

## VICTORIA.



ANNO VICESIMO

## ELIZABETHÆ SECUNDÆ REGINÆ

No. 8184.

An Act with respect to the Holding and Constitution of Magistrates' Courts the Appointment Powers Duties and Protection of Stipendiary Magistrates Justices and Clerks of Magistrates' Courts and for other purposes.

[23rd November, 1971.]

BE it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say) :—

1. (1) This Act may be cited as the *Magistrates' Courts Act* Short title. 1971.

(2) This Act shall come into operation on a day to be fixed by proclamation of the Governor in Council published in the *Government Gazette*. Commencement.

(3) This Act is divided into Parts as follows :—

- Part I.—Magistrates' Courts.
- Part II.—Stipendiary Magistrates.
- Part III.—Justices of the Peace.
- Part IV.—Clerks of Magistrates' Courts.
- Part V.—The Protection of Justices and Officers.
- Part VI.—General.
- Part VII.—Rules.

Division into Parts.

2. (1) The

Repeals and amendments.

2. (1) The enactments mentioned in Schedule One to the extent thereby expressed to be repealed or amended are hereby repealed or amended accordingly.

(2) Except as in this Act expressly or by necessary implication provided—

(a) all persons things and circumstances appointed or created by or under any of the repealed enactments or existing or continuing under any of such enactments immediately before the commencement of this Act shall under and subject to this Act continue to have the same status operation and effect as they respectively would have had if this Act had not commenced ; and

(b) in particular and without affecting the generality of paragraph (a) such repeals shall not disturb the continuity of status operation or effect of any appointment made before the commencement of this Act.

Interpretations.

3. In this Act unless inconsistent with the context or subject-matter :—

" Clerk."

" Clerk " means Clerk of a Magistrates' Court and includes a Deputy Clerk of a Magistrates' Court.

" Court."

" Court " means a Magistrates' Court.

" Rules."

" Rules " means rules under this Act.

" Secretary."

" Secretary " means the Secretary to the Law Department.

#### PART I.—MAGISTRATES' COURTS.

Governor in Council may appoint places for Magistrates' Courts.

4. (1) The Governor in Council may, from time to time by notice in the *Government Gazette*, appoint places at which Magistrates' Courts shall be held, and may by the same or by any subsequent notice or notices from time to time appoint and alter the days and hours when such Courts shall be held.

(2) Where a summons or other process returnable before a Court is issued before or within one month after an alteration under sub-section (1) of the days or hours on which the Court is held and the summons or other process was made returnable before the Court on a day or at an hour which was a day and hour fixed for the holding of the Court immediately before the alteration the summons or other process shall not be void by reason only of its being returnable on such a day or at such an hour and the Clerk of the Court shall adjourn the hearing thereof to the hour and to the day next appointed by the alteration for the holding of the Court in its ordinary jurisdiction or in its special jurisdiction, as the case may require, or with the consent of the parties to the appointed hour on a later date.

(3) A Court

(3) A Court appointed to be held at any time and place may be divided into divisions so that two or more divisions of the Court, each of which shall be constituted as and shall have the jurisdiction and powers of and shall for all purposes be deemed to be a Magistrates' Court, may sit at the same time in the place so appointed or with the consent of the parties and upon the direction of a stipendiary magistrate at any other place or time.

Power to  
Magistrates'  
Court to sit  
in divisions.

5. (1) The Governor in Council may, from time to time by notice in the *Government Gazette*—

- (a) revoke the appointment of any place for holding a Court and direct such Court to be closed ; and
- (b) by the same or another notice direct the books and other records of such Court and of the clerk thereof to be by such clerk delivered to the clerk of some other Court in such notice named, in this section called the "new Court".

Governor in  
Council may  
revoke  
appointment  
of places for  
Magistrates'  
Courts.

(2) All proceedings pending in a Court at the time of the closing thereof shall be had and determined in the new Court and the new Court shall have jurisdiction to make all such orders and to do all such things in respect of such pending proceedings or of any proceeding had or determined in such Court so closed as such Court would have had, had it not been closed, and in respect thereof the clerk of the new Court shall have all the rights and be charged with all the duties of the clerk of the Court so closed.

