JUSTICES.

An Act to Amend "The Justices Acts, 1886 to 1948," in certain particulars.

13 GEO. VI. No. 30. THE JUSTICES ACTS AMENDMENT ACT OF 1949.

[ASSENTED TO 22ND APRIL, 1949.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as "*The Justices Acts Amendment Act of* 1949," and shall be read as one with *"*The Justices Acts*, 1886 *to* 1948," herein referred to as the Principal Act. Short title and construction.

The Principal Act and this Act may collectively be cited as "*The Justices Acts*, 1886 *to* 1949." Collective title.

Amendments of the Principal Act.

2. Section four of the Principal Act is amended by repealing the definition "Order" and by inserting the following definition in lieu of that repealed definition, namely:— Amendment of s. 4.

"" Order "—Includes any order, adjudication, grant, or refusal of any application, and also any determination of whatsoever kind made by justices or a justice, and also any refusal by justices or a justice to hear and determine any complaint or to entertain any application made to them or him: The term does not include any order made by justices committing a person for trial for an indictable offence, or dismissing a charge of an indictable offence, or granting or refusing to grant bail;". Order.

3. Section nineteen of the Principal Act is amended by repealing the words "treason, felony" and by inserting, in lieu of such repealed words, the words "a crime". Amendment of s. 19.

* 50 V. No. 17 and amending Acts.

Repeal of and new s. 22.

4. Section twenty-two of the Principal Act is repealed and the following section is inserted in lieu thereof, namely :—

Power to appoint Petty Sessions Districts, &c.

"[*22.*] (*1.*) The Governor in Council may from time to time by Proclamation—

(*a*) Appoint districts for the purposes of Courts of Petty Sessions;

(*b*) Abolish, subdivide, or alter the boundaries of any district which has been or may at any time hereafter be appointed for the purposes of Courts of Petty Sessions, or amalgamate any such districts or parts of such districts; and

(*c*) If considered desirable assign a name to any such district and vary any such name.

(*2.*) The Governor in Council may from time to time by Proclamation appoint places for holding Courts of Petty Sessions within such districts respectively and if necessary more places than one within the same district and cancel the appointment of any place which has been or shall at any time hereafter be appointed as a place for holding Courts of Petty Sessions.

(*3.*) The Governor in Council may from time to time appoint any person to be clerk of petty sessions at one or more such places and any clerk of petty sessions who has been or may at any time hereafter be appointed may discharge the duties of his office at every place for which he is so appointed".

Amendment of s. 25.

5. Section twenty-five of the Principal Act is amended by repealing the words "any warrant of execution or commitment thereon" and by inserting, in lieu of such repealed words, the words "thereon any warrant of execution or of commitment".

Amendments of s. 39 (1).

6. Paragraph (*b*) of subsection one of section thirty-nine of the Principal Act is amended—

(*a*) By repealing the word "clerk" and by inserting, in lieu of that repealed word, the words "court or clerk"; and

(*b*) By repealing the words "any offence punishable by the Court of Petty Sessions on summary conviction" and by inserting, in lieu of those repealed words, the words "any proceeding under this Act in a summary way"

Amendments of s. 40.

7. Section forty of the Principal Act is amended by repealing the word " five " and by inserting, in lieu of such repealed word, the word " twenty-five " ; and also by repealing therein the words " seven days " and inserting in lieu of such repealed words the words " two months".

Repeal of and new s. 48.

8. Section forty-eight of the Principal Act is repealed and the following section is inserted in lieu thereof, namely :—

Want of form or variance in complaint, &c.

" [*48.*] If at the hearing of any complaint any objection is taken for an alleged defect therein in substance or in form or for any such alleged defect in any summons or warrant to apprehend a defendant issued upon such complaint or if objection is taken for any variance between the complaint summons or warrant and the evidence adduced at the hearing in support thereof the justices shall make such order for the amendment of the complaint summons or warrant as appears to them to be desirable or to be necessary in the interests of justice.

Amendments of s. 49.

9. Section forty-nine of the Principal Act is amended by repealing the words " any such variance appears to the justices to be " and by inserting, in lieu of such repealed words, the words " in making an order for the amendment of a complaint summons or warrant the justices consider that the defendant has been misled by the form in which the complaint summons or warrant has been made out or if it appears to them that the variance between the complaint summons or warrant and the evidence adduced at the hearing in support thereof is " ; and also by repealing therein the words " or discharge him upon recognizance " and inserting in lieu of such repealed words the words " or if the defendant is in custody order his discharge upon his entering into a recognizance conditioned " ; and also by adding to the said section the words " or if the defendant is not in custody may suffer him to go at large but may also require him to enter into a recognizance conditioned as aforesaid ".

Amendment of s. 50.

10. Section fifty of the Principal Act is amended by repealing the word " variance " and by inserting, in lieu of such repealed word, the words " complaint, summons, or warrant".

Amendment of s. 52.

11. Section fifty-two of the Principal Act is amended by repealing the words " six months " and by inserting, in lieu of such repealed words, the words " one year ".

Amendment of s. 84.

12. In section eighty-four of the Principal Act the words and brackets " (or such longer period as may be consented to by the defendant)" are inserted after the words " eight clear days".

Amendments of s. 88.

