A MAGISTRATE'S HANDBOOK

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London
ERNEST BENN LIMITED

FIRST PUBLISHED IN

1929

PRINTED IN

GREAT BRITAIN

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instruction. As regards matters of practice and procedure, he will turn to the clerk to his Bench, who is in most cases a practical and experienced lawyer. And as regards the details of the multitudinous offences with which he has to deal, and the punishment appropriate to each, let him consult that mine of information, Stone's *Justices' Manual*. One thing he will not find in any book, or learn from outside agency, and that is that in all his duties the two things which matter most are the application of the rules of common sense and of the sense of fair play.

The contents of this book will be found arranged so far as possible in self-contained sections, but cross-references are at times inevitable, and will be found in the notes where necessary. No effort has been spared to make the index as complete as possible.

While a great part of a magistrate's duties, especially those arising under Statute, are specialised, and the chapters dealing with such subjects are of interest primarily to those who have to administer the law as it exists in England to-day, it is hoped that those parts of the book which deal with the broad principles of British justice, such as evidence, procedure, and the like, may be found useful to those whose judicial and administrative duties are exercised in other parts of the Empire.

S. R. C. B.
D. H. J. C.

PART I

DUTIES OF MAGISTRATES

CHAPTER I

THE OFFICE OF MAGISTRATE

Definition.—A Magistrate is a person deputed by the Crown to administer law and justice, and to maintain the peace of the Realm.

A Justice of the Peace (commonly called a Justice) was originally a subordinate magistrate appointed to keep the peace within a given jurisdiction and to inquire of felonies and misdemeanours, with a statutory jurisdiction to decide summarily in many cases, and in some cases to adjudicate upon claims of a civil nature.[1]

In modern language the terms Magistrate and Justice of the Peace are now synonymous.

Qualifications for the Office of Magistrate.—All persons of either sex,[2] if over twenty-one years of age, are eligible for appointment to the office of magistrate, unless disqualified by an adjudication as a bankrupt,[3] a conviction of treason or felony,[4] or a conviction of corrupt practices.[5] There is now no property qualification.

[1] Mozley and Whiteley's *Law Dictionary*, 4th ed., 173.
[2] Sex Disqualification (Removal) Act, 1919, s. 1.
[3] Bankruptcy Act, 1883, s. 32. The disqualification lasts five years from the date of discharge.—Bankruptcy Act, 1890, s. 9.
[4] Forfeiture Act, 1870, s. 2.
[5] Corrupt Practices Act, 1883, s. 6 (3); Municipal Election (Corrupt and Illegal Practices) Act, 1884, s. 2 (2). The disqualification lasts for seven years from the date of conviction.

A County Magistrate must reside within the county or within seven miles of its border at the time of the appointment.[1]

A Borough Magistrate must reside in or within seven miles of the borough to which he is appointed, or must occupy a house, warehouse, or other property within it. He need not be a burgess.[2]

A solicitor, if otherwise qualified, may be appointed a Borough Justice and may now become a County Justice, but in the latter case neither he nor any partner of his firm must practise directly or indirectly before the Justices of that county, or of any borough in that county.[3]

Clergymen of the Church of England, though qualified, are not now in practice appointed as magistrates.

Appointment.—County and borough magistrates, other than those holding the position ex-officio,[4] are appointed by the Crown on the recommendation of the Lord Chancellor, who usually selects them from the list of nominations by the Lord-Lieutenant of the county, assisted by an Advisory Committee.

In boroughs, persons are often recommended by the borough council.

On the appointment of a magistrate it is the duty of the Clerk of the Crown in Chancery to add the name of the persons so appointed to the document known as the "Commission of the Peace" for the county, riding, city or borough concerned.

It is issued by the Crown Office under the Great Seal.[5]

A new Commission of the Peace may be issued at any time, and it immediately supersedes any previous Commission for the same county or other area.

Termination of Authority.—The death of the King does not now put an end to the appointment of Justices of the

[1] Justice of the Peace Act, 1906, s. 2.
[2] Municipal Corporations Act, 1882, s. 157 (3).
[3] Justice of the Peace Act, 1906, s. 3.
[4] See page 8.
[5] Crown Office Act. 1877, s. 5 (1).

Peace.[1] The office as to particular persons may be terminated by—

(1) the issuing of a new Commission omitting the name of any particular person, whose services are no longer required ;

(2) dismissal by the King, acting through the Lord Chancellor by Writ of Discharge under the Great Seal ;[2]

(3) a conviction for treason, felony[3] or any offence for which imprisonment for over twelve months has been awarded ;[4]

(4) a conviction for a corrupt practice[5] (this includes personation, bribery, treating and undue influence, at or concerning either parliamentary or municipal elections) ;

(5) an adjudication in bankruptcy, which disqualifies a debtor from holding any judicial office for five years after discharge, unless such debtor is discharged by the Court, with a certificate that the bankruptcy was caused by misfortune, and not misconduct ;[6]

(6) appointment as a sheriff of a county or county borough. Being the representative of the King, the sheriff is precluded from acting as a magistrate for that county or borough during his term of office.[7]

(7) practising as a solicitor either directly or indirectly before the Justices of their county or any borough within it, or before the Justices of their borough ;[8]

[1] Demise of the Crown Act, 1901, s. 1.

[2] 1 Bl. Com., 20th ed., 373.

[3] The term " felony " is applied to a crime for which under the old Common Law of England a man forfeited all his property, and to certain other crimes constituted felonies by Statute. It now applies to the more serious indictable offences, such as arson, murder, etc., which are deemed graver than misdemeanours.

[4] Forfeiture Act, 1870, s. 2.

[5] Corrupt, etc., Practices Prevention Act, 1883, s. 38 (6), and Municipal Elections (Corrupt, etc., Practices) Act, 1884, s. 8.

[6] A mayor is an official whose duties entitle him to act as a Justice of the Peace, and he loses his office immediately on adjudication in bankruptcy.—Bankruptcy Act, 1883, s. 32 (c).

[7] Sheriffs Act, 1887, s. 17.

[8] Justices of the Peace Act, 1906, s. 3. A justice who desires to practise as a solicitor should first take steps to have his name removed from the Commission.

A Borough Magistrate is disqualified from acting if he loses his residential or business qualification.[1]

Oaths of Office.—County and Borough Justices of the Peace, before acting in that capacity, must take the following judicial oath :—[2]

"I.....A.B.....do swear by Almighty God that I will well and truly serve Our Sovereign Lord, King George the Fifth, in the Office of Justice of the Peace, and I will do Right to all Manner of People after the Laws and Usages of this Realm without Fear, Favour, Affection, or Ill-will.

So help me, God."

And also the Oath of Allegiance :—

"I.....A.B.....do swear by Almighty God that I will be faithful and bear true allegiance to His Majesty, King George the Fifth, His Heirs, and Successors, according to Law.

So help me, God."

The person swearing these oaths holds in his uplifted hand the New Testament (or in the case of a Jew the Old Testament) and repeats the words of the oath after the officer administering the same.

Any person who objects to being sworn, and stating his objection to be either—

(1) that he has no religious belief,

or

(2) that the taking of an oath is contrary to his religious belief, may make affirmation instead of taking the oath.[3]

A Justice of the Peace for a county is usually sworn in open Court at the Quarter Sessions for the county concerned, but if the Master of the Crown Office be satisfied that the matter be urgent, permission may be obtained for the oaths to be taken before a King's Bench Divisional Court. The inclusive fee payable is £2.[4]

[1] Municipal Corporations Act, 1882, s. 157.
[2] Promissory Oaths Act, 1868, s. 6.
[3] Oaths Act, 1888, ss. 1, 2.
[4] This fee is in practice generally remitted.

A mayor, being ex officio a magistrate, takes his oaths before two Justices of the borough, or if there be none, then before two councillors.[1]

A Borough Justice must take the oaths (1) before the mayor, or (2) before two Justices of the borough, or (3) in open Court at the Quarter Sessions, or (4) in any Division of the High Court.

A mayor or Borough Justice must in addition to the Oath of Allegiance and Judicial Oath also swear the following declaration :—[1]

"I.....A.B.....hereby declare that I will faithfully and impartially execute the office of {Mayor / Justice of the Peace} for the Borough of.....according to the best of my ability.

So help me, God."

A chairman of a county council (who is also a Justice ex officio) takes the oaths in the same manner as other County Justices, but the fee is five shillings instead of two pounds.[2]

He must be re-sworn if re-elected to office, and if an interval of time has elapsed since the expiration of his office as chairman and his re-election.

The chairman of a District Council may be sworn before two Justices sitting in Petty Sessions. If re-elected immediately after the expiry of his former term of office he need not be re-sworn.

Classes of Magistrates.—Magistrates are divided into two classes, namely :—

(*a*) those appointed by commission ;

(*b*) those who exercise the office in virtue of holding a particular post, and who are usually called "magistrates ex officio."

(*a*) Magistrates appointed by Commission comprise—

(1) County magistrates.

[1] Municipal Corporations Act, 1882, s. 157 (2), Sch. 8 (Form B).

[2] See note, p. 4.

(2) Borough magistrates.
(3) Stipendiary magistrates.
(4) Metropolitan Police magistrates in London.

(1) *County Magistrates*.—These are appointed by a Commission of the Peace for duties within the county or riding of a county.

(2) *Borough Magistrates*.—There are three classes of boroughs, as regards Criminal Jurisdiction, outside the London Metropolitan Police district :—

(*a*) those having a separate Commission of the Peace ;
(*b*) those having a separate Quarter Sessions ;
(*c*) those having neither separate Commission nor Quarter Sessions.

In all boroughs having a separate Commission, or a Court of Quarter Sessions—the Jurisdiction of Borough Justices is confined to matters arising within the borough. The mayor takes precedence over all other Borough Justices.

The stipendiary magistrate (where there is one) acts as chairman of the Bench even if the mayor be present.

In the case of boroughs which have a separate Quarter Sessions[1] the Recorder is the sole Judge of the Court of Quarter Sessions, though the mayor may be present.[2]

A Recorder is appointed by the Crown on the recommendation of the Home Secretary. He must be a barrister of over five years' standing. He holds office during good behaviour, and is paid a salary, not more than that stated in the petition from the borough asking for a separate Court of Quarter Sessions. Before acting, a Recorder must take the judicial oath, the oath of allegiance, and the declaration, as required for a Borough Justice.

In the case of boroughs which have no separate Commission of the Peace, the jurisdiction of the County Justices extends to offences committed within the borough. There are, therefore, to some extent two co-ordinate jurisdictions, that of the County Justices, whose powers extend both to

[1] Municipal Corporations Act, 1882, s. 162 (1).
[2] *Ibid.*, s. 165 (2).

the county and the borough, and that of the Borough Justices, whose powers are limited to the borough itself. The mayor is entitled to precedence when sitting on a Bench of Borough Justices only.

The dates of the holding of Petty Sessions are fixed by the County Justices for the Division within which the borough is situate.[1]

(3) *Stipendiary Magistrates*.—These consist of :—

(*a*) Borough stipendiaries.[2]

(*b*) Stipendiaries for districts of over 25,000 inhabitants. [3]

(*c*) Stipendiaries appointed under Private Acts.

Mode of appointing Stipendiaries.—In the event of a borough council with a population of over 25,000 desiring the appointment of a stipendiary, a petition must be presented to the Home Secretary, who may thereupon appoint a barrister of at least seven years' standing. He holds office during good behaviour, and is paid such salary as is fixed by the Crown, provided that it must not exceed the amount specified in the petition, unless the council consent to the increase. On a vacancy in the office of stipendiary occurring, a fresh petition must be presented for the appointment of a successor. A borough may have more than one stipendiary.[4]

Deputy.—A deputy may be appointed for a period of three months should the stipendiary be incapable of acting.[5]

District Stipendiary.—The conditions of appointment of a stipendiary for an urban district of a population of over 25,000 are the same as for a borough, except that the urban district stipendiary need be a barrister of only five years' standing.[6]

[1] See Halsbury's *Laws of England*, vol. 19, p. 545.
[2] Municipal Corporations Act, 1882, s. 161.
[3] Stipendiary Magistrates Act, 1863, s. 3.
[4] Municipal Corporations Act, 1882, s. 161.
[5] Recorders, Stipendiary Magistrates Act, 1906, s. 1.
[6] Stipendiary Magistrates Act, 1863, s. 2.

Powers.—A stipendiary magistrate, whether for a borough or an urban district, when sitting alone, can exercise all the powers of a Court of Summary Jurisdiction.[1]

Although borough and county stipendiaries possess the powers of and constitute in themselves Courts of Summary Jurisdiction, it frequently happens that in pursuance of a borough custom they sit with the other Justices, and in such an event the decision of the majority prevails.

Stipendiaries under Private Acts.—The qualification of stipendiaries appointed under Private Acts varies according to the particular Statute creating the post.

(4) *Metropolitan Police Magistrates in London*.—The magistrates at the police courts of the Metropolis are also salaried magistrates and act within certain areas of the Metropolitan Police district.[2] They are appointed by the Crown by a warrant under the Sign Manual on the recommendation of the Home Secretary.[3] The tenure of the office is limited to the pleasure of the Crown. They must be barristers who have practised for seven years or more. The number is limited to twenty-seven in all.[4]

The Chief Magistrate of the Metropolitan Police and the other Metropolitan Police Courts have special powers as to Fugitive Offenders from British Possessions and foreign countries,[5] and the magistrate at Bow Street has special power in regard to extradition cases.[6]

Magistrates ex officio.—In every Commission of the Peace are included the names of certain persons of eminence, namely Privy Councillors and Judges of the High Court, but these do not exercise their functions, and the insertion of their names is merely a formality.

The following are magistrates " ex officio " :—

[1] For definition of this Court, see p. 67.
[2] Metropolitan Police Act, 1829, s. 1.
[3] Metropolitan Police Courts Act, 1839, s. 3.
[4] Halsbury, *Laws of England*, vol. 19, p. 548.
[5] Fugitive Offenders Act, 1881.
[6] Extradition Acts, 1870–1895.

(*a*) The chairman of the county council, if not disqualified ;[1]

(*b*) Chairmen of the urban or rural district councils, subject to the same limitation.[2]

(*c*) In a borough, the mayor is a magistrate during his year of office, and during the ensuing year, provided the borough has a separate Commission of the Peace.[3]

(*d*) A mayor of a Metropolitan borough is a Justice of the County of London.[4]

(*e*) A stipendiary magistrate is also a magistrate for his borough, but cannot attend Quarter Sessions.[5]

(*f*) A coroner may be a magistrate, but should not so act unless specially appointed and sworn in at Quarter Sessions.[6]

(*g*) The aldermen of the City of London, who are elected for life, are ex officio Justices of the Peace.

(*h*) Where there is a Recorder of a borough, he is ex officio a Justice of that borough.[7]

(*i*) The Judge of the County Court within a county may be included in the Commission of the Peace[8] of that County, even though not qualified by residence.

Jurisdiction Generally.—There are several different senses in which the legal term " jurisdiction " is employed, but as regards magistrates it means either—

(1) the extent or range of judicial or administrative power, or the territory over which such power extends ;

(2) the exercise of judicial authority, or the power of declaring and administering law or justice.

[1] Local Government Act, 1888, s. 2 (5) b.
[2] Local Government Act, 1894, s. 22.
[3] Municipal Corporations Act, 1882, ss. 155, 158.
[4] London Government Act, 1899, s. 24.
[5] Municipal Corporations Act, 1882, s. 161.
[6] Jervis, " Office and Duty of Coroners," p. 254.
[7] Municipal Corporations Act, 1882, s. 163 (3).
[8] County Court Act, 1888, s. 17 ; Justices of the Peace Act, 1906, s. 5 (2) Sch.

The acts of a magistrate may be either judicial or ministerial, the former term applying to those acts which involve the exercise of discretion, the latter to acts performed when a previous decision, or order of some superior authority, has to be enforced.

Where two or more magistrates are sitting in a Court of Summary Jurisdiction and actually try and decide cases, criminal or civil, their duties are purely judicial, as also where a Justice conducts an examination into the case of an accused person prior to committing him for trial or discharging him.

A Justice who hears an application for a summons or a warrant of arrest is similarly acting in a judicial capacity, but a Justice who grants a warrant of distress on a person's goods in obedience to a conviction, or to a civil order already made, is engaged on purely ministerial duties.

Local Jurisdiction.—County magistrates have jurisdiction to deal with all matters arising in or offences committed within their own county or riding which has a separate Commission of the Peace, except the area of any borough in the county having a separate Court of Quarter Sessions.[1]

Where a borough has no separate Commission of the Peace and no Court of Quarter Sessions, and its Charter contains no clause prohibiting the County Justices from acting within the borough, the County Justices and the Borough Justices have co-ordinate jurisdiction in all matters arising in and relating to the borough.[2] Once a matter has been earmarked by proceedings being commenced either by the County or Borough Justices, the other authority ceases to have jurisdiction.[3]

County magistrates have, chiefly for their convenience, but in some cases by Statute, been divided into divisions, to which certain magistrates have been allocated. Each division, then, acts as a separate Bench, and has its own Court-houses. Any magistrate of the same county could as of right sit on the Bench of any division, but in practice this seldom occurs.

[1] Summary Jurisdiction Act, 1879, s. 45.
[2] Municipal Corporations Act, 1882, s. 154 (2).
[3] Lawson *v.* Reynolds (1904), 1 Ch. 718.

The Lord Mayor or an alderman of the City of London has local jurisdiction over the area of the City of London, and has the powers, when sitting alone at the Guildhall or Mansion House, of a Court of Summary Jurisdiction and a Court of Petty Sessions, and has power to do any act which ordinarily requires two Justices.

Extension of Jurisdiction.—Formerly an offender had to be proceeded against and tried in the county in which the offence was alleged to have been committed. Now, by section 11 of the Criminal Justice Act, 1925, a person charged with any indictible offence may be proceeded against, tried and punished in any county or place in which he is apprehended, provided that—

(1) if it appears to the examining magistrate that the accused would suffer hardship if he were tried in that county, or

(2) if the accused applies to the Justices to discontinue proceedings on account of hardship,

he must be sent for trial to the county or place in which the offence was committed.

Magistrates have power to summon witnesses from any part of England or Wales, and a warrant or a summons issued by a single magistrate on his own responsibility can be executed anywhere in England or Wales.

CHAPTER II

DISQUALIFICATION OF MAGISTRATES

MAGISTRATES may be personally disqualified either generally or from dealing with particular cases or special classes of cases.

Bias and Interest.—Apart from Statute, a magistrate is bound by the general law of the land to refrain from taking part in any case in which there might be grounds for supposing him to be actuated by motives of self-interest or bias, such as a matter in which he is individually interested or where he is personally related to one of the parties, or where he has already given any advice. Bias denotes prejudice, and is presumed to exist wherever the person concerned has, in fact, an interest in any given dispute, however slight, although, in fact, a man may be interested in a matter without being personally prejudiced.[1]

Where a Justice can be shown to be interested, even to a very small extent, a conviction or order to which he is a party will be quashed by the High Court, unless the parties to the proceedings knew of the interest and raised no objection[2] at the time of the hearing. For a conviction or order to be upset it is not necessary to prove, as a rule, the actual existence of bias, so long as it can be shown that the Justice is so far affected as to render the existence of bias a possibility. Whenever he knows of the existence of such a possi-

[1] Stone's *Justices' Manual*, 60th ed., 173.