(3) Where the day fixed for the hearing of any proceedings pending in the Court is for a day upon which the new Court is not held the hearing of the proceedings in the new Court shall be deemed to have been fixed for the day on which the new Court is held next after the day originally fixed.

6. (1) Except where otherwise expressly enacted, every Magistrates' Court shall consist—

- (a) of not less than two and not more than five justices, of whom two at least shall be present and acting together during the whole time of the hearing and determination of the case ; or
- (b) of a stipendiary magistrate ; or
- (c) of a single justice other than a stipendiary magistrate if all parties to the proceedings consent that such justice shall hear and determine the case.

Constitution of  
Magistrates'  
Court.

(2) The consent of the parties under paragraph (c) shall be forthwith entered upon the minutes of the Court by the justice or the clerk.

(3) Where a Court consists of a stipendiary magistrate and one or more other justices, the stipendiary magistrate shall be the chairman.

(4) Except

(4) Except where express provision is made to the contrary every Magistrates' Court shall be an open court.

(5) A stipendiary magistrate, except where the contrary is expressly provided, may do alone whatever any two or more justices are by law authorized to do.

(6) In any proceeding before justices or a Court the opinion of the majority shall except where otherwise expressly provided be the decision of the justices or Court, and if they are equally divided in opinion then in case of an information if the person charged has not been convicted or the information dismissed the matter shall be re-heard but on any question of penalty or punishment or other matter subsequent to conviction upon an information and in case of a complaint the chairman shall have a second or casting vote and his decision shall be the decision of the justices or Court.

#### PART II.—STIPENDIARY MAGISTRATES.

Appointment of stipendiary magistrates.

7. (1) Subject to the *Public Service Act* 1958 there shall be appointed a Chief Stipendiary Magistrate, a Deputy Chief Stipendiary Magistrate and as many stipendiary magistrates as are necessary to enable Courts to be held at the places and times appointed for the holding of Courts.

Schedule Two.

(2) Every person who is appointed a stipendiary magistrate shall before acting as a stipendiary magistrate take an oath of allegiance and an oath of office in the forms and in the manner set forth in Schedule Two.

Additional allowance Chief Stipendiary Magistrate.

8. The person for the time being holding the office of Chief Stipendiary Magistrate shall be entitled to an allowance at the rate of \$300 per annum in addition to any other salary or allowances to which he is entitled under the *Public Service Act* 1958.

Power to Attorney-General to assign duties to stipendiary magistrates.

9. (1) A stipendiary magistrate shall carry out such duties as are from time to time assigned to him by the Attorney-General.

(2) The Attorney-General may delegate to the Chief Stipendiary Magistrate the power to assign duties or any class of duties amongst the stipendiary magistrates.

#### PART III.—JUSTICES OF THE PEACE.

Governor in Council may appoint justices.

10. (1) The Governor in Council may appoint as many justices as he thinks necessary from time to time to keep the peace in Victoria.

(2) No commission of the peace shall be issued.

Persons of or over 65 years of age not to be appointed justices.

11. No person of or over the age of sixty-five years shall be appointed a justice but nothing in this sub-section shall be construed as precluding any person of or over that age from becoming a justice by virtue of his holding any office mentioned in section 16 or section 17.

12. (1) Every

12. (1) Every person who is appointed a justice shall before acting as a justice take an oath of allegiance and an oath of office in the forms and in the manner set forth in Schedule Two and shall make application to the Secretary for registration as a justice.

Justice to take oaths and apply for registration.

(2) Every such application shall be in the form prescribed by the rules, shall contain the required particulars with respect to such justice and shall be accompanied by a fee of \$4.

Application.

(3) Upon receiving any such application the Secretary shall enter particulars of such justice and his place of residence and place of business (if any) in a register to be known as the "Register of Justices" and shall issue a certificate of registration to such justice.

Registration.

(4) Every such registration shall remain in force for a period of three years from the making thereof unless such justice sooner dies or ceases to be a justice by virtue of the provisions of this Act.

Term of registration.

13. (1) Not less than one month before the expiration of the registration or renewal of registration of any justice the Secretary shall send notice in writing of the expiry thereof by post to the justice addressed to the place of residence of the justice shown in the Register of Justices.

Notice of expiration of registration to be sent to justice.

