Prosecutions, and to make further Provision for the Apprehension and Trial of Offenders, in certain Cases. [1st August, 1851.]

WHEREAS by the Act of the seventh year of King ^{7 Geo. 4.} George the Fourth, chapter sixty-four, certain provisions were made relating to the allowance of costs, expenses, and compensations to prosecutors and witnesses in cases of prosecutions for felonies and certain misdemeanors therein mentioned, [and the regulation and ascertaining of such costs and expenses, and relating to the allowance of compensation to persons who may have been active in the apprehension of offenders or persons charged with offences; and provisions have been made by other Acts relating to costs, expenses, and compensations in cases of prosecutions in respect of the offences therein mentioned: And whereas it is expedient to amend the law relating to costs, expenses, and compensations in cases of criminal prosecutions: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons,

Appndx. in this present parliament assembled, and by the authority of the same, that—

So much of 7 Geo. 4, c. 64, s. 23, as to expenses of attendance before examining magistrate, &c., repealed.

1. So much of section twenty-three of the said Act of the seventh year of King George the Fourth as provides that in cases of misdemeanor the power of ordering the payment of expenses and compensation shall not extend to the attendance before the examining magistrate, shall be repealed.

Power of courts to allow expenses in prosecutions for certain misdemeanors extended to other misdemeanors.

2. All the provisions of the said Act of the seventh year of King George the Fourth, as amended by this Act, authorizing and empowering courts to order payment of costs and expenses, and compensation for trouble and loss of time, in cases of the several misdemeanors enumerated in section twenty-three of the said Act of King George the Fourth, and concerning orders for payment of such costs, expenses, and compensation, and the payment thereof, and all the provisions of any other Act for, concerning, or applicable to the payment of such costs, expenses, and compensation in cases of the said misdemeanors, shall extend and be applicable in the case of any of the misdemeanors hereinafter mentioned; namely, unlawfully and carnally knowing and abusing any girl being above the age of ten years and under the age of twelve years; unlawfully taking or causing to be taken any unmarried girl, being under the age of sixteen years, out of the possession and against the will of her father or mother, or of any other person having the lawful care or charge of her; conspiring to charge any person with any felony, or to indict

any person of any felony; conspiring to commit Appndx.
any felony (a).

* * * * *

4. So much of the said Act of the seventh year of King George the Fourth (b), as empowers the justices of the peace of any county, riding, or division, or of any liberty, franchise, city, town, or place, chargeable with costs and expenses as therein mentioned, in quarter sessions assembled, to establish and alter regulations as to the rate of any costs and expenses to be allowed by virtue of that Act, shall be repealed: Provided always, that all such regulations in force at the time of the passing of this Act shall continue in force until revoked or until regulations in relation to the matter thereof are made under the powers of this Act.

So much of 7 Geo. 4, c. 64, as empowers quarter sessions to make regulations as to costs and expenses, repealed.

5. It shall be lawful for one of Her Majesty's principal secretaries of state to revoke any regulations made under the provision hereinbefore repealed, and to make regulations as to the rates or scales of payment of all or any costs, expenses, and compensations to be allowed or ordered to be paid under the said Act or any other Act or this Act to prosecutors and witnesses, and to persons attending the court in obedience to any recognizance or subpoena, in cases of criminal prosecutions, and (except as hereinafter mentioned) to persons who may have been active in or towards the apprehension of persons charged with offences, and also regulations as

Secretary of state may make regulations as to costs, expenses, and compensations, and certificates to be granted by examining magistrates.

(a) See 29 & 30 Vict. c. 52, s. 1, *post*, p. 465.

(b) *i.e.*, s. 26.

Appndz. to the rates or scales of payment according to which certificates may be granted by the examining magistrate or magistrates in respect of the expenses of any prosecutor, or witness or witnesses for the prosecution, or other person, of attending before such magistrate or magistrates, and of any compensation for trouble and loss of time therein, in any case where any court or judge is empowered under the said Act of the seventh year of King George the Fourth or any other Act or this Act to order payment of such expenses or compensation, and concerning the forms of such certificates and the details or particulars to be inserted therein of the expenses, trouble, and loss of time to which such certificates relate, and it shall be lawful for one of Her Majesty's principal secretaries of state from time to time to alter any such regulations, or make new regulations in relation to any of the matters aforesaid, and such regulations for the time being shall be binding on all courts and persons whomsoever.

* * * * *

Clerks of the peace, &c., may be paid by salaries in lieu of fees.

9. And whereas it may be expedient to authorize the payment of clerks of the peace and such other clerks as hereinafter mentioned by salaries instead of fees: Be it enacted, that it shall be lawful for the justices of the peace at their general or quarter sessions for the several counties, ridings, divisions of counties, and liberties throughout England and Wales, notice being given at the preceding quarter sessions that a motion will be made for such purpose, and the council or other governing body in every borough in England and Wales, from time to

time, if they see fit so to do, to recommend to one of Her Majesty's principal secretaries of state that the clerks of the peace, the clerks of special and petty sessions, and the clerks of the justices of the peace within their several jurisdictions, or any of such clerks as aforesaid, be paid by salaries in lieu of fees and other payments, or where any such clerks are for the time being paid by salaries, by virtue of any order made under this Act or otherwise, to recommend that the amounts of all or any of the salaries for the time being payable be reconsidered, or that all or any of such clerks for the time being paid by salaries be paid by fees in lieu of salary, and where payment by salary in lieu of fees or the reconsideration of the amounts of any salaries is recommended, to state the amount of salary which in the opinion of such justices, council, or governing body should in each case be paid; and every such recommendation being signed by the chairman of the court of general or quarter sessions, or the mayor or other head officer of the borough, shall be transmitted to the secretary of state; and it shall be lawful for such secretary of state, when any such recommendation is so made to him, by order under his hand, if he so think fit, to direct that all or any of the clerks to which such recommendation refers be paid by salary, and to fix the amount of salary to be so paid, or vary the amount of salary for the time being payable to any such clerk, or to direct that any such clerk for the time being paid by salary be paid by fees in lieu of salary; and such secretary of state shall cause copies of every order made under this enactment affecting any clerk of the peace, or any clerks of

Appndx.

Appndx. special sessions or petty sessions, or clerks to the justices within the district of any clerk of the peace, to be transmitted to such clerk of the peace, to be by him distributed, where occasion shall require, to such other clerks as aforesaid; and the salary for the time being payable to any such clerk under any such order shall be paid out of any county rate or rate in the nature of a county rate made in the county, riding, division, or liberty, or out of the borough fund of the borough, as the case may be, for or in which such clerk of the peace or other clerk to whom the same is payable is appointed or acts: Provided always, that in fixing the amount of any salary to be paid to any clerk of the peace or other clerk appointed before the passing of this Act regard shall be had to the tenure of his office and to his rights in respect thereof, but no clerk of the peace or other such clerk as aforesaid appointed after the passing of this Act shall be entitled to any compensation on account of any reduction of his emoluments occasioned by any order made under this enactment: Provided also, that no order shall be made in pursuance of any recommendation of the council or governing body of any borough in relation to the mode of payment or the amount of salary of any such clerk other than the clerk of the peace for such borough, unless the justices of such borough at a meeting of such justices approve of such recommendation, and such approval be certified to such secretary of state, under the hand of the chairman of such meeting (a).

(a) Now see 40 & 41 Vict. c. 43, s. 2, *post*, p. 474, making payment by salary compulsory; also section 3. By section

10. Provided that any such court of sessions or **Appndx.**
council, or governing body may, where they see fit, recommend that any description (to be specified in the recommendation) of the business of any clerk whom they may recommend to be paid by salary should not be included in fixing the amount of such salary, but that such clerk should be remunerated for the same by such fees or other payments as may be payable to him in respect thereof; and where any order is made by the secretary of state in pursuance of such recommendation as last aforesaid, such clerk shall be entitled to receive, for his own use, the like fees or payments in respect of the business in such recommendation specified in this behalf as he would be so entitled to receive if not paid by salary; and, save as aforesaid, where any clerk is paid by salary, under any order made by virtue of this Act, such salary shall include and be deemed the remuneration for all business which such clerk may, by reason of his office, be called on to perform; and no other payment shall be made for any such business, or for or to a deputy of any such clerk.

Certain business may be excepted in fixing the salaries.

11. Save as hereinbefore provided, all the fees which any such clerk as aforesaid would have been for the time being entitled to receive to his own use if such order had not been made shall, so long as any order for payment of such clerk by salary in lieu of fees is in force, be by him received and paid

Clerks paid by salaries to account for fees.

10 of the same Act, so much of sections 9 and 10 of this Act as empowers a secretary of state to direct that a clerk be paid by fees in lieu of salary is repealed.

Appndx. in any county, riding, division, or liberty to the treasurer in aid of the county rate or rate in the nature of a county rate of such county, riding, division, or liberty, and in any borough to the treasurer in aid of the borough fund, and such fees shall be accounted for from time to time in such manner and under such regulations as the justices at quarter sessions, or in any borough the council or other governing body, may direct (a).

Fees may be remitted by justices.

12. Where any clerk is paid by salary by virtue of any order made under this Act, any justices or justice before whom any proceeding is had, whereon a fee is payable which should be accounted for by such clerk under this Act, or before any person is summoned for non-payment of any such fee, may remit such fee in whole or in part for poverty or other reasonable cause, in their or his discretion, and in every such case the justices or justice by whom any fee is wholly or in part remitted shall cause an entry to be made, in a book or books to be kept for that purpose by such clerk, of the nature and amount of the several fees so remitted and of the reason for the remission in such case, which entry shall be signed by the justice, or two or more of the justices authorizing such remission, and shall be a sufficient voucher to discharge the clerk therefrom.

So much of 4 & 5 Will. 4, c. 36, as restrains

13. And whereas by the Act of the sessions holden in the fourth and fifth years of King William the

(a) By 40 & 41 Vict. c. 43, s. 9, *post*, p. 481, the account is now to be rendered quarterly, or at any less interval directed by the local authorities.

fourth, chapter thirty-six (b), it was enacted, that the justices of the peace acting in and for the cities of London and Westminster, the liberty of the Tower of London, the borough of Southwark, and the counties of Middlesex, Essex, Kent, and Surrey, should not at their respective general or quarter sessions of the peace, or any adjournment thereof, try any person or persons charged with any of the offences therein mentioned committed or alleged to be committed within the limits of that Act: Be it enacted, that the said recited enactment shall be repealed: Provided always, that such repeal shall not be construed to give authority to the said justices of the peace to try any person or persons for any offence which the justice of the peace acting in and for any county, riding, division, or liberty are restrained from trying under the Act of the session holden in the fifth and sixth years of Her Majesty, chapter thirty-eight (c)

Appndx.
 justices of London, &c., from trying certain offences, &c., repealed.

Such repeal not to give power to try offences restrained from being tried under 5 & 6 Vict. c. 38.

* * * * *

17. So much of an Act of the ninth year of King George the Fourth, chapter forty-three, and of an Act of the session holden in the sixth and seventh years of King William the Fourth, chapter twelve, as enacts that nothing therein contained shall extend to the county of Middlesex, shall be repealed, and the said Act shall be construed and take effect as if the county of Middlesex had not been excepted from the operation thereof.

So much of 9 Geo. 4, c. 43, and 6 & 7 Will. 4, c. 12, as exempts Middlesex, repealed.

18. And whereas by section thirteen of the Act of the session holden in the eleventh and twelfth

11 & 12 Vict. cc. 42 and 43.

(b) See *ante*, p. 387.
 (c) Now see 32 & 33 Vict. c. 62, s. 20, *ante*, p. 387.

Appndx. years of Her Majesty, chapter forty-two, provision is made for indorsing such warrants as therein mentioned by any officer within any of the Isles of Guernsey, Jersey, Alderney, and Sark, who shall have jurisdiction to issue any warrant or process in the nature of a warrant for the apprehension of offenders, and other provisions are made in the same Act, and in the Act of the same year, of Her Majesty, chapter forty-three, by reference to the enactment of the said section, and doubts have arisen by whom warrants should be endorsed in the said isles pursuant to the said provisions: Be it enacted, that the bailiffs of Jersey and Guernsey respectively, or in their respective absence the lieutenant bailiffs of such islands respectively, within their respective bailiwicks or jurisdictions, the judge of Alderney, or in his absence any jurat of such island within such island, and the seneschal of Sark, or in his absence his deputy within such island, shall have all such power and authority to indorse warrants as by the said Acts respectively is given or expressed or intended to be given to any officer within any of such isles having jurisdiction to issue any warrant or process in the nature of a warrant for the apprehension of offenders, and for such purpose shall have authority to administer an oath, and all the provisions of the said Acts shall be construed as if the officers authorized to indorse warrants by this enactment had been so authorized by the said section of the first-mentioned Act of the eleventh and twelfth years of Her Majesty.

By whom
warrants to
be backed in
the Channel
Islands.

In certain
counties of
cities and

19. Whenever any justice or justices of the peace, or coroner, acting for any county of a city or county

of a town corporate within which Her Majesty has not been pleased for five years next before the passing of this Act to direct a commission of oyer and terminer and gaol delivery to be executed, and until Her Majesty shall be pleased to direct a commission of oyer and terminer and gaol delivery to be executed within the same, shall commit for safe custody to the gaol or house of correction of such county of a city or town any person charged with any offence committed within the limits of such county of a city or town not triable at the court of quarter sessions of the said county of a city or county of a town, the commitment shall specify that such person is committed pursuant to this Act, and the recognizances to appear to prosecute and give evidence taken by such justice, justices, or coroner shall in all such cases be conditioned for appearance, prosecution, and giving evidence at the court of oyer and terminer and gaol delivery for the next adjoining county; and whenever any such person shall be so committed the keeper of such gaol or house of correction shall deliver to the judges of assize for such next adjoining county, a calendar of all prisoners in his custody so committed in the same way that the sheriff of the county would be by law required to do if such prisoners had been committed to the common gaol of such adjoining county; and the justice, justices, or coroner by whom persons charged as aforesaid may be committed, shall deliver or cause to be delivered to the proper officer of the court the several examinations, informations, evidence, recognizances, and inquisitions relative to such persons at the time and in the manner that would be required in case such persons had been committed to

Appndz.

towns prisoners may be committed, and tried at assises held for adjoining county.

Appndx. the gaol of such adjoining county by a justice or justices, or coroner, having authority so to commit, and the same proceedings shall and may be had thereupon at the sessions of oyer and terminer or general gaol delivery for such adjoining county as in the case of persons charged with offences of the like nature committed within such county.

What to be deemed the next adjoining county.

* * * * *

24. For the purpose of this Act the counties named in the second column of schedule (C.) to the Act of the session holden in the fifth and sixth years of King William the Fourth, chapter seventy-six, shall be considered next adjoining the counties of cities and towns corporate in the first column of the same schedule in conjunction with which they are respectively named (a).

(a) Schedule (C.) of the Municipal Corporations 5 & 6 Will. 4, c. 76, was as follows:—

Berwick-upon-Tweed -	-	Northumberland.
Bristol - - -	-	Gloucestershire.
Chester - - -	-	Cheshire.
Exeter - - -	-	Devonshire.
Kingston-upon-Hull -	-	Yorkshire.
Newcastle-upon-Tyne	-	Northumberland,

and it is reproduced in the Sixth Schedule to the Municipal Corporations Act, 1882.

29 & 30 VICT. CAP. 52.

Appndx.

An Act to extend the law relating to the Expenses of Prosecutions, and to make Provision for Expenses on Charges of Felony and certain Misdemeanors before Examining Magistrates.

[23rd July, 1866.]

WHEREAS by the Act of the seventh year of King ^{7 Geo. 4,} George the Fourth, chapter sixty-four, certain provisions were made relating to the allowance of costs, expenses, and compensation to prosecutors and witnesses in cases of prosecutions for felonies and certain misdemeanors therein mentioned, and by an Act of the session of the fourteenth and fifteenth years of Her Majesty, chapter fifty-five, the provisions of the said Act are extended, and authority is given to one of Her Majesty's secretaries of state to regulate the scale of payment to be allowed or ordered under the said Act or any other Act, as to the rates or scales of payment according to which certificates may be granted by the examining magistrate or magistrates in respect of the expense of any prosecutor or witnesses attending before such magistrate or magistrates : ^{14 & 15 Vict.} _{c. 55.}

And whereas it is expedient to extend the law relating to expenses in cases of prosecutions to the payment of expenses incurred in attending before an examining magistrate or magistrates, and to compensation for trouble and loss of time therein, on any charge of felony *bonâ fide* made, and on any case of the several classes of misdemeanor enumerated in section twenty-three of the said Act of King George

Appndx. the Fourth, or of section two of the said Act of Her Majesty, *bonâ fide* preferred, although the parties may not be bound over by recognizance or subpcena to prosecute or give evidence, and although no committal for trial may take place :

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this présent parliament assembled, and by the authority of the same as follows :—

Powers of examining magistrate to grant certificate of expenses to witnesses extended, and petty session clerks to be entitled to fees on depositions.

1. It shall and may be lawful for any magistrate or magistrates, at his or their discretion, and he or they is and are hereby authorized and empowered, at the request of any prosecutor or other person who shall have appeared before such magistrate or magistrates, either by summons or otherwise, on a charge of felony, *bonâ fide* made upon reasonable and probable cause, or on a charge in any case of the several misdemeanors enumerated in section twenty-three of the said Act of King George the Fourth, and of section two of the said Act of Her Majesty, *bonâ fide* preferred, and who shall have been examined on such charge of felony and misdemeanor, to grant a certificate of the expenses and of the amount to be allowed for trouble and loss of time to the witnesses so appearing and examined on such charge of felony or misdemeanor, in the same manner and to the same or like extent as magistrates are authorized by law to do in cases of felony and in cases of misdemeanor enumerated in the said Acts, where a committal for trial takes place or the parties are bound over by recognizance or subpcena to prosecute and give evidence ; and it shall also be lawful for such

examining magistrate or magistrates to allow to the clerk of the magistrates acting for the petty sessional division or district (except where such clerk is paid by salary in lieu of fees) the same fees on taking the depositions on such charge or charges as would be allowed to him, or he would be entitled to at law, in the event of a committal for trial taking place, and to include such allowance of fees in the certificate. **Appndx.**

2. Every examining magistrate signing or granting such certificate shall forward the same to the clerk of the peace of the county, riding, division, city, or borough, within which such petty sessional division or district is situate, to be laid by him before the next quarter sessions of the peace for such county, riding, division, city or borough; and such court shall be at liberty to allow the amount or so much of the amount named in the certificate, on the same being certified by the proper officer of the court of quarter sessions as correct, in accordance with the scale of payment fixed or to be from time to time fixed under section five of the Act of Her Majesty, before referred to (a), and thereupon to sign an order for payment on the treasurer or other officer of the county, riding, or division, or city, liberty, or franchise, in which the offence shall have been committed or supposed to have to been committed, in the same manner as an order for payment could have been made in case the parties had been bound over to prosecute, and an indictment had been preferred, and such treasurer or other officer shall

Magistrates signing, &c., certificates to forward same to clerks of the peace to be laid before court of quarter sessions, which may allow amount wholly or partially, and make orders for payment.

(a) See the Scale of Fees, *post*, p. 395.

Appndx. pay the amount of such order to the person or persons
Duration of Act. named therein.

3. This Act shall continue in force only for three years next after the passing thereof, and thence to the end of the then next session of parliament.

32 & 33 VICT. CAP. 49.

An Act to enable Local Authorities to collect Fines and Fees by means of Stamps.

[2nd August, 1869.]

WHEREAS it is expedient to authorize the collection of certain fees and fines hereafter mentioned by means of stamps :

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, as follows :

Short title.

1. This Act may be cited for all purposes as "The Local Stamp Act, 1869."

Application of Act.

2. This Act shall not apply to Scotland or Ireland.

Interpretation of "local authority."