[2] R. *v.* Hammond (1863), 9 L.T. 423, where a conviction was quashed because one of the magistrates was a shareholder in a railway, and the charge was that of defrauding that railway by travelling without a ticket.

bility, it is the duty of a Justice to disclose his position at the outset, and unless the objection to his sitting is expressly waived, to take no further part in the proceedings and to withdraw from the Bench. The strictness of the rule is exemplified in a judgment recently delivered by the Lord Chancellor in the House of Lords, where he says : " If there is one principle which forms an integral part of English law, it is that every member of a body engaged in a judicial proceeding must be able to act judicially ; and if a member of such a body is subject to a bias (whether financial or other) in favour of or against either party to the dispute, or is in such a position that bias must be assumed, he ought not to take part in the decision or even to sit upon the Tribunal."[1]

An advocate appearing in any proceeding has no right, where bias or interest may be presumed, to be silent as to its existence if known to him at the time. His silence may be construed as a consent to the Justice in question acting, if it can be shown that the circumstances were known to him.[2] The rule as to the possible existence of bias, if carried too far, might impede the administration of justice by emptying the Bench and wasting the time of the Court. Accordingly, in some cases the legislature has to some extent relaxed this rule, as will be seen later. There have also been decisions on the subject which permit a greater elasticity than was at first allowed. To these reference will also be made.

It has been decided that mere membership of a Society, affiliated to the Society which is prosecuting, will not be sufficient to disqualify a magistrate from acting, or if he has acted, to upset the proceedings. In a charge of cruelty to animals, objection was taken to a Justice on the ground that he was a subscriber to a local Society for the Prevention of Cruelty to Animals. This was held not to be a disqualification[3] as the prosecution was initiated, not by the local branch, but by the Head Office of the Society in London.

[1] From United Breweries Co. *v.* Bath J.J. [1926] A.C., 586 at., p. 590.

[2] R. *v.* Henley (1892), 1 Q.B., 504.

[3] R. *v.* Deal, J. J. (1881), 46 J. P., 71.

When a magistrate retires from a case he ought not to remain on the Bench, or to interfere in the case at all, but in order to avoid the appearance of partiality he should leave the room.[1]

Even where a Statute allows certain interested persons to adjudicate in general (*e.g.* members of Corporations who have nothing to do with the case in question), the proceedings will be upset on proof of actual bias.

On the other hand proof that a man holds strong and bigoted opinions on the matter in dispute is not enough to disqualify him from sitting on the Bench,[2] *e.g.* a man who objects to all motor-cars in general is not disqualified from deciding cases involving breaches of the Motor Car Acts.

Statutory Exceptions.—There are, moreover, certain statutory exceptions to the rule of law that the presence of Justices on the Bench, who have an interest in the matter to be decided, vitiates the decision :—

(1) A Justice who is a ratepayer may sit on the Bench in a rating case.[3]

(2) A Justice is not disqualified from adjudicating in a case under the Salmon Fishery Acts on the ground of his being a Conservator or member of a Board of Conservators, or member of a Society for the protection of fish, provided that the offence is not alleged to have been committed on his own land.[4] (Nevertheless, it would be imprudent for a magistrate, who was a member of the Fishery Board, which had initiated the prosecution, to take part in the proceedings on the Bench.[5])

(3) No Justice is disqualified from hearing matters

[1] R. *v.* Meyer (1875), 1 Q.B.D., 173 ; R. *v.* J.J. of Hertford (1845), 6 Q.B, 753.

[2] *Ex parte* Wilder (1902), 66 J.P., 761.

[3] Justice of the Peace Act, 1867, s. 2. The chairman of a local board who had initiated a prosecution was held to be disqualified. R. *v.* Lee (1882), 9 Q.B.D., 394.

[4] Salmon and Fresh-water Fisheries Act, 1923, s. 76.

[5] R. *v.* Henley (1892), 1 Q.B., 504.

arising out of the Municipal Corporations Act, 1882, by reason only of his being liable to the borough rate.[1]

(4) A Justice is not disqualified for any purpose under the Licensing Acts on account of the fact that he is interested in a railway company, which is a retailer of intoxicating liquor.[2]

(5) A Justice is permitted to act in parish matters generally even though he pays the Poor Rate.[3]

(6) Under the Gas Act, 1871, a man who pays gas rent can adjudicate in a gas case.[4]

(7) By the Public Health Act, 1875, a Justice can adjudicate in a case although a member of a local authority, or a ratepayer, or liable to contribute to, or share in any fund into which penalties may be paid.[5]

These enabling Statutes are of no avail if actual bias be proved, *e.g.* in a case under the Salmon Fishery Act, 1865, where it was shewn that a Justice who was a riparian owner had attended a meeting of owners at which a prosecution was agreed upon, and had afterwards sat and heard the case, the conviction was quashed.[6]

Statutory Disqualification.—In certain cases, on the other hand, a Justice is disqualified by Statute from acting because he is a member of a particular class, and this rule extends in some instances to one who is a relative or even connected by marriage with a member of that class. Persons so disqualified are forbidden to adjudicate in certain cases, and it is doubtful whether they can act even when both parties consent to their doing so.

This depends upon whether the Statute in question is merely declaratory of the Common Law, or whether the Statute creates a new disqualification, thereby changing the

[1] Municipal Corporations Act, 1882, s. 158.
[2] Licensing (Consol.) Act, 1910, s. 40 (5).
[3] Justices Jurisdiction Act, 1742, s. 1.
[4] Gas Works Clauses Act, 1871, s. 46.
[5] Public Health Act, 1875, s. 258.
[6] R. *v.* Henley (1892), 1 Q.B., 504.

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law. In the first case a Justice is capable of acting provided both parties acquiesce. In the latter case the prohibition is absolute. Instances of the latter class of Statute are the following :—

(*a*) The Factory Act, 1901, forbids the occupier of a factory, his father, son or brother from adjudicating on a charge of an offence against the Act in that factory.[1]

(*b*) Under the Bread Act, 1836, no miller, mealman, or baker can adjudicate in a case controlled by the Act, and where a person so disqualified has adjudicated, though the conviction may be valid, he can be sued by a Common Informer for a penalty of £100.[2]

(*c*) The Hosiery Act is a peculiar Statute. While it does not forbid those engaged in the trade from adjudicating in a matter within the Act, there must be at least one member of the adjudicating magistrates who is not engaged in the manufacture, trade or employment of hosiery, nor the father, son or brother of any person so engaged.[3]

(*d*) Excise officers cannot adjudicate in any Excise case. Traders in excisable articles, on the other hand, are only disqualified when the case concerns their own particular trade.[4]

(*e*) Under the Railway Clauses, Companies Clauses and Lands Clauses Acts no interested person can adjudicate.[5]

(*f*) In cases relating to Trade Unions no employer in the trade to which the Act relates, nor his father, son or brother can act.[6]

(*g*) The Licensing Act, 1910, provides that no partner or even shareholder in a brewery concern, no distiller, maker of malt, or retailer of malt, or any intoxicant in the

[1] Factory Act, 1901, s. 144.
[2] Bread Act, 1836, ss. 15, 24.
[3] Woollen Manufactures Act, 1843, s. 25.
[4] Excise Management Act, 1827, s. 68.
[5] Railways Clauses Act, 1845, s. 3 ; Companies Clauses Act, 1845, s. 3 ; Lands Clauses (Consol.) Act, 1845, s. 3.
[6] Trade Unions Act, 1871, s. 22.

licensing district, or district adjoining, can sit on the Bench, or form one of a Licensing Committee,[1] or even take part in the election of the Licensing Committee.[2]

Under the same Act a Justice who took part in the hearing of an application for the renewal, transfer or special removal of a licence cannot take part in an appeal to Quarter Sessions.[3]

The statutory prohibition does not extend so as to disqualify an avowed opponent of the liquor trade, but he may become disqualified under the general law. Thus, a member of a temperance society was held to be disqualified from adjudicating on an application for the renewal of a licence, where he had attended a meeting at which a resolution was passed to oppose the granting of that particular licence.[4]

(*h*) The Coal Mines Act, 1911, provides that no owner, agent or manager or employée of a mine, or the father, son, brother, father-in-law, son-in-law, or brother-in-law of such owner, etc., may act as a member of a Court dealing with a coal mine case, unless the parties consent.[5]

[1] Licensing (Consol.) Act, 1910, s. 40.

[2] Att.-Gen. *v.* Willett (1896), 60 J.P., 643.

[3] Licensing (Consol.), 1910, s. 29 (7). This does not prevent a Justice who has referred a licence to Quarter Sessions for compensation from sitting on the Compensation Committee if he is a member of it. Licensing Rules, 1910, r. 17.

[4] R. *v.* Fraser (1893), 57 J.P., 500.

[5] Coal Mines Act, 1911, s. 103. A checkweigher is also excluded.

CHAPTER III

LIMITATION OF JURISDICTION

Bona fide Claims of Legal Right or Title.—Where proceedings are brought before magistrates and the defence is set up that the act complained of was done in pursuance of some legal right, the Bench must not adjudicate. In technical language, their jurisdiction is said to be " ousted " by the claim. Before, however, declining to act, the Bench should hear sufficient of the case to satisfy them that the claim is not a frivolous one, and that the accused fully believed that what he did was not legally wrong.

They are not in any way bound to accept the evidence of the accused, and they can, if they think fit, adjourn the case for further evidence. Where the Bench consider the claim has not the stamp of truth, or is frivolous, or concocted as an afterthought, they can reject the claim.

The fact that others have done similar acts to that complained of with impunity is not a defence, unless it is put forward in support of a genuine claim of right.

But, on the other hand, the Bench cannot convict or make an order where there is reasonable doubt as to the existence of a claim of right, and though they may hear evidence, they cannot in such a case give judgment.

No claim of right can justify the commission of a crime, and therefore, when a charge is made, say of an assault (other than one of a merely technical nature), the hands of the Bench are not tied, and they must adjudicate. The claim of right set up must be one of a legal nature, *i.e.* such as a Court of Law will recognise. Of the *bona fides* of the defendant the Justices are the sole judges, and when they have exercised their discretion in a reason-

able manner, this will not be interfered with by the High Court.[1]

Where *mens rea* (guilty mind) is necessary to constitute an offence, an honest claim of right, however groundless in law, will frustrate a summary conviction by the Justices, but where it is not a necessary ingredient the person who sets up a claim of right must show some legal foundation for its assertion.[2]

Instances of Claims of Right.—(1) *Fishing*.—A claim of right may be raised in charges of fishing in private water whenever the accused may honestly, though mistakenly, believe that he had a right to fish in a particular place.

(2) *Game*.—In the case of a prosecution under the Game Act, 1831, a *bona fide* claim of right is held to deprive the Bench of its right to adjudicate.[3]

(3) *Obstruction to Highways*.—Justices must give effect to a claim of right to remove an obstruction from an alleged highway or private way, where the real question for decision is the existence or non-existence of the way alleged.[4]

Again, on a summons for non-repair of a highway, if the obligation to repair be disputed the Justices cannot inquire into the matter, and have no jurisdiction to convict.[5]

(4) *Pound Breach*.—A claim of right in regard to fences and boundaries is sufficient to oust the jurisdiction in Pound Breach cases.

(5) *Malicious Damage*.—Where the party charged acts under a fair and reasonable supposition that he had a right to do the act complained of, there can be no conviction under the Malicious Damage Act, 1861.[6]

[1] *Ex parte* Smith (1890), 7 T.L.R., 42.

[2] Per Lindley J. in Watkins *v.* Major (1875), L.R. 10 C.P. 662. *Mens rea* need not be shewn in cases where particular acts are in terms prohibited by Statute.

[3] Adams *v.* Masters (1871), 35 J.P. 292.

[4] Usher *v.* Luxmore (1890), 54 J.P. 405.

[5] Highways Act (1835), s. 94; Ex parte Walker (1899), 43 Sol. Jo. 333.

[6] Malicious Damage Act, 1861, s. 52. See Usher *v.* Luxmore, *supra*.

Autrefois acquit, Autrefois convict, Res Judicata.—As no man can be punished twice for the same offence when called on to plead to a charge, he can, besides the ordinary pleas of "guilty" or "not guilty," set up the plea of "autrefois acquit" if he has been already charged on the same facts and found not guilty. He may also plead "autrefois convict" if he has already been found guilty and dealt with suitably.

In every case where such a plea is entered the Justices must inquire into the facts upon which it is founded, and, if they find the defence proved, must acquit the accused.

In general, the test—though not an infallible one, is, "Does the same charge fit both offences?" If it does, it is the same crime.[1] The same crime may constitute two offences in law, *e.g.* one and the same act may be an assault and also a highway offence. But the offence remains the same, and a conviction for an assault under the Highways Act, 1835, can be pleaded successfully against subsequent proceedings under the Offences against the Person Act, 1861.[2]

It has been decided that a conviction for a common assault is a successful defence to subsequent proceedings for unlawful wounding.[3] Needless to say, the converse would also be true. But in every such case in order to succeed the defendant must show that the offences charged are in substance the same.[4]

To be a bar to a fresh charge the original conviction or acquittal must be valid and effective.

Where, therefore, the trial before the magistrates has been regular, and has resulted either in a conviction or a dismissal of the charge, the matter cannot be re-opened. Where, however, the first proceedings have been irregularly instituted so that the whole trial has been abortive, *e.g.* where proceedings have been instituted by a private person, which

[1] R. *v.* Tonks [1916], 1 K.B. 443.

[2] Wemys *v.* Hopkins (1875); L.R. 10 Q.B. 378, where a driver of a carriage was convicted, under the Highways Act, 1835, of striking a horse ridden on the highway, causing damage and hurt to complainant. He could not afterwards be convicted of unlawfully assaulting the complainant.

[3] R. *v.* Elrington (1861), 31 L.J.M.C. 14.

[4] Bannister *v.* Clarke (1920), 3 K.B. 598.

ought to have been instituted by a Police Officer, but no certificate of dismissal has been given, fresh proceedings have been allowed.[1]

Where one Court having jurisdiction over a case decides it, another Court cannot re-open the matter afresh, *e.g.* a claim for wages by a servant having been decided by a County Court, the matter cannot be again raised before the Justices.[2]

When the defendant has successfully defended a charge, he may apply to the Justices for, and they can at their discretion grant him, a certificate which will be a bar to all proceedings, civil or criminal, on the same grounds. The mere production of the certificate is, in itself, an answer to fresh proceedings. The certificate ought in no case to be arbitrarily withheld if asked for. In cases of assault which are dismissed on their merits either because the case is not proved or because the facts are too trivial to warrant a conviction, a certificate of acquittal must be granted as of right.[3]

Offences Committed Abroad.—English Tribunals cannot, at Common Law, take cognisance of offences committed by British subjects or foreigners abroad, and no person can be prosecuted in England for such an offence unless a Statute sanctions the prosecution.[4]

There are, however, certain statutory exceptions giving magistrates jurisdiction.

The following are the principal offences committed outside the United Kingdom which can be punished in English Criminal Courts, namely :—

(1) Treason and misprision of treason.[5]

[1] Foster *v.* Hull (1869), 33 J.P. 629.
[2] Routledge *v.* Hislop (1860), 24 J.P. 148.
[3] Offences against the Person Act, 1861, s. 44.
[4] Russell on Crimes, 1, 27.
[5] Misprision of treason is where a man knows that treason has been committed and conceals the same from the authorities See also 35 Hen. VIII, c. 2, s. 1. R. V. Lynch (1903), 1 K.B 744.

(2) Murder[1] on land outside the United Kindgom by a British subject.

(3) Manslaughter[2] with the same limitation.

(4) Offences against the Dockyards Protection Act, 1772.[3]

(5) Offences against the Foreign Enlistment Act, 1870.[4]

(6) Offences under the Commissioners of Oaths Act, 1889, and also under the Foreign Marriages Act, 1892; and the Marriage with Foreigners Act, 1906.

(7) Offences against the Slave Trade Acts, and as to kidnapping Pacific Islanders.[5]

(8) Forcing seamen of British ships ashore in a foreign port.[6]

(9) Discharging British seamen in a foreign port otherwise than is permitted by the Merchant Shipping Act.[7]

(10) Leaving seamen behind in a foreign port without authority of British Consul.

(11) Offences under the Explosives Substances Act, 1883.[8]

(12) Offences under the Official Secrets Act, 1911.

(13) Offences under the Perjury Act, 1911 (s. 8).

(14) Bigamy by a British subject[9] outside England or Ireland.

(15) Offences committed abroad by a master or seaman employed on a British ship.[10]

Aliens cannot be tried in English Courts for offences committed abroad, unless they are pirates or members of

[1] Offences against the Person Act, 1861, s. 9.
[2] *Ibid.*
[3] 12 Geo. III, c. 24, s. 2.
[4] See sections 16 and 17, and R. *v.* Jameson (1896), 2 Q.B. 425.
[5] Pacific Islanders Protection Acts, 1874 and 1875.
[6] Merchant Shipping Act, 1906, s. 43.
[7] *Ibid.*, s. 36 (1).
[8] Sec. 7 (3).
[9] R. *v.* Earl Russell (1901), A.C. 446, tried and sentenced for bigamous marriage in foreign country.
[10] Merchant Shipping Act, 1894, s. 689.

the crew of a British ship, or have been such members within three months of the committal of the crime.[1]

Receiving or having in possession in England goods stolen outside the United Kingdom is punishable in England.[2] So also is posting a libellous document from a foreign country to England if the libel is a criminal offence in the country concerned.[3]

Limitations of Time for commencing Proceedings.—In all summary cases where no time is specially limited for making any complaint, or laying any information, proceedings must be commenced within six months from the time when the matter of complaint arose.[4]

This rule must be most rigidly observed, for after the expiration of the time limited for taking proceedings, Justices have jurisdiction neither to issue a warrant or a summons. In every case the particular Statute regulating the time for commencing proceedings must be considered.

Apart from this rule, a limitation of time has been fixed by Statute in regard to a number of offences, a list of which will be found in Appendix B.[5]

Other Limitations of Jurisdiction.—Besides the limitation as to the time within which proceedings must be taken to enable the Justices to have authority to adjudicate, there are also the following limitations :—

(*a*) as to the number of magistrates forming a quorum ;
(*b*) as to the nature of the offence ;
(*c*) as to the value of the claim.

(*a*) To form a quorum there must be at least two magistrates sitting on the Bench of County or Borough Petty Sessions qualified to adjudicate, though one magistrate may issue a summons or a warrant.

[1] Merchant Shipping Act, 1894, s. 686.
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[3] R. *v.* Johnson, 7 East 65.
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[5] See p. 202.