(2) A registered justice may within one month before the expiry of his registration or renewal of registration as a justice make application for renewal of registration as a justice.

Application for renewal of registration.

(3) Every such application shall be in the form prescribed by the rules and contain the required particulars with respect to such justice.

(4) Upon receiving any application for renewal of the registration of a justice the Secretary shall note that fact in the Register of Justices in relation to such justice and issue a certificate of renewal of registration to such justice.

Renewal of registration.

(5) Every renewal of registration of a justice shall remain in force for a period of three years from the day of expiry of the registration or the last renewal thereof unless such justice sooner dies or ceases to be a justice by virtue of the provisions of this Act.

Term of renewal of registration.

14. (1) Every justice who changes his name or his place of residence or business (if any) shall within one month after such change notify the Secretary thereof in writing and the Secretary shall amend the Register of Justices accordingly.

Justices to notify change of name or address.

(2) A person appointed a justice by the Governor in Council shall not act as a justice without being registered for the time being in the Register of Justices.

Justices not to act without being registered.

(3) Contravention

(3) Contravention of or failure to comply with any of the foregoing provisions of this section shall be a ground upon which the Governor in Council may revoke the assignment or appointment of a justice under section 19.

Delegation.

15. (1) The Secretary may by writing under his hand delegate to an officer under his supervision and control all or any of his duties and functions with respect to the registration of justices so that the delegated duties and functions may be exercised by the delegate with respect to the matters specified in the instrument of delegation.

(2) Every delegation under this section shall be revocable at will and no delegation shall prevent the performance of any duty or function by the Secretary.

Presidents and mayors to be justices.

16. The chairman for the time being of any municipality having taken an oath of allegiance and an oath of office in the forms and in the manner set forth in Schedule Two shall, by virtue of his office as chairman and without any further commission or authority than this Act be a justice for Victoria and shall continue to be a justice during the next succeeding twelve months after he has ceased to be chairman if he so long continues to be qualified to be chairman as aforesaid.

Certain officers to be justices.

17. Every member of the Executive Council every judge of the Supreme Court or of the County Court every coroner and deputy coroner and every stipendiary magistrate shall, by virtue of his office and without any further commission or authority than this Act, be a justice.

Persons of 72 years or over incapable of acting as justices except to exercise certain ministerial powers.

18. (1) No justice who is of or over the age of seventy-two years shall be capable of acting as a justice except for the purpose of exercising (in any case where by law a justice might exercise any such power) all or any of the following powers :—

- (a) The power to receive any information or complaint ;
- (b) The power to issue any summons or to grant issue or endorse any warrant ;
- (c) The power to take any affidavit or declaration or to attest any instrument or document whatsoever.

Saving.

(2) Nothing in this section shall apply to or affect any person who at the commencement of the *Justices of the Peace Act 1935* was, by virtue of His Majesty's commission or of holding any office, a justice.

Governor in Council may revoke appointment of justices or prohibit certain justices from acting.

19. The Governor in Council may by Order published in the *Government Gazette*—

- (a) revoke the assignment or appointment of any person as a justice ; or
- (b) prohibit

(b) prohibit any person who is a justice by virtue of his holding any office from acting as a justice—

and from the day on which the Order is published the person shall cease to be a justice or shall be incapable of acting as or exercising any of the powers of a justice (as the case may be).

20. If any justice becomes bankrupt or applies to take the benefit of any Act for the time being in force for the relief of bankrupt debtors, or by any deed or other writing compounds with or makes any assignment for the benefit of his creditors, he shall thereupon cease to be a justice and shall forthwith notify the Secretary in writing of such bankruptcy, application or assignment.

Bankrupts, &c. to cease to be justices.

Penalty : \$20.

21. No justice shall be disabled from acting in the due discharge and execution of his duties as justice in any matter relating to any municipality by reason only of his being a ratepayer or interested in the concerns of the municipality.

Justice although a ratepayer may act in municipal matters.

22. Every person who not being a justice or who being aware that he has been prohibited from acting as a justice assumes or pretends to act as such, or extorts demands takes accepts or receives any fee gratuity or reward under colour or pretext of such office, shall be guilty of a misdemeanour and liable to imprisonment for a term of not more than two years.

Penalty for pretending to be a justice.