3. For the purposes of this Act "local authority" shall mean in any county, parts, liberty, or division of a county having a separate commission of the peace, the justices in general or quarter sessions assembled; in any borough subject to the jurisdiction of a council or other governing body, the council or other governing body for the borough.

4. Whenever all the clerks of special and petty sessions and all the clerks of the justices of the peace within the jurisdiction of any local authority are paid in the whole or partly by salaries, by virtue of any order made under the Act of the session of the fourteenth and fifteenth years of the reign of Her present Majesty, chapter fifty-five, it shall be lawful for any such local authority, if they think fit, notice having been given at a previous meeting of the local authority of such purpose, to order that, from and after a day to be named in such order, all or any of the fees, fines, and penalties payable to the treasurer of the county, parts, liberty, division, or borough respectively within the jurisdiction of such local authority, or to any person on account of such treasurer, shall be received by such treasurer or such person as aforesaid by means of stamps denoting the sums payable, and not in money, and to cause such dies to be made as may be required for the purpose of carrying into effect this Act; subject nevertheless to such rules as may from time to time be made and published by such local authority, with the approval of one of Her Majesty's principal secretaries of state, and with the assent, so far as relates to the pattern, colour, and form of stamps and dies, and the making and impressing of the same, of the commissioners of inland revenue; and it shall be lawful for any such local authority from time to time, with the like notice, to revoke, vary, or renew any such order, the like approval and assent being first obtained for any such variation or renewal.

Appndx.
Power to collect fees and penalties by stamps.

The Lords Commissioners of Her Majesty's Treasury on the 23rd December, 1874, gave notice that on and after the 1st January, 1875, the fees payable in the police courts of London, Chatham, and Sherness shall be collected by means of stamps.

Appndx.

Unstamped
document
not to be
valid.

5. Any document to or on which a stamp or stamps ought to be affixed or impressed under this Act, or under any rule for the time being in force under this Act within the jurisdiction of any local authority, shall not be of any validity unless the proper stamp or stamps has or have been affixed or impressed, or unless a certificate has been signed thereon by a justice of the peace acting in the matter to the effect that he has excused or postponed the affixing or impressment of the proper stamp or stamps, in which case the document shall be of the same validity as if the proper stamp or stamps had been duly affixed or impressed: Provided that if any such document is, through mistake or inadvertence, received, lodged, recorded, or used without being properly stamped, it shall be competent for the court or judge before whom the cause or proceeding depends to which document relates to order that the same be stamped as in such order may be directed: and on every such document being stamped accordingly, the same, and every proceeding relative thereto, shall be as valid as if such document had been properly stamped in the first instance.

Authority
to sell
stamps.

6. The local authority may, by order under the hands of any two of their number, authorize any persons to sell or distribute stamps for the purpose of this Act upon such terms and subject to such conditions as such local authority may direct, and may from time to time revoke any authority so granted. If any person not authorized as aforesaid sells or distributes any such stamps as are authorized to be used for the purpose of this Act, he shall upon summary conviction be liable to a penalty not exceeding five pounds.

Penalty.

7. All expenses which may be incurred by any local authority in or about the preparing or making of dies or stamps, or in or about the carrying into execution of any of the powers given them by this Act, shall be defrayed out of and be a charge upon the county or borough rate respectively of such local authority..

Appndx.
Expenses of
Act.

8. If any person is guilty of any of the following offences,—

Penalties
for offences
herein
named.

- (1.) Forges or counterfeits, or causes or procures to be forged or counterfeited, any stamp or die, or any part of any stamp or die, provided, made, or used in pursuance of this Act; or
- (2.) Forges or counterfeits, or causes or procures to be forged or counterfeited, the impression, or any part of the impression, of any such stamp or die as aforesaid upon any document; or,
- (3.) With intent to defraud the local authority, stamps or marks, or causes or procures to be stamped or marked, any document with any such forged or counterfeited stamp or die;
- (4.) Sells or exposes for sale any document having thereupon the impression of any such forged or counterfeited stamp or die, or part of any such stamp or die, or any such forged or counterfeited impression or part of an impression, knowing the same to be forged or counterfeited; or
- (5.) Fraudulently cuts or gets off, or causes or procures to be cut or got off, the impression

Appndx.

of any such stamp or die from any document, with intent to use the same for any other document ; or

- (6.) Knowingly and without lawful excuse (the proof whereof lies on the person accused) has in his possession any false, forged, or counterfeited die, plate, or other instrument, or part of any such die, plate, or instrument, resembling or intended to resemble, either wholly or in part, any stamp or die, which at any time whatever has been or may be provided, made, or used by or under the direction of the local authority for the purposes of this Act ; or
- (7.) Knowingly and without lawful excuse (the proof whereof lies on the person accused) has in his possession any vellum, parchment, or paper having thereon the impression of any such false, forged, or counterfeit stamp or die, or having thereon any false, forged, or counterfeit stamp, mark, or impression resembling or representing, either wholly or in part, or intended or liable to pass or be mistaken for any such stamp or die ;
- (8.) With intent to defraud the local authority, forges or alters, or offers, utters, disposes of, or puts off, knowing the same to be forged or altered, any certificate of a justice of the peace under this Act, or any signature to any certificate purporting to be signed by a justice of the peace under this Act ;

Every person so offending, and every person knowingly and wilfully aiding and abetting any person in committing any such offence, and being thereof lawfully convicted, shall be judged guilty of felony, and shall be liable, at the discretion of the court, to penal servitude for any term not less than five years, or to be imprisoned for any term not exceeding two years.

Appndx.

40 & 41 VICT. CAP. 43.

An Act to amend the Law with respect to the Appointment, Payment, and Fees of Clerks of Justices of the Peace and Clerks of Special and Petty Sessions.

[10th August, 1877.]

WHEREAS by section nine of the Act of the session of the fourteenth and fifteenth years of the reign of Her present Majesty, chapter fifty-five, intituled "An Act to amend the law relating to the expenses of prosecutions, and to make further provision for the apprehension and trial of offenders in certain cases," (in this Act referred to as "the principal Act,") it is provided that one of Her Majesty's principal secretaries of state (in this Act referred to as a secretary of state) upon the recommendation of the justices, counsel, or other governing body as therein mentioned (in this Act referred to as "the local authority,") may, by order, direct that the clerks of special and petty sessions and the clerks of justices of the peace within the jurisdiction of such local authority, or any of such clerks, are to be paid by

14 & 15 Vict.
c. 55.

And whereas it is the duty of the said Justices, in respect of every such writ, to cause the same to be paid:

And whereas by the same Act the said writ is authorized to be commuted into a writ of habeas corpus, to enable the said Justices to cause the same to be paid in lieu of the writ of habeas corpus, and that such writ shall be paid for the same in the same manner as a writ of habeas corpus is paid:

And whereas it is expedient to provide that the said writ shall be paid by way of fine of the said writ, in the same manner as a writ of habeas corpus is paid:

It is therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and the authority of the same, as follows:

1. That the writ of habeas corpus in the Justice's Court shall be paid.

And whereas it is the duty of the said Justices, in respect of every such writ, to cause the same to be paid:

2. That in the passing of this Act or under the principal Act, and in force for the payment of any such writ of habeas corpus, or of any writ of habeas corpus, or of any writ of habeas corpus, or of any writ of habeas corpus, that shall be paid, as well as may be after the passing of this Act, and in any case before the first day of February next next ensuing, and seventy-eight and every eighth year thereafter, the Secretary of State is hereby authorized to make such regulations in respect of the payment of such writs of habeas corpus, and for the better carrying into effect the foregoing words provided.

Appndx.

in the case of any of the said clerks, such recommendation as enables a secretary of state to make an order under the principal Act is not received before the said first day of January, the secretary of state shall, in like manner (so far as circumstances admit) as if such recommendation had been duly made, make an order under the principal Act, directing the payment of the clerk by salary in lieu of fees for all business other than the business of giving copies of depositions (if that business is excepted by the order) and the amount of the salary.

Every such salary may, if it is thought fit, be made to vary according to the number of cases or amount of business.

Subject as aforesaid, every such salary shall be made to accrue from day to day and shall be paid weekly or at such less intervals as may be from time to time fixed by the local authority.

Where at the passing of this Act an order is in force under the principal Act for the payment of any clerk of special or petty sessions or clerk of justices of the peace by salary in lieu of fees, but an order has not been made that such clerk should be paid for all his excepted business (other than that of giving copies of depositions) by fees and not by salary, this Act shall, so far as is consistent with the tenour thereof, apply, as regards the fees for the excepted business, in like manner as it applies where an order has been made for the payment of a clerk by salary.

Where any order made as aforesaid is, in pursuance of the principal Act, made for the payment of a clerk by salary in lieu of fees, and the clerk is not paid by salary in lieu of fees, the clerk shall be entitled to be paid by salary in lieu of fees, and the amount of such salary shall be the same as if the clerk had been paid by salary in lieu of fees.

Provision as to clerks of petty sessions partly paid by salary under 14 & 15 Vict. c. 55, ss. 9, 10, or paid under a special Act.

Appndx. Act), paid by salary in lieu of fees, either for all business, or for all business other than that of giving copies of depositions, that clerk shall continue to be paid by salary in lieu of fees for all such business, and a recommendation need not be made with respect to such clerk in pursuance of this Act.

Provision as to clerk of petty sessions, &c., paid by salary by arrangement.

4. Where at the passing of this Act any clerk of special or petty sessions or clerk of justices of the peace is by arrangement paid by salary in lieu of fees, either for all business, or for all business other than that of giving copies of depositions, that clerk shall continue to be paid by salary in lieu of fees for all such business, and unless a secretary of state requires a recommendation to be made with respect to such clerk in pursuance of this Act, such arrangement shall have effect as if it were an order of the secretary of state under the principal Act, and this Act shall apply accordingly.

Appointment of one salaried clerk only in a petty sessional division.

5. In each petty sessional division there shall, after the first day of February one thousand eight hundred and seventy-eight, or any later date at which an order for the payment of a clerk by salary in lieu of fees comes into operation in the division, be only one salaried clerk in the division to perform the duties of clerk of petty sessions, clerk of special sessions, or clerk of any justice or justices of the peace :

Provided that—

- (1.) Where special or petty sessions are usually held at more than one place appointed for the purpose in a petty sessional division, there may, if it seem fit, be a separate

salaried clerk appointed in respect of each Appndx.
such place ; and

- 2.) Where a secretary of state has fixed the amount of the salary for one salaried clerk in a division, and there are, at the passing of this Act, two clerks, each of whom performs the duties of clerk of petty sessions and clerk of special sessions in that division, the local authority may, if they think fit, continue such existing clerks in office, and apportion the salary between those clerks in such manner as they think just ; and
- (3.) Where any partners have before the passing of this Act jointly performed the duties of clerk of petty sessions or clerk of special sessions, the local authority may, if they think fit, continue such existing clerks in office and pay the salary to such clerks jointly.
- (4.) A secretary of state, on the application of the local authority, may, if he thinks fit, authorize in any case the appointment of more than one salaried clerk.

The salaried clerk (in this Act referred to as a clerk of a petty sessional division) shall be appointed from time to time by the justices acting in and for a petty sessional division in which he is clerk assembled in special sessions, and shall hold his office during the pleasure of those justices.

Where there is a salaried clerk of a petty sessional division, any fees which may be received by clerk of special sessions, clerk of petty sessions, clerk of a justice of the peace in that division,

Appndx. shall not be received by such clerk for his own use, but shall be received, paid, and accounted for as directed by section eleven of the principal Act, or by any Act specially relating to such clerk.

Nothing in this section shall apply to, or to the fees of, either a clerk of a metropolitan police court, or a clerk to the justices of a borough, or a clerk to a stipendiary or other magistrate whose salary is regulated under any Act of parliament other than the principal Act.

In the case of the town and county of Haverfordwest, the justices of the peace for the said town and county in quarter sessions assembled, and not the town council thereof, shall be the local authority to carry out the provisions of the principal Act and this Act, and the salary for the time being payable to the clerk of the justices of the said town and county under their order shall be paid out of the county rate thereof, and all fees received by such clerk after the making of such order shall be paid to the treasurer of the said town and county in aid of the county rate thereof, and shall be accounted for by such treasurer from time to time as the justices so assembled as aforesaid may direct.

Payment to
treasurer
of county
or borough
of un-
claimed
penalties
and other
sums.

6. All penalties, costs, and sums which, in pursuance of a conviction or order by a justice or justices of the peace, are paid to a clerk of a petty sessional division, or a clerk of special sessions, or a clerk of petty sessions, or a clerk of any justice or justices of the peace, and are not actually paid by him to the party or parties by law entitled thereto, other than the treasurer hereinafter mentioned, shall be paid to the treasurer of the county, riding, divi-

, liberty, city, borough, or place for which such **Appndx.**
ice or justices acted, subject nevertheless to be
by such treasurer, to any party showing him-
to be by law entitled thereto.

Every such clerk shall account for and pay over
penalties, costs, and sums payable to any such
surer, under this or any other Act, at such times
in such manner as may be from time to time
cted by the justices or council who appointed
treasurer, and if he wilfully omits to account
or pay over any such penalty, costs, or sum, he
l forfeit for every such omission twenty pounds,
e recovered by action of debt by any person
may sue for the same (a).

Every clerk appointed after the passing of
Act to be a salaried clerk of a petty sessional
sion, or to be clerk to the justices of a borough,
l either—

- 1.) Be a barrister of not less than fourteen years
standing; or,
- 2.) Be a solicitor to the supreme court of judi-
cature; or
- 3.) Have served for not less than seven years as
a clerk to a police or stipendiary magis-
trate, or to a metropolitan police court,
or to one of the police courts of the city
of London.

rovided that a person who for not less than
teen years has served as or as assistant to either
erk of petty sessional division, or a clerk to the

) With reference to this section see 11 & 12 Vict. c. 43,
, ante, p. 81.

Qualifica-
tion of
salaried
clerk of
petty ses-
sional divi-
sion and
justices of
a borough.

Appndx. justices of a borough, or (in the case of service before the passing of this Act) a clerk of special or petty sessions, or a clerk of a justice or justices of the peace, may be appointed salaried clerk of a petty sessional division, or clerk to the justices of a borough, in any case in which in the opinion of the justices empowered to make the appointment there are special circumstances rendering such appointment desirable; provided also, that no person being clerk of the peace or deputy clerk of the peace for a county or borough, or a partner of such clerk or deputy clerk, shall be salaried clerk of a petty sessional division or clerk to the justices of a borough within such county; but this proviso shall not apply to any clerk of the peace or deputy clerk of the peace, or partner of such clerk or deputy clerk holding and executing in person at the time of the passing of this Act the office of clerk to the justices of any petty sessional division of a county, or clerk to the justices of a borough.

Power of local authority and secretary of state as to table of fees and adjustment of fees in proportion to salary of clerks.
11 & 12 Vict. c. 43.

8. Whereas by section thirty of the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled "An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders," provision is made for the making of tables of the fees to be paid to the clerks of special and petty sessions, and to the clerks of justices of the peace, and it is expedient to make such further provision as is hereinafter mentioned concerning the same; be it therefore enacted as follows:

The said section thirty is hereby repealed so far as Appndx. relates to clerks of special and petty sessions and clerks of justices of the peace, without prejudice to anything done in pursuance of that section.

Where it appears to a local authority that the aggregate amount received by the treasurer of that authority in respect of court fees unduly exceeds or unduly falls below the aggregate amount paid by that authority by way of salary to the clerks of petty sessional divisions, or in the case of a borough to the clerk to the justices of the borough, or that otherwise it is expedient so to do, the local authority may make a table of the court fees which in their opinion should be taken, and shall cause such table signed by the chairman, mayor, or other presiding officer of the local authority, to be laid before a secretary of state, and a secretary of state may, if he think fit, alter such table of fees and settle the same (having due regard to the relation of the aggregate amount so received and paid as aforesaid), and certify that the fees in the table as settled by him are proper to be taken within the jurisdiction of the said local authority.

Where complaint is made to a secretary of state that the aggregate amount received by the treasurer of a local authority in respect of court fees unduly exceeds or unduly falls below the aggregate amount paid by that authority by way of salary as aforesaid, or that for other reasons it is expedient that the table of court fees should be revised, he may, if he think fit, by order, require the local authority to make a return to him within the time specified in the order of the aggregate amount so received and paid during three years previous to the order, or of

Appndx. the table of court fees in force for the time being as the case may be, and if, on receiving such return, or on the failure of the local authority to make the return, he is, after making such inquiry as he thinks proper, satisfied of the truth of the complaint, he may, by order, require the local authority to make and lay before him, within the time (not being less than four months from the date of the order) specified in the order, a table of court fees in pursuance of this section, and if the local authority fail to comply with the order, he may, in like manner (so nearly as circumstances admit) as if the local authority had laid before him a table of fees in pursuance of this section, settle a table of fees and certify that the fees in that table are proper to be taken within the jurisdiction of the said local authority.

A secretary of state, upon certifying a table of fees in pursuance of this section, shall cause copies thereof to be sent to the clerk of the local authority to be by him distributed to the clerks of petty sessional divisions and clerks to justices within the jurisdiction of that authority, and if at any time thereafter any of those clerks or any other person wilfully demands or receives any other or greater court fee than such as is set down in the said table, he shall forfeit for every such demand or receipt twenty pounds, to be recovered by action of debt by any person who may sue for the same.

Until a table is made in pursuance of this section, any of the said clerks may demand and receive such fees as he is at the passing of this Act lawfully authorized to demand and receive.

The expression "court fee" in this section means any fee, gratuity, or sum, which may by law be

demanded or received in respect of any business or **Appndx.**
transacted or done by a clerk of special or petty
sessions or a clerk of justices of the peace as such
clerk, notwithstanding that by reason of such clerk
being paid by salary, or of the provisions of this
Act, he cannot receive the same for his own use, and
includes fees for the giving of copies of depositions
by any clerk mentioned in this section, whether
received for his own use or not.

9. The account of fees required by section eleven Account
of fees by
clerk.
of the principal Act, as amended by this Act, to be
rendered by any clerk shall be rendered quarterly,
or at any less interval directed by the local autho-
rity, and if any clerk wilfully omits from any such
account any fee received by him he shall forfeit for
every such omission twenty pounds, to be recovered
by action of debt by any person who may sue for
the same.

10. This Act shall, so far as is consistent with Construc-
tion of Act
and repeal
of part of
14 & 15 Vict.
c. 55.
the tenour thereof, be construed as one with the
principal Act; and so much of sections nine and ten
of the principal Act as empowers a secretary of
state to direct that a clerk be paid by fees in lieu of
salary (either generally or in respect of excepted
business) is hereby repealed.

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an indictment to be preferred Appndx.

h offence, or unless such indictment, if charged to have been committed, be preferred by the direction or writing of a judge of one of the law at Westminster, or of Her-
 -General or Solicitor-General for such indictment for such offence, been committed in Ireland, be direction or with the consent in of one of the superior courts of

of Her Majesty's Attorney-
 -General for Ireland, or (in the
 ment for perjury by the direction
 ge or public functionary authorized
 session holden in the fourteenth and
 of Her Majesty, chapter one hundred,
 cution for perjury (a).

14 & 15 Vict.
 c. 100.

ed by the Debtors' Act, 1869 (32 & 33 Vict.
 every misdemeanor under the second part
 be deemed to be an offence within and sub-
 visions of the 22 & 23 Vict. c. 17; and that
 is charged with any such offence before any
 es, such justice or justices shall take into con-
 vidence adduced before him or them tending
 he act charged was not committed with a guilty

er for the discretion of the judge to whom the
 made under 22 & 23 Vict. c. 17, s. 1, to decide
 ills ought to be before him, and it is not neces-
 sary for the accused person or to bring him before
 in any way. *Reg. v. Bray*, 32 L. J. M. C. 11.

prisoner was committed upon one charge only
 offences, but a second indictment was preferred without
 required by 22 & 23 Vict. c. 17, s. 1, and found by
 jury, and the prisoner was committed upon one charge only
 oner of false pretences, the court directed a plea
 y to be entered for him,
 ay it was held that the

Appndx.