In the case of stipendiary magistrates, Metropolitan Police magistrates and the Lord Mayor and aldermen of the City of London, each one has the full power of a Petty Sessions.

(*b*) Certain offences may be disposed of by the Court of Summary Jurisdiction, other offences must be sent to the Quarter Sessions or to the Assizes for trial.

(*c*) The amount in dispute must sometimes be considered before the case can be dealt with,[1] *e.g.* :—

(1) Under the Employers' and Workmen's Act, 1875, the value of the matter in dispute must not exceed £10.

(2) Under the Metropolitan Police Acts, magistrates may order goods unlawfully retained to be restored if the value does not exceed £15, and compensation may be awarded in some cases not exceeding £10.

(3) Under the Lands Clauses Acts compensation for land claimed may be dealt with, provided it does not exceed £50 in value.

(4) By the Mail Ships Act, 1891, a fine not exceeding £50 may be recovered on Summary Conviction.

(5) Under the Small Tenements Act, 1838, recovery of a tenement can be granted when the rent does not exceed £20 per annum.

Fiat of the Attorney-General.—One other class of limitation remains to be considered. There are certain offences in regard to which a prosecution lies only when such is commenced with leave of the Attorney-General as principal Law Officer of the Crown. A list of these offences will be found in Appendix D.[2]

Before dealing with any case coming within this category, magistrates must be careful to ascertain that the necessary authority has been obtained, and that it is produced in Court.

[1] See pp. 178–185.
[2] See p. 208.

CHAPTER IV

EVIDENCE

Evidence Generally.—*Preliminary.*—It cannot be too strongly emphasised that Justices who have to decide any matter, whether civil or criminal, are acting in a judicial as well as in a personal capacity. On the Bench they are the representatives of the Crown, and as such are bound to put aside personal feeling or prejudice, and to decide the issue before them on the evidence adduced, and upon that alone. In *no* case should a magistrate allow representations to be made to him except in open court, by any person or persons, whether parties to a pending proceeding or not. Such persons should be informed that the matter cannot be discussed except in open court.

The only exception to the rule that a Justice must act on evidence, is in the case of licensing Justices, who are entitled to use facts within their own knowledge, provided that they act on them with discretion and impartiality.

It is, therefore, of the utmost importance that all magistrates should acquire some knowledge of the rules of evidence which obtain in English Courts of Justice.

Kinds of Evidence.—There are three kinds of evidence, viz. :—

(1) Oral evidence of witnesses given in Court.

(2) Documentary evidence, consisting of marks or writing on a permanent substance, be it paper, a wall, or other material, made at or before the trial.

(3) Evidence of things produced in a Court of Justice, which are known as Exhibits, *e.g.* a knife, or an instrument bought or hired to effect a burglary, which is

identified by a witness as the instrument used for breaking-in.

Thus the fact of a burglarious instrument being found in A's possession may be strong evidence against him when he is charged with burglary.

Evidence of things cannot stand alone, and requires for its support the evidence of a person. Similarly, documentary evidence must, *as a general rule*, be produced and identified by a person who can, if necessary, be cross-examined as to its custody and identity.

A.—MATTERS TO BE PROVED

General.—Before dealing with the rules of evidence we proceed to consider what matters require to be proved in order to support a case. Such matters may be divided under the headings of " Facts in Issue " and " Relevant Facts."

" *Facts in Issue* " are those facts by which either party to a proceeding must stand or fall.

In a criminal case, "Facts in Issue" are those facts which, taken together, are essential to constitute the crime, or such as may constitute a defence to the charge.

In a larceny case the following facts may be Facts in Issue :—

(1) That A was found by B in possession of B's sheep.

(2) That A was seen by C driving B's sheep along the road.

(3) That A, when arrested by D, the constable, gave a false explanation of how he came by the sheep.

"*Relevant facts* " are facts which form part of the chain of events leading up to the Facts in Issue, or which throw light upon those facts either by way of explaining or diminishing their importance. Thus, when A is charged with stealing money from his employer's safe, his possession of a duplicate key, and his opportunities of access to the safe, when nobody was about, may render his guilt possible, or, combined with other facts, probable or even certain.

Facts shewing preparation or motive for an act are relevant. Evidence of subsequent conduct showing consciousness of guilt, is also relevant. The conduct of a prisoner before the crime often assists in establishing his guilt or innocence, as showing that he was either preparing or intending to commit it, or would have no interest in doing so. His subsequent conduct may also be relevant and of the greatest value, *e.g.* when money has been stolen from an office, the disappearance of a confidential clerk who has opportunities of stealing it, is strong, though not conclusive, evidence of his guilt.

Evidence of similar facts.—As a general rule, evidence may not be given of any matters outside the transaction with which the Court is dealing, and this applies with special force in criminal cases. Certain exceptions to this rule are, however, admitted :—

(1) Where a number of acts form part of one transaction, evidence respecting the whole of such acts may be given in support of a charge relating to one act only.

(2) Evidence may be called to prove a system, design or intent, *e.g.* on a charge of uttering counterfeit coin, it may be shown that the accused has uttered counterfeit coin on other occasions, because guilty knowledge is of the essence of this offence.

(3) To rebut some defence which has been put forward by the accused. In a well-known case where a prisoner was accused of murdering his wife by administering arsenic, evidence was admitted showing that he had administered arsenic to another person in order to rebut a defence that the poison was in his possession for an innocent purpose, namely for use as a weed-killer.[1]

Apart from the above-named exceptions, evidence may not be given upon a criminal charge which tends to show that the accused person has been guilty of other crimes, and is therefore *likely* to have committed the one now charged.

Presumptions.—The administration of the law is subject to certain principles, which are known as Presumptions. They

[1] R. *v.* Armstrong (1922), 2 K.B. 555.

have a somewhat similar authority to that enjoyed by the axioms of Euclid.

Ordinary presumptions (termed presumptions of fact) are simply inferences which a reasoning man draws from given facts quite irrespective of their legal consequences or effects. This kind of presumption can be disputed, or in legal language is rebuttable.

Another kind of presumption is known as a "presumption of law," because the law lays down that a particular inference is to be drawn from a given fact. Legal presumptions are either conclusive and not rebuttable, *e.g.* that a child under seven is incapable of crime, or rebuttable, *e.g.* that a deed over thirty years old and produced from the proper custody is perfectly regular. Legal presumptions differ from natural presumptions in this, that they consist of inferences drawn by the law and not by the tribunal. The following presumptions of law should here be noted :—

(1) A person who is not a lunatic, idiot or imbecile is presumed to know the natural consequences of his act, and to have intended to do that act. Even lunatics who know the difference between right and wrong have been deemed to have intended the consequences of their actions.

(2) A man is presumed to be innocent of a crime till he is proved to be guilty of it beyond all reasonable doubt.

(3) A child born in lawful wedlock is legitimate, and this presumption can only be disputed by proof of non-access of the husband to the wife.

(4) Where persons hold themselves out as a married couple, and are believed by their friends and neighbours to be married, they are deemed to be married until there is proof to the contrary.

(5) A document which has been proved is presumed to have been executed on the date it bears.[1]

(6) In the absence of contradictory evidence, alterations and interlineations in a deed or agreement are presumed

[1] Stephens' *Digest of the Law of Evidence*, Art. 85.

to have been made before that written document was signed.[1]

(7) On the contrary, alterations and interlineations in a will or codicil are presumed to have been made after the will or codicil was executed.[2]

(8) Every formality respecting the execution of a document is presumed to have been duly observed till the contrary is shewn, *e.g.* it is presumed that a will has been signed by the testator in the usual way and regularly attested. Here the Courts will treat the will as valid till the contrary is shewn.[3]

(9) A deed thirty years old produced from the proper custody is treated as genuine till proper evidence is given in disproof of its genuineness.[4]

(10) When a stamped document is produced, and the stamp appears to be correct, the document is presumed to have been stamped within the proper time.[5]

Burden of Proof.—In a criminal case it is a general principle of law that the initial burden of proof is always on the prosecution. In accordance, however, with certain statutory provisions it may, in the course of the trial, shift to the accused. Thus, where a man is charged under the bankruptcy laws with certain offences connected with his bankruptcy, once the prosecution have established that the Statutes have been infringed, the onus of proving that what he did was done without intent to defraud is laid upon the accused person. Similarly, where a man under the age of twenty-three is charged with carnal knowledge of a girl under sixteen, the onus is cast upon him of proving that he had reasonable grounds for believing her to be above that age.

[1] Tatum *v.* Catomor (1851), 16 Q.B. 745.
[2] Simmons *v.* Rudall (1851), 1 Sim (N.S.) 136.
[3] Hall *v.* Bainbridge (1848), 12 Q.B. 699 at p. 710.
[4] Stephen's *Digest of the Law of Evidence*, Art. 88.
[5] *Ibid.*, Art. 86.

B.—METHODS OF PROOF

(*a*) Parole Evidence. (i) *Competency of Witnesses.*—Every person who is of sound understanding and can appreciate the obligation to give true evidence is now a competent witness in a Court of Law. There are, of course, certain persons whose testimony in the nature of things cannot be received. These are :—

(1) Lunatics or idiots.

(2) Children so young as to be without the intelligence necessary for the purpose of giving evidence.

(3) Deaf and dumb persons who are unable to communicate even by signs.

(4) Persons who are suffering from a temporary aberration, such as drunkenness or illness affecting their understanding.

The competency of certain witnesses again is subject to limitations. A husband cannot give evidence against his wife, nor a wife against her husband, except in certain cases.

At Common Law a wife could always give evidence against her husband where she was herself the victim of an assault by him. By Statute she may give evidence in the following cases :—

(1) Cases under the Vagrancy Act, 1824 (for neglect or desertion of a wife).

(2) Cases under the Offences against the Person Act, 1861, sections 48–55 (charges of rape and the like).

(3) Cases under the Married Women's Property Acts.

(4) Cases under the Criminal Law Amendment Act, 1885 (offences against women and girls).

(5) Cases under the Punishment of Incest Act, 1898.

(6) Cases under the Children's Act, 1908, Part 2 (neglect, etc., of children).

(7) Cases under the Mental Deficiency Act, 1913, section 56 (offences against defective girls).

A prisoner cannot be called as a witness for the prosecution against a fellow-prisoner charged in the same indictment. If, however, he elects to give evidence on his own behalf, and in so doing bears testimony which tells against his fellow-prisoner, such testimony may be received as evidence against the other prisoner, but requires corroboration in accordance with the rule as to evidence of accomplices.[1]

Child of Tender Years.—Where a child of tender years is produced as a witness, and in the opinion of the Justices is unable to appreciate the nature of an oath, he or she may, in certain cases, be permitted to give evidence unsworn,[2] but it is provided by Statute that no person can be convicted on such evidence unless it be corroborated in some material particular by sworn evidence.[3]

(ii) *Hearsay Evidence.*—"You must not tell what the soldier or any other man said—it's not evidence."[4]

In addressing these words to Sam Weller, Mr. Justice Stareleigh was referring to the well-known rule that a man can only testify as to matters which he has himself perceived through his senses of sight, touch, smell, taste or hearing. A witness cannot, in general, give evidence as to what others have perceived, or said, or, unless called as an expert, as to his opinion of the proper inference to be drawn from what he or some other witness has experienced.

The law says that the best evidence must be produced or its absence accounted for.

To the rule forbidding the reception of hearsay evidence there are several exceptions, viz. :—

(1) A dying declaration.

[1] See p. 38.

[2] Criminal Law Amendment Act, 1885, s. 4. Children's Act, 1908, s. 30. Criminal Justice Administration Act 1914, s.28 (2).

[3] It should be noted that where on a charge of assault made by a child against a man, evidence of the complaint is admitted, such complaint does not constitute corroboration required in law.

[4] Bardell *v.* Pickwick. *Pickwick Papers*, chap. 33, p. 367. (Original edition.)

(2) Sick-bed deposition.
(3) Declarations accompanying acts.
(4) Complaints.
(5) Declarations against interest.
(6) Declarations in course of a person's duty.
(7) Declarations as to pedigree.
(8) Declarations as to Public and General rights.
(9) Evidence in former proceedings.
(10) Proof of Custom.
(11) Confessions and Admissions.

(1) *A Dying Declaration*.—This term is used to denote a statement made by an injured person, who subsequently dies, and is only available in charges of murder or manslaughter; it must relate to the cause of death, and must have been uttered in the "settled, hopeless expectation of the same at a time when the injured person has given up all hope of recovery." The reason for its admissibility is that a man fully expecting to go into the presence of his Maker is not likely to lie.

Death-bed confessions of crime have no weight in law, and are not received[1] unless they are admissible on some other ground.

(2) *Sick-bed Depositions*.—When an injured person desires to make a statement as to his injuries, a Justice should take a bedside deposition, which is admissible provided that the statutory requirements dealt with later have been satisfied.[2]

Such a declaration must be signed by the sick man and the magistrate, and the accused must have notice so that he or his legal representative may attend and cross-examine should they desire to do so. Such a declaration by a person since deceased has the validity of a deposition, but must in no case be confused with the dying declaration already referred to.

(3) *Declarations accompanying Acts*.—Evidence of acts,

[1] *Gray's Case*, 1841, Irish Circuit Reports, p. 76.
[2] See post, p. 92.

declarations and incidents which accompany, or explain the matter in question, is admissible, if in legal language it forms part of the *res gestae* (*i.e.* of the general circumstances concerning the act related by the witness). For example, things or matters relevant to the facts in issue between the parties (that is, so bound up with them that they are, in fact, inseparable) are admitted because they may emphasize or diminish their significance. The cries of a mob before or during a riot,[1] or the cries of a woman being ravished, are admissible as *res gestae*.

(4) *Complaints*.—As a rule, what is said in the absence of an accused or interested party may not be given in evidence. Exceptionally, complaints of rape or indecent assault made by girls, women and young boys, may be admitted if made at the first opportunity. These complaints must not be regarded as corroborating the accusation, but merely as shewing the consistency of the story told by the person outraged. It is for the Bench to say whether the complaint or complaints were made within a reasonable time, and to a person or persons to whom it was natural that they should be made. Otherwise the terms of a complaint must be excluded, although the fact that a complaint was made is always admissible in evidence.

A complaint as to an indecent assault in answer to a question put by a little playmate in the absence of the prisoner was admitted to shew that the little girl who was assaulted was telling a consistent story.[2]

The bodily feelings of a deceased person may be proved by statements he or she made to a living person, especially if they relate to a malady the deceased suffered from.[3]

(5) *Declarations against Interest*.—Declarations made by dead persons against their interest, either with reference to

[1] Best on *Evidence*, 12th ed., 417; R. *v.* Lord George Gordon (1781), 21 How. St. Tr. 535.
[2] R. *v.* Osborne (1905), 1 K.B. 551.
[3] R. *v.* Johnson (1847) 2 Car. and K. 354.

their money or their property, are admissible on this ground. An entry by a dead midwife that she had been paid for a confinement was held good evidence.[1]

(6) *Declarations made in Course of a Person's Duty.*—A statement by a deceased person in the course of his duty may be given in evidence after proof of his death has been given, but its admissibility is confined to those facts which it was his duty to record. Thus, where in a certificate of baptism the date of the birth of a child was recorded, it was held impossible to prove that particular date in this manner, the duty of a clergyman being to record not birth, but baptism.[2] The duty need not be a public duty, business entries having in many cases been admitted in evidence. The leading case on the subject is an old one, where it was held that an entry by a deceased drayman of the delivery of beer was admissible, though, of course, not conclusive evidence of its delivery.[3]

In a much more recent case entries made by a deceased surveyor for the purposes of a survey were admitted.[4]

These entries, apart from the limitation already made, must have synchronized with the facts recorded, and they must bear *prima facie* the stamp of truth. It is, however, always open to the other side to shew that the deceased had a motive for making false or misleading entries, and that no weight should be attached to the evidence when it has been admitted.

(7) *Declarations as to Pedigree.*—To be admissible, these statements must have been made by deceased blood relatives or their spouses, and these persons need not purport to make the statements from their own personal knowledge, but from matters of family repute. Thus, in an unreported Chancery case, the eldest daughter of a married couple was allowed to prove the death of a brother who had died before

[1] Higham *v.* Ridgeway (1808), 10 East 109.
[2] R. *v.* Clapham (1829), 4 C. and P. 29.
[3] Price *v.* Torrington (1703), 1 Salk. 285.
[4] Mellor *v.* Walmsley (1905), 2 Ch. 164.

she was born, though her knowledge was confined to what she had heard from her parents and others.

The statements must have been made before any dispute as to pedigree had arisen, or even been contemplated.

The evidence must be confined to matters relating to pedigree, *e.g.* family successions, relationship of one person to another, births, deaths, celibacy, etc., when any question of the succession to property is to be determined. It is, however, unlikely that the newly-appointed magistrate will often, if ever, be called upon to deal with such problems.

(8) *Declarations as to Public and General Rights.*—A public right is a right or privilege common to all British subjects, such as the right to use a road as a highway. Statements of deceased persons as to the existence of such right may be given in evidence. A general right is a right common not to all, but to a considerable number of His Majesty's subjects, such as the right of common belonging to the inhabitants of a particular village or district.

Evidence of such declarations is admissible on proof that the dead person, who made them, had means of knowing that they were true. They may be made in any form.[1]

(9) *Evidence adduced in Former Proceedings.*—Where a person has on a previous occasion given evidence on oath relating to the matter in issue, proof of such evidence may in certain cases be given.[2]

This kind of evidence has been the subject of recent legislation. Section 13 (3) of the Criminal Justice Act, 1925, makes provision for the depositions of absent or even deceased persons being given in evidence at the trial of an accused. [A deposition is a written statement of the evidence of a witness taken in the presence of a magistrate and signed both by the magistrate and the witness at the time it is made.]

Such depositions may be put in evidence when :—

(*a*) The attendance of a particular witness is deemed unnecessary within the meaning of the 13th section of the Act.

[1] Stephen's *Digest of the Law of Evidence*, Art. 30.
[2] *Ibid.*, Art. 32.

(*b*) A witness present at the trial proves that another person, who ought in to have given evidence, is either dead, insane, too ill to travel, or kept away from the Court by the defendant or some person acting on his behalf.

(*c*) It has in every case been proved at the trial, either by a certificate signed by the Justices, or the Clerk to the Justices, or by oath of a credible witness, that the deposition was taken in the presence of the accused, and that the accused or his counsel or solicitor had full opportunity of cross-examining the witness.

(10) *Proof of a Custom.*—Hearsay evidence is admissible when it is sought to shew that a custom was accepted or observed.

The custom or routine of an office can also be proved, *e.g.* evidence that it was the rule to place letters for posting in a certain receptacle may, within a limited extent, go to shew that a given letter was posted on a given day.

(11) *Confessions and Admissions.*—A confession is an admission made at any time by a person charged with an offence from which it may be inferred that he committed it. A confession, if voluntary, *i.e.* made by a person of his own free will without being either intimidated or improperly influenced, is admissible in evidence.[1] A confession is involuntary and inadmissible when given under the influence of any threat, promise or inducement made by one whom the law considers a person of authority in the conduct of the prosecution. For instance, the words, "Tell the truth and it will be better for you," have been held sufficient to render a confession inadmissible. Although a confession may itself be adjudged involuntary and inadmissible, circumstances discovered in consequence of its having been made may, none the less, be evidence against the accused.