#### PART IV.—CLERKS OF MAGISTRATES' COURTS.

23. (1) Subject to the *Public Service Act* 1958 there may be appointed a clerk for every Magistrates' Court.

Clerk of Magistrates' Court.

(2) The clerk for a Court shall attend to discharge the duties of his office at the place or places appointed for the holding of the Court.

24. (1) The clerk of a Court shall keep a register of the minutes or memoranda of all the convictions and orders of such Court and of such other proceedings as are directed by any rule under this Act to be registered, and shall keep the register with such particulars and in such form as is prescribed by the rules.

Register of Magistrates' Court.

(2) Such register and also any extract from such register certified by the clerk of the Court for the time being having the custody of the register to be a true extract shall be *prima facie* evidence of the matters entered therein; and every document purporting to be such an extract and to be so certified shall be taken to be such extract and so certified unless the contrary is made to appear.

(3) The register kept by every clerk in pursuance of this section may be distinguished by such name or description as may be prescribed by the rules.

(4) The entries relating to each minute memorandum or proceeding shall be signed by the justices or one of the justices constituting

constituting the Court by or before whom the conviction or order or proceeding referred to in the minute or memorandum was made or had.

Inspection of registers.

25. Every register shall be open for inspection without fee or reward by any justice and by any person authorized in that behalf by a justice or by a law officer and so far as relates to the proceedings in any particular matter by any person who is a party to such proceedings.

Powers of clerk of the Magistrates' Court as to taking informations, issuing summonses and warrants, certifying bail and signing licences.

26. The clerk of a Court shall subject to the rules have the following powers in addition to those given to or conferred upon him by this Act or any other Act—

- (a) he may take and receive any information for any offence or cause in which under any Act any Magistrates' Court justices or justice has or have jurisdiction and in regard to which a summons is applied for and for such purposes may administer such oath as is required by law ;
- (b) he may issue such summons and all other summonses whether for defendants or witnesses in any case matter or proceeding whatever cognisable by any Magistrates' Court justices or justice under any Act and for such purpose may (when necessary) administer such oath as is required by law ;
- (c) after a case has been heard and determined or a conviction obtained or an accused person remanded or committed to gaol or for trial, the clerk—
  - (i) may issue the necessary warrant, whether of distress or commitment or for remanding such person ; and
  - (ii) if the Court justice or justices has or have consented to such person being bailed and has or have fixed the amount of bail which ought to be required, may certify accordingly—

and all such warrants or any such certificate shall be as valid and effectual for all purposes as if signed by a justice or justices ; and

- (d) he may sign any licence which a justice or justices or a Magistrates' Court is or are by any Act authorized to grant or issue, and all such licences, when ordered by such justice justices or Court to be granted or issued, shall if so signed be as valid and effectual for all purposes as if signed by a justice or justices.

Deputy clerks of certain Magistrates' Courts.

27. (1) Subject to the *Public Service Act 1958* there may be appointed one or more officers of the public service to be a deputy clerk or clerks of each of the Magistrates' Courts at Ballarat Bendigo Geelong and Melbourne and of any other Court nominated by the Minister.

(2) A deputy



(2) A deputy clerk of a Court shall have and may exercise all the powers of the clerk of that Court.

(3) Without derogating from the generality of the last preceding paragraph a deputy clerk may receive any information or complaint which the clerk of the Court may receive and may issue and sign in his own name as if he were the clerk and without the use of the word "deputy" any summons or warrant or any document which the clerk may issue and sign and every information or complaint so received and every summons warrant or document so issued and signed shall be deemed to have been received or issued and signed by the clerk of the Court.

(4) The provisions of Part V. relating to the protection of a justice with respect to any act done by him as such justice shall with such alterations modifications and substitutions as are necessary extend and apply with respect to any like act done by the clerk of a Court as such clerk in pursuance of the powers given to or conferred upon him by this Act or any other Act.

Protection of  
clerks of the  
Magistrates'  
Court.

28. (1) The clerk of a Court shall demand receive and take for the use of Her Majesty the several fees appointed by the rules and no more.

Fees in  
Magistrates'  
Court.

(2) Such fees shall be paid in the first instance by the person by whom or on whose behalf the act or proceeding (in respect whereof the same are payable) is required before such act is done or such proceeding is issued or taken (as the case may be).