II. VEXATIOUS INDICTMENTS.

22 & 23 VICT. CAP. 17.

*An Act to prevent Vexatious Indictments for certain
Misdemeanors.* [8th August, 1859.]

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, as follows :—

No indictment for offences herein named to be preferred without previous authorization.

1. After the first day of September, one thousand eight hundred and fifty-nine, no bill of indictment for any of the offences following; viz.

Perjury,

Subornation of perjury,

Conspiracy,

Obtaining money or other property by false pretences,

Keeping a gambling house,

Keeping a disorderly house, and

Any indecent assault,

shall be presented to or found by any grand jury, unless the prosecutor or other person presenting such indictment has been bound by recognizance to prosecute or give evidence against the person accused of such offence, or unless the person accused has been committed to or detained in custody, or has been bound by recognizance to

appear to answer to an indictment to be preferred against him for such offence, or unless such indictment for such offence, if charged to have been committed in England, be preferred by the direction or with the consent in writing of a judge of one of the superior courts of law at Westminster, or of Her Majesty's Attorney-General or Solicitor-General for England, or unless such indictment for such offence, charged to have been committed in Ireland, be referred by the direction or with the consent in writing of a judge of one of the superior courts of law in Dublin, or of Her Majesty's Attorney-General or Solicitor-General for Ireland, or (in the case of an indictment for perjury by the direction of any court judge or public functionary authorized by an Act of the session holden in the fourteenth and fifteenth years of Her Majesty, chapter one hundred, to direct a prosecution for perjury (a).

14 & 15 Vict.
c. 100.

(a) It is enacted by the Debtors' Act, 1869 (32 & 33 Vict. c. 62, s. 18), that every misdemeanor under the second part of that Act shall be deemed to be an offence within and subject to the provisions of the 22 & 23 Vict. c. 17; and that when any person is charged with any such offence before any justice or justices, such justice or justices shall take into consideration any evidence adduced before him or them tending to show that the act charged was not committed with a guilty intent.

It is a matter for the discretion of the judge to whom the application is made under 22 & 23 Vict. c. 17, s. 1, to decide what materials ought to be before him, and it is not necessary to summon the accused person or to bring him before the judge in any way. *Reg. v. Bray*, 32 L. J. M. C. 11.

Where a prisoner was committed upon one charge only for false pretences, but an indictment was preferred without leave as required by 22 & 23 Vict. c. 17, s. 1, and found by the grand jury, containing a second charge of false pretences, and the prisoner refusing to plead, the court directed a plea of not guilty to the whole indictment to be entered for him, and receive evidence of both charges; it was held that the

Appndx.

In certain cases where prosecutor desires to prefer an indictment justice to take his recognizance to prosecute.

2. That where any charge or complaint shall be made before any one or more of Her Majesty's justices of the peace that any person has committed any of the offences aforesaid within the jurisdiction of such justice and such justice shall refuse to commit or to bail the person charged with such offence to be tried for the same, then in case the prosecutor shall desire to prefer an indictment respecting the said offence, it shall be lawful for the said justice and he is hereby required to take the recognizance of such prosecutor to prosecute the said charge or complaint, and to transmit such recognizance, information, and depositions, if any, to the court in which such indictment ought to be preferred, in the same manner as such justice would have done in case he had committed the person charged to be tried for such offence (a).

proper course was to have quashed the part of the indictment relating to the second charge, and that as the evidence upon that charge would not then have been admissible, the conviction could not be supported. *Reg. v. Fwidge*, 9 L. T. (N.S.) 777.

Where it is made clear, either on the face of an indictment or by affidavit, that it has been found without jurisdiction the court will quash it on motion by the defendant after plea pleaded; but in a doubtful case they will leave him to his writ of error. *Reg. v. Hearne*, 33 L. J. M. C. 115; 9 L. T. (N.S.), 719.

It is not necessary that an indictment should aver that the conditions imposed by 22 & 23 Vict. c. 17, s. 1, had been performed, *e. g.*, that it had been preferred by the direction or with the consent of a judge, or of the attorney or solicitor-general. *Knowlden v. The Queen*, 5 B. & S. 532.

(a) A magistrate before whom a charge or complaint is made of an offence which cannot be the subject of an indictment is not bound to take the recognizance of the prosecutor according to 22 & 23 Vict. c. 17, s. 2. *Ex parte Wason*, L. R. 4 Q. B. 573; 38 L. J. Q. B. 302; 10 B. & S. 583.

Recognizance.

80 & 81 VICT. CAP. 85.

An Act to remove some Defects in the Administration of the Criminal Law.

[20th June, 1867.]

WHEREAS it is found that delay and inconvenience are frequently caused by the provisions contained in the first section of the Act twenty-second and twenty-third Victoria, chapter seventeen, in cases not within the mischief for remedy whereof the same Act was made and passed, and it is expedient to restrict the operation thereof:

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same:

1. That the said provisions of the said first section of the said Act shall not extend or be applicable to prevent the presentment to, or finding by a grand jury of any bill of indictment containing a count or counts for any of the offences mentioned in the said Act, if such count or counts be such as may now be lawfully joined with the rest of such bill of indictment, and if the same count or counts be founded (in the opinion of the court in or before which the same bill of indictment be preferred) upon the facts or evidence disclosed in any examinations or depositions taken before a justice of the peace in the presence of the person

Limitation
of 22 & 23
Vict. c. 17.

Appndx. person, and shall put the same into writing; and such depositions of such witnesses shall be read over to and signed respectively by the witnesses who shall have been so examined, and shall be signed also by the justice or justices taking the same, and transmitted in due course of law with the depositions, and such witnesses, not being witnesses merely to the character of the accused, as shall in the opinion of the justice or justices give evidence in any way material to the case or tending to prove the innocence of the accused person, shall be bound by recognizance to appear and give evidence at the said trial; and afterwards upon the trial of such accused person, all the laws now in force relating to the depositions of witnesses for the prosecution shall extend and be applicable to the depositions of witnesses hereby directed to be taken.

—
taken and returned to court of trial if accused person call any.

Provisions of 11 & 12 Vict. c. 42, extended to this Act.

4. All the provisions of the said Act eleventh and twelfth Victoria, chapter forty-two, relating to the summoning and enforcing the attendance and committal of witnesses, and binding them by recognizance and committal in default, and for giving the accused person copies of the examinations, and giving jurisdiction to certain persons to act alone, shall be read and shall have operation as part of this Act.

If witnesses, for accused bound by recognizance, appear at the trial, court may allow expenses.

5. The court before which any accused person shall be prosecuted or tried, or for trial, before which he may be committed or bailed to appear for any felony or misdemeanor, is hereby authorized and empowered, in its discretion, at the request of

any person who shall appear before such court on **Appndx.**
recognizance to give evidence on behalf of the
person accused, to order payment unto such witness
so appearing such sum of money as to the court
shall seem reasonable and sufficient to compensate
such witness for the expenses, trouble, and loss of
time he shall have incurred or sustained in attend-
ing before the examining magistrate, and at or before
such court; and the amount of such expenses of
attending before the examining magistrate, and com-
pensation for trouble and loss of time therein, shall
be ascertained by the certificate of such magistrate,
granted before the attendance in court; and the
amount of all other expenses and compensation shall
be ascertained by the proper officer of the court, who
shall, upon receipt of the sum of sixpence for each
witness, make out and deliver to the person entitled
thereto an order for such expenses and compensa-
tion, together with the said fee of sixpence, upon
such and the same treasurers and officers as would
now by law be liable to payment of an order for the
expenses of the prosecutor or witnesses against such
accused person; and if the accusation be of such
kind that the court shall have no power to order the
expenses of the prosecutor, then upon the treasurer
or other officer in the capacity of a treasurer of the
county, riding, division, city, borough, or place
where the offence of such accused person may be
alleged to have been committed, which treasurer or
other officer is hereby required to pay the same
orders upon sight thereof, and shall be allowed the
same in his accounts: Provided always, that in no
case shall any such allowances or compensation ex-
ceed the amount now by law permitted to be made

Appndz. person, and shall put the same into writing ; and such depositions of such witnesses shall be read over to and signed respectively by the witnesses who shall have been so examined, and shall be signed also by the justice or justices taking the same, and transmitted in due course of law with the depositions, and such witnesses, not being witnesses merely to the character of the accused, as shall in the opinion of the justice or justices give evidence in any way material to the case or tending to prove the innocence of the accused person, shall be bound by recognizance to appear and give evidence at the said trial ; and afterwards upon the trial of such accused person, all the laws now in force relating to the depositions of witnesses for the prosecution shall extend and be applicable to the depositions of witnesses hereby directed to be taken.

taken and returned to court of trial if accused person call any.

Provisions of 11 & 12 Vict. c. 42, extended to this Act.

4. All the provisions of the said Act eleventh and twelfth Victoria, chapter forty-two, relating to the summoning and enforcing the attendance and committal of witnesses, and binding them by recognizance and committal in default, and for giving the accused person copies of the examinations, and giving jurisdiction to certain persons to act alone, shall be read and shall have operation as part of this Act.

If witnesses, for accused bound by recognizance, appear at the trial, court may allow expenses.

5. The court before which any accused person shall be prosecuted or tried, or for trial, before which he may be committed or bailed to appear for any felony or misdemeanor, is hereby authorized and empowered, in its discretion, at the request of

any person who shall appear before such court on recognizance to give evidence on behalf of the person accused, to order payment unto such witness so appearing such sum of money as to the court shall seem reasonable and sufficient to compensate such witness for the expenses, trouble, and loss of time he shall have incurred or sustained in attending before the examining magistrate, and at or before such court; and the amount of such expenses of attending before the examining magistrate, and compensation for trouble and loss of time therein, shall be ascertained by the certificate of such magistrate, granted before the attendance in court; and the amount of all other expenses and compensation shall be ascertained by the proper officer of the court, who shall, upon receipt of the sum of sixpence for each witness, make out and deliver to the person entitled thereto an order for such expenses and compensation, together with the said fee of sixpence, upon such and the same treasurers and officers as would now by law be liable to payment of an order for the expenses of the prosecutor or witnesses against such accused person; and if the accusation be of such kind that the court shall have no power to order the expenses of the prosecutor, then upon the treasurer or other officer in the capacity of a treasurer of the county, riding, division, city, borough, or place where the offence of such accused person may be alleged to have been committed, which treasurer or other officer is hereby required to pay the same orders upon sight thereof, and shall be allowed the same in his accounts: Provided always, that in no case shall any such allowances or compensation exceed the amount now by law permitted to be made

Appndx.

Appdx. to prosecutors and witnesses for the prosecution; and provided always, that such allowances and compensation shall be allowed and paid as part of the expenses of the prosecution.

Power to take deposition of person dangerously ill, and not likely to recover, and to make same evidence in certain events, after death of such person.

6. And whereas by the seventeenth section of the Act eleventh and twelfth Victoria, chapter forty-two, it is permitted under certain circumstances to read in evidence on the trial of an accused person the deposition taken in accordance with the provisions of the said Act of a witness who is dead, or so ill as to be unable to travel; and whereas it may happen that a person dangerously ill, and unable to travel, may be able to give material and important information relating to any indictable offence, or to a person accused thereof, and it may not be practicable or permissible to take, in accordance with the provisions of the said Act, the examination or deposition of the person so being ill, so as to make the same available as evidence in the event of his or her death before the trial of the accused person, and it is desirable in the interests of truth and justice that means should be provided for perpetuating such testimony, and for rendering the same available in the event of the death of the person giving the same: therefore, whenever it should be made to appear to the satisfaction of any justice of the peace that any person dangerously ill, and in the opinion of some registered medical practitioner not likely to recover from such illness, is able and willing to give material information relating to any indictable offence, or relating to any person accused of any such offence, and it shall not be practicable for any justice or justices of the peace to take an

examination or deposition in accordance with the provisions of the said Act of the person so being ill, it shall be lawful for the said justice to take in writing the statement on oath or affirmation of such person so being ill, and such justice shall thereupon subscribe the same, and shall add thereto by way of caption a statement of his reason for taking the same, and of the day and place when and where the same was taken, and of the names of the persons (if any) present at the taking thereof, and, if the same shall relate to any indictable offence for which any accused person is already committed or bailed to appear for trial, shall transmit the same with the said addition to the proper officer of the court for trial at which such accused person shall have been so committed or bailed; and in all other cases he shall transmit the same to the clerk of the peace for the county, division, city or borough in which he shall have taken the same, who is hereby required to preserve the same, and file it of record; and if afterwards, upon the trial of any offender or offence to which the same may relate, the person who made the same statement shall be proved to be dead, or if it shall be proved that there is no reasonable probability that such person will be ever able to travel or to give evidence, it shall be lawful to read such statement in evidence, either for or against the accused, without further proof thereof, if the same purports to be signed by the justice by or before whom it purports to be taken, and provided it be proved to the satisfaction of the court that reasonable notice of the intention to take such statement has been served upon the person (whether prosecutor or accused) against whom it is proposed to be read

Appndx.

Appndx. in evidence, and that such person, or his counsel or attorney had or might have had, if he had chosen to be present, full opportunity of cross-examining the deceased person who made the same.

Provision for the prisoner being present at taking of statement.

7. Whenever a prisoner in actual custody shall have served or shall have received notice of an intention to take such statement as hereinbefore mentioned, the judge or justice of the peace by whom the prisoner was committed, or the visiting justices of the prison in which he is confined, may, by an order in writing, direct the gaoler 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 gaoler shall convey the prisoner accordingly, and the expenses of such conveyance shall be paid out of the funds applicable to the other expenses of the prison from which the prisoner shall have been conveyed.

Provisions of 24 & 25 Vict. c. 66, as to witnesses who object to be sworn, extended to jurors.

8. And whereas relief has been given by the statute twenty-fourth and twenty-fifth Victoria, chapter sixty-sixth, to persons refusing, from alleged conscientious motives, to be sworn as witnesses in criminal proceedings, and it is expedient to extend that relief to persons required to serve as jurors: therefore if any person summoned or required to serve as a juror in any civil or criminal proceeding shall refuse or be unwilling from alleged conscientious motives, to be sworn, it shall be lawful for the court or judge or other presiding officer or person qualified to administer an oath to a juror, upon being satisfied of the sincerity of such objec-

tion, to permit such person, instead of being sworn, **Appndx.**
to make his or her solemn affirmation or declaration
in the words following :

“I, *A. B.*, do solemnly, sincerely, and truly
affirm and declare that the taking of any oath is,
according to my religious belief, unlawful; and I
do also solemnly, sincerely, and truly affirm and
declare,” &c.

which solemn affirmation and declaration shall be
of the same force and effect, and if untrue shall
entail all the same consequences, as if such person
had taken an oath in the usual form; and when-
ever in any legal proceedings it is necessary or
usual to state or allege that jurors have been sworn,
it shall not be necessary to specify that any par-
ticular juror has made affirmation or declaration
instead of oath, but it shall be sufficient to state
or allege that the jurors have been “sworn or
affirmed.”

9. Where any prisoner shall be convicted, either
summarily or otherwise, of larceny or other offence,
which includes the stealing of any property, and it
shall appear to the court by the evidence that the
prisoner has sold the stolen property to any person,
and that such person has had no knowledge that
the same was stolen, and that any monies have
been taken from the prisoner on his apprehension,
it shall be lawful for the court, on the application
of such purchaser, and on the restitution of the
stolen property to the prosecutor, to order that out
of such monies a sum not exceeding the amount of
the proceeds of the said sale be delivered to the said
purchaser.

Money
found on
prisoner to
be given to
purchaser
of property
not known
to be stolen,
on restitu-
tion of
property.

Appndx. 10. Where recognizances shall have been entered into for the appearance of any person to take his trial for any offence at any court of criminal jurisdiction, and a bill of indictment shall be found against him, and such person shall be then in the prison belonging to the jurisdiction of such court, under warrant of commitment, or under sentence for some other offence, it shall be lawful for the court, by order in writing, to direct the governor of the said prison to bring up the body of such person in order that he may be arraigned upon such indictment without writ of *habeas corpus*, and the said governor shall thereupon obey such order.

Governor of
prison to
bring up the
body of any
person
indicted,
without
writ of
habeas
corpus, un-
der order
of court.

III. SCALE OF ALLOWANCES TO PROSECUTORS AND WITNESSES.

ORDERS OF SECRETARY OF STATE PRESCRIBING
SCALE OF ALLOWANCES TO PROSECUTORS
AND WITNESSES UNDER 14 & 15 VICT. c. 55, s. 5.

[9th February, 1858, and 14th February, 1863.]

WHEREAS it is expedient to make regulations as to the rates and scales of payment according to which costs, expenses, and compensation shall be allowed and ordered to be paid under the Act of the seventh year of the reign of King George the Fourth, cap. 64, and divers other Acts of parliament authorizing such payments to prosecutors and witnesses, and to persons attending courts in obedience to recognizances or subpoenas in the cases of criminal prosecutions, for their travelling expenses and trouble and loss of time incurred in attending such courts, and also to make regulations as to the rates and scales of payment according to which certificates may be granted by the examining magistrate or magistrates in respect of the travelling expenses of prosecutors, and witnesses for the prosecution, and other persons, of attending before such magistrate or magistrates, and of compensation for trouble and loss of time therein in the cases aforesaid: And whereas to the end aforesaid, it has become necessary to revoke divers regulations made under the 26th section of the said Act, hereinbefore recited: Now I, the Right Honourable Sir George Grey, acting under and in pursuance of a certain Act of

Appndx. parliament made and passed in a session of parliament holden in the fourteenth and fifteenth years of the reign of her present Majesty, intituled "An Act to amend the Law relating to the Expenses of Prosecutions, and to make further Provision for the Apprehension and Trial of Offenders in certain Cases," do revoke, annul, and make void all rules and regulations made under the said 26th section of the said Act, whereby any costs, expenses, and compensations may be allowed or ordered to be paid to such prosecutors and witnesses, or other persons attending on recognizances or subpoena, for their travelling expenses, trouble, and loss of time in attending before such courts or before such examining magistrate or magistrates, to a larger or greater amount than the allowances hereinafter authorized to be made in that behalf: and I do make, constitute, and appoint the following rules and regulations to be observed by all courts and magistrates, and the officers and clerks of such courts and magistrates, and by all others whom it may concern, as to the rates and scales of payment of such costs, expenses, and compensation; and I do direct that the same shall take effect and be in force in all places where the same may be capable of taking effect, that is to say,—

1. I do make, constitute, and appoint the following rules and regulations as to the rates and scales of payment according to which such certificates may be granted by such examining magistrate or magistrates, in respect of the travelling expenses of prosecutors and witnesses, for the prosecution of attending before such magistrate or magistrates, and of compensation for their trouble and loss of time therein in the cases aforesaid, namely:—

£ s. d. Appndx.

There may be allowed to prosecutors or witnesses being members of the profession of the law, or of medicine, if resident in the city, borough, parish, town or place where the examination is taken, or within a distance not exceeding two miles from such place, for their loss of time and trouble in attending to give professional evidence on such examination, but not otherwise, a sum in the discretion of the magistrate or magistrates, for each attendance not to exceed - - - - - 0 10 6

If such prosecutor or witness shall reside elsewhere, then a sum for the same not to exceed - - - - - 1 1 0

And for mileage, a sum not to exceed 3d. per mile each way.

To prosecutors and witnesses being constables attending the bench of magistrates where such examination is taken on any police duty, and to constables paid by salary, and attending from a distance not exceeding three miles, there shall be allowed - - - - - Nil.