13. Section eighty-eight of the Principal Act is amended by repealing the words " may suffer the defendant to go at large, or may commit him, or " and by inserting, in lieu of such repealed words, the words " may commit him or if the defendant is in custody"; and also by adding to the said section the words " or if the defendant is not in custody may suffer him to go at large but may also require him to enter into a recognizance conditioned as aforesaid".

Amendment of s. 93.

14. Section ninety-three of the Principal Act is amended by repealing the words "at the time and place mentioned in the recognizance" and by inserting, in lieu of those repealed words, the words "at any time and place for his appearance at which the recognizance is conditioned or which is mentioned in the recognizance".

New s. 94A.

15. The following section, numbered 94A, is inserted after section ninety-four of the Principal Act, namely :—

Non-acceptance of sureties.

" [*94A.*] No person shall be accepted as a surety if it appears on the administering of an oath to such person that it would be ruinous or injurious to such person or his family should the recognizance be forfeited for any non-compliance with any of the conditions therein."

Amendment of s. 97.

16. In section ninety-seven of the Principal Act the words " or to some other gaol or place of legal detention which is more accessible or convenient " are inserted after the words " mentioned in the warrant".

Amendment of s. 98.

17. Section ninety-eight of the Principal Act is amended by adding thereto the following paragraph, namely :—

" The Governor in Council may from time to time by Order in Council published in the *Gazette* amend the said Schedule by altering or deleting any of the forms therein contained or by adding to the Schedule any other forms (whether in addition to or in substitution for any forms in the Schedule), and the said Schedule as so amended shall thereupon become for the time being the Third Schedule to this Act and shall have effect accordingly.

Amendments of s. 104.

18. In section one hundred and four of the Principal Act the words " against you " are repealed where such words twice appear.

Amendments of s. 115.

19. Section one hundred and fifteen of the Principal Act is amended by repealing the words " with such surety or sureties " ; and also by inserting therein, after the word " bail ", the words " with or without a surety or sureties ".

Amendment of s. 142.

20. Section one hundred and forty-two of the Principal Act is amended by repealing the words " in the absence of the defendant " and by inserting, in lieu of such repealed words, the words " as fully and effectually to all intents and purposes as if the defendant had personally appeared before them in obedience to the said summons ".

Amendments of s. 150.

21. Section one hundred and fifty of the Principal Act is amended—

(*a*) By repealing the words " against a defendant " ; and

(*b*) By repealing the words " upon the defendant " and by inserting, in lieu of those repealed words, the words " upon the person convicted or against whom the order is made " ; and

(*c*) By inserting the words " or memorandum " after the word " minute " where such lastmentioned word last appears in the said section.

The marginal note to the said section is amended by repealing the words " on defendant ".

Repeal of and new s. 161 and new s. 161A.

22. Section one hundred and sixty-one of the Principal Act is repealed and the following sections are inserted in lieu thereof, namely :—

" *Enforcement of decisions.*

Mode of enforcement where no express provision made.

[*161.*] When any decision adjudges or requires the payment of a penalty or compensation or sum of money or costs and when the Act by virtue of which such decision is made does not expressly provide—

(*a*) That the amount of such penalty or compensation or sum of money or costs is to be levied by distress and sale of the goods and chattels of the person liable to make such payment, or by execution ; or

(*b*) That such person in default of payment of such penalty or compensation or sum of money or costs either immediately or within a time to be fixed by the adjudicating justices is to be imprisoned for any period not exceeding the period stated in such Act,

then the adjudicating justices shall in their discretion either direct that the amount of such penalty or compensation or sum of money or costs shall be recoverable by execution against the goods and chattels of the person liable to make such payment or in the alternative direct that in default of payment of such penalty or compensation or sum of money or costs either immediately or within a time to be fixed by them such person shall be imprisoned for any period not exceeding the period stated in this Act or in the Act by virtue of which such decision is made.

Execution.

Mode of levying penalties, moneys, or costs.

[*161*A.] When the adjudicating justices in their discretion direct that the amount of the penalty or compensation or sum of money or costs adjudged or required to be paid under a decision shall be recoverable by execution and also when the Act by virtue of which a decision adjudging or requiring the payment of a penalty or compensation or sum of money or costs is made expressly provides that the amount of such penalty or compensation or sum of money or costs is to be levied by distress or execution, then the amount of such penalty or compensation or sum of money or costs shall be recoverable by execution against the goods and chattels of the person liable to make such payment and a warrant of execution may be issued for the purpose of levying the same."

Amendments of s. 162.

23. Section one hundred and sixty-two of the Principal Act is amended by repealing the words " the defendant" where such words first appear and inserting, in lieu of such repealed words, the words " the person against whom such warrant of execution is issued " ; and also by repealing therein the words " the defendant" where such words thereafter appear and inserting, in lieu of such repealed words, in every such case the words " such person ".

Moreover the marginal note to the said section one hundred and sixty-two is repealed and a marginal note "Power to detain until return of warrant" is inserted in lieu thereof.

Amendments of s. 163.

24. Section one hundred and sixty-three of the Principal Act is amended by repealing the words "the defendant" where such words first appear and by inserting, in lieu of such repealed words, the words "the person against whom such warrant of execution is issued"; and also by repealing therein the words "the defendant" where such words thereafter appear and inserting, in lieu of such repealed words, in every such case the words "such person".

Moreover the marginal note to the said section one hundred and sixty-three is repealed and a marginal note "Commitment in default of execution" is inserted in lieu thereof.