The answers given by a bankrupt at his public examination are evidence against him in any subsequent proceedings for a bankruptcy offence.[2]

[1] R. *v.* Thompson (1893) 2 Q.B. 12.
[2] R. *v.* Scott (1856) 25 L.J.M.C. 128.

A confession is not to be considered a forced confession where it can be shewn that the threat or inducement has ceased to operate.[1] Such a confession is relevant and admissible if proved affirmatively to have been made freely and voluntarily.

A confession obtained under a threat of Divine retribution by a clergyman is inadmissible.

The police, the magistrates, a master or mistress, a gaoler or warder are examples of persons in authority, and any extorted confessions made to them by a prisoner are inadmissible.

A confession obtained under promise of secrecy is admissible, even if it be obtained by deceiving the accused, or in answer to questions by a police officer when no caution has been given.[2] Such a confession may be admissible provided that (1) the accused was not at the time in custody, and (2) that the police officer had not made up his mind to arrest him; but Justices should be careful about receiving such evidence.

Once he is in custody, the law scrutinizes with jealous care any attempt to strengthen the case against a prisoner by trapping him into admissions, and in the absence of other and better evidence, admissions obtained in this manner should be disregarded.

Evidence in Conspiracy Cases.—In a case where conspiracy is alleged between two or more persons to commit a crime, or an actionable wrong, whatever is done, written or said by word of mouth by any alleged conspirator in furtherance of the common design can be given in evidence against the rest. This is an exception to the rule, excluding hearsay evidence, but such evidence only becomes admissible when the existence of a common purpose between the accused persons, or between an accused person and some person unknown and not in custody, has been established.

It should be noted, however, that things said or done behind the back of a prisoner before he is alleged to have

[1] R. *v.* Thomas (1836), 7 C. & P. 345.
[2] Stephen's *Digest of the Law of Evidence*, Art. 32.

joined the conspiracy, and in certain cases after he has left it, are inadmissible.[1]

Symptoms.—In both civil and criminal cases, statements made by a person as to his bodily or mental feelings or condition may be admitted in evidence if material to an issue in the proceedings, even though the person against whom it is tendered was not present when the statement was actually made.[2]

(iii) *Special Classes of Witnesses*.—*Accomplices*.—An accomplice is always competent to give evidence against his fellow, and there is no rule of law to prevent the conviction of a prisoner upon his evidence alone. In practice, however, it has been laid down by the Superior Courts that no person ought to be convicted upon such evidence unless it is, in fact, corroborated in a material particular by some independent and trustworthy evidence.[3]

Experts.—Experts are persons who are shewn to have devoted a considerable period of study or time to some science, art or business, science and art meaning in this connection subjects which require special study or special experience.

An Englishman who has studied foreign law, but who is not qualified to practice in the Courts which administer such law, is not an expert. It is necessary to summon a lawyer qualified to practice law in the country in question, and he should produce the foreign law books and explain them. It is for the Court to construe the books.

An expert may give evidence as an ordinary witness, both as to facts which he has perceived through his senses, and as to the inference which he draws from them. A scientific witness may give evidence as to experiments, and a medical witness may give evidence from an examination of the body,

[1] R. *v.* Brandreth (1817), 32 How. St. Tr. 857; R. *v.* Newton (1907), 147 C.C.C. Sess. Pap. 946.

[2] Powell's *Evidence*, 10th ed. 68; Taylor's *Evidence*, 11th ed., par. 590.

[3] R. *v.* Gallagher (1883), 15 Cox C.C. 289; R. *v.* Tate (1908) 2 K.B. 680.

both as to how long a given person has been dead, and what, in his opinion, from the symptoms and examination was the cause of death. An ordinary witness can give evidence as to whether, in his opinion, a man was drunk on a given occasion. Evidence as to the grounds upon which an expert bases his opinion is admissible, and so is evidence to contradict him. If, however, it is desired to counter his evidence by adducing the opinion of another expert, the latter must be called as a witness in the ordinary way. To contradict a medical expert, for instance, it is not sufficient to produce and quote from a volume such as Quain's *Anatomy*, although he may be asked in cross-examination whether he agrees with some statement contained in such a work, and if not, what are his reasons for disagreement.

Evidence of Handwriting.—The fact that a given document is in a given person's handwriting is frequently a matter of opinion.

Anyone who has seen another person write at any time may give his opinion that a document is in the handwriting of that person. A person who habitually has received written replies from a correspondent, in answer to the letters he has addressed to him, may give his opinion as to the handwriting of his correspondent when the letters in reply purport to be signed by the person whose handwriting has to be proved. An expert may give his opinion as to the handwriting of any document,[1] but in view of the errors proved to have occurred in such testimony it should be received with the utmost caution. Similarity in handwriting among uneducated men is common, and even that of the educated may vary according to the position of the writer or the instrument used. An expert is employed to discover similarities between the disputed and undisputed handwriting, and however honest he may be, his judgment may be warped or his imagination stimulated by the desire to

[1] Stephen's *Digest of the Law of Evidence*, Art. 52. See R. *v.* Silverlock (1894), 2 Q.B. 766, where a solicitor was permitted to give evidence of handwriting as one whose skill in comparison of handwriting has been gained in the way of business or profession.

bring to justice one whom he believes, perhaps for quite different reasons, to be a guilty man.

Evidence as to Character.—In criminal cases the prisoner can call witnesses or cross-examine those of the prosecution as to his character, but, strictly speaking, such evidence must not go further than to shew what sort of reputation he bears. Where, however, the prisoner gives evidence of good character, or attacks the character of the witnesses for the prosecution, the Crown can give evidence of bad, and it usually retaliates on the prisoner by proving when possible a previous conviction before the jury have given their verdict. In some cases evidence of a previous conviction can be given before the jury, whether the prisoner has or has not put his character in issue.[1]

In a case of rape, the prisoner may give evidence as to the general reputation of the prosecutrix as a person of dissolute habits, but her answers in reply to the question of whether she has or has not had connection with a particular man other than the accused must be accepted as final, *i.e.* they cannot be contradicted by evidence. If, however, the prosecutrix denies that she on previous occasions had voluntary sexual intercourse with the accused, then her evidence can be contradicted at the trial.

(iv) *Oral Examination in Court before the Magistrates*.—When witnesses are giving evidence for the party who relies on them, their evidence is called "examination-in-chief." After this is completed they can be cross-examined by the opposing party and finally they can be re-examined by the side which summons them in order to elucidate or diminish the effect of their cross-examination. The order of the proceedings will be dealt with in the Chapter relating to "Summary Convictions."[2]

Advocates appearing before magistrates may be either barristers, solicitors or members of the police force; and in rare cases, members of the Civil Service, or the managing clerks of solicitors, are allowed to act, though in practice

[1] See *ante*, p. 27.
[2] See Part II, Chapter 1.

this, unless allowed by Statute, may be forbidden by the Bench as tending to abuses.

In examination-in-chief, leading questions must not be asked, except as to undisputed matters for the purpose of shortening the proceedings, or for the identification of persons or things.

A leading question is one which suggests the answer which an advocate desires to receive.

The putting of " omnibus " questions (*i.e.* questions containing a series of suggestions to which in fairness the witness should be allowed to reply separately) should equally be discouraged.

When a doubtful question is put, it is not necessary for the Bench to interfere, that being the business of the opposite party, but the Bench should be vigilant to protect a prisoner who is ignorant or unrepresented.[1]

A party may not cross-examine or impugn the testimony of his own witness without the permission of the Court. This permission is only given if the witness proves to be hostile. The test of hostility is usually the demeanour of the witness. An artful witness, or one who has been tampered with, whom it is impossible to avoid calling, may thus do his side considerable harm.

Though an advocate cannot without leave treat his own witness as hostile, the Bench may on their own initiative put any questions they consider desirable in the interests of justice. When once permission has been given to treat a witness as hostile who has on a previous occasion made a statement which is inconsistent with his present testimony, he may, after the facts have been brought to his recollection, be cross-examined as to his earlier statement (*e.g.* " You gave evidence at the coroner's inquest on the death of a certain person ? " " Yes." " Did you not say this before him," etc., etc.).

Leading questions may be asked in cross-examination, and the advocate need not confine himself to the transaction under inquiry, but may ask the witness questions calculated to test his accuracy, veracity or credibility, or

[1] Or to curb an irregular advocate.

to shake his credit by injuring his character or shewing that in the matter before the Court he is unlikely to be impartial.

The right to interfere with the cross-examiner, provided that the limits of decency and fairness are not exceeded, is doubtful. No man is, however, compelled to answer any question the answer to which might render him liable to a criminal persecution.

Where the witness under cross-examination is a defendant in a criminal charge, the advocate cross-examining him has not so free a hand.

A prisoner giving evidence on his own behalf may be asked any question in cross-examination, even though it would tend to incriminate him as to the offence charged.

He cannot be asked, or if asked he is not required to answer, any question tending to shew that he had been charged with any offence other than that with which he is then charged, unless the proof that he has committed such offence is admissible to shew that he is guilty of that with which he is now charged, *e.g.* evidence of a previous uttering of false coin by a man charged with a repetition of the offence, to shew guilty knowledge.

When a witness is asked by a cross-examiner a question merely calculated to destroy his credit, he may, of course, not receive a truthful answer, but truthful or not he cannot call evidence to contradict him. The general principle in law is that a witness' answers as to credit are final—the remedy lying in a prosecution for perjury.

Where a witness during cross-examination makes a statement which does not tally with a former statement made by him, the circumstances under which the previous statement was made should in general be brought to his recollection. If he does not distinctly admit making such a statement, proof can be given that he did make it.[1]

A witness who is being examined may refresh his memory by referring to notes, made either by him or another person at his dictation, whilst the transaction was fresh in his memory; but the notes must be handed to the cross-

[1] Judge's *Rules*, 7 C. & P. 676.

examiner or the Bench if demanded, and the witness can be cross-examined thereon.

Cross-examination is at times a dangerous weapon; if questions are asked in cross-examination as to part of a conversation, or as to the contents of a document, the opposing party is entitled in re-examination to elicit the whole of such conversation or to put in evidence the whole document. This may often have a damaging effect on the case.

Questions on re-examination must be confined to facts which explain, or matters which arise out of, answers elicited by cross-examination. When the advocate or the defendant has finished with the witness whom he is examining or cross-examining, he cannot recall that witness again without the leave of the Court. Should the leave be granted and further evidence be given, then the opponent has the right to cross-examine or re-examine as the case may be. When a witness has been examined in reference to an indictable offence, and instead of committing for trial the Bench decide to try the case summarily, the defendant's advocate can demand that a witness be recalled for further cross-examination.[1] He can also, and frequently does, ask leave to reserve his cross-examination until he knows the substance of the case which is being brought against his client.

Corroboration of Witnesses.—As previously stated,[2] the evidence of certain witnesses requires corroboration. In addition to those cases already mentioned, corroboration is required before a person can be convicted of certain specified offences. In a prosecution for perjury, although one witness is sufficient to prove what the prisoner swore or affirmed, two at least, or else one, corroborated in a material particular, are necessary to prove that his testimony was false.

Corroboration is also required in charges of :—

(*a*) Treason (except a charge of attempting the life of the King).

[1] Summary Jurisdiction Act, 1879, s. 27.

[2] See pp. 31 and 38.

(*b*) Personation at elections.[1]
(*c*) Certain offences against women and girls.[2]
(*d*) Exceeding the speed limit in a motor car.[3]

Corroboration of the complainant is also required in proceedings in Bastardy.[4]

In every such case where an indictable offence is being investigated, corroboration should be produced before the magistrates to enable them to commit for trial.

(*b*) **Documentary Evidence.**—*Documents not requiring Proof.*—Certain printed or written documents are accepted in all Courts without proof. These are :—

(1) Commissions and other documents sealed with the Great Seal.

(2) All public statutes and private statutes issued by the King's Printer.[5]

(3) Copies of statutory rules or orders made by a Government Department and printed by the King's Printer.

(4) Documents under the seal of a Court of English Law.

(5) Office copies of proceedings of any English Court of Justice, *i.e.* copies appearing to be sealed with the seal of the Court.

(6) Copies of documents from the Public Record Office certified by the Master of the Rolls or Deputy-Keeper of the Records.

Documents of a Private Nature.—Where documents of a private nature are put in evidence it is necessary to give oral evidence showing that they have come from some place of proper custody. In general, evidence may not be given

[1] Registration of Voters Act, 1843, s. 88.
[2] Criminal Law Amend. Act, 1885, ss. 2 and 3.
[3] Motor Car Act, 1903, s. 9 (1).
[4] Bastardy Law Amend. Act, 1872, s. 4; Cole *v.* Manning (1877) 2 Q.B.D. 611.
[5] Taylor on *Evidence*, 11th ed., 21.

of a copy of a document other than those already mentioned, unless it is shewn that the original is lost, destroyed or the last-known custody was that of the other party (in the latter case " Notice to Produce " must be given to the other party to produce the document before evidence of a copy can be produced). In civil proceedings an original document need not be produced when the opponent admits its genuineness, and as soon as this admission is given a copy can be used for all purposes.

Exceptions to the above rules are made in certain cases in order to obviate the difficulty which would arise were it necessary to bring into Court books of a bulky nature, or books of a public character which it would be difficult or undesirable to produce in their entirety.

Certified copies of the following documents are made evidence without production of the original books :—

(*a*) Public registers of birth, marriage or death.

(*b*) Books of Corporations, Bankers or public companies.[1]

(*c*) Minutes of Local Authorites.[2]

(*d*) Certificates of convictions, but in this case oral evidence must be produced identifying the prisoner named in the conviction.

(*e*) Where it is impossible, as in the case of a tombstone or hoarding to bring the original script into Court, a copy may be used in evidence, but notice of the intention to use such a copy should, where possible, be given to the other party.

Where it is desired to put in evidence copies of private documents, and the necessary notice to produce has been given, the original should be called for at the trial, and if it is not produced a copy may be used. Oral evidence should, however, first be given shewing that the copy is a faithful reproduction of the original document.

[1] R. *v.* Mothersell, 1 Str. 93; Bankers' Books Evidence Act, 1879, ss. 3 and 4.

[2] Local Government Act, 1889, s. 22; Local Government Act, 1893, s. 59.

Ancient Documents, *Maps*, *etc.*—Deeds and other documents thirty years old, and produced from proper custody, are receivable in evidence without further proof. A witness must prove the custody from which it has come. A map is not evidence of the matters recorded in it, except as evidence of hearsay, although ancient maps are from time to time received in evidence to shew the existence of roads, ditches or other features of a similar nature.

CHAPTER V

GENERAL RULES OF PRACTICE

General Powers of Magistrates.—Justices of the Peace sitting in a duly constituted Petty Sessional Court possess jurisdiction both criminal and civil.

As regards criminal cases their functions are exercised in two ways :—

(1) By dealing directly with certain minor offences in pursuance of what is commonly known as Summary Jurisdiction.

(2) By holding a preliminary investigation into cases of a graver nature, which cases can only be finally disposed of by trial with judge and jury.

Magistrates also exercise collectively a civil and criminal jurisdiction as members of the Quarter Sessions. (See Part 2, Chapter 6.) In the exercise of their Summary Jurisdiction magistrates act as judges, and can not only try, but also punish, offenders whom they find guilty, either on confession or on the evidence of witnesses. They can also, by consent, try certain indictable offences when permitted to do so by a Statute. (See page 86.)

The powers of a single Justice are very limited. In the ordinary way (except in the case of the Lord Mayor and Aldermen of the City of London and stipendiary magistrates) a Court of Petty Sessions cannot be constituted without the presence of at least two Justices.

A single Justice can perform a number of ministerial acts which are preliminary to the hearing of a case, and may by Statute adjudicate in certain specified cases. He may, moreover, perform the duty of hearing the charge against

the defendant if he is charged with an indictable offence. His duties in this case, though judicial, are limited to deciding whether there is sufficient evidence to commit the accused for trial. This function is, however, rarely exercised by a single County or Borough Justice.

Information.—The first step in a criminal prosecution is laying an information before a Justice. Though preferably the information should be in writing, yet it may be verbal. It must contain a statement of the specific offences with which the accused is charged, with such particulars as to the time and place as are reasonable and necessary. The statement should be in ordinary language, avoiding technical terms, but if the offence is created by an Act of Parliament, the section of the Statute should be quoted.[1]

Who may lay Information.—Any person may lay an information for a public offence to which a penalty is attached, unless the Statute concerned limits the class of informants. The informant may appear in person or by counsel or by solicitor.

Consent of the Attorney-General, etc.—In some cases proceedings may not by Statute be commenced without the authority of the Attorney-General or the Director of Public Prosecutions. (See list of such Statutes in Appendix D., p. 208.)

Limitation of Time.—The time within which proceedings must be commenced has been limited by Statute in some cases; in all other cases the period is limited to six months from the time when the offence is alleged to have been committed. (A table of limitations will be found set out in Appendix B., p. 204.)

Form of Process.—The information need not be on oath, but it is for the Justice to decide if the information—

(*a*) is sufficient to shew *prima facie* that an offence has been committed,

(*b*) that it has been properly laid, *i.e.* by the proper

[1] Criminal Justice Act, 1925, s. 32.

(In a civil case the allegation against a defendant is called a complaint).

person, and with the necessary consents and within the proper time,

(*c*) concerns a matter in which the Justices have jurisdiction.

He should then take the necessary steps to bring the case to a hearing before a Court of Summary Jurisdiction, and the first point to be decided is whether in order to procure the attendance of the defendant a summons or a warrant should be issued. A "summons" is an order issued by a Justice that the person mentioned should attend at some Court at a specified time to answer a charge.

A "Warrant of Arrest" is an order issued, usually to a police officer, to arrest and bring before the Court a specified person.

So far as offences within the cognisance of Courts of Summary Jurisdiction are concerned, a summons should usually be issued in the first instance, and only if the summons is disregarded or disobeyed a warrant in default of appearance in Court should be issued by the Justice.

A warrant should only be issued in the first instance in cases of charges of a serious nature where a summons is likely to fail to bring the accused before the Court, or might cause him to abscond.[1] It would be oppressive for a Justice to issue a warrant at once on the ground merely that the prosecution would have difficulty in proving their case if a summons were issued.

A Justice may endorse on the warrant the amount of bail which will be accepted, such bail being ultimately taken by the officer in charge of any police station.[2] This considerably reduces the difficulty for the Justice.

When Warrants may be Issued.—A Justice may only issue a warrant upon sworn written information in cases of indictable offences against :—

(1) Persons who, within his jurisdiction, are alleged to have committed indictable offences.

[1] R. *v.* Thompson (1909), 2 K.B. per Alverstone C.J. at p. 617 ; also O'Brien *v.* Brabner (1885), 49 J.P. 227.
[2] Criminal Justice Administration Act., 1914, s. 21.