Unless the magistrate or magistrates shall certify that there were special reasons for making an allowance, and shall specify such reasons upon his or their certificate, and then a sum not to exceed for each day - - - - - 0 1 0

To prosecutors and witnesses being constables paid by salary, and not attending the magistrate or bench of magistrates on any police duty, for their trouble in attending such examination, from a distance greater than three miles, and not exceeding seven miles from the place where the examination is taken, a sum not to exceed for each day - - - - - 0 1 0

To the same if attending from a distance greater than seven miles from the place where the examination is taken, a sum not to exceed for each day 0 1 6

To prosecutors and witnesses being constables paid by salary, if necessarily detained all night for the purposes of the examination, a sum for the night not to exceed - - - - - 0 2 0

(The said allowances to prosecutors and witnesses being constables paid by salary, are to be conditional, upon the same being applicable for their personal benefit.)

To prosecutors and witnesses being constables necessarily travelling to the place of examination in discharge of any police duty, there shall be allowed for mileage - - - - - Nil.

Appndx.

£ s. d.

(Unless the examining magistrate or magistrates shall certify that there were special reasons for making an allowance, and shall specify the same upon the certificate, and then the same as other constables.)

To prosecutors and witnesses being constables not attending the place of examination in discharge of a police duty, and entitled to be conveyed under 7 & 8 Vict. c. 85, s. 12, and able to travel by railway, there shall be allowed mileage as follows:—

To superintendents, inspectors, serjeants, and constables, the lowest amount per mile authorized by Act of Parliament for their conveyance and no larger sum;

To prosecutors and witnesses being constables able but not so entitled to travel, and not attending the place of examination on any police duty, there shall be allowed for mileage, railway fare, the same as to ordinary witnesses;

To prosecutors and witnesses being constables not able to travel by railway, and not attending the magistrate or magistrates on any police duty, for every mile beyond 4 miles each way they shall travel to reach the place of examination, a sum not to exceed each way, 2d.;

To prosecutors and witnesses being constables able partially to travel by railway, for every mile after the first four miles each way, in reaching such means of conveyance, a sum not to exceed 2d., and railway fare as other constables.

To prosecutors and witnesses not hereinbefore provided for, resident in the city, borough, parish, town, or place where the examination is taken, or within a distance not exceeding two miles from such place, for their trouble and loss of time in so attending, there shall be allowed a sum for each day, not to exceed - - - - - 0 1 0

If resident elsewhere and beyond the distance of two miles, or if such prosecutors or witnesses shall be necessarily detained from home, for the purpose of the examination, more than four hours, a sum at the like discretion, not to exceed - - - 0 1 6

If they shall be necessarily detained from home more than six hours, then a sum at the like discretion, not to exceed - - - - - 0 2 6

£ s. d. Appndx.

When he or they shall reside at such a distance from the place of examination as to render it necessary that he or they shall sleep from home, then, at the like discretion, a sum for the night, not to exceed - - - - - 0 2 6

There may be allowed for mileage, as follows:—

If the prosecutor or witness reside at a greater distance than two miles from the place of examination, and the whole or any portion of the journey can be performed by railway, second-class for such whole, or portion of the journey, as the case may be; and for a journey, or part of a journey, performed otherwise than by railway, a sum not to exceed per mile each way - - - - - 0 0 3

In pursuance of the power in me vested, I do make the following rules and regulations as to the rates and scales of payment of costs, expenses, and compensations to be allowed, or ordered to be paid, under the said Act of the seventh year of the reign of George the Fourth, and other the Acts of parliament aforesaid, to prosecutors and witnesses attending courts of assize, oyer and terminer, gaol delivery, general session of the peace, or any other courts having power to allow such costs, expenses, and compensation to prosecutors and witnesses and persons attending such courts, in obedience to any recognizance or subpoena in cases of criminal prosecutions, for their trouble, loss of time, and travelling expenses in so attending.

For the purpose aforesaid I do make, constitute, and appoint the following rules and regulations; (that is is say,) they may be allowed:—

£ s. d.

To prosecutors and witnesses, being members of the profession of the law or of medicine, attending to give professional evidence, but not otherwise,

Appndx.

	£	s.	d.
for their trouble, expenses, and loss of time, for each day they shall necessarily attend the court to give professional evidence, a sum not to exceed	1	1	0
For each night, the same as ordinary witnesses, and for mileage a sum not to exceed, per mile each way	0	0	3
To prosecutors and witnesses, being constables and paid by salary, if resident in the city, borough, town, or place, where such court is held, or within a distance not exceeding two miles of such place, a sum, in the discretion of the court, not to exceed for each day	0	1	0
If resident elsewhere, and if they shall attend from a greater distance than two miles, a sum, in the discretion of the court, for each day not to exceed	0	1	6
To the same if they shall be necessarily detained all night for the purposes of the prosecution, a further sum for the night not to exceed (a)	0	2	0

If such prosecutors and witnesses shall be chief constables or superintendents attending from a distance greater than three miles, and they shall be necessarily detained all night for the purposes of the prosecution, instead of the foregoing allowances there may be allowed to them the same as ordinary witnesses.

(The said allowances to prosecutors and witnesses, being constables void by salary, shall be conditional on the same being applicable to their personal benefit.)

To prosecutors and witnesses, being constables who shall be entitled to be conveyed under 7 & 8 Vict. c. 85, s. 12, and able to travel by railway, there may be allowed for mileage as follows:—

To superintendents, inspectors, serjeants, and police constables, the lowest amount per mile authorized by Act of parliament for their conveyance, and no larger sum;

To prosecutors and witnesses, being constables not so entitled to travel, there may be allowed railway fare the same as to ordinary witnesses;

To the same if paid by salary, and where they are able to travel by railway, for every mile

(a) See the Order of 14th Feb., 1863, *post*.

£ s. d. Appndx.

beyond four miles each way, they shall travel to and return from the court where the prosecution takes place, a sum not to exceed 2*d.* ;

To the same if paid by salary, when able partially to travel by railway, for every mile after the first four miles each way in reaching such means of conveyance, a sum not to exceed 2*d.*, and railway fare as other constables.

To prosecutors and witnesses not hereinbefore provided for, there may be allowed for their expenses, trouble, and loss of time in attending the court where the prosecution takes place, per day, a sum not to exceed - - - - - 0 3 6

To the same, if entitled to mileage, for each night they may be necessarily detained from home for the purposes of the prosecution at any assizes, session of gaol delivery, or session of oyer and terminer, a sum not to exceed - - - - - 0 2 6

To the same, for each night they may necessarily be detained from home for the purposes of the prosecution at a session of the peace - - - - - 0 2 0

To the same for mileage there may be allowed as follows:—

If resident more than two miles from the court where the prosecution takes place if the whole or any portion of the journey can be performed by railway, second-class fare for such whole or portion of the journey, as the case may be, and for a journey or part of a journey performed otherwise than by railway, per mile, each way, a sum not to exceed - 0 0 3

In computing the amount to be allowed for mileage under any of the regulations herein contained, I do direct that no greater allowance be made than at the rate of 3*d.* per mile each way by the nearest available route.

I also direct that no prosecutor or witness allowed for mileage, under any of the regulations herein contained, shall be allowed for loss of time occasioned by his or her omission to avail himself or herself of a public conveyance, if available.

Appndx. I further direct that no prosecutor or witness be allowed, under any of the regulations aforesaid, for his attendance, loss of time, trouble, or expense, in more than one case on the same day.

I further direct that no constable paid by salary be allowed for railway fare not actually paid.

I do authorize payment to the officer of a gaol whose duties require his attendance in the court where the prosecution takes place, for giving evidence on a former conviction, a sum not to exceed 8s. 6d. (a).

I do make the following regulations as to compensation to be allowed in the cases of prisoners brought by writ of *habeas corpus*, or other lawful process, to give evidence for the prosecution.

To governors and officers of gaols, in whose custody the prisoner is brought, as follows :—

	£	s.	d.
To a governor, for his loss of time, trouble, and expenses, in bringing up such prisoner, for each day he may attend, the sum of	-	0	12 0
To other officers, for the same, the sum of	-	0	6 0
And for mileage, a sum, in the discretion of the court, not to exceed per mile each way-	-	0	1 0

Provided always that the above allowances shall not be made to any gaoler or officer charged with the custody of prisoners for trial, at the place where such prisoner shall be required to give evidence, in respect of the time such gaoler or officer shall, by virtue of his office, be required to be there present.

I authorize the following payments to be made to attornies for the prosecution, giving evidence,

(a) See the Order of 14th Feb., 1863, *post*.

over and above the allowance so made to them as Appndx.
attornies:—

	£ s. d.
Such attornies may be allowed a sum not exceeding	0 6 8
If, in the opinion of the proper officer of the court, such evidence was necessary, and saved the attendance of another witness.	

And whereas it may become necessary, in certain cases, that scientific persons, unacquainted with the facts to be given in evidence upon the prosecution, may be required to attend as witnesses, in order to state their opinion on matters of science in the issue on such prosecutions, and it is reasonable in such cases that the foregoing rates of allowance should be departed from; I hereby direct that the allowances to be made to such persons shall be subject to the decision of the court before whom such persons may be examined, which may direct such allowances as to such court may appear reasonable (b).

Whenever an interpreter shall be employed to interpret on the part of the prosecution, it shall be competent for the court before whom such interpreter shall be so employed to make him such allowances as to such court may seem reasonable: Provided always, that this regulation is not to interfere with any regulations in force (where such now exist) for the remuneration of interpreters.

In case of the illness or inability of any prosecutor or witness to travel without some special means of conveyance, it shall be lawful for the court to depart from the foregoing rates of allowances, and to make such other allowances as the justice of the case shall require.

Under the circumstances herein specified under the head of exceptions, I authorize a departure from the

(b) See the Order of 14th Feb., 1863, *post*, p. 507.

Appndx. rules and regulations herein contained, as well by the examining magistrate or magistrates as by the courts herein mentioned, except only in the case of an attorney for the prosecution giving evidence: Provided always, that whenever any allowances hereinbefore authorized under the head of exceptions, shall have been made, the circumstances under which the general rate of allowances shall be departed from shall in all cases be fully specified by the proper officer of the court, or magistrate, upon the document by which such allowances shall be authorized. And lastly, I do order that, notwithstanding anything herein contained, all lawful rules and regulations heretofore made and in force, under or by reason whereof allowances to a less amount than those hereby authorized are now payable in the cases hereinbefore provided for, shall be and remain in as full force and effect as if this order had not been made, and shall continue to apply to the persons and the circumstances thereby provided for, although such persons and circumstances may be comprehended within the terms hereof, and that the said rules and regulations shall so far remain unaffected by this order, and that nothing herein contained shall have the effect of increasing the amount of any rates or allowances which may be lawfully made under such rules and regulations; it being the true intent and meaning hereof that such rules and regulations shall be and remain unaltered, further or otherwise than in the reduction of allowances to prosecutors and witnesses where the rates thereof shall be in excess of those herein contained.

Given under my hand at Whitehall, the ninth day of February, one thousand eight hundred and fifty-eight.

(Signed) G. GREY.

ORDER.

DATED 14TH FEBRUARY, 1868.

WHEREAS on the 9th day of February, 1858, I, the Right Honourable Sir George Grey, one of Her Majesty's principal secretaries of state, did, under and by virtue of the provisions of a certain Act, made and passed in the fifteenth year of the reign of Her present Majesty, entitled "An Act to amend the Law relating to the Expenses of Prosecutions, and to make further Provision for the Apprehension and Trial of Offenders in certain Cases," make certain rules and regulations as to the rates and scales of payment of the costs, expenses, and compensations therein referred to; and whereas it appears to me to be desirable and expedient that certain of the said regulations shall be altered, that is to say, that—

To prosecutors and witnesses being constables, and paid by salary, if they shall necessarily be detained all night, for the purposes of the prosecution, there shall be allowed a sum for the night, not to exceed, at assizes, 2s. 6d.; at sessions, 2s.; instead of the sum of 2s. allowed by the regulation of the 9th February, 1858, for the detention all night at either assizes or sessions.

And further, that in lieu of the words (under the head of "Exceptions"), "I do authorize payment to the officer of a gaol, whose duties require his attendance in the court where the prosecution takes place, for giving evidence on a former conviction, a sum not

Appndx. to exceed 8s. 6d.," there shall be inserted the following words:—

"I do authorize payment to the governor of a gaol attending to prove a former conviction in any court, not being within the county, riding, town, borough, or other jurisdiction in which the gaol of which he is governor is situate, a sum for each day not to exceed 7s. And when such governor shall be detained all night for such purpose, he shall receive in addition, for the night's detention, the same allowance as other witnesses."

When the attendance of any other officer of the gaol is required for such purpose in any court, not being within the county, riding, town, borough, or other jurisdiction, in which the gaol of which he is such officer is situate, I do authorize the payment to him of a sum not to exceed 8s. 6d. per day, and if detained all night, the same sum in addition as that allowed to other witnesses.

I do authorize payment to the officer of a gaol, whose duties require his attendance in the court where the prosecution takes place, for giving evidence of a former conviction, a sum not to exceed 8s. 6d.

And further, also, that in lieu of the words "And whereas it may become necessary, &c., &c., &c.," there shall be inserted the following words:—

"And whereas it may become necessary in certain cases that persons, unacquainted with the facts to be given in evidence upon the prosecution, may be required to attend as witnesses, in order to state their opinion on matters as to which such opinion is admissible in evidence; and it is reasonable in such cases that the foregoing rates of allowance should be

departed from, I hereby direct that the allowances Appndx.
to be made to such persons shall be subject to the
decision of the court before which such persons may
be examined, which may direct such allowances as to
such court may appear reasonable."

Finally, I do direct that the foregoing altered regu-
lations shall take effect and be in force in all places
where the regulations made by me on the 9th day
of February, 1858, now are (or hereafter shall be)
in force.

Given under my hand at Whitehall, this 14th day
of February, 1868.

(Signed) G. GREY.

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RULES.

Appndx. 1. These Rules may be cited as the Summary
Short title. Jurisdiction Rules, 1880.

Commence- 2. These Rules shall come into operation on the
ment. 1st day of January, 1880.

Register. 3. The clerk of each court of summary juris-
diction shall keep the register required to be kept
by him in pursuance of the Summary Jurisdiction
Act, 1879, with such particulars as appear by the
form in Part III. of the schedule hereto.

Special 4. Where in pursuance of any statute the court
appropria- specially directs the appropriation of a fine, the
tion of fine statute under which the appropriation is made shall
under a be set forth in the register and authenticated by the
statute. signature of the justice or one of the justices con-
stituting the court.

Returns. 5. The return referred to in section 22, sub-
section (4) of the Summary Jurisdiction Act, 1879,
shall contain the particulars required to be entered
in the register. The justice signing any such return

shall cause it to be sent to the clerk who keeps the **Appndx.** register for his petty sessional division, and that clerk shall enter the return in his register.

6. The form of account to be rendered by clerks of courts of summary jurisdiction of fines, fees, and other sums received by them shall be the form given in Part III. of the schedule hereto, or a form to the like effect approved by the local authority under the Justices Clerks Act, 1877, and shall be rendered quarterly or at any less interval as may be directed by that authority. Provided that nothing in this rule shall apply to the police courts of the metropolis, Chatham, or Sheerness.

Form of account of fines.

7. All fines imposed by the court shall appear in this account in chronological order, and where payment is deferred or to be made by instalments, the fact shall be shown in the column headed "Remarks." When the whole of the sum has been paid or recovered by distress, or the term of imprisonment imposed in default of payment or of sufficient distress has expired, the clerk shall then enter the sum in the account. Provided that, though the whole of the sum may not have been paid or recovered, the instalments received shall be accounted for at such times and in such manner as the above-mentioned local authority may direct.

Rule as to sums of which payment is deferred or to be made by instalments.

8. Where a clerk of a court of summary jurisdiction renders an account in the form required or authorized by these rules to the authority to whom he is required to render it, he shall not be required

Provision for dispensing with unnecessary accounts.

Appndx. to render any other account relating to the same particulars.

Entry of receipts by clerk.

9. The clerk of each court of summary jurisdiction shall enter on the day of its receipt each sum of money received by him on any account whatever. Each instalment so received shall be entered in a book called the instalment ledger to an account to be opened in respect of the proceeding in which the sum is paid.

Remitted fees book.

10. The book required to be kept by section 12 of the Act 14 & 15 Vict. c. 55, shall be kept according to the form in Part III. of the schedule hereto, and shall be called the remitted fees book.

Crown fines.

11. The clerk of every court of summary jurisdiction shall send on the tenth day of January, April, July, and October, in each year, to the Secretary of State for the Home Department, Whitehall, without paying the postage, a certified statement, in the form in Part III. of the schedule hereto, of all fines which have been imposed by the court during the previous three months, and which are payable wholly or in part to Her Majesty or to the Exchequer. If no such fines have been imposed, the statement shall be certified in blank.

Application of sum due under forfeited security.

12. Where a court of summary jurisdiction has enforced payment of any sum due by a principal in pursuance of a security under the Summary Jurisdiction Act, 1879, which appears to the court to be forfeited, the sum shall, unless it is recoverable as a

civil debt, be paid to the clerk of the court, and **Appndx.** shall be paid and applied by him in the manner in which fines imposed by the court, in respect of which fines no special appropriation is made, are payable and applicable.

13. Any security given under the Summary Jurisdiction Act, 1879, by an oral or written acknowledgment shall be in the form of an undertaking, and may be in the appropriate form in Part I. or Part II. of the schedule hereto, or in any other form to the like effect. Form of security under Act.

14. The clerk of each court of summary jurisdiction shall keep a security book, and shall enter therein, with respect to each security given in relation to any proceeding before the court, the name and address of each person bound, showing whether he is bound as principal or as surety, the sum in which each person is bound, the undertaking or condition by which he is bound, the date of the security, and the person before whom it is taken. Where any such security is not entered into before the court, or before the clerk of the court, the person before whom it is entered into shall make a return of it, showing the above particulars, to the clerk of the court. The security book, and any certified extract therefrom, shall be evidence of the several matters hereby required to be entered in the security book in like manner as if the security book were the register. Security book.

15. Not less than two clear days before a warrant of distress is issued for a sum due by a principal in Notice to principal of

Appndx. **forfeiture of security.** pursuance of a forfeited security under the Summary Jurisdiction Act, 1879, the clerk of the court issuing the warrant shall cause notice of the forfeiture to be served on the principal. Service of the notice may be effected either by prepaid letter sent to the address mentioned in the security, or as service of a summons may be effected under the Summary Jurisdiction Acts.

Mode of application to vary order for sureties.

16. An application under section 26 of the Summary Jurisdiction Act, 1879, shall be an application for a summons requiring the complainant to show cause why the order made on his complaint should not be varied.

Time for stating special case.

17. An application to a court of summary jurisdiction under section 33 of the Summary Jurisdiction Act, 1879, to state a special case, shall be made in writing, and may be made at any time within seven days from the date of the proceeding to be questioned, and the case shall be stated within three calendar months after the date of the application.

Particulars of claim for civil debt.

18. In the case of a claim for a civil debt recoverable summarily the particulars of the claim shall, unless embodied in the summons, be annexed to and, if so annexed, shall be deemed part of the summons.

Judgment summons.

19. An order of commitment under section 35 of the Summary Jurisdiction Act, 1879, shall not be made unless a summons to appear and be examined

on oath (hereinafter called a judgment summons) **Appndx.**
has been served on the judgment debtor.

20. The judgment summons shall, whenever it is practicable, be served personally on the judgment debtor, but if it is made to appear on oath to the court that prompt personal service is for any reason impracticable, the court may make such order for substituted or other service as to the court may seem just.

Service of judgment summons.

21. A judgment summons may issue although no distress warrant has been applied for, and its service, where made out of the jurisdiction of the court, may be proved by affidavit or solemn declaration.

Issue and proof of service of judgment summons.

22. A judgment summons shall be served not less than two clear days before the day on which the judgment debtor is required to appear.

Time of service.

23. The hearing of a judgment summons may be adjourned from time to time.

Adjournment of hearing of judgment summons.

24. Any witness may be summoned to prove the means of the judgment debtor, in the same manner as witnesses are summoned to give evidence on the hearing of a complaint.

Witnesses on judgment summons.