Amendments of s. 163A.

25. Section 163A of the Principal Act is amended by repealing the words "decision adjudges the payment of a pecuniary penalty or compensation or sum of money or costs, or when an order requires the payment of a sum of money or costs," and inserting, in lieu of such repealed words, the words "decision adjudges or requires the payment of a penalty or compensation or sum of money or costs"; and also by repealing therein the words "or order" where such words thereafter twice appear.

Amendments of s. 164.

26. Section one hundred and sixty-four of the Principal Act is amended by repealing the words "conviction or order" where such words twice appear and by inserting, in lieu of such repealed words, in both such cases the word "decision".

Amendments of s. 165.

27. Section one hundred and sixty-five of the Principal Act is amended by repealing the words "conviction or order for a penalty or compensation or for the payment of a sum of money or costs" and by inserting, in lieu of such repealed words, the words "decision adjudging or requiring the payment of a penalty or compensation or sum of money or costs"; and also by repealing therein the words "conviction or order" wherever such words thereafter appear and by inserting, in lieu of such repealed words, in every such case the word "decision"; and also by repealing therein the words

" the defendant " where such words first appear and by inserting, in lieu of such repealed words, the words "the person liable to make such payment " ; and also by repealing therein the words " the defendant " wherever such words thereafter appear and by inserting, in lieu of such repealed words, in every such case the words " such person ".

Amendment of s. 166A.

28. In section 166A of the Principal Act the words " or order " are repealed.

Amendments of s. 167.

29. Section one hundred and sixty-seven of the Principal Act is amended by repealing the words " penalty, or sum," and by inserting, in lieu of such repealed words, the words " penalty or compensation or sum of money "; and also by repealing therein the words " the defendant " and by inserting, in lieu of such repealed words, the words " such person ".

Moreover the marginal note to the said section one hundred and sixty-seven is amended by repealing the words "of defendant"; and also the head note to the said section is amended by repealing the word " execution " and by inserting, in lieu of such repealed word, the word " imprisonment ".

Amendment of marginal note to s. 168.

30. The marginal note to section one hundred and sixty-eight of the Principal Act is amended by repealing the words "of defendant" and by inserting, in lieu of such repealed words, the words " on payment ".

Amendments of s. 174.

31. Section one hundred and seventy-four of the Principal Act is amended by repealing the words " adjudged to be paid by a conviction or order " and by inserting, in lieu of such repealed words, the words " adjudged or required to be paid by a decision " ; and also by repealing therein the words " to be paid (including costs as ascertained by the conviction, or order, or order of dismissal)" and by inserting, in lieu of such repealed words, the words "or required to be paid (including costs as ascertained by the decision) " ; and also by repealing therein the words " conviction or order " wherever such words thereafter appear and by inserting, in lieu of such repealed words, in every such case the word " decision " ; and also by repealing therein the words " or order " wherever such words appear after the word " decision ".

32. The following section, numbered 174A, is inserted after section one hundred and seventy-four of the Principal Act, namely :— New s. 174A.

"[*174A.*] When a person tenders to the police officer charged with the execution of a warrant of commitment for non-payment of the amount of any penalty or compensation or sum of money or costs adjudged or required to be paid by a decision the sum mentioned in such warrant together with the amount of the costs and charges (if any) therein also mentioned such police officer shall accept the sum so tendered. Police officer to execute warrant of commitment when full sum not tendered.

If the sum mentioned in such warrant together with the amount of the costs and charges (if any) therein also mentioned is paid to such police officer he shall not execute the warrant but if part only of such sum is tendered to him he shall execute such warrant according to the directions thereby given."

33. Section one hundred and seventy-five of the Principal Act is repealed and the following sections are inserted in lieu thereof, namely :— Repeal of and new s. 175 and new s. 175A.

"[*175.*] [*1.*) When any decision adjudges or requires the payment of any penalty or compensation or sum of money or costs and it appears that the person liable to make such payment does not reside at or near the place where such decision was made the clerk of petty sessions at such place may if he considers that any act or acts for the enforcement of such decision can more conveniently be performed at some other place appointed for holding Courts of Petty Sessions prepare and sign a certificate in duplicate called a "transfer of fine certificate" and transmit to the clerk of petty sessions at such other place such transfer of fine certificate and the duplicate thereof together with the minute or memorandum of the decision aforesaid and a copy of such minute or memorandum if a copy of such minute or memorandum has not theretofore been served on the person liable to make such payment. Transfer of jurisdiction as to enforcement of fines, &c.

(*2.*) Where it appears at any time to a clerk of petty sessions to whom a transfer of fine certificate has been transmitted that any act or acts for the enforcement of such decision can more conveniently be performed at some other place appointed for holding Courts of Petty Sessions such clerk of petty sessions may prepare and

sign a further transfer of fine certificate, in triplicate, and transmit to the clerk of petty sessions at such other place such certificate and the duplicate thereof together with the minute or memorandum of the decision aforesaid and a copy of such minute or memorandum if a copy of such minute or memorandum has not theretofore been served on the person liable to make such payment and shall thereupon transmit forthwith to the clerk of petty sessions at the place where the decision aforesaid was made the triplicate of such certificate.