(2) Suspected persons residing or believed to reside within his jurisdiction.[1]

(3) Persons who are in custody for an indictable offence, or who have appeared to answer to a summons charging them with the offence[2] (alleged to have been committed elsewhere).

(4) Persons who, in the opinion of the Justice issuing the process, ought in the public interest to be tried jointly with or in the same place as another person who is in custody, or who is being or about to be proceeded against within the jurisdiction of the Justice.[3]

The following points should be further noted in regard to the issue of a warrant :—

(1) It must be signed and sealed by the Justice issuing it.[4]

(2) It cannot be issued for civil process unless authorised by Statute.

(3) It may be addressed to any person named therein, and may be executed by any police officer generally or by name in any place in England or Wales.

(4) It must contain a concise description of the offence (summary or indictable) in ordinary language.[5] Where guilty knowledge is essential this should be set out.

(5) The warrant must direct that the offender when arrested be brought before a Court of Summary Jurisdiction empowered to deal with the case.

(6) In the case of statutory offences the section of the Statute, order, etc., infringed should be set out.

(7) All necessary particulars should be set out in order to enable accused to meet the charge.

(8) It cannot, as a rule, be issued against a Corporation,

[1] Indictable Offences Act, 1848, s. 1.
[2] Criminal Justice Act, 1925, s. 11.
[3] Criminal Justice Act, 1925, s. 31.
[4] Indictable Offences Act, 1848, s. 10.
[5] Criminal Justice Act, 1925, s. 32.

but in certain instances the members of a Corporation may be arrested in their capacities of individuals.[1]

(9) A warrant for an indictable offence can be executed on Sunday.[2]

(10) It is customary in many Courts that applications be made for criminal process privately, *i.e.* not in open Court. (Statements made in the course of such an application are privileged, *i.e.* they cannot, even if made maliciously, form the ground of proceedings for libel.[3])

(11) A warrant is not abortive as regards arrest owing to any variation between its contents and the evidence adduced in support thereof.[4]

Search Warrants.—Before deciding whether it is desirable to issue a warrant of arrest it is often advisable to issue a search warrant.

The authority to issue search warrants is given to magistrates by special Statutes. Such warrants should only authorise a search in the daytime, and the officer executing it must have it in his possession at the time of the search.

Amongst other Statutes the following authorise the granting of search warrants by magistrates :—

Army Act, 1881, s. 156, for stolen regimental necessaries, stores, etc.

Betting Act, 1853, s. 11, for lists, cards or other betting documents.

Bread Act, 1836, s. 11, for adulterated flour, bread, etc.

Coinage Act, 1861, s. 27, for counterfeit coins and coining tools.

Children Act, 1908, ss. 3 and 24, for infants being nursed for reward apart from their parents, or children being ill-treated or neglected.

Criminal Law Amendment Act, 1885, s. 10, for women or girls unlawfully detained for immoral purposes.

[1] R. *v.* Worcester Corporation (1904), 68 J.P. 130.
[2] Indictable Offences Act, 1848, s. 4.
[3] Kimber *v.* Press Association (1893), 1 Q.B. 65.
[4] Indictable Offences Act, 1848, s. 9.

Cruelty to Animals Act, 1876, s. 13, for animals experimented on by unlicensed persons.

Explosives Act, 1875, s. 73, for explosives.

Forgery Act, 1913, s. 16, for banknotes or implements, or paper for forging them.

Horse-Flesh (Sale of) Act, 1889, s. 4, for horse-flesh for sale for human food contrary to the Act.

Larceny Act, 1916, for stolen goods.

Licensing (Consol.) Act, 1910, s., 82, for intoxicating liquor.

Malicious Damage Act, 1861, s. 35, for explosive and noxious substances.

Mental Deficiency Act, 1913, ss. 15, 56, for defectives being neglected or cruelly treated.

Merchandise Marks Act, 1887, s. 12, after issue of summons or warrant, for goods or things with unlawful trade marks, etc.

Musical Copyright Act, 1906, s. 2 (1) for pirated copies of musical works or plates for producing them.

Obscene Publication Act, 1857, s. 1, for obscene books, prints, pictures kept for sale or hire.

Official Secrets Act, 1911, s. 9, for any sketch, document connected with a suspected officer.

Pawnbroker's Act, 1872, s. 36, for goods unlawfully pawned.

Petroleum Act, 1871, s. 13; and 1926, s. 1 (1), for petroleum or petroleum spirit kept contrary to the Act.

Post Office Act, 1908, s. 44 (3), for uniform, etc., of dismissed or deceased Postal Officer.

Public Health Act, 1875, s. 119, for unsound food.

Salmon & Fresh-Water Fisheries Act, 1923, s. 70, for salmon, trout or fresh-water fish illegally taken.

Vagrancy Act, 1898, s. 1, for house used for prostitution.

Wireless Telegraphy Act, 1904, s. 1 (4), for wireless telegraph without a license.

Search warrants may be executed on a Sunday, and are usually issued only on the sworn information of the person requiring the search. They may be issued for execution anywhere in England or Wales.

Summonses.—So far as the preliminary requirements of the issue of a summons are concerned, the rules relating to them are identical with those relating to a warrant, but the following points should be noted :—

(1) The summons is the method used for instituting civil as well as criminal proceedings.

(2) It should be served by a police officer if possible, but in certain cases this may be done by another person.

(3) Service of the summons should be on the person himself, when defendant can be readily found, but in other cases it may be left with some responsible person, such as the wife, etc., of the defendant at his last or most usual place of abode.[1]

(4) The summons must direct that defendant attend at a specified time and place before the Justice issuing the same, or other Justice or Justices for the county or borough.

(5) The service of a summons does not prevent the issue of a warrant for the arrest of the defendant before the day fixed for the hearing of such summons.

A summons ceases to have effect on the appearance of the defendant in Court, but a warrant remains in force until it is either executed and obeyed or withdrawn by the Justice who issues it. A summons may also be withdrawn.[2]

As to issuing process, Justices for adjoining counties, ridings, divisions, liberties, cities, boroughs or places, may act for one county whilst residing in another.[3]

Constables apprehending offenders in one county may take them before a Justice in another county where such Justice can act for both counties.

Execution of Warrants outside England and Wales.—Formerly it was necessary that a warrant issued in one county should be endorsed by a magistrate in another county before it could be executed there, but as regards counties and

[1] Indictable Offences Act, 1848, s. 9.
[2] Dickenson *v.* Brown (1794), Peake 307.
[3] Indictable Offences Act, 1848, s. 5.

boroughs in England and Wales this endorsing or " backing " has been abolished by the Criminal Justice Act, 1925, but if the accused escapes to Scotland it is still necessary that the warrant should be backed by a Sheriff or Substitute or Justice of the Peace in Scotland before an arrest can be effected.[1]

Scotch warrants can be backed by English magistrates.[2]

Where the accused goes to Ireland magistrates may back the warrants there, and where an accused person in Ireland comes over to England or Wales the magistrates may similarly back the warrant.

The Indictable Offences Act, 1848, provides for the backing of warrants where accused persons repair to the Isle of Man, Guernsey, Alderney or Sark, or *vice versa*.[3]

Summoning of Witnesses.—There are two kinds of witnesses, those who give oral testimony before the Court and those who are called upon to produce books, plans, or other articles known as " exhibits."

Witnesses who are unlikely to attend of their own accord should be summoned or else be brought up on a warrant to give evidence.[4]

To justify the issue of a warrant for the attendance of a witness it must be shewn either :—

(1) That such witness (either in an indictable or summary case) has received a summons to attend and has omitted to do so, or

(2) Where the offence is indictable and there is sworn testimony that the witness will probably not attend unless brought up on a warrant.

[1] Indictable Offences Act, 1848, s. 14.
[2] *Ibid.*, s. 15.
[3] Indictable Offences Act, 1848, s. 12. As to Northern Ireland, the proper course is to send the warrant for endorsement and execution to the Inspector-General, Royal Irish Constabulary, Belfast. In the Irish Free State it should be sent with a declaration as to handwriting and seal to the Commissioner of Civic Guard, Dublin. See Stone, 60th ed., p. 25.
[4] Indictable Offences Act, 1848, s. 16

Witnesses in summary cases can demand conduct money to bring them to the Court.[1] But in indictable cases a witness is bound to attend, even if his expenses be not paid. Inability to pay travelling expenses will, however, probably be a good excuse for non-attendance. Witnesses who are in prison can be brought up to give evidence under an order signed by the Home Secretary.[2]

Bail.—When issuing a warrant the Justice should consider the amount of bail, if any, which he should allow the police to take,[3] and the circumstances of the accused should be ascertained. There are cases where it would be morally wrong not to allow bail, though its allowance is discretionary. Every case, however, must be decided according to its peculiar circumstances. The amount of the recognisance and security, if any, should be endorsed on the warrant. Except in the most serious cases bail may be granted by the Justices at any point in the proceedings.[4]

Extradition Warrants.—As regards persons who are alleged to have committed crimes outside the United Kingdom, a county or borough magistrate cannot issue an extradition warrant,[5] but he can issue a warrant against the accused and commit him to the Chief Police Magistrate, Bow Street, London. The Home Secretary may direct the case to be heard where the person has been apprehended, if the removal will be prejudicial to his health. The Home Office Circular on the subject gives full particulars as to how Justices should act.

Persons who are accused of having committed offences in another part of His Majesty's Dominions are dealt with under a special Act.[6]

[1] S. J. Rules, 1915, Form 5. The maximum allowances for ordinary witnesses are fourteen shillings for the day and ten shillings for the night. Home Office Regulations under Costs in Criminal Cases Act, 1908, s. 10 (1) (a).

[2] Prison Act, 1898, s. 11 ; Crim. Pro. Act, 1853, s. 9.

[3] Criminal Justice Administration Act, 1914, s. 21.

[4] See p. 96.

[5] Extradition Acts, 1870–1906.

[6] Fugitive Offenders Act, 1881, s. 2.

Refusal to Act.—When the facts of the complaint have been laid before the Bench they have a discretion, which must be reasonably exercised, whether they will or will not issue process by means of a summons or warrant.

This discretion does not enable a Justice to consult his personal inclinations, and where a case arises in which the facts make the issue of process clearly necessary it is the duty of magistrates to issue the same.

Wherever a duty to act is imposed the High Court will grant a mandamus to compel a Justice to act, if in the opinion of the Judges he is in default.

Nevertheless, if after giving due consideration to an information or complaint laid before him, a Justice declines to issue a summons or warrant, and has exercised a real discretion even though it may be wrongly, the High Court will not interfere. The hearing of the facts to decide if process should issue or not is a judicial inquiry, and the Court can neither reverse the decision of the magistrate nor order him to re-hear it.[1]

Refusal of Process.—In certain instances a Justice is legally bound to refuse to issue either summons or warrant, and this occurs :—

(1) Where the informer is not entitled in law to initiate proceedings.

(2) When the time for filing an information has passed owing to the existence of a statute of limitations (see Appendix B). This period is usually six months, unless some other period is specifically fixed by statute.

An information is irregular, and process must be refused when :—

(*a*) A corporation acts as an informer without statutory authority.[3]

(*b*) A private individual attempts to initiate a prosecu-

[1] R. *v.* Huggins (1891), 60 L.J. (M.C.) 139.
[2] p. 202.
[3] Guardians of St. Leonard's, Shoreditch *v.* Franklin (1878), 3 C.P.D. 377.

tion in a Revenue case, which can only be done by the Commissioners of Inland Revenue.[1]

(*c*) The information is for a common assault, and by or on behalf of a person other than the person injured.[2]

(*d*) The consent of the Attorney-General or other public officer is required prior to the initiation of proceedings and has not been obtained, although in some cases there is power to have the accused arrested or admitted to bail pending the consent of the public official concerned.

(*e*) An offence has been committed against the Public Health Acts, but proceedings[3] have not been initiated by the proper officials.

(*f*) A penalty is recoverable under some Statute by the injured party only, and proceedings have been initiated by some one else.

(*g*) A private individual initiates a prosecution for treason or other serious offences where the State and not the individual is concerned.

Mandamus.—Where the person who requests the Justices to act has a legal right to require them to do so, and, contrary to their duty, they refuse, a writ of mandamus in the name of the King can be obtained from the King's Bench Division of the High Court commanding them to fulfil a public duty.[4]

The aggrieved person may make an affidavit of the facts, and apply to the High Court for a rule (*i.e.* order) that the magistrates shew cause why the act should not be done. If they do not appear, or the Court decides in favour of the applicant, the Justices are commanded to do the act required, and they must then obey the rule and do the act in question.

A mandamus may issue where an act is a matter of discretion in cases where the Court considers that the Justices have failed to exercise a proper discretion. Every case must

[1] Inland Revenue Regn. Act, 1890, s. 21.
[2] Offences against the Person Act, 1861, s. 42.
[3] Public Health Act, 1875, s. 253.
[4] *Cf.* Paley, 9th ed., pp. 203 and 204. R. *v.* Lewisham Union (1897), 1 Q.B. 498.

be considered by them on its merits, whether process shall or shall not be issued. A Justice should be guided by the facts laid before him, and should ignore information acquired in an indirect way. Process may be refused if the evidence laid before the Justices is deemed untrustworthy.[1]

Justices are required not only to act, but to act with reasonable speed (*e.g.* they have no right to delay granting process until a pending action has been disposed of), and if they are guilty of undue delay the High Court will interfere.

Even where the Justices believe that they have no jurisdiction to act, a mandamus may be granted if they had in fact legal authority.

Orders of magistrates which have not been appealed against, or have been appealed against unsuccessfully, must be obeyed. Other Justices may sign distress warrants and do that which is necessary to enforce a conviction or order already made.

Justices have no jurisdiction to consider the validity of an order previously made by them, and should they refuse to enforce it, a mandamus will be issued to compel them to do so.[2]

Decision by a Majority.—Where the votes of the magistrates sitting on the Bench are unequal, the decision follows that of the majority.

Where the votes are equal, it is the duty of the Bench to adjourn the case for hearing on another day by a Bench consisting of an uneven number.[3] The chairman has no casting vote.

Another method of solving this difficulty is for one Justice to retire from the case, withdrawing his vote. This course was approved in *ex parte* Evans by the House of Lords.[4]

In the event of the votes being equal on a final hearing,

[1] *Ex parte* Reid (1885), 49 J.P. 600.
[2] R. *v.* Lancashire, J.J. (1925), 1 K. 200. See also Stone, 60th ed., pp. 184, 185 and 186.
[3] Kennis *v.* Graves (1899), 67 L.J.Q.B. 583; Bagg *v.* Colquhoun (1904), 1 K.B. 554.
[4] (1894) A C. 16.

the Bench can decline to adjourn, and in a criminal case the accused should be discharged.[1]

Deferred Judgment.—Where there are two or more informations or summonses, dealing with the same matter against one person, before the Court, the Justices are not entitled to reserve judgment in one case until the second has been disposed of, and where this course is pursued the High Court would probably quash both convictions.

The reason for this is that when judgment is postponed till a second case is heard there is a risk of the evidence in the first case being confused with that in the second, so that neither is in fact decided on its own merits. There is the further objection that a man may be deprived of his right to plead a previous acquittal in the event of the prosecution failing to prove the charge first taken.

After the hearing of the first case the question should be put to the vote, and a decision taken either in favour of a conviction or an acquittal.[2]

Where there are several charges of a very similar character, and a case is stated for the opinion of the King's Bench on a point of law which affects them all, the Justices may adjourn the hearing to a future day, judgment being in the meantime reserved till the High Court has delivered its opinion. Mandamus will not be granted to compel them to adjudicate.[3]

Alteration of Judgment.—Convictions and orders may be altered by the Bench at Quarter Sessions and Petty Sessions before the Justices leave the Court, but where two or more Justices are engaged on a case one cannot alter the conviction agreed upon after his colleague has left the Court.

Convictions (or minutes of them) when made are drawn up in writing, and until they are drawn up any of the Justices

[1] R. *v.* Ashplant (1888), 52 J.P. 474.

[2] Hamilton *v.* Walker (1892), 2 Q.B. 25, where a man was charged with delivering indecent advertisements to another and also procuring the same person to exhibit them.

[3] O'Leary's Case (1872), Queen's Bench, 22nd November.

may withdraw his opinion. Where a term of imprisonment has to be served for the non-payment of a fine ordered by a court of Summary Jurisdiction, and the defendant pays a part at the time of the hearing, the term may be reduced proportionately.[1]

Contempt of Court.—Justices in Petty Sessions have no power to commit to prison a person guilty of contempt of Court. (*See* p. 113 as to Quarter Sessions.)

An offender guilty of disrespectful conduct, or unmannerly expressions in the face of the Court, may be required to find sureties for his good behaviour. This should be done as soon as possible after the contempt is committed, and, in the case of Petty Sessions, *not* by the magistrate specially attacked, but by the other magistrates.[2]

In default of sureties being found the Justices may commit to prison, but the warrant should state that the committal is for want of sureties and not for the contempt.[3]

Similar action may be taken in case of words disparaging a magistrate, in relation to his office, made out of Court, or in the case of a person who obstructs or insults an officer of the Court in the execution of his duty, or uses words tending directly to a breach of the peace.

The Justices have no power to deal with a person who makes disparaging remarks regarding a magistrate in his private capacity.

The wisest course in cases of interruption in Court is to have the offender removed from the Court.[4]

Anyone taking photographs or sketches in Court with a view to publication or publishing them may on summary conviction be fined fifty pounds.[5]

The Court of the King's Bench has full jurisdiction to deal with applications calling on a person to answer for any

[1] Criminal Justice (Adm.) Act, 1914, s. 3.
[2] R. *v.* Lee (1701), 12 Mod. 514.
[3] Dean's Case (1599), Cro. Eliz. 689.
[4] R. *v.* Webb, *ex parte* Hawker (*The Times*, 24th January 1899).
[5] Criminal Justice Act, 1925, s. 41 (1).

alleged contempt of Court in publishing comments tending to prejudice the trial of a person charged with a criminal offence before the Justices. The offender may be attached for such comments even if made before committal to the Quarter Sessions or Assizes.[1]

Remand.—In the case of indictable offences when, owing to absence of witnesses or other reasonable cause, an adjournment is necessary, the Justices or Justice in charge of the case can remand the accused, either in custody or on bail, for consecutive periods not exceeding eight clear days. The accused, where the remand is for three days or less, may be handed over to the constable in charge on a verbal order. The accused in that event remains in the police station. The accused may also be discharged on bail.[2]

If the accused does not appear, then the Justice or Justices can certify on the back of the recognisance his non-appearance, and transmit it to the Clerk of the Peace of the county or borough, and upon such certificate a warrant will be issued for the arrest of the accused.

Part-hearing by Different Magistrates.—Where a criminal case has been adjourned, and the members of the Bench are not the same as at the previous hearing, the evidence already given should either be repeated or the depositions read over to the witnesses, who should be asked if they may be considered correct, and the case may then proceed.[3]

[1] R. *v.* Parke (1903), 2 K.B. 432 ; R. *v.* Davies (1906), 1 K.B. 32.