(3) No such fee shall be demanded received or taken from any member of the police force acting in the execution of his duty or from any person acting for and by authority of Her Majesty or of the Commission of Public Health or any municipality in discharge of any right or duty imposed by any Act relating to the public health.

Exemption in  
certain cases.

(4) No fee shall be payable on the issue of any summons on the complaint of any municipality to enforce payment of any rates or the issue or service of any summons on the complaint of any Authority under the *Water Act* 1958 to enforce payment of any rates charges or sums due to such Authority except where it is expressly provided to the contrary.

(5) No default summons on the complaint of a municipality or of any Authority under the *Water Act* 1958 to enforce payment of any rates charges or sums shall be served on a defendant by any member of the police force unless some person on behalf of such municipality or Authority has first paid to the justice or clerk issuing such summons the fee ordinarily chargeable for the service of a summons in a civil case.

29. (1) The

List of fees to be exhibited.

29. (1) The clerk of a Court shall cause a true printed copy of the rules for the time being in force under this Act so far as they relate to fees to be exhibited in some conspicuous part of any office or room in which any fee is demanded taken or received pursuant to this Act at all times during which the office or room is open to the public.

Penalty.

(2) A clerk who fails or neglects to comply with the provisions of sub-section (1) shall be liable to a penalty of not more than \$1 for every day during any part of which he is in default.

Penalty for extortion &c.

30. A clerk who extorts or corruptly demands takes accepts or receives from any person any fee gratuity or reward not appointed under the rules or greater in amount than is so appointed shall be guilty of a misdemeanour, and liable to imprisonment for a term of not more than two years.

Penalty for pretending to be a clerk of Magistrates' Court.

31. A person who not being a clerk and who assumes or pretends to act as a clerk, or extorts demands takes accepts or receives any fee gratuity or reward under colour or pretext of the office of clerk, shall be guilty of a misdemeanour and liable to imprisonment for a term of not more than two years.

#### PART V.—THE PROTECTION OF JUSTICES AND OFFICERS.

Form of action against justices and allegations therein.

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

(2) If at the trial of any such action upon the defence of "not guilty by Statute" (which defence is hereby permitted to be pleaded) being pleaded the plaintiff fails to prove that such act was done maliciously and without reasonable and probable cause, judgment shall be given for the defendant.

Action in cases of no jurisdiction or exceeded jurisdiction.

33. (1) For any act done by a justice in a matter of which by law he has not jurisdiction or in which he has exceeded his jurisdiction, any person injured thereby or by any act done under any conviction or order made or warrant issued by the justice in any such matter may maintain an action against the justice in the same form and in the same case as he might have done previously to the first day of May 1888, without making any proof that the act complained of was done maliciously and without reasonable and probable cause.

Action not to be brought until conviction or order quashed.

(2) No such action shall be brought for anything done under such conviction or order until such conviction or order has been quashed either upon appeal to the County Court or upon application to the Supreme Court.

(3) No

(3) No such action shall be brought for anything done under any such warrant which has been issued by such justice to procure the appearance of such party and which has been followed by a conviction or order in the same matter until such conviction or order has been so quashed as aforesaid.

(4) Where such warrant has not been followed by any such conviction or order or where it is a warrant upon an information for an alleged indictable offence, if a summons was issued previously to such warrant and if such summons was duly served upon such person, and if he did not appear according to the exigency of such summons, no action shall be maintained against such justice for anything done under such warrant.

No action to lie if party bringing the same did not appear on summons.

34. Where a conviction or order has been made by a Court or justices and a warrant of distress or of commitment is issued thereon by some other justice *bona fide* and without collusion, no action shall be brought against the justice who so issued such warrant by reason of any defect in such conviction or order or for any want of jurisdiction in the Court or justices who made the conviction or order ; but the action (if any) shall be brought against the justices who made the conviction or order.

No action to lie against one justice for warrant issued by him on void order of another.

35. Where any rate is made by the council of the city of Melbourne or city of Geelong or any municipality and a warrant of distress issues pursuant to an order of a Magistrates' Court against any person named and rated therein, no action shall be brought against the justice who has issued such warrant by reason of any irregularity or defect in the said rate or by reason of such person not being liable to be rated therein.