(*3.*) Every transfer of fine certificate shall include particulars of the minute or memorandum of the decision aforesaid and shall state the acts if any performed to enforce the said decision and the amount still required to be paid in satisfaction of such decision and when such certificate has been signed by the clerk of petty sessions it shall be *primâ facie* evidence of the facts therein stated.

(*4.*) When a clerk of petty sessions receives a transfer of fine certificate he shall forthwith sign the memorandum of receipt endorsed on the duplicate certificate and transmit the same to the clerk of petty sessions from whom he has received such certificate.

(*5.*) As from the date of the transmission of a transfer of fine certificate all acts for the enforcement of such decision which if such a certificate had not been transmitted could have been performed at some other place shall (unless a further transfer of fine certificate is signed and transmitted as hereinbefore provided) be performed at the place to which such certificate has been transmitted and not otherwise :

Provided that any payment received by a clerk of petty sessions by virtue of a transfer of fine certificate shall be forthwith transmitted by him to and shall be accounted for by the clerk of petty sessions at the place where such decision was made.

(*6.*) If a copy of the minute or memorandum of such decision has not been served on the person liable to make such payment the clerk of petty sessions receiving the same together with a transfer of fine certificate shall (unless a further transfer of fine certificate is signed by him and transmitted as aforesaid) cause to be served on such person the said copy of the said minute or

memorandum together with a notice advising such person that such payment is to be made to the said clerk of petty sessions instead of to the clerk of petty sessions at the place where the decision was made.

(*7.*) Where such decision is enforced by virtue of a transfer of fine certificate the clerk of petty sessions at the place where such decision is so enforced shall report the result of such enforcement to the clerk of petty sessions at the place where such decision was made.

Allocation of part payments.

[*175A.*] Subject to any direction contained in the Act under which the complaint was made any sum received by a clerk of petty sessions under a decision shall be applied—

(*a*) In the first place, in the repayment to the complainant (or in the case of an order of dismissal or other order in favour of the defendant, to the defendant) of any Court fees paid by him ;

(*b*) In the second place, in the payment of any Court fees which have been ordered to be paid and have not already been paid by the complainant or defendant as aforementioned ;

(*c*) In the third place, in the payment of any costs and charges of taking and conveying the person making payment to prison (if previously ascertained and stated in the decision) ;

(*d*) In the fourth place, in payment or repayment of any witnesses' expenses payable under the decision ;

(*e*) In the fifth place, in payment of any professional costs payable under the decision ;

(*f*) In the sixth place, in payment of any other fees or costs payable under the decision ;

(*g*) In the seventh place, in payment of any compensation restitution or damages adjudged by the decision to be paid ; and

(*h*) In the eighth place, in payment of any sum directed by the decision to be paid and, subject to such direction, if any, in the manner in which fines, penalties, or forfeitures are to be duly appropriated."

Repeal of and new Part IX.

34. Part IX. of the Principal Act (being sections two hundred and nine to two hundred and fifty-one, both inclusive, thereof) is hereby repealed and the following Part IX. and sections are inserted in lieu thereof, namely :—

"PART IX.—APPEALS FROM THE DECISIONS OF JUSTICES.

Division I.—Appeal by way of Order to Review.

Order to review.

[*209.*] (*1.*) When any person who feels aggrieved as complainant, defendant, or otherwise by any conviction or order of any justices or justice or against whom any warrant has been issued by any justices or justice shows by affidavit to a Judge of the Supreme Court sitting in Court or Chambers a *primâ facie* case of error or mistake in law or fact on the part of such justices or justice, or that such justices or justice had no jurisdiction to convict or make such order or issue such warrant or exceeded their or his jurisdiction in convicting or making such order or issuing such warrant, the Judge may, whether any other right or remedy is provided by law or not, upon application made within twenty-eight days from the making of such conviction or order or the issuing of such warrant grant the applicant (hereinafter called "the appellant") an order (hereinafter called "an order to review") calling upon the party interested in maintaining the conviction order or warrant (hereinafter called "the respondent") and also if the Judge for any special reason so directs upon the justices or justice to show cause (at a time to be therein mentioned or so soon thereafter as the matter can come on for hearing) why the conviction order or warrant should not be reviewed.

(*2.*) Such order to review may be made returnable before the Supreme Court sitting as the Full Court or before a Judge sitting in Court or Chambers.

(*3.*) Where an order to review has been made returnable before a Judge and the respondent desires that the order to review be returnable before the Supreme Court sitting as the Full Court the respondent may, within seven days after the service on him of the order to review, serve on the appellant a notice that he requires the order to review to be made returnable before the Supreme Court sitting as the Full Court at the first sittings thereof appointed to be held not less than ten

days after service of such notice and file with the Registrar of the Court an affidavit of the service of such notice, and the order to review shall thereupon be returnable before the Full Court instead of before a Judge to all intents and purposes as if such order to review had been made returnable before the Full Court in the first instance.

(*4.*) There shall be no appeal to the Full Court from any determination of a Judge but on the return of an order to review before a Judge the Judge may, if he thinks fit, refer the same for hearing and determination by the Full Court.

(*5.*) No order to review any order by any justices or justice made on any complaint for any moneys recoverable summarily or on any complaint for any claim determinable summarily shall be granted unless the sum or (as the case may be) the amount, value, or damages in respect to which the person applying for the order to review is aggrieved exceeds or exceed five pounds (exclusive of costs) or unless it appears to the Judge that the order complained of ought to be reviewed on the ground that some important principle of law or justice is involved, or unless the said justices or justice had no jurisdiction to make such order or exceeded their or his jurisdiction in making such order and substantial justice has not been done.