[2] Indictable Offences Act, 1848, s. 21 ; Criminal Justice Administration Act, 1914, s. 20 (2).

[3] *Ex parte* Bottomley (1909), 2 K.B. 14.

CHAPTER VI

PERSONAL LIABILITY OF MAGISTRATES

It may be laid down as an axiom that a magistrate who acts fairly and reasonably, and is careful to deal only with matters within his jurisdiction, cannot be penalised, either for acts done or for words spoken in the course of his duties, either by the civil or criminal law.

If, however, he goes outside the scope of his authority or acts improperly, he is amenable to the law at the suit either of the Crown or an aggrieved individual.

Civil Liability.—*Acts Done.*—A magistrate is only liable to an action against him in a civil Court for acts done by him in the course of his duties if he has acted both maliciously and without reasonable and probable cause.[1]

" Malice " has been defined as an act done with an ulterior or indirect motive, and in the present sense may be taken to mean " a wrongful act done intentionally without just cause or excuse."[2]

" Reasonable and probable cause " means a genuine belief based on reasonable grounds that the proceedings against the person were justified.

In the case of an action brought against a magistrate, whether there be reasonable and probable cause, is a question of law for the Judge and not for the jury to determine after the facts have been ascertained.

Any such action would take the form of an action for

[1] Justices Protection Act, 1848, s. 1.
[2] *Per* Bayley J. in Bromage *v.* Prosser (1825), 4 B.&C. 255.

trespass or false imprisonment, and before it could be instituted the order complained of must have been set aside either on appeal to Quarter Sessions or by order of the High Court.[1]

A Bench of magistrates is an "inferior Court," and each member of the Bench is liable for any act done by the whole Bench, either without jurisdiction or in excess of jurisdiction.

Limitation of Time.—An action or prosecution against a magistrate must be commenced within six months after the act, neglect, or default complained of.[2]

Further protection is given to Justices by the Public Authorities Act, 1893, by which, before commencement of proceedings against a Justice, he must receive notice in order to give him an opportunity to make amends by tendering a suitable sum.[3]

Against whom Action may be Brought.—When an action lies, it must be brought against the Justices who are responsible for the wrongful order or conviction, and *not* against a Justice who has issued a warrant in obedience to the terms of the order or conviction.[4]

A Justice is not liable for issuing a distress warrant in respect of a Poor Rate, even though the person proceeded against is not in fact liable to be rated, or even though the rate be defective and irregular.[5]

Words Spoken.—When sitting as a Court, a magistrate is not liable for words uttered in the course of his judicial duties, but has the same privilege as a High Court Judge.[6] This protection does not, however, extend so as to protect him against an action for slander uttered when he is merely discharging administrative duties, such as attesting oaths,

[1] Justices Protection Act, 1848, s. 2.
[2] Public Authorities Protection Act, 1893, s. 1.
[3] *Ibid.*, s. 1 (c).
[4] Justices Protection Act, 1848, s. 3.
[5] *Ibid.*, s. 4.
[6] Law *v.* Llewellyn (1906), 1 K.B. 487 C.A.

or declarations, nor even when he is sitting for the purpose of granting or refusing liquor licences.[1]

Liability for Costs.—Where a Justice refuses to act, and the King's Bench of the High Court orders the performance of that act by Writ of Mandamus, costs may be ordered against the Justice for refusing to act, but such an order is unusual unless the Justice has acted with obvious impropriety.

All costs incurred by Quarter Sessions, or by Justices out of Session of a county, or by a Justice in defending legal proceedings in respect of any order made or act done in the execution of his duty, shall so far as may be sanctioned by the Standing Joint Committee of the county council be paid out of the county fund.[2]

Criminal Liability.—Where a Justice is guilty of flagrant misconduct in the discharge of his duties he can, in certain circumstances, be prosecuted on a criminal information. It must be clearly shewn, and not merely inferred, by an affidavit that the Justice has acted illegally—not from mere mistake or error of judgment, but from unjust oppression or corrupt motive, such as fear, favour or the desire of gain.[3]

A criminal information is a written charge of crime akin to an indictment for felony or misdemeanour. There are two methods of procedure, either :—

(1) The filing of a criminal information by the Attorney-General himself ex officio, which does not require the sanction of the Court, or by

(2) Criminal information filed at the Crown Office by a private individual as prosecutor which requires the leave of a Divisional Court of the King's Bench.

This leave must be granted in open Court after a recognisance has been entered into by the relator (as the prosecutor is here styled) to prosecute the information

[1] Attwood *v.* Chapman (1914), 3 K.B. 275.
[2] Local Government Act, 1888, s. 66.
[3] R. *v.* Barker (1800), 1 East 186; R. *v.* Sainsbury (1791), 4 T.R. 457.

and abide by the Order of the Court. The offence must be strictly an official offence, such as extortion or acting where directly interested, or giving an illegal sentence, and the Justice must be served with six days' notice of the application to a Divisional Court of the High Court of Justice.

In order to entitle an applicant to proceed he must make an affidavit to the effect that the Justice was influenced by a corrupt motive, and where an unlawful conviction forms the subject-matter of the charge, innocence must be sworn to. It is very rarely in recent times that a criminal information is granted.

Liability for Penalties.—Where a Justice sits to determine a matter, and he is to his knowledge disqualified, he renders himself liable to a criminal information for penalties.

In the case of a Justice, who sits in a Licensing matter for which he is disqualified, he is liable to a penalty of £100.[1] A similar penalty is imposed under the Bread Act in the case of a Justice who adjudicates when disqualified.

[1] Licensing Consol. Act, 1910, s. 40 (4).

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PART II

JURISDICTION OF MAGISTRATES (CRIMINAL)

CHAPTER I

SUMMARY JURISDICTION

Definition.—A Court of Summary Jurisdiction is the name given to a sitting of a Justice or Justices held in a Petty Sessional Court-house for the purpose of deciding cases, both civil and criminal, of a comparatively unimportant nature, in exercise of the jurisdiction granted them in virtue of their commission as magistrates, or by Statute.

This jurisdiction, which was originally of a restricted character, has been enlarged as the result of various Statutes with the object of relieving Assizes and Quarter Sessions in regard to cases of a simple and straightforward character.

An offence which is triable by such a Court without the necessity of the consent of the accused is known as a "summary offence." The jurisdiction of a Petty Sessional Court in regard to civil matters is dealt with in Part III, Chapters I–IX, under the appropriate headings.

Proceedings Prior to Hearing.—Before any person can be brought before a Court of Summary Jurisdiction for trial of an offence, the steps shewn in Part I, Chapter V, must be taken.

The rules of practice to be observed in order to bring an accused person before a Court of Summary Jurisdiction are the same, whether the offence charged is one triable by the

Justices summarily or is one which must be ultimately tried before a jury. This applies to the laying of an information, issue of warrant, summonses to secure the appearance of accused persons and witnesses, and other preparation for the hearing of the case.

The issue of a warrant in the first instance is now the exception, and when one is issued it is usually endorsed with the sum on which the accused may be released on bail.

A warrant is only issued in case of charges of a serious character, or when a summons is likely to prove ineffective in bringing the accused to the Court.[1]

Composition of the Court.—" A Petty Sessional Court " consists of two or more Justices sitting together in the usual Petty Sessional Court-house, but the Lord Mayor of the City of London and any Alderman of that City, any Metropolitan or Borough Police magistrate or other stipendiary magistrate, when sitting in a Court-house or place at which he is authorised by law to sit, forms by himself a Petty Sessional Court, and can perform any act which, in general, can only be done by a quorum of two Justices of the Peace.[2]

" A Petty Sessional Court-house " is a Court-house or other place at which Justices are accustomed to assemble for holding Special or Petty Sessions, or which is for the time-being appointed as a substitute for such Court-house or place. The expression includes the Court-house where the Lord Mayor or an Alderman of the City of London or any Metropolitan or Borough Police magistrate or other stipendiary magistrate sits.[3]

The object of confining the jurisdiction of the Justices to particular places is to ensure publicity for trials, and stipendiary magistrates are as much bound to sit in particular places as ordinary magistrates.

" An occasional Court-house " means such police station or other place appointed for the purpose by the County Justices at some special Sessions.[4]

[1] O'Brien *v.* Brabner (1885), 49 J.P. (N.) 227.
[2] Interpretation Act, 1889, s. 13 (12).
[3] *Ibid.*, s. 13 (13).
[4] Summary Jurisdiction Act, 1879, s. 20 (4) and (5).

The legislature has limited the use which may be made of occasional Court-houses by declaring that a Court of two or more ordinary magistrates, or even a stipendiary magistrate, when deciding cases in an occasional Court-house, have only the powers possessed by the ordinary magistrate when sitting alone, viz. their power is limited to awarding imprisonment for a maximum period of fourteen days, or a fine of twenty shillings.[1]

They may, however, adjourn any matter which is brought before them to the next ordinary Sessions held at the usual place of sitting.

Open Court.—The Sittings of Courts of Summary Jurisdiction must, whilst any case is being heard, determined and adjudged be in open Court.[2] The Justices have no power to exclude any of the public unless justice would be defeated or the publication of evidence to be given would be prejudicial to the national safety, *e.g.* a case under the Official Secrets Act, 1920.[3] This rule does not apply to proceedings of a "Juvenile Court" (see p. 70) to which the general public, other than the accredited representatives of the Press, are not to be admitted except with the leave of the Court.[4]

"Open Court" means a Petty Sessional Court-house or an occasional Court-house, *i.e.* a police station or other place appointed by the County Justices in Special Sessions, and notified publicly as such.[5]

Applications may be heard in Private.—Ex parte applications for summons or warrants, however, are usually made before the Bench in private. Similarly, when acting in a ministerial capacity it is not necessary that such acts should be done in public open Court. Such matters are the swearing-

[1] Summary Jurisdiction Act, 1879, s. 20 (7).
[2] S. J. Act, 1848, s. 12; S. J. Act, 1879, s. 20 (1).
[3] Scott *v.* Scott (1913), A.C. 417, when the House of Lords decided that the Divorce Court had no power to hear a nullity suit *in camera* in the interests of public decency. See also 72 Sol. Jo. 77 regarding official secrets.
[4] Children's Act, 1908, s. 111.
[5] Summary Jurisdiction Act, 1879, s. 20 (2).

in of recruits, or the transaction of formal business, as apart from the hearing and determining of a case.

A General Annual Licensing Meeting of Justices is not a Court of Summary Jurisdiction and need not be held in public.[1]

Powers of a Single Magistrate.—Although as a general rule the jurisdiction of a Petty Sessional Court can only be exercised by two or more Justices, there are a number of acts which are within the powers of a single magistrate. These powers can only be exercised, so far as they are of a judicial nature, in open Court, as defined above. In no case may he inflict a greater penalty than fourteen days' imprisonment, or a fine of twenty shillings. A list of the offences with which a single magistrate may deal will be found in Appendix A.[2]

Juvenile Courts.—By the Children's Act, 1908, a child or young person (*i.e.* a person under eighteen years of age) is not to be brought before an ordinary Petty Sessional Court, but must be tried either in some place or at some time other than that of the ordinary Adult Petty Sessions. The same rule applies in regard to applications in regard to children at which the attendance of the child is necessary. The public (other than accredited Press representatives) are not to be admitted to Juvenile Courts except by special leave of the Bench.

When a child or young person is charged jointly with an adult, the proceedings are held before the ordinary Bench or Petty Sessions.[3]

The Hearing.—Cases for hearing at a Petty Sessions are called on in their order by the Clerk to the Justices.

Absence of Prosecutor.—If, when a case is called on, the prosecutor fails to appear either personally or by his counsel

[1] Boulter *v.* Kent, J. J. (1897), A.C. 536.
[2] See p. 199.
[3] Children's Act, 1908, s. 111

or solicitor, the Justices must dismiss the information, unless they think fit to adjourn the hearing upon such terms as they consider just. Pending the adjourned hearing the accused may be admitted to bail or committed to prison at the discretion of the Justices.[1]

In criminal cases the death of either the prosecutor or of the Justice who issued the summons does not affect the proceedings.[2] If in any case the Justices have reason to suspect that the prosecutor has received valuable consideration for not proceeding with a prosecution, they should adjourn the case for inquiries. In such a case it is the duty of the Clerk to the magistrates to notify the Director of Public Prosecutions, and if required, to transmit to him copies of the information and all documents relating to the matter.[3] It is the duty of Justices to see that the Director of Public Prosecutions is so informed by the Clerk.

The Director of Public Prosecutions can at any stage of the proceedings take charge of a case where he considers that a prosecution by him would be desirable in the public interest.[4]

Absence of Defendant.—If a defendant who has been duly summoned does not appear on the day fixed for the hearing of a charge, upon proof [5] of the service of the summons, the case can either be heard in his absence or else a warrant may be issued for his arrest, and the case be adjourned until he attends the Court.

In trifling cases the accused is frequently absent, but it is always competent for him to be represented by his legal adviser at the hearing.

This power to proceed in the absence of the defendant is limited to those cases which are summarily triable by the Court without his consent.

[1] Summary Jurisdiction Act, 1848, s. 13.
[2] Paley's *Summary Convictions*, 9th ed., 213; Summary Jurisdiction Act, 1879, s. 37.
[3] Prosecution of Offences Act, 1879, s. 5.
[4] *Ibid.*, 1908, s. 2 (3).
[5] This proof may be either upon oath or by declaration; Summary Jurisdiction Rules, No. 39.

Justices should proceed cautiously in dealing with a defendant in his absence, unless they are satisfied that he has actually received the summons and he is wilfully disobeying it.[1]

The Hearing—Order of Proceedings.—If the defendant appears, the substance of the information is communicated to him by the Clerk, and he is then asked whether he pleads guilty or admits the truth of the information. If the charge is admitted, statements are allowed by both prosecutor and the defendant or his advocate, and the accused can be sentenced.

Where defendant is entitled to claim to be tried by a jury,[2] the question must be decided before the case is commenced. (For further information on this subject, see Part II, Chapter II.) Objections to any given Justice on account of interest or bias should be taken at the very outset, as the whole proceedings might be nullified if such objections were taken at a later stage.

The Court should ask the defendant: "You are charged with an offence in respect of the commission of which you are entitled, if you desire it, instead of being dealt with summarily, to be tried by a jury; do you desire to be tried by jury?"

Should the defendant elect for trial by jury, the case should proceed as for an indictable offence, and if necessary the accused be committed for trial at Assizes or Sessions.[3]

If the defendant pleads "not guilty" and does not elect to be tried by a jury, the prosecutor or his legal adviser (solicitor or counsel) makes his opening speech, and the witnesses for the prosecution are examined and cross-examined by or on behalf of the defendant and re-examined. The witnesses for the defence are then dealt with in the same manner as the witnesses for the prosecution. The

[1] R. *v.* Smith (1875), L.R. 10, Q.B. 604.

[2] Where a person is charged with an offence for which the offender is liable to be imprisoned in the first instance for a term exceeding three months, and which is not an assault, he can claim trial by jury.

[3] Summary Jurisdiction Act, 1879, s. 17 (2).

prosecutor may with the leave of the Court call witnesses to contradict the evidence for the defence. The defendant or his advocate may address the Court, but as a rule a reply by the prosecution is not allowed. If a point of law be raised by the defendant, the prosecutor may reply to that only. Each Court, however, makes its own rule of procedure.

Adjournments.—The Court has a general power to adjourn a case. There is no hard and fast rule as to the length of an adjournment, but the hearing should not be unduly deferred, and if the parties act unreasonably, application may be made to the High Court for what is known as a "Mandamus" to compel them to proceed.[1]

Where an adjournment takes place the length of the adjournment should be expressly stated in the presence of the parties or their legal advisers. Pending the adjourned hearing the defendant may be committed to prison or to police custody, or admitted to bail.

When the prosecutor is absent on the day fixed for the adjourned hearing, or where both prosecutor and defendant are absent, the proceedings may be continued if there is ground for supposing that a case which, in the public interest should be investigated, has been the subject of improper compromise by the parties behind the back of the Court. As to action by the Director of Public Prosecutions, see *ante*, p. 71.

Where the prosecutor does not appear at an adjourned hearing the Justices may dismiss the application with or without costs.

Though there is no limit as to the number of days proceedings may be adjourned, it is undesirable to remand a prisoner in custody for more than eight clear days at a time.[2]

Dismissal of Information.—If after hearing all the evidence the Justices are not satisfied that the case against the defendant is proved, it is their duty to dismiss the summons.

[1] See p. 196.
[2] Douglas' *Summary Jurisdiction*, 10th ed., p. 52.

When this is dismissed, the Justices have discretion to order the prosecutor to pay the accused such costs as they consider reasonable, and a similar order can be made against a defendant if he is convicted.[1]

If in the opinion of the Justices the facts alleged by the prosecution are proved, but at the same time are of so trivial a nature as to render a conviction against the defendant oppressive, they may dismiss the summons, and at the same time order the defendant to pay costs.

Questions as to the legality of the proceedings and replies thereto are taken at the end of the hearing.[2]

After the dismissal has been pronounced by the Court the Justices can, if they think fit, and on his application give the defendant a certificate of dismissal, the production of which will be a defence against subsequent proceedings for the same cause.[3] If the defendant at the time fails to ask for the certificate, it will not be granted, and he may have to prove the fact of dismissal, if it becomes material on the hearing of any further charge.

To obtain the certificate, the case must have been tried on its merits, and the defendant who is acquitted through want of form in the proceedings is not entitled to one. As to convictions for an assault, see p. 21.

Mens Rea or Guilty Mind.—Before recording a conviction the Justices must be satisfied not only that the offence was committed, but in most cases they must also be satisfied that the accused had a guilty mind.

It is an ancient maxim of our law that no man can be convicted on a criminal charge unless he has a *mens rea* (guilty mind), and although there are a limited number of cases in which this maxim does not apply, Justices in general must not convict unless they are satisfied that the accused person intended to act wrongfully.

It must, however, be remembered that where a man does

[1] Summary Jurisdiction Act, 1848, s. 18; Summary Jurisdiction Rules, Form 20.

[2] Douglas' *Summary Jurisdiction*, 10th ed., p. 46.

[3] Summary Jurisdiction Act, 1848, s. 14. Such certificate may be claimed as of right in a charge of assault.

an act he is presumed to know the nature and probable consequences of such act.

There are cases where a negligent mind is held to be a guilty mind, viz. in cases where peculiar care and caution must be exercised by persons who occupy that which the law considers responsible positions.

Modern legislation has in certain cases made particular acts criminal, and penalties have been imposed for conduct to which no criminality formerly attached.[1]

By section 23 of the Larceny Act, 1861, it is an offence to kill any house-dove or pigeon under circumstances that do not amount to larceny at Common Law, and it is no defence that the defendant believed that the pigeon was a wild one.[2]

In cases where a Statute requires a motive to be proved before guilt attaches, the doctrine of the " guilty mind " is implicit.