25. An order of commitment made under section 35 of the Summary Jurisdiction Act, 1879, shall, on whatever day it is issued, bear date on the day on which it was made.

Date of order of commitment.

Appndx. 26. When an order of commitment for non-payment of money is issued, the defendant may, at any time before he is delivered into the custody of the gaoler, pay to the officer holding the order the amount indorsed thereon as that on the payment of which he may be discharged, and on receiving that amount the officer shall discharge the defendant, and shall forthwith pay over the amount to the clerk of the court.

Payment by judgment debtor.

Discharge of judgment debtor. 27. The sum indorsed on the order of commitment as that on payment of which the prisoner may be discharged may be paid to the clerk of the court from which the commitment order was issued, or to the gaoler in whose custody the prisoner is. Where it is paid to the clerk, he shall sign a certificate of the payment, and upon receiving the certificate by post or otherwise the gaoler in whose custody the prisoner then is shall forthwith discharge the prisoner. Where it is paid to the gaoler, he shall, on payment to him of that amount, with costs sufficient to pay for sending the amount by post office order or otherwise, to the court under the order of which the prisoner was committed, sign a certificate of the payment, and discharge the prisoner, and forthwith transmit the sum so received to the clerk of the court.

Costs of plaintiff in enforcing order.

28. All costs incurred by the plaintiff in endeavouring to enforce an order shall, unless the court otherwise order, be deemed to be due in pursuance of the order, as if it were made under section 5 of the Debtors Act, 1869.

29. The fee for taking a declaration under section **Appndx.**
41 of the Summary Jurisdiction Act, 1879, shall be Fee for
taking de-
claration.
one shilling.

30. The forms in the schedule hereto, or forms Forms
to the like effect, may be used, with such variations
as circumstances require.

The forms S. 1 and S. 2 in the schedule to the
Summary Jurisdiction Act, 1848, are hereby an-
nulled.

CAIRNS, C.

12th December, 1879.

Appndx.

SCHEDULE.

Note.—The headings and the descriptions at the foot of these forms will be altered as circumstances require. For instance in the metropolitan police district the heading will be,—

In the Metropolitan Police District.

Before the court of summary jurisdiction sitting at the police court [*Bow Street*].

And the conviction will be signed,—

A. B.,

One of the magistrates of the police courts of the metropolis.

In a borough the heading will be,—

In the borough of [*Birmingham*],
and a justice for a borough will sign as such.

These forms do not supersede those in the schedule to 11 & 12 Vict. c. 43, which may, as far as they are not inconsistent with the provisions of any later Act, be still used in cases to which they are applicable.

PART I.

FORMS APPLICABLE TO SUMMARY PROCEEDINGS OTHER THAN PROCEEDINGS FOR THE RECOVERY OF A CIVIL DEBT.

1.

SUMMONS TO PERSON BOUND BY A RECOGNIZANCE WHICH IS ALLEGED TO HAVE BEEN FORFEITED BY CONVICTION OF PRINCIPAL. [s. 9 (2).]

In the [*county of* . . . *Petty sessional division of*

To *A. B.* of . . .

You are hereby summoned to appear before the court of summary jurisdiction sitting at . . . on . . . day the

day of _____ next, at the hour of _____ in the forenoon, **Appndx.**
to show cause why the recognizance entered into the _____
day of _____ whereby you are bound to pay the sum of _____
_____ should not be adjudged to be forfeited, and why you
should not be adjudged to pay that sum.

Dated the _____ day of _____

(Signed)

(L.S.)

One of Her Majesty's Justices of the Peace
for the [county] of _____

2.

SUMMONS TO ATTEND AN APPLICATION FOR VARYING OR
DISPENSING WITH SURETIES. [s. 26.]

In the [county of _____] . Petty sessional division of _____

To *A. B.* of _____

You are hereby summoned to appear before the court of
summary jurisdiction sitting at _____ on _____ day the
_____ day of _____ at the hour of _____ in the _____ noon,
to show cause why the amount for which it is proposed that
the suret _____ of _____ should be bound should not be
reduced [or why the obligation of _____ to find suret
should not be dispensed with].

Dated the _____ day of _____ 18 .

(Signed)

(L.S.)

One of Her Majesty's Justices of the Peace
for the [county] of _____

3.

INDORSEMENT ON SUMMONS TO WITNESS. [ss. 36, 41.]

Proof on oath [or solemn declaration] having this day
been made before me the undersigned that the name of *J. S.*
to the within summons subscribed is of the handwriting of
the justice of the peace within mentioned, I authorize *W. T.*,
who brings to me this summons, and all other persons by
whom it may be lawfully served, and also all constables of
the [county] of _____, to serve the same within the said
[county].

Dated the _____ day of _____ 18 .

(Signed)

(L.S.)

One of Her Majesty's Justices of the Peace
for the [county] of _____

Appndx.

4.

WARRANT WHERE WITNESS HAS NOT OBEYED AN INDORSED
SUMMONS. [s. 36.]

In the [county of . Petty sessional division of
].

To each and all of the constables of

A. B. has been charged for that [state shortly offence
charged].

And it appearing that *E. F.* of was likely to give
material evidence concerning the said charge, he was by
summons commanded to appear before the court of summary
jurisdiction sitting at on day, the
day of at the hour of in the noon,
to testify what he should know concerning the said charge.

And on the day of the summons was duly
indorsed with an authority to serve it within the [county]
of

And as it has been proved to me the undersigned, the said
E. F. has been duly served with the summons, and a reason-
able amount has been paid [or tendered] to him for his
expenses, but he has neglected to appear according to the
summons, and has not offered any sufficient excuse for his
neglect.

Therefore you are hereby commanded to take the said *E. F.*
and to bring and have him before the court of summary
jurisdiction sitting at on day the
day of 18 , at the hour of in the noon,
to testify what he knows concerning the said charge.

Dated the day of

(Signed)

(L.S.)

One of Her Majesty's Justices of the Peace
for the [county] of

5.

CONVICTION FOR FINE, TO BE LEVIED BY DISTRESS, AND
IN DEFAULT OF SUFFICIENT DISTRESS, IMPRISONMENT.
PAYMENT FORTHWITH, OR BY A GIVEN DAY, OR BY
INSTALMENTS. [ss. 7, 8.]

In the [county of . Petty sessional division of
].

Before the court of summary jurisdiction sitting at

The day of 18 .

A. B. (hereinafter called the defendant) is this day con-

Appndx. victed before this court for that he, on the day of
18 , at [place] [offence charged].

And it is adjudged that the defendant do for his said offence forfeit and pay to the clerk of this court [or other the person to whom payment is to be made] at the sum of [amount of fine], and do also pay to the said the sum of for compensation [if awarded] and for costs [or without costs].*

And it is ordered that the said sums be paid forthwith [or on the day of 18 , or by instalments of for every days, the first instalment to be paid forthwith or on the day of 18].

And if default is made in payment according to this adjudication and order, it is adjudged that the defendant be imprisoned in Her Majesty's prison at , there to be kept to hard labour [if so adjudged] for the space of unless the said sums, and all costs and charges of his commitment and conveyance to the said prison [if so ordered], be sooner paid.

(Signed) (L.S.)
of Her Majesty's Justices of the Peace
for the [county] of

* Where the fine does not exceed 5s., omit the direction to pay costs, and insert the words "without costs," unless costs are expressly ordered.

7.

CONVICTION WHERE PUNISHMENT IS BY IMPRISONMENT. NO COSTS.

In the [county of . Petty sessional division of
].

Before the court of summary jurisdiction sitting at
The day of 18 .

A. B. (hereinafter called the defendant) is this day convicted before this court for that he on the day of
18 , at [place] [offence charged].

And it is adjudged that the defendant be for his said offence imprisoned in Her Majesty's prison at [there to be kept to hard labour] for the space of .

(Signed) (L.S.)
of Her Majesty's Justices of the Peace
for the [county] of

8.

Appndx.

CONVICTION WHERE PUNISHMENT IS BY IMPRISONMENT.
COSTS. [s. 7.]

In the [county of . Petty sessional division of].

Before the court of summary jurisdiction sitting at .

The day of 18 .

A. B. (hereinafter called the defendant) is this day convicted before this court for that he on the day of 18 , at [place] [offence charged].

And it is adjudged that the defendant be for his said offence imprisoned in Her Majesty's prison at [there to be kept to hard labour] for the space of .

And it is ordered that the defendant pay to the said the sum of for costs forthwith [or on the day of 18 , or by instalments of for every days, the first instalments to be paid forthwith or on the day of next].

And if default is made in payment according to this adjudication and order, it is ordered that the sum due thereunder be levied by distress and sale of the defendant's goods.

And in default of sufficient distress it is adjudged that the defendant be imprisoned in Her Majesty's prison at [there to be kept to hard labour] for the space of , to commence at and from the termination of his imprisonment aforesaid, unless the said sum, and all costs and charges of the said distress and of his commitment and conveyance to the said prison [if so ordered], be sooner paid.

(Signed)

(L.S.)

of Her Majesty's Justices of the Peace
for the [county] of

9.

CONVICTION OR ORDER WHERE SECURITY IS TO BE GIVEN
FOR PAYMENT. [ss. 7, 23 (3).]

[Proceed as in ordinary conviction or order down to direction as to time of payment inclusive, and then, instead of inserting any direction as to distress or imprisonment, proceed as follows :]

And it is ordered that be at liberty to give to the satisfaction of this court [or such court of summary jurisdiction, or person or persons, as may be specified by the court] security in the sum of with two sureties [or one surety] in the sum of [each] for the payment of the said sums as above directed.

Appndx. victed before this court for that he, on the day of
18 , at [place] [offence charged].

And it is adjudged that the defendant do for his said offence forfeit and pay to the clerk of this court [or other the person to whom payment is to be made] at the sum of [amount of fine], and do also pay to the said the sum of for compensation [if awarded] and for costs [or without costs].*

And it is ordered that the said sums be paid forthwith [or on the day of 18 , or by instalments of for every days, the first instalment to be paid forthwith or on the day of 18].

And if default is made in payment according to this adjudication and order, it is adjudged that the defendant be imprisoned in Her Majesty's prison at , there to be kept to hard labour [if so adjudged] for the space of unless the said sums, and all costs and charges of his commitment and conveyance to the said prison [if so ordered], be sooner paid.

(Signed) (L.S.)
of Her Majesty's Justices of the Peace
for the [county] of

* Where the fine does not exceed 5s., omit the direction to pay costs, and insert the words "without costs," unless costs are expressly ordered.

7.

CONVICTION WHERE PUNISHMENT IS BY IMPRISONMENT. NO COSTS.

In the [county of . Petty sessional division of
].

Before the court of summary jurisdiction sitting at .
The day of 18 .

A. B. (hereinafter called the defendant) is this day convicted before this court for that he on the day of
18 , at [place] [offence charged].

And it is adjudged that the defendant be for his said offence imprisoned in Her Majesty's prison at [there to be kept to hard labour] for the space of .

(Signed) (L.S.)
of Her Majesty's Justices of the Peace
for the [county] of

8.

Appndx.

CONVICTION WHERE PUNISHMENT IS BY IMPRISONMENT.
COSTS. [s. 7.]

In the [county of . Petty sessional division of]

Before the court of summary jurisdiction sitting at .
The day of 18 .

A. B. (hereinafter called the defendant) is this day convicted before this court for that he on the day of 18 , at [place] [offence charged].

And it is adjudged that the defendant be for his said offence imprisoned in Her Majesty's prison at [there to be kept to hard labour] for the space of .

And it is ordered that the defendant pay to the said the sum of for costs forthwith [or on the day of 18 , or by instalments of for every days, the first instalments to be paid forthwith or on the day of next].

And if default is made in payment according to this adjudication and order, it is ordered that the sum due thereunder be levied by distress and sale of the defendant's goods.

And in default of sufficient distress it is adjudged that the defendant be imprisoned in Her Majesty's prison at [there to be kept to hard labour] for the space of , to commence at and from the termination of his imprisonment aforesaid, unless the said sum, and all costs and charges of the said distress and of his commitment and conveyance to the said prison [if so ordered], be sooner paid.

(Signed)

(L.S.)

of Her Majesty's Justices of the Peace
for the [county] of

9.

CONVICTION OR ORDER WHERE SECURITY IS TO BE GIVEN
FOR PAYMENT. [ss. 7, 23 (3).]

[Proceed as in ordinary conviction or order down to direction as to time of payment inclusive, and then, instead of inserting any direction as to distress or imprisonment, proceed as follows :]

And it is ordered that be at liberty to give to the satisfaction of this court [or such court of summary jurisdiction, or person or persons, as may be specified by the court] security in the sum of with two sureties [or one surety] in the sum of [each] for the payment of the said sums as above directed.

Appndx.

10.

ORDER FOR ANY MATTER (OTHER THAN THE PAYMENT OF
A CIVIL DEBT) WHERE DISOBEDIENCE TO THE ORDER
IS PUNISHABLE BY IMPRISONMENT. (See s. 21, &c.)

In the [county of . Petty sessional division of
].

Before the court of summary jurisdiction sitting at .
The day of 18 .

A. B. having made a complaint that *C. D.* (hereinafter called the defendant) on the day of at [state the facts entitling the complainant to the order], and the defendant having appeared [or the defendant not having appeared, but proof having been given that the defendant was duly summoned to appear], and on hearing the matter of the complaint, it is this day adjudged and ordered by this court that the defendant do [state the matter required to be done].

And if on a copy of a minute of this order being served on the defendant, either personally or by leaving it for him at his last or usual abode, he neglects or refuses to obey this order, then it is adjudged that the defendant for such his disobedience be imprisoned in Her Majesty's prison at [there to be kept to hard labour], for the space of unless the said order be sooner obeyed [if the statute authorizes this].

And it is also adjudged and ordered that the defendant pay to the complainant the sum of for costs forthwith [or on the day of or by instalments, &c.].

And if default is made in payment according to this adjudication and order, it is ordered that the sum due thereunder be levied by distress and sale of the defendant's goods.

And in default of sufficient distress, it is adjudged that the defendant be imprisoned in Her Majesty's prison at there to be kept to hard labour [if so adjudged] for the space of , to commence at and from the termination of his imprisonment aforesaid, unless the said sum, and all costs and charges of the said distress, and of the commitment and conveyance of the defendant to the said prison [if so ordered], be sooner paid.

(Signed)

(L.S.)

of Her Majesty's Justices of the Peace,
for the [county] of

11.

Appndx.

ORDER TO ENTER INTO RECOGNIZANCE TO KEEP THE PEACE
OR TO BE OF GOOD BEHAVIOUR. [s. 25.]

In the [county of . Petty sessional division of
].

Before the court of summary jurisdiction sitting at

The day of 18 .

A. B. having made a complaint that C. D. (hereinafter
called the defendant) on the day of at

[state the facts entitling the complainant to the
order], and the defendant having appeared, and on hearing

the matter of the complaint, it is this day adjudged and

ordered by this court that the defendant do forthwith to the
satisfaction of enter into a recognizance in the sum

of with suret in the sum of

[each] to keep the peace and be of good behaviour towards
Her Majesty and all her liege people, and especially towards

the complainant, for the term of now next ensuing.

And if the defendant fails to comply with this order it is
adjudged that he be imprisoned in Her Majesty's prison at

for the space of unless he sooner complies
with this order.

[If costs are ordered, proceed as follows :]

And it is also adjudged and ordered that the defendant
pay to the complainant the sum of for costs forth-

with [or, on the day of next, or by instal-
ments, &c.] :

And if default is made in payment according to this
adjudication and order, it is ordered [proceed as in last
form].

(Signed)

(L.S.)

of Her Majesty's Justices of the Peace

for the [county] of .

12.

ADJUDICATION OF FORFEITURE OF RECOGNIZANCE WHERE
PERSON BOUND AS PRINCIPAL HAS BEEN CONVICTED OF
AN OFFENCE WHICH IS A BREACH OF THE CONDITION.

[s. 9 (2).]

In the [county of . Petty sessional division of
].

Before the court of summary jurisdiction sitting at

The day of 18 .

A. B. (hereinafter called the defendant) was by his
recognizance entered into the day of 18 ,

Appndx. bound in the sum of _____ the condition of the recognizance being that _____ of _____ should [*state condition of recognizance*]:

And proof having been given that the said _____ has been convicted of the offence of having [*state offence*], being an offence which is in law a breach of the condition of the said recognizance:

Therefore it is adjudged that the said recognizance is forfeited, and that the defendant do pay to the clerk of this court the said sum of _____ and also pay to _____ the sum of _____ for costs:

And it is ordered that the said sums be paid forthwith [*or* on the _____ day of _____ next *or* by instalments of _____ for every _____ days, the first instalment to be paid forthwith, *or* on the _____ day of _____ next]:

And if default is made in payment according to this adjudication and order it is ordered [*proceed as in conviction for fine to be levied by distress.*]

13.

SUMMARY CONVICTION OF CHILD FOR INDICTABLE OFFENCE. [ss. 10, 27.]

In the [*county of* _____ . *Petty sessional division of* _____].

Before the court of summary jurisdiction (being a petty sessional court sitting at _____ .

The _____ day of _____ 18 _____ .

A. B. (hereinafter called the defendant), being a child within the meaning of the Summary Jurisdiction Act, 1879, and above the age of seven years, and of sufficient capacity to commit crime, and having been charged for that he on the day of _____ at _____ [*state offence*]

And _____ the parent [*or* guardian] of the defendant *having been informed by this court of his right to have the defendant tried by a jury, and not having objected to the case being* dealt with summarily, †and the court thinking it expedient so to deal with the case: †

The defendant is this day convicted before this court of the said offence:

And it is adjudged that he do [*or* be] for his said offence [*Proceed as in other forms of summary conviction. If whipping ordered, insert either in addition to or in substitution for any other punishment.*]

And it is adjudged that the defendant being a male child,

be, as soon as practicable, privately whipped with strokes of a birch rod by a constable in the presence of an inspector, or other officer of police of higher rank than a constable, and also in the presence, if he desires to be present, of the defendant's parent [*or guardian*].

*† *Omit words between asterisks and crosses if the parent or guardian is absent, and substitute for the words between asterisks "not having been present at the hearing of the charge, but the court thinking it expedient that the case be."*

14.

SUMMARY CONVICTION (BY CONSENT) OF JUVENILE OFFENDER FOR INDICTABLE OFFENCE. [s. 11, 27.]

In the [county of . Petty sessional division of].

Before the court of summary jurisdiction (being a petty sessional court) sitting at .

The day of . 18 .

A. B. (hereinafter called the defendant), being a young person within the meaning of the Summary Jurisdiction Act, 1879, and having been charged for that he on the day of at [*state offence*] and having been informed by the court of his right to be tried by a jury, and having consented to be dealt with summarily, and the court thinking it expedient so to deal with the case:

The defendant is this day convicted before this court of the said offence, and it is adjudged that he do [*or be*] for his said offence [*proceed as in other forms of summary conviction. If whipping ordered, insert either in addition to or in substitution for any other punishment.*]

And it is adjudged that the defendant, being a male under the age of fourteen years, be, as soon as practicable, privately whipped with strokes of a birch rod by a constable, in the presence of an inspector, or other officer of police of higher rank than a constable, and also in the presence, if he desires to be present, of the defendant's parent [*or guardian*].

Appndx.

15.

SUMMARY CONVICTION (BY CONSENT) OF ADULT FOR INDICTABLE OFFENCE. [SS. 12, 27.]

In the [county of . Petty sessional division of
].

Before the court of summary jurisdiction (being a petty sessional court) sitting at

The day of 18 .

A. B. (hereinafter called the defendant), having been charged for that he on the day of at [state offence] and having been informed by the court of his right to be tried by a jury, and having consented to be dealt with summarily, and the court thinking it expedient so to deal with the case:

The defendant is this day convicted before this court of the said offence and it is adjudged that he do [or be] for his said offence [proceed as in ordinary forms of summary conviction].

16.