Appeal from refusal to grant order to review.

[*210.*] On the refusal of a Judge whether sitting in Court or Chambers to grant such order to review or to grant it upon any ground or grounds the applicant may renew his application to the Full Court which shall have all the powers of the Judge provided that such application shall be renewed not later than the first day of the next ensuing Sittings of the Full Court or within such extended time as that Court may allow.

Grounds to be stated.

[*211.*] Every order to review shall state in specific terms the grounds upon which it is sought to review the conviction order or warrant.

Return of order and terms on which it may be granted.

[*212.*] (*1.*) Every order to review returnable before a Judge shall be returnable at such time as the Judge may direct but such time may be enlarged by any Judge.

(*2.*) On granting an order to review the Judge may—

(i.) Impose such conditions as to costs and security as he may think fit; and

(ii.) Make such provision for a stay of proceedings and for admitting any person to bail as he may think necessary.

Powers of Court or Judge on return of order to review.

[*213.*] (*1.*) On return of an order to review and upon a consideration of the evidence and materials adduced and brought before the said justices or justice and if the Court or Judge thinks fit of any further evidence either oral or by affidavit the Court or Judge may—

(i.) Discharge the order to review ;

(ii.) Confirm, vary, amend, rescind, set aside or quash the conviction, order or warrant ;

(iii.) Increase or reduce any penalty imposed by the said conviction or order ;

(iv.) Remit the case or matter for hearing or rehearing to the said justices or justice with or without any direction in law ;

(v.) Order that the case or matter be retried by a stipendiary magistrate ;

(vi.) If the Court or Judge thinks necessary, rehear the case or matter or order that the case or matter be reheard by another Judge ;

(vii.) Prohibit the said justices or justice or any other person from proceeding or further proceeding in respect of the said conviction order or warrant ;

(viii.) Amend or cause to be amended on such terms as are just any defect or error in any proceedings before the said justices or justice ; and all such amendments shall be made as may be necessary for the purpose of determining the case or matter upon the merits ;

(ix.) Make all such orders and cause all such proceedings to be had and taken as the Court or Judge thinks necessary to secure a final determination of the case or matter upon the merits,

and in addition to any other power herein before conferred the Court or Judge may exercise all or any of the powers or jurisdiction which the Court possesses or might exercise upon *certiorari mandamus* prohibition or *habeas corpus* :

Provided that notwithstanding that the Court or Judge may be of opinion that any point raised by the order to review might be decided in favour of the appellant the Court or Judge may discharge the order if it or he considers that no substantial miscarriage of justice has occurred.

(*2.*) Where any case or matter is reheard by the Court or a Judge in accordance with this section the Court or Judge may exercise any power which might be exercised by the justices or justice by whom the case or matter was originally dealt with and any order made by the Court or Judge shall have the like effect and be enforceable in the like manner as if made by the said justices or justice.

Costs.

[*214.*] The Court or Judge may make such order as to costs as it or he deems just.

Report by justices.

[*215.*] (*1.*) On the return of an order to review, the justices or justice shall if thereunto required by the Court or Judge make to such Court or Judge a report in writing on such matter or matters bearing upon the question or questions in issue as the said Court or Judge may direct.

Affidavits.

[*216.*] Upon the return of an order to review, no affidavit shall be used by any party unless—

(i.) Such affidavit has been filed with the Registrar of the Court and a copy thereof delivered to every other party to the proceedings forty-eight hours before the time appointed for the return of the order; or

(ii) The Court or Judge upon such terms if any as it or he thinks fit grants special leave for that purpose.

Dismissal for want of prosecution.

[*217.*] If any appellant makes default in prosecuting his appeal without delay or in taking any necessary steps in the presentation thereof, any other party may apply to a Judge in Chambers by summons served on such appellant for an order discharging the order to review and the Judge shall make such order as shall be just with regard to the subject-matter of the application and to costs.

As to drawing up and transmitting conviction or order.

[*218.*] The time for applying for an order to review shall begin to run from the time when the decision is pronounced whether the conviction or order is formally drawn up or not: Provided that the Court may postpone its decision until the conviction or order is so drawn up and transmitted in due form.

Memorandum of decision.

[*219.*] Whenever a decision is given on an order to review the Registrar shall forthwith send to the proper clerk of petty sessions a memorandum of the decision of the Court or Judge and such memorandum shall be sufficient evidence of the decision for all purposes.

Enforcement of decision of Court or Judge.

[*220.*] Any conviction sentence or order affirmed, amended, varied, adjudged, imposed or made by the decision of the Court or Judge in relation to any order to review may be enforced (subject to any variation made therein) by any justices or justice (whether the justices or justice in respect of whose decision the order to review was granted or not) in the same way as if it had been adjudged, imposed or made by them or him, and any justices or justice may issue, make, adjudge or impose all such summonses, warrants, orders, convictions and sentences as may be necessary to carry into effect any directions contained in any decision of the Court or Judge given in relation to any order to review and no action or proceedings shall be taken against any justices or justice for enforcing any such conviction, sentence, or order notwithstanding any defect therein.

Appellant by way of order to review deemed to have abandoned other rights of appeal.