No action to lie for issue of warrants of distress for payment of rates in certain cases.

36. In all cases where a discretionary power has been given to a justice by any Act of Parliament, no action shall be brought against such justice for or by reason of the manner in which he has exercised his discretion in the execution of any such power.

No action for discretionary acts.

37. Where a warrant of distress or warrant of commitment is issued by a justice upon any conviction or order which either before or after the issuing of such warrant has been or is confirmed or amended upon appeal, no action shall be brought against such justice who so issued such warrant for anything which may have been done under the warrant by reason of any defect in such conviction or order.

No action when proceedings confirmed on appeal.

38. Where by this Act it is provided that no action shall be brought in the particular circumstances, if any such action is brought any judge of the Court in which such action is brought may, upon application

Proceedings in prohibited actions to be set aside.

application of the defendant and upon an affidavit of facts, set aside the proceedings in such action with or without costs as to such judge seems just.

Venue and pleading.

39. (1) Every action for anything done by him in the execution of his office against any justice shall be brought in the Supreme Court only.

(2) The defendant to any such action shall be allowed to plead the defence of "not guilty by Statute" therein, and to give any special matter of defence excuse or justification in evidence under such defence at the trial of such action; and, except as in the next succeeding section provided, the practice and procedure for the time being of the Supreme Court in relation to the payment of money into court and the consequences thereof shall apply to every such action.

Tender of money or payment into court.

40. (1) In every such case before such action is commenced, the justice may tender to the party complaining or to his solicitor or agent such sum of money as he thinks fit as amends for the injury complained of, which tender may afterwards be given in evidence by the defendant at the trial under the defence of "not guilty by Statute" aforesaid.

(2) If the plaintiff does not recover damages beyond the sum so tendered and such sum has been paid into Court the defendant shall be entitled to an order that the plaintiff pay his costs.

(3) The sum of money (if any) paid into Court shall in such case (notwithstanding any amount which the plaintiff has recovered in such action) be available for the payment of such costs.

When plaintiff is entitled to merely nominal damages.

41. Where the plaintiff in any such action is entitled to recover and proves the levying or payment of any penalty or sum of money under any conviction or order as parcel of the damages he seeks to recover, or proves that he was imprisoned under such conviction or order and seeks to recover damages for any such imprisonment, he shall not be entitled to recover the amount of such penalty or sums so levied or paid or any sum beyond the sum of One cent (\$0.01) as damages for such imprisonment or any costs of suit whatever, if it is 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 in actions against justices and other officers.

42. (1) If the plaintiff in any such action recovers judgment, the costs of such action, subject to sub-section (2) shall be in the discretion of the Court.

(2) Where

(2) Where in such case it is proved at the trial that the act complained of was done maliciously and without reasonable and probable cause, if the plaintiff recovers judgment, the plaintiff shall be entitled to his costs, to be taxed as between solicitor and client.

(3) In an action against a justice for anything done by him in the execution of his office, the defendant, if he obtains judgment upon verdict or otherwise, or if the plaintiff discontinues the action, shall in all cases be entitled to his costs, to be taxed as between solicitor and client.

43. (1) No action shall be brought against any member of the police force or other officer or against any person acting by his order and in his aid for anything done in obedience to any warrant under the hand of a justice or the clerk of a Court until there has been made on him or left at his usual place of abode signed by or on behalf of the party or parties intending to bring such action a written demand of the perusal and copy of such warrant and the same has been refused or neglected for the space of six days after such demand.

Action not to be brought against officers &c. acting in obedience to warrant of justice or clerk of the Magistrates' Court until demand of sight and copy of warrant &c.

(2) If after such demand and compliance therewith by showing the said warrant to and permitting a copy thereof to be taken by the person demanding the same any action shall be brought against such member officer or person without making the justice or clerk who signed the said warrant a defendant, on such warrant being produced and proved at the trial of such action verdict and judgment shall be given for the defendant notwithstanding any defect of jurisdiction in such justice or clerk

(3) If such action be brought jointly against such justice or clerk and such member officer or person then on production and proof of such warrant as aforesaid verdict and judgment shall be given for such member officer or person notwithstanding such defect of jurisdiction as aforesaid.