SUMMARY CONVICTION (ON PLEA OF GUILTY) OF ADULT FOR INDICTABLE OFFENCE. [SS. 13, 27.]

In the [county of . Petty sessional division of
].

Before the court of summary jurisdiction (being a petty sessional court) sitting at

The day of 18 .

A. B. (hereinafter called the defendant), having been charged for that he on the day of at [state offence] and having pleaded guilty to the said charge, and the court being satisfied that the case is one which may properly be dealt with summarily under section 13 of the Summary Jurisdiction Act, 1879:

The defendant is this day convicted before this court of the said offence, and it is adjudged that he be for his said offence imprisoned in Her Majesty's prison at and there kept to hard labour [if so adjudged] for the space of . [If costs ordered proceed as in conviction for fine with costs.]

17.

Appndx.

ORDER OF DISMISSAL OF CHILD DEALT WITH SUMMARILY
FOR INDICTABLE OFFENCE. [SS. 10, 27.]

In the [county of . Petty sessional division of
].

Before the court of summary jurisdiction (being a petty sessional court) sitting at

The day of 18 .

A. B. (hereinafter called the defendant), being a child within the meaning of the Summary Jurisdiction Act, 1879, has been charged on the information of of for that he on the day of [state offence].

And the court, in exercise of its jurisdiction, has dealt with the case summarily :

And the matter of the said charge having been duly considered by the court, it manifestly appears to the court that the said charge is not proved :

Therefore the court doth hereby dismiss the said information.

And it is ordered that the informant pay to the sum of for costs forthwith [or on the day of 18].

And if default is made [proceed as in conviction for fine to be levied by distress].

ORDER OF DISMISSAL OF YOUNG PERSON OR ADULT DEALT
WITH SUMMARILY FOR INDICTABLE OFFENCE. [SS. 11,
12, 27.]

In the [county of . Petty sessional division of
].

Before the court of summary jurisdiction (being a petty sessional court) sitting at

The day of 18 .

A. B. (hereinafter called the defendant), being a young person within the meaning of the Summary Jurisdiction Act, 1879 [or being an adult], having been charged on the information of of for that he on the day of at [state offence] and having been informed by the court of his right to be tried by a jury, consented to be dealt with summarily, and the court thought it expedient so to deal with the case :

And the matter of the said charge having been duly considered by the court, it manifestly appears to the court that the said charge is not proved :

Appndx. Therefore the Court doth hereby dismiss the said information :

And it is ordered that the informant pay to the defendant the sum of for costs forthwith, *or* on the day of .

And if default is made [*proceed as in conviction for fine to be levied by distress*].

19.

ORDER DISMISSING INFORMATION AND DIRECTING PERSON CHARGED TO PAY DAMAGES. [s. 16 (1)].

In the [county of . Petty sessional division of].

Before the court of summary jurisdiction sitting at The day of 18 .

A. B. (hereinafter called the defendant), has been charged on the information of C. D. for that he on the day of at [*state offence*].

And the court is of opinion that though the said charge is proved the offence was of so trifling a nature that it is inexpedient to inflict any punishment ;

Therefore the court doth hereby dismiss the said information.

[*If payment of damages or costs ordered, proceed as follows :*]

And it is ordered that the defendant pay to the informant for damages and for costs :

And it is ordered that the said sums be paid forthwith [*or* on the day of , *or* by instalments of for every days, the first instalment to be paid forthwith, *or* on the day of next] :

And if default is made [*proceed as in form of conviction for fine to be levied by distress*].

20.

SUMMARY CONVICTION WHERE PERSON CONVICTED IS DISCHARGED CONDITIONALLY ON GIVING SECURITY TO APPEAR OR TO BE OF GOOD BEHAVIOUR. [s. 16 (2).]

In the [county of . Petty sessional division of].

Before the court of summary jurisdiction sitting at The day of 18 .

A. B. (hereinafter called the defendant), is this day convicted before this court for that he on the day of at [*state offence*].

But the court being of opinion that the said offence was of so trifling a nature that it is inexpedient to inflict any punishment [or any other than a nominal punishment], and the defendant having given security to the satisfaction of this court to appear for sentence when called upon [or to be of good behaviour], he is discharged: Appndx.

And it is ordered that the defendant pay to the said for damages and for costs [if so ordered] forthwith [or on or before the day of or by instalments of for every days, the first instalment to be paid on or before the day of next.]

And if default is made [proceed as in conviction for fine to be levied by distress.]

21.

WARRANT OF DISTRESS ON CONVICTION FOR FINE, WITH OR WITHOUT COSTS OR DAMAGES, OR FOR COSTS OR DAMAGES WITHOUT FINE. [ss. 21, 43.]

In the [county of . Petty sessional division of].

To each and all of the constables of

A. B. (hereinafter called the defendant) was on the day of convicted before the court of summary jurisdiction sitting at for that he [state offence], and it was adjudged that the defendant should for his said offence forfeit and pay * [amount of fine], and should also pay to the said the sum of for compensation and for costs, and it was ordered that the said sums should be paid [&c. as in the conviction], and that if default should be made in payment according to the said adjudication and order, the sum due thereunder should be levied by distress and sale of the defendant's goods:

And default has been made in payment according to the said adjudication and order:

Therefore you are hereby commanded to forthwith make distress of the goods of the defendant (except the wearing apparel and bedding of him and his family, and, to the value of five pounds, the tools and implements of his trade); and if within the space of † days next after the making of such distress the sum of , being the sum stated at the foot of this warrant to be due under the said adjudication and order, together with the reasonable costs and charges of the making and keeping of the said distress, be not paid, then to sell the said goods by you distrained, and pay this money arising therefrom to the clerk of that court, in order

23.

Appndx.

WARRANT OF DISTRESS WHERE THE CHARGE IS DISMISSED,
BUT THE PERSON CHARGED IS ORDERED TO PAY
DAMAGES OR COSTS, OR BOTH. [s. 16.]

In the [county of . Petty sessional division of
].

The day of 18 .

A. B. (hereinafter called the defendant) was charged for
that he on the day of at [state
offence]:

And on the hearing of the said charge on the day
of before the court of summary jurisdiction sitting
at the court, being of opinion that though the charge
was proved the offence was in the particular case of so trifling
a nature that it was inexpedient to inflict any punishment,
dismissed the information, but ordered that the defendant
should pay to * for damages † and * for
costs †:

And it was ordered that the said sums should be paid [as
in order].

[Proceed as in warrant of distress on conviction for fine.]

Where no order to pay damages, omit words between
asterisks * *.

Where no order to pay costs, omit words between
crosses † †.

In either case substitute "sum" for "sums."

24.

WARRANT OF DISTRESS FOR SUM DUE UNDER RECOGNIZ-
ANCE DECLARED TO BE FORFEITED. [s. 9 (1).]

In the [county of . Petty sessional division of
].

To each and all of the constables of

A. B. was by his recognizance entered into the
day of bound in the sum of the condition of
the recognizance being that should [state condition
of recognizance]:

And default having been made in compliance with the said
condition, the said recognizance was on the day of
declared by the court of summary jurisdiction
sitting at to be forfeited:

And the said has made default in payment of the
sum due under the said recognizance:

Appdx. Therefore you are hereby commanded to forthwith make distress of the goods of the said _____ except the wearing apparel and bedding of him and his family, and, to the value of five pounds, the tools and implements of his trade, and if within the space of * _____ days next after the making of such distress the sum of _____, being the sum stated at the foot of this warrant to be due under the said recognizance, together with the reasonable costs and charges of the making and keeping of the said distress, be not paid, then to sell the said goods by you distrained and pay the money arising therefrom to the clerk of that court in order that it may be applied according to law, and that the surplus, if any, may be rendered on demand to the said _____ and if no such distress is found to certify the same to that court in order that further proceedings may be had according to law.

Dated the _____ day of _____ 18 -

(Signed) _____ (L.S.)

One of Her Majesty's Justices of the Peace
for the [county] of _____

	£	s.	d.
Amount due under recognizance -			
Paid - - - - -			
Remaining due - - - - -			
Costs of issuing warrant - -			
Total amount to be levied -			

* *N.B. The goods are not to be sold until after the end of five clear days next following the day on which they are seized, unless the owner consents in writing.*

25.

WARRANT OF DISTRESS FOR SUM DUE UNDER RECOGNIZANCE ADJUDGED TO BE FORFEITED BY CONVICTION OF PRINCIPAL. [s. 9 (2).]

In the [county of _____] . Petty sessional division of _____

To each and all of the constables of _____

A. B. (hereinafter called the defendant) was by his recognizance entered into the _____ day of _____ bound in the sum of _____ the condition of the recognizance being that should [state condition of recognizance]:

And the said _____ having been convicted of the offence of having [*state offence*] being an offence which is in law a breach of the said condition, it was on the _____ day of _____ adjudged by the court of summary jurisdiction sitting at _____ that the said recognizance was forfeited, and that the defendant should pay to the clerk of that court the said sum of _____ and should also pay to _____ the sum of _____ for costs.

Appndx.

And it was ordered that the said sum should be paid [*as in order*], and that if default should be made in payment according to the said adjudication and order, the sum due thereunder should be levied by distress and sale of the defendant's goods:

And default has been made in payment according to the said adjudication and order:

Therefore you are hereby commanded [*proceed as in warrant of distress for fine*].

26.

WARRANT OF DISTRESS FOR SUM DUE BY A PRINCIPAL
IN PURSUANCE OF A FORFEITED SECURITY FOR PAY-
MENT OF A SUM ADJUDGED BY A CONVICTION.
[s. 23 (3).]

In the [*county of* _____ . *Petty sessional division of* _____].

A. B. (hereinafter called the defendant) was on the _____ day of _____ convicted before the court of summary jurisdiction sitting at _____ for that he [*state offence*], and it was adjudged by the conviction of the court that the defendant should pay [*as in conviction*]:

And it was thereby ordered that the defendant should be at liberty to give to the satisfaction of the court [*or as in the conviction*] security with _____ sure for the payment of the said sum at the time and in the manner by the said conviction directed:

And the defendant and _____ and _____ his sureties undertook that the defendant would pay the said sum at the time and in the manner so directed, and severally acknowledged themselves bound to forfeit and pay to _____ the sum of _____ in case the defendant failed to make payment as so directed:

And it appears to this court that the sum of _____ due by the defendant in pursuance of the said undertaking has not been paid and has been forfeited:

Appndx. And notice of the said forfeiture has been duly served on the defendant :

Therefore you are hereby commanded [*proceed as in warrant of distress for fine, substituting for the words "being the sum stated at the foot of this warrant to be due under the said adjudication and order" the words "being the sum stated at the foot of this warrant to be due in pursuance of the said undertaking," and stating the amount at the foot as "amount due in pursuance of undertaking."*]

27.

ORDER FOR IMPRISONMENT AND WARRANT OF COMMITMENT WHERE IT APPEARS THAT THERE ARE NO GOODS, OR INSUFFICIENT GOODS, WHEREON TO LEVY DISTRESS, OR THAT DISTRESS WOULD BE MORE INJURIOUS THAN IMPRISONMENT. [s. 21 (3).]

In the [county of . Petty sessional division of].

To each and all the constables of and to the keeper of Her Majesty's prison at

A. B. (hereinafter called the defendant) was on the day of [or this day] convicted before the court of summary jurisdiction sitting at for that he [&c.] [or on the day of it was adjudged and ordered by the court of summary jurisdiction sitting at that] [*state conviction or order and then proceed as follows :*]

And default has been made in payment according to the said adjudication and order :

And on such default application has been made to this court to issue a warrant of distress in pursuance of the said conviction, but it appears to this court that the defendant has no goods whereon to levy the said distress [or that in the event of a warrant of distress being issued, the goods of the defendant will be insufficient to satisfy the money payable by him, or that the levy of the said distress will be more injurious to the defendant and his family than imprisonment] :

Therefore it is ordered by this court that the defendant, on non-payment of the sum due under the said adjudication and order, be imprisoned in Her Majesty's prison at [there to be kept to hard labour] for the space of , unless the said sum, and the costs and charges of his commitment and conveyance to the said prison [*if ordered*] be sooner paid.

And you are hereby commanded, you the said constables, to take the defendant, and convey him to Her Majesty's prison at and there deliver him to the keeper thereof,

together with this warrant; and you the said keeper of the said prison to receive the defendant into your custody in the said prison, there to imprison him [and keep him to hard labour] for the space of _____, unless the said sum, and the costs and charges of his commitment and conveyance to the said prison [*if ordered*], be sooner paid.

Appndx.

Dated the _____ day of _____ 18 ____.

(Signed)

(L.S.)

One of Her Majesty's Justices of the Peace
for the [county] of _____

28.

WARRANT OF COMMITMENT PENDING RETURN TO WARRANT OF DISTRESS. [11 & 12 Vict. c. 43, s. 20.]

In the [county of _____]. Petty sessional division of _____.

To each and all the constables of _____ and to the keeper of Her Majesty's prison at _____

A. B. (hereinafter called the defendant) was on the day of _____ [or this day] convicted before the court of summary jurisdiction sitting at _____ for that he [*state conviction*]:

And default has been made in payment according to the said adjudication and order:

And a warrant of distress has been issued against the defendant in pursuance of the said conviction, but no return has been made thereto:

And the defendant has not given sufficient security to the satisfaction of this court for his appearance at the time and place appointed for the return of the warrant of distress:

Therefore you are hereby commanded, you the said constables, to take the defendant and convey him to Her Majesty's prison at _____ and there deliver him to the keeper thereof, together with this warrant; and you the said keeper of the said prison to receive the defendant into your custody in the said prison, there to keep and detain him until the _____ day of _____, being the day appointed for the return of the said warrant of distress, unless he previously enters into a recognizance in the sum of _____ l. with _____ sure _____ in the sum of _____ [each] conditioned for his appearance on that day, and on that day, if such recognizance has not been entered into, to convey and have him before the court of summary jurisdiction at _____, at the hour of _____ in the _____ noon, to be further dealt with according to law.

(Signed)

(L.S.)

of Her Majesty's Justices of the Peace
for the [county] of _____

Appendx.

29.

WARRANT OF COMMITMENT FOR WANT OF DISTRESS.

In the [county of . Petty sessional division of].

To each and all of the constables of , and to the keeper of Her Majesty's prison at

[Proceed as in warrant of distress down to commanding part, and close thus:]

And on the day of 18 , a warrant of distress was issued to the constable of , commanding him to levy the sum of [state sum directed to be levied] by distress and sale of the defendant's goods:

And it now appears, as well by the return of the said constable to the said warrant of distress as otherwise, that he has made diligent search for the defendant's goods, but that no sufficient distress whereon to levy the said sum could be found:

Therefore you are hereby commanded, you the said constables to take the defendant and convey him to the said prison, and there deliver him to the keeper thereof, together with this warrant; and you the said keeper of the said prison to receive the defendant into your custody in the said prison, there to imprison him [and keep him to hard labour] for the space of , unless the said sum, and all the costs and charges of the said distress, and of his commitment and conveyance to the said prison [if ordered], be sooner paid.

Dated the day of 18 .

(Signed)

(L.S.)

One of Her Majesty's Justices of the Peace
for the [county] of .

30.

WARRANT OF COMMITMENT REDUCING TERM OF IMPRISONMENT ON PART PAYMENT. [s. 21 (4).]

[Adopt the ordinary form of warrant of commitment, but before the commanding part insert the following:]

And on application to this court to issue a warrant to commit the defendant to prison for non-payment of the sum adjudged to be paid by the said conviction [or order] [or for default of sufficient distress], it appears to this court that by payment of part of the said sum [or by the net proceeds of

the said distress], the amount of the sum so adjudged has been reduced to such an extent that the unsatisfied balance, if it had constituted the original amount so adjudged to be paid, would have subjected the defendant to a maximum term of imprisonment less than the term of imprisonment to which he is liable under the said conviction [*or order*]:

Appendx.

Therefore the said term of imprisonment is hereby revoked, and it is hereby ordered that the defendant be imprisoned in the said prison [there to be kept to hard labour] for the space of [*the reduced term*], unless the said sum and all costs and charges of *the said distress, and of* his commitment and conveyance to the said prison [*if ordered*] be sooner paid.

And you are hereby commanded [*proceed as in ordinary warrant of commitment, inserting reduced term of imprisonment*].

* . . * Omit where there has been no distress.

31.

WARRANT OF COMMITMENT ON A CONVICTION WHERE THE PUNISHMENT IS BY IMPRISONMENT.

In the [county of . . .] Petty sessional division of [. . .].

To each and all of the constables of [. . .], and to the keeper of Her Majesty's prison at [. . .].

A. B. (hereinafter called the defendant) has been this day convicted before the court of summary jurisdiction sitting at [. . .], for that he on the [. . .] day of [. . .] 18 [. . .], [*state offence as in conviction*].

And it has been adjudged by the court that the defendant be for his said offence imprisoned in Her Majesty's prison at [. . .], and there kept to hard labour [*if so ordered*] for the space of [. . .].

Therefore you are hereby commanded, you the said constables, to take the defendant and convey him to the said prison, and there deliver him to the keeper thereof, together with this warrant, and you the said keeper of the said prison to receive the defendant into your custody in the said prison, and there to imprison him and keep him to hard labour [*if so ordered*] for the space of [. . .].

Dated the [. . .] day of [. . .] 18 [. . .].

(Signed)

(L.S.)

One of Her Majesty's Justices of the Peace
for the [county] of [. . .].

Appndx.

32.

WARRANT OF COMMITMENT WHERE PERSON LIABLE TO
SUMMARY CONVICTION DEMANDS TRIAL BY JURY.
[S. 17 (1).]

In the [county of . Petty sessional division of
].

To each and all of the constables of , and to the
keeper of Her Majesty's prison at .

A. B. (hereinafter called the defendant) was charged [on
oath] for that he on the day of at
[state offence]:

And the offence with which the defendant was so charged
is an offence (not being an assault) for the commission of
which the offender is liable on summary conviction to be im-
prisoned for a term exceeding three months:

And on the hearing of the charge before the court of
summary jurisdiction sitting at on the day of
the defendant appeared before the court and claimed
to be tried by a jury:

Therefore you are hereby commanded, you the said con-
stables to take the defendant and convey him to Her Majesty's
prison at and there deliver him to the keeper
thereof, together with this warrant; and you the said keeper
of the said prison to receive the defendant into your custody
in the said prison, and keep him there until he shall be
thence delivered in due course of law.

Dated the day of 18 .

(Signed)

(L.S.)

of Her Majesty's Justices of the Peace
for the [county] of .

33.

RECOGNIZANCE CONDITIONED FOR APPEARANCE OR FOR DOING
SOME OTHER THING IN, TO, OR BEFORE, OR IN A PRO-
CEEDING IN, A COURT OF SUMMARY JURISDICTION.
[SS. 9, (1), 42.] .

The day of 18 .

We the undersigned of of and
of severally acknowledge ourselves to owe
to our Sovereign Lady the Queen the several sums following,
namely the said as principal, the sum of and
the said and as suret the sum of
each, to be levied on our several goods, lands, and tenements
if the said . fails in the condition hereon indorsed.

(Signed (where not taken orally) A. B.

L. M.

N. O.

Taken [orally] before me the day of 18 . Appndx.

J. P.

One of Her Majesty's Justices of the Peace
for the county of

or

Clerk of the Court of Summary Jurisdiction
for the Petty Sessional Division of

or

Superintendent of the police, *or as*
the case may be.

Note.—Where the recognizance is taken orally, omit the words "the undersigned," and insert the word "orally" after "taken."

CONDITION INDORSED.

The condition of the within-written recognizance is such that if the within bounden appears before the court of summary jurisdiction sitting at on day, the day of , at the hour of in the noon, to answer [further] to the charge made against him by and to be [further] dealt with according to law [or appears before the court of summary jurisdiction sitting at for sentence when called upon, *or as the case may be*] then the said recognizance shall be void, but otherwise shall remain in full force.

34.

DECLARATION OF FORFEITURE (to be indorsed on recognizance). [ss. 9, 42.]