[*221.*] Any person who appeals by way of order to review against any order of any justices or justice, from which he is by law entitled to appeal in any other manner, shall be taken to have abandoned any such other right of appeal.

Division II.—Appeal to a Judge of the Supreme Court.

Appeal to a single Judge.

[*222.*] (*1.*) When any person feels aggrieved as complainant, defendant, or otherwise by any order made by any justices or justice in a summary manner upon a complaint for an offence or breach of duty such person may appeal as hereinafter provided to a Judge of the Supreme Court whose determination shall be final between the parties to the appeal: Provided that in the case of a defendant who feels aggrieved by a

summary conviction of an offence or by an order made by justices on the breach of a statutory duty an appeal under this section shall not lie unless—

(*a*) The fine, penalty, or forfeiture exceeds the sum or value of five pounds or the imprisonment adjudged exceeds one month; or

(*b*) Such person has upon application made within seven days after the decision obtained the leave of a Judge to appeal under this section.

(*2.*) Every such appeal shall be made under and subject to the following rules and conditions :—

(i.) The appellant shall—

(*a*) Within seven days after the decision or after obtaining the leave of a Judge to appeal against the decision, as the case may be, serve on the person concerned in upholding such decision and on the clerk of petty sessions at the place where the decision was given a notice of appeal in the prescribed form setting forth the grounds of the appeal : provided that if the appellant is unable through no fault of his own to serve notice as aforesaid he may apply to a Judge for an order enlarging the time for service thereof and, if necessary, for an order for substituted service thereof, and such Judge may make such order or orders as he thinks fit ;

(*b*) After service of such notice on the other party and on the said clerk of petty sessions and within seven days of such service enter into a recognizance before a justice in such sum and with such sureties, if any, as the justice may require conditioned to appear on the hearing of the appeal and to abide the determination of the Judge thereon and to pay such costs as the Judge may order : or if the justice so permits the appellant may deposit with the said clerk of petty sessions such sum of money as the justice may direct by way of security in lieu of such recognizance but the amount of any such recognizance or sum of money shall in no case be less than twenty pounds ;

(ii.) The said clerk of petty sessions shall on receipt of the notice of appeal forthwith transmit a copy of the said notice together with the complaint depositions and other proceedings before the justices to the Registrar of the Supreme Court at—

(*a*) Brisbane, if the place at which the decision appealed from was given is not within the Central District or the Northern District, as such terms are defined by *"*The Supreme Court Act of* 1895 " ; or

(*b*) Rockhampton, if such place is within the Central District ; or

(*c*) Townsville, if such place is within the Northern District ;

(iii.) The said Registrar shall give to the appellant and to the person concerned in upholding such decision ten days' notice of the day on which the appeal is to be heard ;

(iv.) If the appellant is in custody, any justice may order his release upon his entering into the recognizance or lodging the security mentioned in paragraph (i.) of this subsection, and the appeal shall not operate as a stay of execution unless and until the appellant enters into such recognizance or gives such security ;

(v.) If the appellant obtains an order to review under section two hundred and nine he shall be deemed to have waived his right of appeal under this section and any proceedings taken by him under this section shall be null and void and a Judge may order him to pay the costs occasioned to any other party by reason of such proceedings to such other party ;

(vi.) Except where the sole ground of appeal is that the fine penalty forfeiture or punishment is excessive or inadequate, as the case may be, no appeal shall lie under this section where the defendant pleaded guilty or admitted the truth of the complaint.

* 59 V. No. 21.

(*3.*) When by any Act a person summarily convicted or against whom an order is made by justices is entitled to appeal to a Judge of the Supreme Court a District Court or Court of Quarter Sessions, the appeal shall lie to a Judge of the Supreme Court in the same manner as if it were an appeal pursuant to the provisions of this section.

Appeal to be on original materials unless rehearing ordered or agreed to.

[*223.*] If the Judge so orders or the parties so agree the appeal shall be by way of rehearing but otherwise the appeal shall be heard and determined upon the evidence and proceedings before the justices.

Power to adjourn appeal.

[*224.*] The Judge may at any time adjourn the hearing of the appeal for such time and upon such terms and conditions as he may think fit.

Powers of Judge on hearing appeal.

[*225.*] Upon the hearing of any appeal the Judge may by his order confirm, quash, set aside, vary, increase or reduce the conviction order sentence or adjudication appealed against or make such other order in the matter as he may think just and may by such order exercise any power which the justices might have exercised and such order shall have the like effect and may be enforced in the like manner as if it had been made by justices.

Costs.

[*226.*] The Judge may make such order as to costs to be paid by either party as he may think just.

Judge may state case.

[*227.*] The Judge may state in the form of a Special Case for the opinion of the Full Court any question or questions of law arising upon the facts of the case and his judgment shall be affirmed amended altered or reversed and such order made as to costs as the Full Court upon the hearing of such Special Case shall direct.

Appeal not to be defeated for defect in notice, &c., if amendable.

[*228.*] No appeal shall be defeated merely by reason of any defect whether of substance or of form in any notice of appeal or in the statement of the grounds of appeal. If the Judge is of the opinion that any such notice or statement is capable of amendment and ought to be amended he may amend the same accordingly upon such terms as to payment of costs to the other party or postponement of the hearing of the appeal to another day or both payment of costs and postponement as he may think just.

Failure to prosecute appeal.