(4) If judgment is given against such justice or clerk the Court may order that the plaintiffs or plaintiffs' costs shall include such costs as the plaintiff or plaintiffs is or are liable to pay such member officer or person.

44. (1) A person acting under a warrant of distress 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.

Civil remedy for defective warrant of distress.

(2) This section 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, but if amends

are

are tendered before action brought and are paid into Court after the action has commenced, 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.

#### PART VI.—GENERAL.

Power of  
police in  
summary  
cases.

45. On the hearing before justices or a Court of any information in which such justices or Court have or has jurisdiction whether summary or not the informant if a member of the police force shall be at liberty either by himself or by any other member of the police force or by his counsel or solicitor to conduct such information and to examine and cross-examine any witnesses.

Punishment  
for contempt.

46. (1) If any person—

- (a) having been summoned, personally or in such other manner as is directed by the rules, as a witness and having been paid or tendered a reasonable sum for travelling expenses and subsistence refuses or neglects without sufficient cause to appear or to produce any books deeds papers or writings required by the summons to be produced; or
- (b) being summoned or examined as a witness in any Court or criminal proceeding, appeal, action or matter or being present in Court and required to give evidence refuses to be sworn or to answer any lawful question; or
- (c) in the opinion of the chairman is guilty of wilful prevarication—

the chairman may direct the apprehension of any such person and if he thinks fit may commit him to prison for any time not exceeding one month or may impose on him a fine of not more than \$100 for every such offence and may order that in default of payment thereof immediately or within a specified time the offender be committed to gaol for a period not exceeding one month unless such fine is sooner paid.

(2) No fine or commitment under this section shall exempt any person from any action for disobeying any summons to appear or to produce any books deeds or papers or writings.

(3) If

## (3) If any person—

- (a) wilfully insults threatens interferes with or obstructs any justice clerk or officer of the Court in or in the vicinity of the Court or any justice who is going to or returning from Court ; or
- (b) wrongfully influences or attempts to influence any justice clerk or officer of the Court or any witness or any person concerned in any way with the proceedings of the Court in relation to any civil or criminal proceeding appeal action or matter being heard or to be heard by the Court ; or
- (c) wilfully interrupts proceedings of the Court ; or
- (d) wilfully misbehaves in Court in any manner—

the chairman may orally or in writing direct the apprehension of any such person and if he thinks fit may commit him to prison for any time not exceeding six months or may impose on him a fine of not more than \$500 for every such offence and may order that in default of payment thereof immediately or within a specified time the offender be committed to gaol for a period not exceeding six months unless such fine is sooner paid.

(4) An order in the prescribed form or to the like effect may be issued by the chairman and shall be good and valid in law without any other order summons or adjudication whatsoever.

(5) Where any person is guilty of misconduct under this section the chairman may if it or he thinks fit accept an apology for the misconduct and may remit any penalty or punishment for the same either wholly or in part.

Apology may be accepted.

## (6) In this section—

“Chairman” means the stipendiary magistrate or justice who constitutes the Court when sitting alone or the stipendiary magistrate or justice who is the chairman of the Court ;

“Chairman.”

“Court” includes a justice sitting alone in any place to take a preliminary examination or statement or to dispose of any other proceedings which he may lawfully determine.

“Court.”

47. (1) Except in so far as it is otherwise expressly enacted a Court may if it thinks fit at any time order any person appearing to the Court to be under the age of 18 years to leave the place where the Court is held and the precincts thereof, or if it appears desirable on the grounds of public decency and morality to order

Powers of courts to order persons to leave the court.

that

that all or any person or any class or description of persons shall be excluded from the Court during all or any part of the proceedings in any cause or matter then being heard.

(2) In case of disobedience to an order under sub-section (1) the Court may order the removal from the Court of all persons who have disobeyed the order, and may if it thinks fit order that any person so disobeying be imprisoned for any period not exceeding twenty-four hours.

(3) Nothing in this section shall—

(a) authorize the exclusion from the Court of the mother or any female friend of any prisoner or party to or witness actually being examined in such cause or matter or of any counsel or solicitor or the clerk of the solicitor of any such prisoner or party ;

(b) limit the power of the Court to order all witnesses in any cause or matter to leave the Court.

Courts may prohibit publication of reports of proceedings.