In the [county of . Petty sessional division of].

Before the court of summary jurisdiction sitting at
The day of 18 .

The said not having appeared* in accordance with the said condition, this court declares that the within-written recognizance is forfeited.

(Signed)

of Her Majesty's Justices of the Peace
for the [county] of

**or as the case may be.*

Appndx.

35.

ORDER CANCELLING OR MITIGATING FORFEITURE OF RECOGNIZANCE. [s. 9 (1).] (to be indorsed on recognizance.)

In the [county of . Petty sessional division of].

Before the court of summary jurisdiction sitting at

A warrant of distress was on the day of issued for levying the sum of declared to be forfeited under the within-written recognizance, but no goods have been sold thereunder.

And the said has applied to this court to cancel [or mitigate] the forfeiture of the said recognizance, and has given security to the satisfaction of this court for the future performance of the condition of the said recognizance, and has paid [or given security for payment of] the costs incurred in respect of the forfeiture thereof [or insert such other condition as the court may think just]:

Therefore the said forfeiture is hereby cancelled [or mitigated to the sum of].

Dated the day of 18 .

(Signed)

of Her Majesty's Justices of the Peace
for the [county] of .

36.

RECOGNIZANCE CONDITIONED TO KEEP THE PEACE OR TO BE OF GOOD BEHAVIOUR, OR NOT TO DO OR COMMIT SOME ACT OR THING. [s. 9 (2).]

We the undersigned of of and of severally acknowledge ourselves to owe to our Sovereign Lady the Queen the several sums following, namely, the said as principal, the sum of and the said and as suret , the sum of each to be levied on our several goods, lands, and tenements if the said fails in the condition hereon endorsed.

Signed (where not taken orally) A. B.
L. M.
N. O.

Taken [orally] before me the day of 18 .

(Signed) J. P.

One of Her Majesty's Justices of the Peace
for the county of

or

Governor of Her Majesty's Prison at
or as the case may be.

Note.—Where the recognizance is taken orally, omit the words "the undersigned," and insert "orally" after "taken."

CONDITION INDORSED.

The condition of the within-written recognizance is such that if the within bounden _____ keeps the peace and is of good behaviour towards Her Majesty and all her liege people, and especially towards _____ of _____ for the term of _____ now next ensuing [*or abstains from doing the thing forbidden, or as the case may be*], then the said recognizance shall be void, but otherwise shall remain in full force.

37.

ORAL OR WRITTEN ACKNOWLEDGMENT OF UNDERTAKING TO PAY A SUM ADJUDGED BY A CONVICTION. [ss. 7, 23.]

In the [*county of* _____ . *Petty sessional division of* _____].

A. B. (hereinafter called the defendant) was this day [*or was on the* _____ day of _____] convicted before the court of summary jurisdiction sitting at _____ for that he [*state offence*], and it was adjudged by the conviction of the court that the defendant should pay [*as in the conviction*] and it was thereby ordered that the defendant should be at liberty to give to the satisfaction of the court [*or as in the conviction*] security in the sum of _____ with suret _____ in the sum of _____ [each] for the payment of the said sum at the time and in the manner by the said conviction directed.

Now, therefore, I, the defendant, as principal, and we, *C. D.*, of _____ and *E. F.* of _____ as sureties [*or I, C. D.*, of _____ as surety] hereby undertake that the defendant will pay the sum adjudged by the said conviction at the time and in the manner thereby directed.

And I the said defendant and we [*or I*] the said sureties [*or surety*] hereby severally acknowledge ourselves bound to forfeit and pay to [*the clerk of the court or other person specified*] the sum of _____ in case the defendant fails to perform this undertaking.

(Signed) (*where not taken orally*) *A. B.*, Defendant.
C. D., } Sureties.
E. F., }

Taken [*orally before me the* _____ day of _____ .
 (Signed)
 One of Her Majesty's Justices of the Peace
 for the [*county*] of _____ .

39.

Appndx.

NOTICE TO PRINCIPAL OF FORFEITURE OF SECURITY.

[s. 23 (3).]

In the [county of . Petty sessional division of
].

To of

Take notice that you have forfeited the sum of ,
for which you were bound as principal by your undertaking,
entered into the day of 18 , and that
unless you pay that sum to at on or before
the day of next, a warrant of distress will be
issued for the recovery thereof.

Dated the day of

Clerk of the Court of Summary Jurisdiction
for the above [division].

40.

ORDER VARYING ORDER FOR SURETIES. [s. 26.]

In the [county of . Petty sessional division of
].

Before the court of summary jurisdiction (being a petty
sessional court) sitting at

The day of 18 .

A. B. has been under a warrant of commitment dated the
day of and issued by this court [or the
court of summary jurisdiction sitting at] committed
to prison in default of finding sureties [or a surety] in
the

And on new evidence having been produced to this court
[or on proof of change of circumstances having been given
to this court] the court thinks it just to vary in manner here-
inafter appearing the order under which the said warrant was
issued.

Therefore it is ordered that the amount for which it is pro-
posed that the sureties [or surety] of the said *A. B.* should
be bound be reduced to [or that the obligation of the
said *A. B.* to find a surety [or sureties] be dispensed with
[or as may be directed].

(Signed)

(L.S.)

of Her Majesty's Justices of the Peace
for the [county] of

Appendix.

41.

ORDER FOR RESTITUTION OF PROPERTY. [s. 27 (3).]

In the [county of . Petty sessional division of
].

Before the court of summary jurisdiction (being a petty sessional court) sitting at

The day of 18 .

A. B. was charged before this court for that he on the day of at [state offence and describe goods as in conviction], and the court having dealt with the case summarily, the said *A. B.* has been this day convicted before this court of the offence with which he was so charged :

And it is proved to this court that the said goods are now in the possession of of

Therefore it is hereby ordered that the said do forthwith restore the said goods to the said the owner thereof.

(Signed)

(L.S.)

of Her Majesty's Justices of the Peace
for the [county] of

42.

ORDER TO BRING UP APPELLANT IN CUSTODY TO ENTER INTO RECOGNIZANCE FOR APPEAL. [s. 31 (4).]

In the [county of . Petty sessional division of
].

To the keeper of Her Majesty's prison at

You are hereby ordered to bring *A. B.* now in your custody, before the court of summary jurisdiction sitting at

on day the day of at the hour of
in the noon, that he may enter into a re-
cognizance with suret conditioned to appear

and try an appeal from the conviction [or order] dated the day of of the court of summary jurisdiction sitting at and may be thereupon, if the court think fit, released from your custody.

Dated the day of 18 .

(Signed)

(L.S.)

of Her Majesty's Justices of the Peace
for the [county] of

43.

Appndx.

NOTICE TO PARENT OR GUARDIAN OF CHILD CHARGED WITH AN INDICTABLE OFFENCE BEFORE A COURT OF SUMMARY JURISDICTION. [s. 10 (3).]

In the [county of . Petty sessional division of
To of

A. B. has been charged for that he on the day of at [state offence], and has been remanded until the sitting of the court of summary jurisdiction at on the day of , and it has been alleged that you are his parent [or guardian], and if you desire that he be tried by a jury, and object to his case being dealt with summarily, you must attend at the hearing of the charge before that court on that day.

Dated the day of 18 .

(Signed)
of Her Majesty's Justices of the Peace
for the [county] of

44.

DECLARATION OF SERVICE OF SUMMONS OR OTHER DOCUMENT. [s. 41.]

I of hereby solemnly declare that I did on the day of , serve of with the [warrant, summons, notice, process, or other document] now shown to me, and marked A, by delivering a true copy thereof to him [or by leaving a true copy thereof at being his last [or most usual] place of abode].

Taken the day of 18 , before me

(Signed)
One of Her Majesty's Justices of the Peace

or
A Commissioner to administer Oaths in the
Supreme Court of Judicature

or
Clerk of the Peace for the [county] of

or
Registrar of the County Court at

Appndx.**45.****DECLARATION AS TO HANDWRITING AND SEAL. [s. 41.]**

I of hereby solemnly declare that the signature to the document now produced and shown to me, and marked , is in the proper handwriting of of [and that the seal on the said document is the proper seal of].

Taken the day of 18 , before me

(Signed)

One of Her Majesty's Justices of the Peace

or

A Commissioner to administer Oaths in the Supreme Court of Judicature

or

Clerk of the Peace for the [county] of

or

Registrar of the County Court at

46.**CERTIFICATE OF COSTS OF PROSECUTION OF INDICTABLE OFFENCE DEALT WITH SUMMARILY. [s. 28.]****ADDITIONAL RULE.**

I, ROUNDELL BARON SELBOURNE, Lord High Chancellor of Great Britain, hereby, in pursuance of Section 29 of the Summary Jurisdiction Act, 1879, make the following rule, namely:—

Substitution of amended form of certificate as to prosecution expenses.

The Form subjoined hereto, or a Form to the like effect, shall be used in substitution for the Form numbered 46 in the Schedule to the Summary Jurisdiction Rules, 1880.

CERTIFICATE of Costs of Prosecution of Indictable Offence, in pursuance of the Summary Jurisdiction Act, 1879, 42 & 43 Vict. c. 49.

In the [county of . Petty sessional division of]
Before the court of summary jurisdiction (being a petty sessional court), sitting at

A. B. (*state whether adult, young person, or child*) having been charged for that he (*state substance of charge*), and the above court having, in pursuance of its statutory jurisdiction, dealt with the case summarily, and on the day of convicted the said A. B. (*or, dismissed the said charge; or, adjudged the said A. B. to be imprisoned on a plea of guilty*);—It is hereby certified that the under-men-

tioned persons are, for their expenses, trouble, and loss of time in connection with the said charge, entitled to compensation as follows:—

	£ s. d.
C. D. (<i>state trade or profession</i>), the prosecutor residing at _____, for his attendance here _____ day and night, being altogether _____ hours - - - - -	
For travelling _____ miles each way, mileage _____ railway fare - - - - -	
The same for fees payable to the justices clerk	
The same for fees payable to the clerk of the peace - - - - -	
E. F. (<i>state trade or profession</i>), a witness, residing at _____, for his attendance here _____ day and night, being altogether _____ hours - - - - -	
The same for travelling _____ miles each way _____ mileage, _____ railway fare -	
	£

Dated the _____ day of _____ 188 .
 (Signed) _____
 of Her Majesty's Justices of the Peace
 for the (*county*) of _____

RECEIVED _____ 188 , of the _____ Treasurer of the
 (*county*) of _____ the amount above certified.

Note.—The allowances to prosecutors and witnesses must be in strict accordance with the Rules and Regulations made by the Secretary of State on the 9th February, 1858 (*a*).
 31st January, 1881. (Signed) _____ Selborne, C.

47.

ACCOUNT OF COSTS AND CHARGES INCURRED IN RESPECT OF THE EXECUTION OF A WARRANT OF DISTRESS.
 [s. 43 (6).]

In the matter of an information [*or a complaint*] [by

I _____ of _____ the constable charged with the execution of the warrant of distress upon the goods of _____ dated the _____ day of _____ hereby declare that the following is a true account of the costs and charges incurred in respect of the execution of the said warrant.

£ s. d.

Total - _____

(a) See *ante*, p. 497.

Appndx.

PART II.

FORMS APPLICABLE TO PROCEEDINGS FOR THE
RECOVERY OF A CIVIL DEBT.

1.

SUMMONS TO APPEAR.

In the [county of . Petty sessional division of
].
Between Plaintiff,
Address
Description
and
Defendant,

Address
Description

To of

You are hereby summoned to appear before the court of
summary jurisdiction sitting at on day the
day of 18 at the hour of
in the noon, to answer the plaintiff to a claim the
particulars of which are hereto annexed.

Dated the day of 18 .

(Signed) J. P. (L.S.)

One of Her Majesty's Justices of the Peace
for the [county] of

2.

SUMMONS TO WITNESS.

In the [county of . Petty sessional division of
].
Between Plaintiff,
Address
Description
and
Defendant,

Address
Description

To of

You are hereby required to attend before the court of
summary jurisdiction sitting at on day the

day of 18 at the hour of Appndx.
 in the noon, to give evidence in the above cause on
 behalf of the [Plaintiff or Defendant].

Dated the day of 18 . . .

(Signed) (L.S.)

One of Her Majesty's Justices of the Peace
 for the [county] of

3.

JUDGMENT FOR PLAINTIFF.

In the [county of . Petty sessional division of
].

Before the court of summary jurisdiction sitting at
 Between Plaintiff,

Address
 Description

and

Defendant,

Address
 Description

The day of 18 .

It is this day adjudged that the plaintiff recover against
 the defendant the sum of for debt [or damages],
 and for costs, amounting together to the sum of

And it is ordered that the defendant pay the same to the
 plaintiff forthwith [or on the day of , or by
 instalments of for every days, the first in-
 stalment to be paid forthwith or on the day of
 18]; * and if default is made in payment accord-
 ing to this adjudication and order, it is ordered that the sum
 due thereunder be levied by distress and sale of the defen-
 dant's goods.*

(Signed) (L.S.)

of Her Majesty's Justices of the Peace
 for the [county] of

* If security accepted, substitute for words between
 asterisks " and it is ordered that the defendant be at liberty
 to give to the satisfaction of this court [or of]
 security in the sum of with one surety [or two
 sureties] in the sum of [each] for the payment of
 the said sum as above directed."

Appndx.

4.

JUDGMENT FOR DEFENDANT.

In the [county of . Petty sessional division of
].

Before the court of summary jurisdiction sitting at
Between Plaintiff,

Address
Description

and

Defendant,

Address
Description

The day of 18 .

Upon hearing this cause this day it is adjudged that judgment be entered for the defendant, and that the plaintiff pay the sum of £. for the defendant's costs forthwith [or on the day of or by instalments of for every days, the first instalment to be paid forthwith or on the day of]; * and if default is made in payment according to this adjudication and order, it is ordered that the sums due thereunder be levied by distress and sale of the plaintiff's goods.*

(Signed)

(L.S.)

of Her Majesty's Justices of the Peace
for the [county] of

* *If security is accepted, substitute for words between asterisks "and it is ordered that the plaintiff be at liberty to give to the satisfaction of this court [or of] security in the sum of with two sureties [or with one surety] in the sum of [each] for payment of the said sum as above directed."*

5.

JUDGMENT SUMMONS.

In the [county of . Petty sessional division of
].

Between Plaintiff,

Address
Description

and

Defendant,

Address
Description

The day of 18 .

To the above-named defendant [or plaintiff].

The plaintiff (or) defendant obtained an order against you

the above-named defendant (*or*) plaintiff before the court of **Appndx.**
 summary jurisdiction sitting at _____ on the _____ day
 of _____ 18 , for the payment of _____ pounds
 shillings and _____ pence.

And you have made default in payment of the sum payable
 in pursuance of the said order.

Therefore you are hereby summoned to appear personally
 before the court of summary jurisdiction sitting at
 on _____ day the _____ day of _____ 18 , at the hour
 of _____ in the _____ noon, to be examined on oath by
 the court touching the means you have or have had since the
 date of the order to satisfy the sum payable in pursuance of
 the said order ; and also to show cause why you should not
 be committed to prison for such default.

(Signed) _____ (L.S.)

One of Her Majesty's Justices of the Peace
 for the [county] of _____

£ s. d.

Amount of order, and costs - - - -
 Costs of distress against the goods, if any _____

£ s. d.

Deduct { Paid into court -
 Instalments which
 were not required
 to have been paid
 before the date of
 the summons -

£ s. d.

Sum payable - - - - -
 Costs of this summons - - - - -

Amount upon the payment of which no
 further proceedings will be had until
 default in payment of next instalment -

safely in the said prison for _____ days from the arrest under this order, or until he is sooner discharged by due course of law. **Appndx.**

Dated the _____ day of _____ 18 .

(Signed)

(L.S.)

One of Her Majesty's Justices of the Peace
for the [county] of _____

£ s. d.

Total sum payable at the time of
hearing of the judgment
summons - - - - -

Hearing of summons, and cost of
order - - - - -

Total sum on payment of which
the prisoner will be discharged

7.

CERTIFICATE FOR DISCHARGE OF A PRISONER FROM
CUSTODY.

In the [county of _____ . Petty sessional division of
_____].

Between *A. B.* Plaintiff, and *C. D.* Defendant.

To the keeper of Her Majesty's prison at _____

I hereby certify that the defendant [or plaintiff], who was committed to your custody by virtue of an order of commitment dated the _____ day of _____ 18 , has paid and satisfied the sum of money for the nonpayment whereof he was so committed, together with all costs due and payable by him in respect thereof, and may in respect of that order be forthwith discharged out of your custody.

Dated the _____ day of _____ 18 .

(Signed)

Clerk of the Court of Summary Jurisdiction for
the [Petty Sessional Division] of _____

Appndx.

8.

DISTRESS WARRANT.

In the [county of . Petty sessional division of
].

Between . Plaintiff,
Address
Description

and
Defendant,

Address
Description .

To each and all of the constables of

On the . day of 18 ., it was adjudged and ordered by the court of summary jurisdiction sitting at ., that the defendant [or plaintiff] should pay to the plaintiff [or defendant] for debt [or damages], and for costs, making together the sum of .; and it was ordered that the said sum should be paid on the day of [or as in judgment], and that if default should be made in payment according to the said adjudication and order the sum due thereunder should be levied by distress and sale of the defendant's goods.

And default has been made in payment according to the said adjudication and order.

Therefore you are hereby commanded forthwith to make distress of the goods of the said defendant [or plaintiff] (except the wearing apparel and bedding of him and his family, and, to the value of five pounds, the tools and implements of his trade), and if within the space of* . days next after the making of such distress the sum of ., being the sum stated at the foot of this warrant to be due under the said adjudication and order, together with the reasonable charges of the making and keeping of the said distress, be not paid, then to sell the said goods by you distrained, and pay the money arising thereby to the clerk of that court, in order that it may be applied according to law, and that the overplus, if any, may be rendered on demand to the said defendant [or plaintiff], and if no such distress can be found to certify the same to that court in order that further proceedings may be had according to law.

Dated the . day of 18 .

(Signed)

(L.S.)

One of Her Majesty's Justices of the Peace,
for the [county] of

	£	s.	d.	Appndx.
Amount adjudged - - - - -				
Paid - - - - -				
Remaining due - - - - -				
Costs of issuing this warrant - - -				
Total amount to be levied - - -				

* N.B.—The goods are not to be sold until after the end of five clear days next following the day on which they were seized, unless the defendant otherwise consents in writing.

9.

ORAL OR WRITTEN ACKNOWLEDGMENT OF UNDERTAKING TO PAY CIVIL DEBT.

In the [county of . Petty sessional division of]

Between Plaintiff,

Address

Description

and

Defendant,

Address

Description

It was this day [or on the day of] adjudged by the court of summary jurisdiction sitting at that the plaintiff should recover against the defendant the sum of for debt [or damages] and for costs, amounting together to the sum of .

And it was ordered that the defendant should pay the same to the plaintiff forthwith [or on or before the day of or by instalments of for every days, the first instalment to be paid on the day of], and that the defendant should be at liberty to give to the satisfaction of the court [or as in judgment] security in the sum of with surety in the sum of [each] for the payment of the sum so ordered to be paid as thereby directed.

Now, therefore, I the defendant, as principal, and we C. D. of and E. F. of as sureties [or I, C. D. of

Appndx. as surety] hereby undertake that the defendant will pay the sum so ordered to be paid as thereby directed.

And I the said defendant and we [*or* I] the said sureties [*or* surety] hereby severally acknowledge ourselves bound to forfeit and pay to the sum of in case the defendant fails to perform this undertaking.

Signed [*where not taken orally*] A. B. Defendant.

C. D. }
E. F. } Sureties.

Taken [*orally*] before me on the day of

(Signed) (L.S.)
One of Her Majesty's Justices of the Peace
for the [county] of

PART III.
GENERAL FORMS.