[*229.*] (*1.*) If any appellant makes default in prosecuting his appeal without delay or in taking any necessary steps in the presentation thereof any other

party may apply to a Judge in Chambers by summons served on such appellant for an order discharging the notice of appeal and the Judge shall make such order as shall be just with regard to the subject-matter of the application and to costs.

(*2.*) If the appellant fails to appear on the day on which the appeal is to be heard the Judge may upon proof of notice of the hearing having been given to both parties estreat the recognizance entered into by the appellant or order the forfeiture of the deposit lodged by way of security in lieu of such recognizance and order the appellant to pay to the other party such costs as he may think just.

Memorandum of Judge's determination.

[*230.*] Upon the determination of an appeal the Registrar shall forthwith send to the proper clerk of petty sessions a memorandum of the determination of the Judge and such memorandum or a copy thereof certified as correct by the said clerk of petty sessions shall be sufficient evidence of such determination for all purposes.

Enforcement of decision.

[*231.*] (*1.*) If upon the hearing of the appeal the Judge by his order confirms varies increases or reduces the conviction order sentence or adjudication appealed against such conviction order sentence or adjudication may be enforced (subject to any variation increase or reduction made therein) by any justices or justice as if no appeal had been brought unless the judge by his order gives any direction as to the enforcement of such conviction order sentence or adjudication.

(*2.*) If the appellant has entered into a recognizance the Judge may if he thinks fit direct that such recognizance be put in suit or if the appellant has made a deposit by way of security in lieu of such recognizance the Judge may direct that the money so deposited be applied so far as it will extend in payment of any moneys the appellant is required to pay on the enforcement of the said conviction order or adjudication and the residue if any of the amount so deposited be repaid to the appellant.

Costs of appeal.

[*232.*] (*1.*) If upon any appeal the Judge orders either party to pay costs such order shall direct such costs to be paid to the Registrar to be by him paid over to the party entitled to the same and shall state within what time such costs are to be paid.

(*2.*) If such costs are not paid within the time so limited the Registrar upon the application of the party entitled to such costs or of any person on his behalf and on payment of a fee of two shillings and six pence shall grant to the party so applying a certificate that such costs have not been paid.

(*3.*) Upon production of such certificate to any justice, the payment of such costs may be enforced in the same manner as is hereinbefore provided for enforcing the payment of costs awarded by justices or by putting the recognizance (if any) in suit or in both of such modes.

Division III.—General provisions.

Habeas Corpus and Certiorari.

Control of Supreme Court over summary convictions.

[*233.*] No person brought before the Supreme Court, or a Judge thereof, on *habeas corpus* shall be discharged from custody by reason of any defect or error in a warrant of commitment of any justices exercising a summary jurisdiction, unless such justices, or one of them, and the prosecutor or other party interested in supporting the warrant have received reasonable and sufficient notice of the intention to apply for such discharge. Such notice shall require them to transmit or cause to be transmitted to the Court or Judge the conviction or order, if any, on which the commitment was founded, together with the depositions and complaint, if any, intended to be relied on in support of such conviction or order, or certified copies thereof.

Amendment.

[*234.*] If any such conviction or order, complaint, and depositions, or certified copies, are so transmitted, and the offence charged or intended to be charged thereby appears to have been established, and the judgment of the justices thereupon to have been in substance warranted, and the defects or errors appear to be defects of form only, or mistakes not affecting the substantial merits of the proceedings before the justices, the Court or Judge shall allow the warrant of commitment, and may allow the conviction or order also, to be forthwith amended in all necessary particulars in accordance with the facts, and the person committed shall thereupon be remanded to his former custody.

In cases of *certiorari*.

[*235.*] The like proceedings as in the last two preceding sections mentioned shall be had and the like amendments may and shall be allowed to be made in

respect of every order brought before the Court or a Judge by writ of *certiorari*, and after amendment in any such case the order may be enforced in the proper manner, and shall in all respects and for all purposes be regarded and dealt with as if it had been drawn up originally as amended.

Notice dispensed with.

[*236.*] The notice hereby prescribed may be given either before or after the issue of the writ of *habeas corpus* or *certiorari*: Provided that when copies of the conviction or order and depositions are produced at the time of applying for the writ, the Court or Judge may dispense with such notice.

Power to Court or Judge to admit to bail.

[*237.*] When any person committed to gaol by virtue of a summary conviction or order is brought up by writ of *habeas corpus*, and the Court or Judge postpones the final decision of the case, such Court or Judge may discharge the person upon his recognizance with or without sureties for his appearance at such time and place, and upon such conditions, as the Court or Judge may appoint.

If the judgment of the Court or Judge is against any person so brought up, the Court or Judge may remand him to his former custody, there to serve the rest of the term for which he was committed.

Amendment—Informalities.

Respecting the amendment of convictions, &c.

[*238.*] Whenever the facts or evidence appearing by the depositions in substance support the adjudication of the justices, then if such adjudication does not extend beyond the complaint, and if such facts or evidence would have justified the justices in making any necessary allegation or finding omitted in such adjudication, or in the formal conviction or order, or any warrant issued in pursuance of such adjudication, the powers of amendment conferred by the foregoing provisions of this Part of this Act may be exercised, and when in a conviction there is some excess which may (consistently with the merits of the case) be corrected, the conviction shall be amended accordingly, and shall stand good for the remainder; and all amendments shall be subject to such order as to costs and otherwise as the Court or Judge thinks fit.