48. (1) A Court may if it thinks it desirable so to do on the grounds of public decency and morality make an order prohibiting the publication of a report of the proceedings or any part thereof in any cause or matter being heard or which has been heard before it but this sub-section shall not prevent the publication of a report of such parts of or of the facts connected with such proceedings as are not so prohibited.

Copy of order to be posted on door of court house.

(2) When an order has been made under sub-section (1) a copy thereof shall be posted by the clerk on one of the outer doors of the court house in which such cause or matter is then being heard or was heard or in some other conspicuous place where notices are usually posted at such court house.

Penalty for disobeying order.

(3) Every person publishing a report of any such proceedings or any part thereof in respect of which any such order as aforesaid has been made and posted shall be guilty of an offence against this Act and shall be liable to a penalty of not more than \$200 or to imprisonment for a term of not more than three months.

(4) Every person who commits an offence against this Act by publishing a report of any proceedings or any part thereof contrary to any such order so made and posted may be called upon by a Court on some future specified day to show cause why he should not be punished for such offence.

(5) Such person may on such specified day appear by himself or his counsel or solicitor and show cause accordingly and such Court may then or on any subsequent day if it thinks fit proceed to adjudge that such person shall be liable to a penalty of not more than \$200 or to imprisonment for a term of not more than three months.



## PART VII.—RULES.

49. The Governor in Council may, subject to disallowance by Parliament, make rules for or with respect to—

Power to Governor in Council to make rules.

- (a) the forms to be used under this Act ;
- (b) the fees costs and charges under this Act or under any other Act for the time being in force so far as the same relates to any matter or proceeding as to which a Magistrates' Court or any one or more justices has or have jurisdiction ;
- (c) regulating the form of the account to be rendered by clerks of fines fees and other sums received by them ; and
- (d) 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.

---



---

SCHEDULES.

---

SCHEDULE ONE.

1. For section 4 of the *Coroners Act* 1958 there shall be substituted the following section :—

“ 4. (1) A person who is the holder for the time being of the office of stipendiary magistrate under the *Magistrates' Courts Act* 1971 shall by virtue of his holding that office and so long as he holds that office be a coroner in and for each and every part of Victoria.

(2) The Governor in Council—

- (a) may appoint and remove as many persons as he thinks fit to be deputy coroners ;
- (b) may appoint districts within which a deputy coroner shall act and have jurisdiction ;
- (c) may make regulations for or with respect to the ministerial duties of coroners and deputy coroners ; and
- (d) may make regulations for or with respect to the remuneration of deputy coroners.

(3) A person who is of or over the age of 72 years shall be incapable of acting as a deputy coroner.”

2. The *Justices Act* 1958 is hereby amended as follows :—

(a) Paragraphs (e) and (f) of sub-section (1) of section 4 and sections 6, 7, 9, 10, 11, 11A, 11B, 11C, 11D, 11E, 12, 13, 14, 15, 16, 17, 17A, and sub-sections (2) and (5) of section 40 and sections 63, 64, 65, 66, 86, 87, Part VI., sections 199, 204, 205, 211, 212, 213 and 214 and Form 78 in the Second Schedule shall be repealed ;

(b) In section 1 the expressions—

- (i) “ Appointment of Justices ” ;
- (ii) “ Subdivision 4.—Clerks of Petty Sessions.—Register—ss. 86-87 ” ;
- (iii) “ Part VI.—The Protection of Justices and Officers ss. 170-184 ”—shall be repealed ;

(c) In section 5 for the words “ under this Act ” there shall be substituted the words “ under the *Magistrates' Courts Act* 1971 or under this Act ”.

SCHEDULE

**SCHEDULE TWO.**

**OATH OF ALLEGIANCE TO BE TAKEN BEFORE A JUDGE OF THE SUPREME COURT, A JUDGE OF THE COUNTY COURT OR A STIPENDIARY MAGISTRATE.**

I, A.B. swear by Almighty God that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second Her Heirs and Successors lawful sovereigns of the United Kingdom and of this State of Victoria.

**OATH OF OFFICE.**

I, A.B., swear by Almighty God that as a justice of the peace for Victoria I will at all times and in all things do equal justice to all men and discharge the duties of my office according to law and to the best of my knowledge and ability without fear favour or affection.