1. REGISTER.

In the [county of . Petty sessional division of]
Register of the court of summary jurisdiction sitting at
the day of 18 .

Number.	Name of Informant or Complainant.	Name of Defendant and Age, if under 16.	Nature of Offence, or of Matter of Complaint.	Minute of Adjudication.	Justices adjudicating.
(1.)	(2.)	(3.)	(4.)	(5.)	(6.)

2.

or received, showing their appropriation and the portions payable the ending 18 at the time prescribed by the proper authority, with a remittance payable to him.

FEES, &c.					REMARKS.
Total Fees.	Appropriation.				
	Payable to Police, Service of Summonses, Execution of Warrants, &c.	Payable to other Persons, including Clerk of the Peace.	Deductions when not received, remaining due, lost by Committal, &c., or remitted.	Net Fees Payable to Treasurer.	
	(11.)	(12.)	(13.)	(14.)		(15.)
£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	(16.)

3. REMITTED FEE BOOK.

Date.	Nature of Business.	Amount of Fees.	Reasons for Remission.	Signatures of Justices.
(1.)	(2.)	(3.)	(4.)	(5.)

Appndx.

R U L E S .

SUMMARY JURISDICTION ACT, 1879.

I, the Right Honourable Roundell Baron Selborne, Lord High Chancellor of Great Britain, do hereby, under and by virtue of the Summary Jurisdiction Act, 1879, make the following rules with reference to recognizances to be taken out of court by governors and keepers of prisons under the said Act:—

1. Where a court of summary jurisdiction has fixed as respects any recognizance the amount in which a principal and a surety or sureties are to be bound, the governor or other keeper of a prison shall not be required to take the recognizance of any person proposed as surety, unless the person so proposed produces a certificate in writing from a court of summary jurisdiction, or a clerk thereof, that he has satisfied the court or clerk of his ability to pay the amount for which he is to be bound in the event of the recognizance becoming forfeited.

2. These rules shall come into operation on the first day of September, 1880.

SELBORNE, C.

August 24th, 1880.

V. NAMES OF THE SEVERAL PETTY SESSIONAL DIVISIONS IN EACH COUNTY IN ENGLAND AND WALES.

COUNTIES.	PETTY SESSIONAL DIVISIONS.	COUNTIES.	PETTY SESSIONAL DIVISIONS.
ENGLAND.		ENGLAND	<i>—continued.</i>
<i>Bedford</i> - -	Amphill. Bedford. Biggleswade. Bletsae. Leighton Buzzard. Luton. 7 Woburn.	<i>Bucks</i>	<i>—continued.</i> Burnham, Chesham Division of the Hundred of. Cottesloe, Linslade Division of the Three Hundreds of. Cottesloe, Winsloe Division of the Three Hundreds of. Desboro', First Division of the Hundred of. Desboro', Second Division of the Hundred of. Newport, Three Hundreds of Newport Division. Newport, Three Hundreds of Stony Stratford Division.
<i>Berks</i> - -	Abingdon. Faringdon. The Forest. Hungerford. Ilsley. Lambourne. Maidenhead. Newbury. Reading. Wantage. Wallingford. 12 Windsor.	12	Stoke, the Hundred of.
<i>Bucks</i> - -	Ashendon, Three Hundreds of. Aylesbury, Three Hundreds of. Buckingham, Three Hundreds of. Burnham, Beaconsfield Division of the Hundred of.	<i>Cambridge</i> -	Arrington and Melbourn. Bottisham. Cambridge. Caxton. Linton. 6 Newmarket.

COUNTIES.	PETTY SESSIONAL DIVISIONS.	COUNTIES.	PETTY SESSIONAL DIVISIONS.
ENGLAND	<i>—continued.</i>	ENGLAND	<i>—continued.</i>
<i>Liberty of the Isle of Ely</i>	Chatteris and March Division. Ely and Witchford, South. Wisbech.	<i>Cumberland</i>	Allerdale Ward, above Derwent. Allerdale Ward, below Derwent. Bootle. Cumberland Ward. Derwent. Eskdale Ward. Keswick. Leath Ward. Longtown. Workington.
4	Liberties of Whittlesey and Thorney.		
<i>Chester</i>	Altrincham. Broxton. Bucklow. Chester Castle. Daresbury. Eddisbury. Hyde. Leftwich. Nantwich. Northwich Prestbury. Runcorn. Stockport.	10	<i>Derbyshire</i>
14	Wirral.		Alfreton. Appletree. Ashborne. Bakewell. Belper. Chapel-en-le-Frith. Chesterfield. Derby. Eckington. Glossop. Repton and Greasley Smalley. Wirksworth.
<i>Cornwall</i>	East, Middle. " North. " South. Kirrier, East. " West. Lesnewth. Penwith, East. " West. Powder, East. " South. " West. " Tywardreath. Pydar. Stratton. Trigg.	13	<i>Devon</i>
16	West.		Axminster. Braunton. Bideford. Callompton. Crediton. Crockernwell. Ermington and Plympton. Great Torrington. Honiton. Holsworthy. Hatherleigh. Lifton. Midland Roberough.

COUNTIES.	PETTY SESSIONAL DIVISIONS.	COUNTIES.	PETTY SESSIONAL DIVISIONS.
ENGLAND	<i>—continued.</i>	ENGLAND	<i>—continued.</i>
Devon	<i>—continued.</i> Ottery. Paignton. Roborough. Stamborough and Cole- ridge. Southmolton. Teignbridge. Tavistock. Wonford. 22 Woodbury.	Durham	<i>—continued.</i> Darlington Ward, North West Division of, Stanhope. Ditto Wolsingham. Durham Ward. Easington Ward, North Division of, Sunder- land. Ditto Houghton- le-Spring. Easington Ward, South Division of, Castle Eden. Ditto Seaham Harbour Division. Hartlepool Ward. Stockton Ward, in part, 16 Stockton-on-Tees.
Dorset	Blandford. Bridport. Cerne. Dorchester. Shaston. Sturminster. Sherborne. Wareham. 9 Wimborne.	Essex	Brentwood. Chelmsford. Dengie. Dunmow. Epping. Freshwell. Half Hundred of Beacontree. Harlow. Haverling-Atte-Bower, Liberty of. Hinckford, North. Hinckford, South. Ilford. Ongar. Orsett. Rochford. Saffron Walden. Tendring. Witham. 19 Winstree and Lexden.
Durham	Chester Ward, East Di- vision of, South Shields. Ditto Gateshead. Chester Ward, Middle Division of. Chester Ward, West Division of, Lan- chester. Darlington Ward, South East Division of, Dar- lington. Darlington Ward, South West Division of, Bar- nard Castle. Darlington Ward, North West Division of, Bishop Auckland.		

COUNTIES.	PETTY SESSIONAL DIVISIONS.	COUNTIES.	PETTY SESSIONAL DIVISIONS.
ENGLAND	<i>—continued.</i>	ENGLAND	<i>—continued.</i>
<i>Gloucester</i>	Berkeley. Campden. Cheltenham. Cirencester. Coleford. Dursley. Fairford. Gloucester. Horsley. Lawford's Gate. Lydney. Moreton-in-Marsh. Newent. Newnham. Northleach. Sodbury. Stow-on-the-Wold. Stroud. Tetbury. Tewkesbury. Thornbury. Whitminster. Winchcomb. 24 Wotton-under-Edge.	Hertford	<i>—continued.</i> Bishop Stortford. Buntingford. Cheshunt. Dacorum. Hertford. Hitchin. Odsey. St. Albans. (a) Shenley. Stevenage. Ware. Watford. 15 Welwyn.
		<i>Huntingdon</i>	Hurstingstone. Leightonstone. Norman Cross. Ramsey. 5 Toseland.
<i>Hereford</i>	Bredwardine. Bromyard. Dore. Harewoods End. Hereford, No. 1. " No. 2. " No. 3. Kington. Ledbury. Leominster. Ross. Weobly. 18 Wigmore.	<i>Kent</i> - - -	Ashford. Bearstead. Blackhheath. Bromley. Cinque Ports, Liberties of the. Cranbrook. Dartford. Elham. Faversham. Home Division, or St. Augustine's. Malling (Upper South Aylesford). Rochester (North Ayles- ford) and Northfleet. Sevenoaks. Tonbridge. Tunbridge Wells.
<i>Hertford</i>	Albury. Barnet.		

(a) The liberty of St. Albans was amalgamated with the county of Hertford by 37 & 38 Vict. c. 4.

COUNTIES.	PETTY SESSIONAL DIVISIONS.	COUNTIES.	PETTY SESSIONAL DIVISIONS.
ENGLAND	<i>—continued.</i>	ENGLAND	<i>—continued.</i>
Kent	<i>—continued.</i> Ramsgate. 17 Wingham.	Leicester	<i>—continued.</i> Loughborough. Lutterworth. Market Bosworth. Market Harborough. 9 Melton Mowbray.
Lancaster	- Amounderness. Garstang. Kirkham. Accrington. Bacup and Rawtenstall. Blackburn, Lower. Blackburn, Higher. Colne. Clitheroe. Over Darwen. Walton-le-Dale. Leyland Barrow-in-Furness. Hawkshead. Hornby. Lonsdale, North. Lonsdale, South. Ashton-under-Lyne. Bolton. Bury. Middleton. Oldham. Childwall. Kirkdale. Leigh. Ormskirk. Prescot. St. Helen's. Southport. Warrington. 31 Wigan.	Lincoln— Holland - 2	Elloe. Kirton and Skirbeck.
		Do. Kesteven	Sleaford. Lincoln. Spittlegate. 4 Bourn.
		Do. Lindsay	Alford. Barton-on-Humber. Brigg. Epworth. Gainsborough. Grimsby. Horncastle. Lincoln. Louth. Market Rasen. Spilsby. Wragby. 18 Winterton.
Leicester	- Ashby-de-la-Zouch. Belvoir. East Norton. Leicester.	Middlesex -	Brentford. Edmonton. Enfield. Finsbury. Gore. Hampstead. Hanover Square. Holborn. Kensington. Marylebone. Paddington.

COUNTIES.	PETTY SESSIONAL DIVISIONS.	COUNTIES.	PETTY SESSIONAL DIVISIONS.
ENGLAND	<i>—continued.</i>	ENGLAND	<i>—continued.</i>
Middlesex	<i>—continued.</i> St. James. St. Margaret. St. Pancras. South Mimms. Spelthorne. Strand. Tower. 19 Uxbridge.	Norfolk	<i>—continued.</i> Grimshoe. Guilthorpe and Shrop- ham. Happing and Tunstead. Holt. Mitford and Launditch. Smithdon. Swainsthorpe. Taverham. 26 Wayland.
Monmouth	Abergavenny. Bedwelty. Caerleon. Chepstow. Christchurch. Monmouth. Newport. Pontypool. Raglan. Skenfrith. Trelleck. 12 Usk.	Northamp- ton	Brackley. Daventry. Kettering. Little Bowden. Northampton. Oundle. Thrapston. Towcester. 9 Wellingborough.
Norfolk	Blofield and Walsham. Brothercross. Clackclose. Clavering and Loddon. Depwade. Diss. Earsham. Erpingham, North. Erpingham, South. Eynsford. Flegg, East and West. Forehoe. Freebridge Lynn. Freebridge Marshland. Gallow. Greenhoe, North. Greenhoe, South.	Liberty of Peter- borough 2	Peterborough. St. Martin's, Stamford.
		Northum- berland	Bamburgh Ward. Bedlingtonshire. Bellingham. Castle Ward, East. Castle Ward, West. Coquetdale Ward, East. Coquetdale Ward, North. Coquetdale Ward, West. Glendale Ward. Haltwhistle. Morpeth Ward. Norham and Island- shire. 13 Tynedale Ward.

COUNTIES.	PETTY SESSIONAL DIVISIONS.	COUNTIES.	PETTY SESSIONAL DIVISIONS.
ENGLAND	<i>—continued.</i>	ENGLAND	<i>—continued.</i>
<i>Nottingham</i>	Bingham. Mansfield. Newark. Nottingham. Retford. Southwell. 7 Worksop.	Salop	<i>—continued.</i> Oswestry. Pimhill. 19 Stottesden Cleobury.
<i>Oxford</i> - -	Bampton, East. Bampton, West. Banbury and Bloxham. Bullington. Chadlington. Henley. Ploughley. Watlington. Wootton, North. 10 Wootton, South.	<i>Somerset</i> -	Axbridge. Bishops Lydeard. Bridgwater. Crewkerne. Dulverton. Dunster. Frome. Ilminster. Keynsham. Kilmersdon. Long Ashton. Shepton Mallet. Somerton. Taunton. Temple Cloud. Wellington. Wells. Weston. Williton. Wincanton. Wiveliscombe. 22 Yeovil.
<i>Rutland</i> - -	The County.		
<i>Salop</i> - -	Albrighton. Bishops Castle. Bradford Drayton. Bradford Newport. Bradford Wem. Bradford Wellington. Bradford Whitchurch. Brimstree, Bridgnorth, and Stottesden Chel- marsh. Brimstree Shiffnal. Burford. Chirbury. Clun and Purslow. Condover. Ford. Munslow Lower and Overs. Munslow Upper.	<i>Southamp- ton</i>	Alton. Andover. Basingstoke. Droxford. Fareham. Kingsclere. Lymington and New Forest. Odiham. Petersfield. Ringwood. Romsey.

COUNTIES.	PETTY SESSIONAL DIVISIONS.	COUNTIES.	PETTY SESSIONAL DIVISIONS.
ENGLAND	<i>—continued.</i>	ENGLAND	<i>—continued.</i>
Southampton	<i>—continued.</i> Southampton. Winchester.	Suffolk	<i>—continued.</i> Risbridge. Samford. Stowmarket. Thingoe and Thed- wastry.
14	Isle of Wight.	19	Woodbridge
<i>Stafford</i>	Bilston. Burton-upon-Trent. Cheadle. Eccleahall. Elford. Kingswinford and Wordsley. Leek. Penkridge. Pirehill, North. Rugeley. Shenstone. Stafford. Stone. Uttoxeter. Walsall or Brownhills. Wednesbury. West Bromwich. Willenhall.	<i>Surrey</i>	Chertsey. Croydon. Dorking. Epsom. Farnham. Godstone. Guildford. Kingston. Newington. Reigate. Richmond.
19	Wolverhampton.	12	Wandsworth.
<i>Suffolk</i>	Beccles. Blackbourn. Blything. Bosmere and Claydon. Boxford. Bungay. Framlingham. Hadleigh. Hartismere. Hoxne. Lackford. Lowestoft. Melford. Newmarket.	<i>Sussex</i> - (<i>Eastern Division</i>)	Battle. Burwash. Cuckfield. East Grinstead. Frant. Hailsham. Hastings. Hove. Lewes. Rye. Uckfield.
		11	
		<i>Sussex</i> - (<i>Western Division</i>)	Arundel. Chichester. Horsham. Midhurst. Petworth. Steyning. Worthing.
		7	

COUNTIES.	PETTY SESSIONAL DIVISIONS.	COUNTIES.	PETTY SESSIONAL DIVISIONS.
ENGLAND	— <i>continued.</i>	ENGLAND	— <i>continued.</i>
<i>Warwick</i> -	Alcester. Atherstone. Birmingham. Brailes. Burton Dassett and Kington. Coleshill. Henley. Kenilworth. Kirby. Rugby. Solihull. Southam. Stratfield and Snitter- field.	<i>Worcester</i> -	Blockley. Bromsgrove. Droitwich. Evesham. Great Malvern. Halesowen. Hundred House. Kidderminster. Northfield. Oldbury. Persnore. Redditch. Stourbridge. Stourport. Tenbury. Upton-on-Severn.
14	Warwick.	17	Worcester.
<i>Westmrland</i>	Ambleside. East Ward. Kendal Ward. Lonsdale Ward.	<i>York (East Riding)</i>	Bainton Beacon. Buckrose. Dickering. Holderness, Midd. Holderness, North. Holderness, South. Holme Beacon. Howdenshire. North Hunsley Beacon. South Hunsley Beacon. Ouse and Derwent.
5	West Ward.	12	Wilton Beacon.
<i>Wilts</i> - -	Bradford. Calne. Chippenham. Cricklade. Devizes. Everley and Pewsey. Hindon. Malmesbury. Marlborough and Ramsey. Melksham. Salisbury and Ames- bury. Swindon. Trowbridge and West- bury. Warminster.	<i>York (North Riding)</i>	Allertonshire. Birdforth. Bulmer, East. Bulmer, West. Gilling, East. Gilling, West. Greta Bridge. Hallikeld. Hang, East.
15	Whorwelsdown.		

COUNTIES.	PETTY SESSIONAL DIVISIONS.	COUNTIES.	PETTY SESSIONAL DIVISIONS.
ENGLAND	— <i>continued.</i>	ENGLAND	— <i>continued.</i>
York (North Riding)	— <i>continued.</i> Hang, West. Langbaurgh, East. Lanbaurgh, North. Langbaurgh, West. Malton. Pickering Lythe, East. Pickering, Lythe, West. Rydale. Whitby Strand. 19 Yarm.	Liberty of Ripon — WALES: <i>Anglesey</i> - First. 2 Second.	Ripon.
York (West Riding)	Agbrigg, Upper. Agbrigg, Lower. Ainsty, Eastern. Barkstonash, Upper. Barkstonash, Lower. Bolton-by-Bowland. Claro. Dewsbury. Ewecross. Keighley. Kirkby Malzeard. Morley, East. Morley, West. Osgoldcross, Upper. Osgoldcross, Lower. Otley. Rotherham. Saddleworth. Skyrack. Staincliffe, East. Staincliffe, West. Staincross. Strafforth, Upper, and Tickhill. 25 Tadcaster. Wetherby.	<i>Brecon</i> - Brecon Borough. Brynmawr. Builth. Crickhowell. Defynnock. Hay. Merthyr. Penkelly. Penderyn. Talgarth. 11 Ystradgunlais. <i>Cardigan</i> - Upper Geneurglyn. Lower Geneurglyn. Upper Ilar. Lower Ilar and Aberayron. Penarth. Moyddyn. Penrhiwpal. Lower Troedyraur. 9 Llandyssil. <i>Carmarthen</i> Carmarthen. St. Clears. Llanelly. Llanboidy. Newcastle Emlyn. Llanfihangel-ar-arth. Llandilo. 8 Llandovery.	

COUNTIES.	PETTY SESSIONAL DIVISIONS.	COUNTIES.	PETTY SESSIONAL DIVISIONS.
WALES	<i>—continued.</i>	WALES	<i>—continued.</i>
<i>Carnarvon</i>	Bangor. Carnarvon. Conway. Nant Conway. Eifionydd. 6 Pwllheli.	<i>Merioneth</i>	Eldeirnion. Arduwy-uwch-artro. Arduwy-is-artro. Penllyn. Talybout. 6 Estimaner.
<i>Denbigh</i>	Bromfield. Chirk Upper. Isaled. Isdulas. Llangollen. Ruabon. Ruthin. Uwchaled. 9 Uwchddulas.	<i>Montgomery</i>	Cawrse. Deythur. Llanfyllin. Llanidloes, Lower. Llanidloes, Upper. Machynlleth. Mathrafal. Montgomery, Lower. Montgomery, Upper. Newtown, Lower. Newtown Upper. Pool, Lower. 13 Pool, Upper.
<i>Flint</i>	Mold. Hope. Hawarden. Northop. Holywell. Caerwys. Prestatyn. Rhuddlan. Overton. 10 Hanmer.	<i>Pembroke</i>	Castlemartin. Dewslan. Dungleddy. Kemes. Kilgerran. Narberth. 7 Roose.
<i>Glamorgan</i>	Caerphilly, Higher. Caerphilly, Lower. Cowbridge. Dynaspowis. Kibbor. Miskin, Higher. Neath. Newcastle. Swansea. Gower. Pontardawe. 12 Pontypridd.	<i>Radnor</i>	Cefullys. Colwyn. Painscastle. Knighton. Radnor. 6 Rhayader.



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