Want of summons or complaint.

[*239.*] When the person convicted, or against whom an order has been made, or any person whose goods have been condemned or directed to be sold as forfeited,

was present at the hearing of the case, the conviction or order shall be sustained, although there may have been no complaint or summons or amendment thereof, unless he objected at the hearing that there was no complaint or summons or amendment thereof.

[*240.*] No conviction or order shall be defeated for the want of any distribution, or for a wrong distribution of the penalty or forfeiture. Distribution of penalty.

[*241.*] If any person who has been convicted summarily of an offence or against whom an order has been made by justices on the breach of a statutory duty appeals against such conviction or order and it is made to appear upon oath to any justice that such person— Absconding appellant may be arrested.

(i.) Is under a recognizance to appear on the hearing of the appeal and to abide the decision of the Court or a Judge thereon; and

(ii.) Is about to leave, or has left, Queensland,

such justice may issue his warrant for the apprehension of such person and upon such person being brought before him may either release him on a recognizance with a surety or sureties sufficient in the opinion of such justice to secure the appearance of the appellant to abide the decision of the said Court or Judge or commit him to gaol if such justice is satisfied that the ends of justice would otherwise be defeated."

35. Section two hundred and fifty-three of the Principal Act is repealed and the following section is inserted in lieu thereof, namely:— Repeal of and new s. 253.

"[*253.*] When an order to review a conviction, or order or warrant has been granted no action shall be maintainable against the justices or justice by whom the conviction, or order or warrant in question was made or issued in respect of any proceeding taken under or matter arising out of such conviction, or order or warrant." No action against justices after order to review has been granted.

36. Section two hundred and sixty-one of the Principal Act is repealed. Repeal of s. 261.

37. In the head note to Part XI. of the Principal Act the words "AND RULES" are inserted after the word "FEES". Amendment of head note to Part XI.

New s. 267.

38. The following section, numbered two hundred and sixty-seven, is added after section two hundred and sixty-six of the Principal Act, namely :—

Rules of Court.

"[*267.*] The Governor in Council with the concurrence of a majority of the Judges of the Supreme Court may from time to time by Order in Council make Rules of Court providing for all or any purposes, whether general or to meet particular cases, that may be convenient for the administration of this Act or that may be necessary or expedient to carry out the objects and purposes of this Act, and whether in amendment to or modification of or addition to this Act, and where there may be in this Act no provision or no sufficient provision in respect of any matter or thing adequate, necessary, or expedient to give effect to this Act, providing for and supplying such omission or insufficiency.

The provisions of *" *The Supreme Court Act of* 1921 " and †" *The Supreme Court Acts Amendment* (*Rules Ratification*) *Act of* 1928 " shall apply and extend in respect of such Rules of Court.

Every such Rule of Court shall be laid before the Legislative Assembly within forty days after the making thereof, if the Legislative Assembly is then sitting, or, if the Legislative Assembly is not then sitting, within forty days after the commencement of the next ensuing session.

If the Legislative Assembly, by resolution passed within one month after such Rule has been so laid before it, resolves that the whole or any part of such Rule ought not to continue in force, the same shall, after the date of such resolution, cease to be of any force, without prejudice nevertheless to the making of any other Rule in its place or to anything done in pursuance of such Rule before the date of such resolution.

But subject as aforesaid, every such Rule of Court purporting to be made in pursuance of this Act shall, after publication in the *Gazette*, be deemed to have been duly made and to have been within the powers of this Act."

* 12 G. 5 No. 15.
† 19 G. 5 No. 3.

Repeal and Saving.

Repeal of certain enactments. Schedule.

39. The Acts mentioned in the Schedule to this Act are repealed to the extent in such Schedule indicated.

Saving.

40. The provisions of Part IX. of *" *The Justices Acts*, 1886 *to* 1949" (as inserted by this Act), shall not apply to any decision made before this Act comes into force and the provisions of Part IX. of the Principal Act as existing prior to the repeal thereof by this Act shall continue in force so far as relates to any such decision.

Neither the repeal of section twenty-two of the Principal Act and the substitution of provisions in lieu thereof by this Act, nor the repeal of any Act mentioned in the Schedule to this Act shall prejudice or affect appointments made before and subsisting at the passing of this Act of districts for the purposes of Courts of Petty Sessions and of places for holding Courts of Petty Sessions within such districts respectively, or prejudice or affect nominations or appointments made before and subsisting at the passing of this Act of persons to be or to act temporarily as clerks of petty sessions at the aforesaid places respectively.

Without further or other appointment whatsoever any district or place as aforesaid shall be and be deemed to be appointed under the provisions of section twenty-two of the Principal Act as inserted by this Act, and any person as aforementioned shall continue to hold office as clerk of petty sessions in terms of his appointment thereto as made and subsisting at the passing of this Act as if such appointment had been made under such inserted provisions.

SCHEDULE.

Schedule. s. 39.

Year and Number of Act.	Short Title.	Extent of Repeal.
11 Vic. No. 41 ..	" *The Courts of Petty Sessions Act of* 1848 "	The whole.
36 Vic. No. 2 ..	" *The Clerks of Petty Sessions Act of* 1872 "	The whole.
56 Vic. No. 23 ..	" *The Justices Act Amendment Act of* 1892 "	The whole.

* 50 V. No. 17 and amending Acts.