It should be particularly noted that when in a Statute there are some clauses which provide penalties for deeds done knowingly, and in other sections the word " knowingly " is omitted, the doctrine applies to the section containing the word " knowingly," but not to the other section. The wording of a Statute is all important, and where such wording excludes the doctrine of *mens rea* the offence is complete if the act is within the defining words.

Mens rea is, of course, a matter which can ordinarily only be proved by inference; *e.g.* a man who buys stolen goods from a suspicious person at a considerable undervalue may be convicted of receiving them, well knowing them to have been stolen, if he has bought those goods under circumstances which would put an honest man upon inquiry, and has wilfully shut his eyes to the probability of fraud.

It should be noted in this connection that drunkenness is no defence in law. The only way in which it can avail a prisoner as matter of defence is that a man who is so drunk as to be incapable of forming an intention cannot be found guilty of an offence the essence of which is intent, *e.g.* wounding with intent to murder.

[1] R. *v.* Wheat (1921), 2 K.B. 119.
[2] Horton *v.* Gwynne (1921), 2 K.B. 661.

Conviction.—Convictions are now not drawn up unless required for the purposes of an appeal or some other legal purpose. Where a conviction has to be drawn up the same must follow one of the forms in the schedule to the Summary Jurisdiction Rules,[1] and it must also be filed at the office of the Clerk of the Peace. When drawn up a conviction or order need be signed and sealed only by one Justice.

Minute of Order of Conviction.—A minute of the ordinary formal conviction is entered by the Clerk to the Justices in the Register.[2]

A copy of this minute or memorandum, signed by the Clerk of the Court, is evidence in any other court of the fact of conviction.

Requisites of a Conviction.—If it becomes necessary that a conviction should be drawn up, the following rules must be observed :—

(1) It must be precise and certain, and shew that the convicting magistrate has power to convict.

(2) It must shew that the requisite proceedings preliminary to the conviction have been duly taken.

(3) It must shew that defendant has been found guilty of the offence charged upon him.[3]

(4) It should be dated, though an error in the date will not vitiate it.[4]

(5) The amount of costs awarded should be stated.[5]

(6) Words and figures should be set out at length.

(7) It must not be bad in part as it is then bad *in toto*.[6]

(8) It must be signed by one at least of the convicting Justices.[7]

[1] Summary Jurisdiction Rules, 1915, Nos. 53 and 60, Form No. 12; see Appendix B.

[2] Summary Jurisdiction Act, 1879, s. 22; S. J. Rules, 1915, Form 88.

[3] R. Burn's *Justice of the Peace*, I, 1146; *ex parte* Perham (1859), 23 J.P. 823 (conviction should follow the words of the Statute).

[4] R. *v.* Picton (1802), 2 East 195.

[5] Summary Jurisdiction Act, 1848, s. 18.

[6] R. *v.* Patchett (1804), 5 East 344.

[7] Summary Jurisdiction Rules, 1915, r. 53.

(9) It should as far as possible follow one of the forms prescribed.[1]

(10) Where hard labour is intended to be imposed it must be specifically mentioned.[2]

(11) Where two or more offenders are convicted on the same information one conviction will suffice, though as a rule separate convictions are advisable, especially where the penalties are different.[3]

Convictions bad for Duplicity.—It is an elementary rule of British Justice that a man should know clearly the nature of the offence with which he is charged, and the nature of a conviction which is recorded against him. In order that he may be punished in respect of more than one separate offence, each of the offences must be charged separately, and the convictions and penalties in respect of them must also be separate. A conviction in which two or more separate offences are included is bad.[4] This does not mean that a man may not be convicted upon one charge of a number of separate acts which in effect constitute a single offence, *e.g.* a person charged with selling a number of loaves in contravention of the Lord's Day Observance Act, 1677, may be convicted as for one offence and may be subjected to a single penalty.[5]

Where, however, an information discloses more than one offence the prosecutor should be made to elect upon which charge he wishes to proceed.[6]

There is no objection to several persons being included in one conviction in respect of the same offence, *e.g.* if they are found together frequenting a highway with intent to commit a felony.[7]

Enforcement of Fines.—(*a*) *Part Payment*.—When a

[1] Summary Jurisdiction Rules, 1915, Form No. 12; see Appendix B.
[2] *Ex parte* Thompson (1860), 24 J.P. 805.
[3] R. *v.* Littlechild (1871), L.R. 6, Q.B. 293.
[4] Summary Jurisdiction Act, 1848, s. 10.
[5] Crapps *v.* Durden (1777), Cowp. 640.
[6] Rodgers *v.* Richards (1892), 1 Q.B. 555.
[7] *Ex parte* Brown (1852), 16 J.P. 69.

person has been fined by a Court of Summary Jurisdiction, the Court may order him to be searched, and any money found on him on apprehension or when so searched may, unless the Court otherwise directs, be applied in payment of the fine. Any surplus is to be returned to the defendant.[1] The money is not to be applied as mentioned above when the Court is satisfied (1) that the money does not belong to the prisoner; (2) that the taking of the money will be more injurious to his family than if the defendant were imprisoned.[2]

Where the Court makes any special direction as to the disposal of such money, the direction should be in writing.[3]

(*b*) *Enforcement by Distress Warrant*.—A distress warrant for a penalty plays an important part in the enforcement of fines. Such a warrant issued by any Justice (Borough or County) can be executed in any place in England or Wales without being endorsed by any other Justice. It is addressed to the constables generally all over England or Wales, a special form being used.[4] It must be signed and also sealed by the Justices issuing it. It sets out the fact that the defendant was convicted, and also the offence for which he was convicted. A statement follows that defendant has made default in payment of the fine. After stating these facts the warrant commands the constable executing the same forthwith to distrain on the goods of the defendant (except the wearing apparel and bedding of the debtor and his family, and to the value of £5 the tools and implements of his trade), and it further states that if within the space of five clear days next after the seizure, unless defendant consents in writing to an earlier sale, or unless the sum stated at the foot of the warrant together with the costs incidental to the distraint be paid, the constable is to sell the goods distrained upon and pay the proceeds of the sale to the Clerk of the Court, and if no distress be found, to certify this

[1] Criminal Justice Administration Act, 1914, s. 4.
[2] *Ibid*., s. 4.
[3] Douglas' *Summary Jurisdiction*, 10th ed., 214.
[4] Summary Jurisdiction Rules, 1915, Form 22; Summary Jurisdiction Act, 1848, s. 19; Criminal Justice Administration Act, 1914, s. 4 (2).

fact to the Court. If no distress can be found, or the goods seized and sold are not sufficient to pay the fine and subsequent expenses, the usual practice is to commit the defendant to prison until he has expiated the entire fine and expenses, or the balance owing as the case may be. The sale of the goods must be by public auction, and five clear days must intervene between the seizure of the goods and the sale unless the defendant consents to an earlier sale in writing.

Where there is no consent, the goods must, in the event of non-payment, be sold within the period fixed by the warrant, and if no period be fixed the sale must take place within fourteen days from the seizure.[1]

Subject to contrary direction given by the distress warrant, where the distress is levied on household goods, the same shall not, without the defendant's written consent, be removed from the house until the sale day, but so much of the household effects as shall, in the opinion of the constable, suffice for satisfying the distress is impounded. The impounding is to take the shape of affixing to the articles seized a conspicuous mark, and any person who removes goods so marked or the mark on the goods may on summary conviction be fined a sum not exceeding £5.

If the person charged with the execution of the warrant makes any improper charge, he commits a summary offence for which he may be fined not exceeding £5.

A written account of all charges incidental to the execution of the warrant is to be sent to the Clerk to the magistrates, and the defendant may inspect this account at any reasonable time within one month without any fee. Any surplus after payment of fine, costs, etc., is to be paid to the owner of the goods.[2] When the amount mentioned in the warrant is paid to the constable, or a receipt for the proper amount by the Clerk to the magistrates is produced, the constable must not execute the warrant provided that the further expenses incidental to the distress be paid.

(*c*) *Imprisonment in default of payment*—Where a man fails

[1] (But not until five clear days have elapsed) Summary Jurisdiction Act, 1879), s. 43.

[2] *Ibid.*

to pay a fine, and if he has no goods or insufficient goods to satisfy the fine, or if it appear to the Court that the levy of distress will be more injurious to the defendant or his family than imprisonment, the Court may order imprisonment without issuing a distress warrant.[1]

This applies to criminal cases only, and in civil cases tried by magistrates disobedience to an order for payment affords no ground for a committal to prison, unless it is proved that since the order the defendant has had means to pay, and yet has not done so.

In criminal cases the practice of committal to prison irrespective of means to pay is being gradually departed from, and various alleviations of punishment have come into existence.

Section 1 of the Criminal Justice Administration Act, 1914, provides that no warrant of committal to prison in respect of non-payment of a fine shall be issued unless the convicting Court is satisfied that the defendant has sufficient means to pay the entire sum forthwith. No warrant must issue unless an opportunity has been given to the defendant of obtaining a respite from the Court. It is only if he does not express any desire for further time, or if he fails to satisfy the Court that he has a fixed abode within its jurisdiction, or the Court for any special reason thinks if necessary that an immediate warrant should be issued, that this course should be adopted. The following are sufficient grounds for an immediate issue of a warrant: (*a*) a previous conviction of defendant; (*b*) the fact that defendant has been committed before for non-payment of a fine when time has been given; (*c*) the probability that if time is allowed further offences will be committed in order to raise the money; (*d*) the presence of peculiarly aggravating circumstances.[2]

Where the defendant asks for time for payment the Court must give him at least seven days to pay.[3] Where time is not allowed for payment, the reason for immediate commitment must be given.[4]

[1] Criminal Justice Administration Act, 1914, s. 25 (1).
[2] Douglas' *Summary Jurisdiction*, 10th ed., 211.
[3] Criminal Justice Administration Act, 1914, s. 1(2). [4] *Ibid.*, s. 1 (4).

No fine is to be payable where the defendant comes to the Court and asks for the statutory amount of imprisonment in lieu of payment.[1]

Where offender is over sixteen and under twenty-one years of age, the Court may place him under the supervision of some trustworthy person of their selection until the fine has been paid. In such cases no warrant of commitment is to be issued till a report from the person supervising him has been considered as to his conduct and his ability to pay. This means that if the defendant cannot get work, or suitable work, he cannot be committed to prison.

Where time to pay has been allowed and nothing has been paid, the Court may allow more time for payment, or direct payment of the fine by instalments.[2]

Instalments may be more readily allowed where payment is guaranteed by a surety. Further time may be granted or payment by instalments allowed by any single magistrate of the same Bench.[3]

The Court may fix instalments, and the rule is that if default is made in payment of one instalment the entire fine becomes enforceable.[4]

The payment of the fine by instalments or otherwise can be guaranteed by a surety,[5] and the accused can give such security (1) by a deposit of money with the Clerk of the Court,[6] or (2) by an oral or written undertaking in the form presented by the S. J. Rules, 1915 (Form 47).

Allocation of Fine.—The money received is in the first place applied :—

(1) In re-payment to the informant of any Court or police fees paid by him.

(2) In payment of Court fees not already paid by the informant which may be payable under the table of fees in the First Schedule of the Act.

[1] Criminal Justice Administration Act, 1914, s. 1 (2).
[2] *Ibid.*, s. 2.
[3] Douglas' *Summary Jurisdiction*, 10th ed., 212.
[4] Summary Jurisdiction Act, 1879, s. 7.
[5] *Ibid.*, s. 7. [6] *Ibid.*, s. 23.

(3) In payment of police fees not already paid by informant.

(4) The balance is to be paid to the fund or person to which the fine is directed to be paid by the Statutes creating the fine imposed for the offence, and if there are no such Statutes, then it must be paid to the fund into which Court fees are paid.[1]

The word " fine " means any pecuniary penalty, forfeiture or compensation payable under a conviction.[2]

The Register.—The Clerk of the Court has to keep a register of all its judicial business. In this register are entered minutes or memoranda of all convictions, including fines; extra time allowed for payment of fines; dismissals and orders under Probation of Offenders Act. The register must also shew the offences of which defendants have been convicted; where a defendant pleads guilty, the plea must be recorded on the register. The exact form of the register is immaterial.

The entries in the register must either be made or signed by one of the Justices by whom the conviction is made.[3]

Remission of Penalties.—The Crown can remit all fines and penalties, although the same may be payable either wholly or in part to a private person.[4]

Scale of Imprisonment or Fine.—Where there are no extenuating circumstances calling for indulgence in the enforcement of an unpaid fine, the following scale of imprisonment applies: " Where the fine does not exceed ten shillings, seven days. Between ten shillings and one pound, fourteen days. Between one pound and five pounds, one calendar month. Between five pounds and twenty pounds, two calendar months. Over twenty pounds, three calendar months." [5]

[1] Criminal Justice Administration Act, 1914, s. 5.
[2] Summary Jurisdiction Act, 1879, s. 49; Criminal Justice Administration Act, 1914, s. 41 (2).
[3] Summary Jurisdiction Act, 1879, s. 22.
[4] Remission of Penalties Act, 1859, s. 1.
[5] Summary Jurisdiction Act, 1879, s. 5.

In all the above cases the imprisonment is to be without hard labour.[1]

In Inland Revenue and Customs cases, a defendant may be imprisoned for any period exceeding three months, but not exceeding six months, when the fine exceeds £50.[2]

Where a term of imprisonment is imposed for non-payment of a fine and the prisoner pays part of the fine, the term of imprisonment is reduced by a number of days bearing (as near as possible) the same proportion to the total number of days in the term of imprisonment as the sum paid bears to the sum in respect of non-payment of which the imprisonment is imposed. In reckoning the number of days of reduction of imprisonment the first day of imprisonment shall be excluded. Fractions of a penny are to be disregarded.[3]

Warrants of Commitment.—When a Court has imposed a sentence of imprisonment, or where a sum adjudged to be paid as a fine by a conviction of a Court of Summary Jurisdiction is not paid, and the Court decrees that imprisonment must follow, it issues a warrant of commitment.

In form it is a signed and sealed direction in writing addressed to a constable, and also the keeper of the prison to which the prisoner must be taken.[4] There are numerous forms of commitment to suit various sets of circumstances, and the form applicable to the case in the Summary Jurisdiction Rules for 1915 should be followed as closely as possible. A warrant is not to be deemed void by reason of defects therein, if it states that the defendant has been convicted, and there is a valid conviction to justify the proceedings.[5]

When once it is drawn up and handed over for execution the warrant of commitment cannot be amended, but in case of error a new commitment may be issued to the Governor

[1] Criminal Justice Administration Act, 1914, s. 16 (1).
[2] Summary Jurisdiction Act, 1879, s. 53.
[3] Criminal Justice Administration Act, 1914, s. 3.
[4] Summary Jurisdiction Rules, 1915, Forms 9–11, 27–30 and c. 36, 37.
[5] Summary Jurisdiction Act, 1879, s. 39.

of the Prison, with an endorsement, requesting him to substitute the new for the former warrant.[1]

The warrant must be written, signed, and sealed, except in cases of detention within the precincts of the Court for a single day. Orders for such detention may be oral.[2]

There need be no date on the warrant, and the period of imprisonment runs from the time of the receipt of the defendant into custody under the warrant.[3] It sometimes happens that the person to be committed is already in gaol on some other charge, and in that event the warrant should be directed to the Governor of the Prison, and the warrant should state whether the terms of imprisonment run consecutively or concurrently.[4] The warrant should state correctly the Christian and surnames of the defendant, and the committing magistrate should state his qualification to act as Justice, and also his address.[5]

[1] *Ex parte* Cross (1857), 2 H. & N. 354.
[2] Criminal Justice Administration Act, 1914, s. 12.
[3] Henderson *v.* Preston (1888), 21 Q.B.D. 362.
[4] Summary Jurisdiction Act, 1848, s. 25.
[5] Criminal Justice Administration Act, 1914, s. 18.

CHAPTER II

INDICTABLE OFFENCES DEALT WITH SUMMARILY

Jurisdiction.—In addition to the jurisdiction to punish minor offences as described in the last chapter, Justices have the power, with the consent of the accused and subject to certain limitations, to deal with a number of offences which would ordinarily be tried by a jury. An offence which is ordinarily triable before a jury is called an indictable offence, as distinguished from a summary offence, by reason of the procedure adopted for its hearing. An indictable offence is brought before the Court, which has power to try it, by means of a written statement or indictment which has to be approved in the first instance by a Grand Jury before the matter can proceed. (See Part II, Chapter VI, "Quarter Sessions.")

Right to be Tried by a Jury.—Every person brought before a Court of Petty Sessions has a right to be tried by a jury if the offence (other than an assault) is one in which imprisonment for a period exceeding three months may be awarded.[1] It is important that all such accused persons should be informed of their right to a trial by jury, otherwise the trial by the Justices may be abortive.[2] It is usual for the Clerk

[1] These words are strictly construed. If the maximum imprisonment is three months they do not apply, only if the period *exceeds* three months. (R. *v.* Evans (1914), 83 L.J. (K.B.) 905), and if the offence is punishable by imprisonment in the first instance. (Carle *v.* Elkington (1892), 56 J.P. 359.)

[2] Summary Jurisdiction Act, 1879, s. 17 (1). This section does not apply to indictable offences dealt with summarily by consent under s. 24, Criminal Justice Act, 1925.

to the Justices to inform the accused of his right to demand a jury, but the Chairman of the Bench is finally responsible, and should be careful to see that this procedure is followed.

Offences by Children and Young Persons.—All cases in which children (*i.e.* persons between the ages of seven and fourteen) or young persons (*i.e.* persons between the ages of fourteen and sixteen) are charged may be dealt with summarily by the Justices, except cases of homicide. Before, however, the Justices can exercise this jurisdiction as regards indictable offences, the parent or guardian of a child, in the former case, or the young person himself or herself, where the accused comes within that category, must be informed of their right to a trial by jury, and must consent to the jurisdiction of the magistrates.[1] (See p. 70 as to Juvenile Courts. As to the punishments to be awarded, see Chapter IV, p. 103.)

Offences by Adults : effect of recent Statutes.—Justices in Petty Sessions may now deal with a very large number of offences committed by adults if in their opinion it is desirable to do so. They must, however, before dealing with such offences, be careful that the statutory rules laid down are complied with. The following provisions should be carefully noted :—

(1) The case must be free from circumstances which endue it with a grave or serious character.

(2) The punishment which the Court may inflict must be adequate to the offence.

(3) Where the Director of Prosecutions is the prosecutor, his consent must be obtained.

(4) Where the case affects the property or affairs of the Crown or of a public body, the consent of the prosecution must also be obtained.

(5) The accused person must be made clearly to understand his right to a trial by jury, and he must give his

[1] Summary Jurisdiction Act, 1879, ss. 10 and 11.

consent to the jurisdiction of the magistrates before they can act.[1]

The list of indictable offences which may be dealt with by the magistrates has been considerably enlarged in recent years, in particular by the Criminal Justice Act, 1925.[2] In the case of the offence of obtaining goods or money by false pretences, the jurisdiction is given by a Statute passed in 1899. In exercising their discretion as to whether an indictable offence should or should not be dealt with summarily, Justices must be careful to inquire into the nature of the charge, and also the character and antecedents of the accused, and should not assume jurisdiction in cases of a grave character,[3] but such cases should be committed for trial at the Quarter Sessions or Assizes.

The list of indictable offences which may not be dealt with by the Quarter Sessions will be found in Appendix C.[4]

Procedure.—Where the Court comes to the conclusion that it is desirable for them under the circumstances above-mentioned to deal with a case, the charge must first be reduced into writing, and the accused asked whether he desires a jury, and if he elects to be dealt with summarily, he must be asked to plead formally guilty or not guilty.[5] In the event of his electing to be tried by a jury, the case proceeds as described in the next chapter. Where a case is tried by the Justices, if the accused consents to the jurisdiction, it proceeds as for a summary offence.

Limit of Punishment.—A person charged with an indictable offence and convicted before Justices may now be punished by a sentence up to six months imprisonment with hard labour, and either as an alternative or in addition to the sentence of imprisonment, a fine not exceeding £100.

[1] Criminal Justice Act, 1925, s. 24.
[2] *Ibid*., Sch. 2.
[3] See remarks of Roche, J., in his charge to the Grand Jury, Winter Assizes, 1928; also remarks of Avory, J., in the Court of Criminal Appeal, R. *v*. Bennett (*The Times* newspaper, 8th May 1928, p. 5).
[4] P. 205.
[5] Criminal Justice Act, 1925, s. 24 (2).

Summary Trial of Case of False Pretences.—In the particular case of a charge for obtaining goods or money by false pretences which a Court of Summary Jurisdiction propose to deal with summarily, the Justices, after the charge has been reduced to writing and read to the accused, must explain the meaning of the charge. A "false pretence" for the purpose of a charge, means a false representation by words, writing or conduct that some fact exists or existed; a promise as to future conduct not intended to be kept is not by itself a false pretence. The Court should add any such further explanation of the offence as it may deem suitable to the circumstances.[1]

It must be shewn that the representations alleged were known by accused to be false at the time the property was obtained, and that the person to whom it was made was deceived by the false representations.

Offences by Corporations.—Where a corporation is charged with an indictable offence, the Justices may either commit for trial before Assizes or Quarter Sessions, or, if the corporation either does not appear, or appearing by a representative, consents to that course, may deal with the case summarily.

Reduction of Charges.—It sometimes happens that a charge is brought before a Bench of magistrates in which the prisoner is accused of what is *prima facie* an offence triable only on indictment, but which at the same time involves an offence of a lesser degree which can be dealt with summarily. In such cases it may sometimes appear to the Justices that by reason of the comparative triviality of the offence, the youth of the offender, or some other cogent circumstance, it is undesirable to send the accused for trial before a jury. They then have power to ignore the more serious part of the charge, and to proceed as if the summary offence were the only one brought before them. This is called reducing the charge. It is a power which is liable to abuse, and which should be used somewhat sparingly.

[1] Summary Jurisdiction Act, 1899, s. 3; Summary Jurisdiction Act, 1879, s. 11; and Criminal Justice Act, 1925, s. 24.

It should never be applied to cases of a serious character, which should always be sent for tiral before a jury.[1]

[1] See remarks of Avory, J., in R. *v.* Bennett (*The Times* newspaper, 8th May 1928, page 5): "It was to be regretted that the provisions of a recent Act extending the jurisdiction of Courts of Summary Jurisdiction of a Courts of Quarter Sessions had been misconstrued as an invitation to reduce grave charges in order to bring them within the jurisdiction of those Courts."

CHAPTER III

INDICTABLE OFFENCES (COMMITTAL FOR TRIAL BY JURY)

Proceedings at Examinations.—Rules.—Special rules have been issued by the Lord Chancellor dealing with the procedure before the examining Justices in cases of indictable offences.[1]

Place of Examination.—Where a person is accused of an offence which is only triable on indictment, *i.e.* before a Judge and Jury, either at Assizes or Quarter Sessions after a true bill found by a Grand Jury, there is, as a general rule, a preliminary hearing before the Justices, on whom is cast the burden of seeing whether there is a case made out against the prisoner which should be inquired into by the Petty Jury. This hearing is, as a rule, conducted by two or more Justices sitting in a Petty Sessional Court, to which reporters are admitted, although the Justices can, in certain cases, hold the examination in private.[2] A prisoner charged with an indictable offence is, as a rule, indicted, tried and punished in the county or place where the offence was committed, but now, by the Criminal Justice Act, 1925, such a person may be indicted,[3] tried and punished in the county or place

[1] Indictable Offences Rules, 1926, No. 676, L. 19, dated 11th June 1926.

[2] Such cases include offences under the Official Secrets Act and where children are concerned. They have discretion under Indictable Offences Act, 1848, s. 19.

[3] The word "indicted" means having the charge (or written criminal accusation) read out to the accused at the Court of Trial. An "indictment" is a written accusation specifying the offence of treason, felony or misdemeanour alleged against the accused.

in which he was apprehended, or in which he is in custody on a charge for the offence, or in which he has appeared in answer to a summons charging the offence. He may in these events be dealt with as though the offence had been committed in that place.

But although Statute has now made this lawful, magistrates ought not to proceed in any case where hardship may result to the prisoner by his trial in any particular locality, and if they consider that such trial would be prejudicial to him they must discontinue the case. In such a case they cannot discharge the accused, but must either commit him to prison as a prisoner awaiting trial or admit him to bail,[1] pending his transfer to the county or place where the offence was committed.

If an accused person applies to the magistrates to discontinue on the ground of hardship, and the Justices refuse this request, he can appeal to the High Court by a process known as a Writ of Certiorari, and then proceedings must be stayed until the matter is determined.[2] The High Court can either disallow the appeal or direct magistrates to discontinue proceedings, save in so far as the Act provides otherwise.

The Depositions.—A deposition is a written statement of the oral evidence of a witness given on oath.

Depositions must be taken in all examinations into indictable offences or other offences where the accused can and does demand a jury.

The Justices must, as soon as the examination of each witness for the prosecution has been concluded, cause the deposition to be read to him in the presence and hearing of the accused, and cause the witness to sign the deposition, and bind him over to attend the trial.[3]

Either the prosecutor or the accused can, before the opening of the Assizes or Sessions, give notice to the Clerk to the magistrates, or after such opening, to the Clerk of

[1] Criminal Justice Act, 1925, s. 11; Indictable Offences Act, 1848, s. 22.

[2] Criminal Justice Act, s. 11.

[3] *Ibid.*, s. 13.

Assizes or Clerk of the Peace, as the case may be, that the attendance of further witnesses is required, and then every such witness must receive a statutory notice to that effect without delay.

Witnesses are bound over conditionally (1) when the statement of the accused renders their attendance unnecessary; (2) when the accused pleads guilty; (3) when their evidence is merely formal.[1] If a witness refuses to sign the recognisance to appear at the trial, a Justice can sign a warrant for his committal to a convenient prison until day of trial, or until he agrees to enter into a recognisance, or the prisoner is discharged.[2]

A witness who declines to give evidence or to answer questions without proper excuse can be committed to prison for any period not exceeding seven days, or until he shall consent to be examined. The law is the same in summary cases.[3]

Witness' Oath.—Every witness is sworn according to his particular belief. If he states that he has no religious belief, or that the taking of an oath is contrary to his religious belief, he will be allowed to make a solemn affirmation instead of an oath.[4]

The deposition should be attested by one or more of the examining Justices.[5] It is usually written by the Clerk to the magistrates in narrative form. Typewriting is now permitted.[6]

Sick Bed Depositions.—Where a registered medical practitioner reports that a person who can give material information relating to any indictable offence is dangerously ill, and not likely to recover, Justices may take his deposition at his place of abode, provided that notification be given to

[1] Criminal Justice Act, 1925, s. 13.
[2] Indictable Offences Act, 1848, s. 20.
[3] *Ibid.*, s. 16.
[4] Oaths Act, 1909, s. 2.
[5] Indictable Offences Act, 1848, s. 17.
[6] Home Office Circular, 12th May 1891. See Stone's *Manual*, 60th ed., p. 31.

the accused, and that he or his advocate have the opportunity to attend to cross-examine the sick person. The deposition must be subscribed by the Justice and the special caption (or heading) must state the Justice's reason for taking such deposition, date, time and place of taking the evidence, and the names and addresses of persons present at the time.[1]

If a proceeding is pending, the deposition must be sent to the proper officer of the Court where the accused is to be tried, and if no proceeding is pending, to the Clerk of the Peace for the county.

Depositions of Children and Young Persons.—Where an offence has been committed against a child or young person under the Dangerous Performances Acts, 1879–1897, Part II of the Children's Act, 1908, and sections 27, 55 and 56 of the Offences against the Person Act, 1861, or an offence under the Criminal Law Amendment Act, 1885, or any other offence involving injury to a child or young person, evidence may be taken out of Court. Such evidence must relate to some injury to the deponent and must be on oath.[2] The same steps must be observed as in the case of a deponent dangerously ill. If a proceeding is pending, the deposition must be sent to the proper officer of court of trial, and in other cases to the Clerk of the Peace of the county. The deposition cannot be read at the trial unless the doctor satisfies the Court that the attendance in Court of the deponent would be harmful to him or her.[3]

Deposition of Child of Tender Years.—Depositions of a child of tender years may be taken in all cases without administration of an oath if the Court is satisfied that the child does not understand the nature of an oath, but the child must be of sufficient intelligence to justify the reception of the evidence and also understand the duty of speaking the truth.[4] Such evidence requires corroboration

[1] Criminal Law Amendment Act, 1867, ss. 6 and 7.
[2] Except in the case of a child of tender years.
[3] See p. 32.
[4] Children's Act, 1908, s. 30.

in some material particular if it forms the foundation of a criminal charge. Any child whose evidence is received in this manner, and who wilfully gives false evidence, is liable on summary conviction to be given the same punishment as for perjury.[1]

Proceedings at Examination.—After the examination-in-chief of each witness for the prosecution is concluded, the Justices must ask the accused or his advocate if he desires to put any questions to the witness, and if an accused person is illiterate or unversed in the procedure, it is desirable that the Bench should give him any necessary assistance.

Caution to the Accused.—After the last witness for the prosecution has been bound over, the examining Justices, or their clerk, must read the charge to the accused and explain it to him without using technical language, and inform him that he has the right to call witnesses or to give evidence on his own behalf. If he calls no evidence, the accused is to be addressed by the examining Justices as follows: "Do you wish to say anything in answer to the charge? You are not obliged to say anything, unless you desire to do so, but whatever you say will be taken down in writing and may be given in evidence upon your trial." Before the accused makes any statement in answer to the charge, the examining Justices shall state to him, and give him clearly to understand, that he has nothing to hope from any promise of favour and nothing to fear from any threat which may be held out to induce him to make any admission or confession of his guilt, but that whatever he then says may be given in evidence at his trial notwithstanding any promise or threat.[2]

The Defence.—If the accused makes a statement, the exact words of such statement must be inserted in the proper form.[3]

[1] Criminal Law Amendment Act, 1885, s. 4
[2] Criminal Justice Act, 1925, s. 12.
[3] Form N. in the Schedule to the Indictable Offences Act, 1848.

The accused may make a statement and may also give evidence on oath. The statement must be read over to the accused and signed by the examining Justices and, if the accused desires, also by the accused. The statement, whether signed by the accused or not, may be given in evidence without further proof.

A speech may be made for the defence by the accused or his advocate.[1] After this the accused may give his evidence if he desires, and the witnesses for the defence give their evidence. The sole matter for the Justices being the question whether or no there is a *prima facie* case to go before a jury, the speech must be directed to this point only. The depositions of the prisoner and his witnesses are governed by the same legal rules as those of the Crown witnesses, with this exception—that witnesses to character only are not usually bound over to appear at the trial, and though advisable it is perhaps not necessary to take their depositions in writing.

The prosecution at the trial can give in evidence any admission or confession by the accused.[2]

Committal for Trial.—If the examining Justices are satisfied that a *prima facie* case has been made out, it becomes their duty to commit the accused for trial. They may commit the accused to the Assizes or Quarter Sessions at any convenient place of trial should they think fit, either for the sake of expediting the final hearing or saving expense, but not if the Assizes or Quarter Sessions for their own county or borough will be held within a month of the date of committal, or if the accused satisfies the examining Justices that he would, if the power were exercised, suffer hardship.[3] Before sending a case to any Quarter Sessions, they must be careful to assure themselves that the particular offence charged against the accused is triable at Quarter Sessions. Other indictable cases will, of course, be sent for trial to the Assizes. A table of offences not triable at Quarter Sessions will be found in Appendix C.[4]

[1] Criminal Justice Act, 1925, s. 12.
[2] See p. 36.
[3] *Ibid.*, s. 14.
[4] See p. 205.

When the accused is committed for trial to Sessions the examining Justices may, if the Sessions are to be held within five days of date of committal, commit the accused to the next Sessions but one, but this power is not to be exercised when the next Quarter Sessions but one are not due to be held within eight weeks of committal.

Documents, etc., needed for Trial.—Documents put in evidence at the hearing before the Justices should, before being forwarded to the court of trial, be identified in each case by a distinguishing initial and number, and should be attached to the depositions prior to transmission to the Higher Court.[1]

Remand and Bail.—When on the hearing of a charge relating to an indictable offence the case cannot be completed at the first hearing, the Justices can remand the accused either in custody or on bail for consecutive periods not exceeding eight clear days, and where the remand is for less than three days, the accused may be handed over to the custody of a constable on a verbal order.[2]

The accused may also be liberated on bail at the discretion of the Justices.

A remand may be for a longer period than eight days if both the prosecutor and the accused consent.

Bail.—The question of granting bail to a person charged with an indictable offence must be dealt with by the Justices committing for trial. The power to liberate on bail in such circumstances is one which should be freely exercised, except in cases of a particularly serious nature, such as treason, murder, etc. In cases where there is no reasonable expectation that the accused will abscond, bail should be proportioned to the means of the accused and his friends. The Justices may bind over the accused on his own recognisances without any surety.[3]

[1] Criminal Justice Act, 1925, s. 13 (5).

[2] Indictable Offences Act, 1848, s. 21; Criminal Justice Administration Act, 1914, s. 20 (2).

[3] Bail Act, 1898, s. 1; Indictable Offences Act, 1848, s. 23.

A contract to indemnify bail in criminal cases is illegal and unenforceable, and is itself a criminal offence, whether the indemnity be given by the accused or a third person. This is none the less a crime, even though there be no intention on the part of the accused to abscond.[1] The existence of such a contract may be considered by the Justices in deciding whether they shall allow bail.[2]

Where the Justices commit a person charged with a misdemeanour for trial and do not admit him to bail, the Court must inform the accused of his right to apply for bail to a Judge of the High Court.[3]

Bail may be granted by the committing Justices to persons in custody at any time up to the first day of the Court of Quarter Sessions or Assizes at which the accused is to be tried. When the Justices are willing to grant bail, but none is immediately forthcoming, they should certify on the back of the committal warrant that they will accept bail in a specified sum, and thereupon a visiting Justice of the prison where the accused is confined can take the required bail and order the prisoner's discharge. The magistrate may dispense with sureties at his option. Where it is inconvenient for a surety to attend at the prison, the committing Justices may make a duplicate of the certificate of allowance of bail, and the surety can enter into his recognisances before another Justice of the borough or county.[4]

Warrant of Deliverance.—When the person to be bailed is already in prison the committing Justices may issue to the keeper of the prison a warrant of deliverance, and thereupon the prisoner may be released on bail.[5]

Continuous Bail.—When a person is remanded on bail the recognisance may be conditioned for his appearance at every time and place to which during the course of the proceedings the hearing may be from time to time adjourned, but the Court may vary the order at any subsequent hearing.[6]

[1] R. *v.* Broome (1846), 15 J.P. 644.
[2] Herman *v.* Jenchner (1885), 15 Q.B.D. 561.
[3] Criminal Justice Administration Act, 1914, s. 23.
[4] Indictable Offences Act, 1848, s. 23. [5] *Ibid.*, s. 24.
[6] Criminal Justice Administration Act, 1914, s. 19.

Amount of Bail.—The sum fixed for bail should be sufficient to secure the appearance at the trial of the accused, but regard should be paid to the circumstances of the case and the means of the party. The sum should not be excessive.

Refusal of Bail.—When the Justices refuse bail the accused can appeal to a Judge in Chambers. The amount of bail in money is in the discretion of the committing Justices, subject to an appeal (if any) to a Judge in Chambers. In serious cases magistrates have very considerable discretion as to whether they should grant bail or not, treason and murder being in practice the only crimes for which bail may not be granted.

When a warrant for the arrest of a person is issued the Justice issuing the warrant may cause to be endorsed on the back of it the amount of bail to be demanded, and in that event bail can be taken by an officer-in-charge of a police station.[1]

Arbitrary denial of bail by a Justice, in a case where it ought to be granted, is an offence on the part of the Justice, and as such is punishable on indictment for false imprisonment. But the act of the Justice being a judicial duty, no action lies against him unless he acts with express malice.[2] The fixing of bail at a preposterous amount may be a denial of bail.

In general, the prosecution is entitled to know the names of the persons tendered as bail before they are accepted as sureties.

Proof of Means.—In the Metropolitan Police Courts the person offering bail may be required to take an oath as to the value of his property, but in the provinces it is usually sufficient for a man to swear that he is worth the sum required for security. He also swears that he is a householder.

[1] Criminal Justice (Administration) Act, 1914, s. 21.
[2] Linford *v.* Fitzroy (1849), 18 L.J. (M.C.), 108; see p. 62.

CHAPTER IV

PUNISHMENT OF OFFENCES

General.—Courts of Summary Jurisdiction have a wide latitude in regard to the punishment which they may inflict. While it is true that maximum punishments are laid down for various offences, the discretion of magistrates in the direction of leniency is practically unfettered. In deciding what sentence is appropriate to an offence they must examine not only the circumstances attending the crime, but also the antecedents and upbringing of the accused person, the likelihood of a repetition of the offence, and the possibility of reforming the criminal by an exercise of judicious leniency. It is the duty of magistrates to remember that while they sit for the purpose of punishing offences, their efforts should largely be directed to the reformation of the criminal as well as the protection of society. Recent Statutes have put into their hands a means of dealing with youthful or inexperienced offenders by which such punishment as confinement in prison or kindred institutions may be altogether avoided, and the offender helped to become a useful member of society.

Alternative Methods of Dealing with Offenders.—A Court of Summary Jurisdiction may :—

(1) Order a convicted person to be detained in prison with or without hard labour.

(2) Order the convicted person to detention either within the precincts of the Court (for one day) or detention at a place of detention for a period not exceeding four days.

(3) Inflict a fine and order the payment of costs.

(4) Bind over the convicted person on recognizances.
(5) Place him in charge of a Probation Officer.[1]

(1) *Imprisonment*.—Where a case is of a sufficiently serious nature to warrant a sentence of imprisonment, the sentence takes effect forthwith. The length and nature of the imprisonment is, within limits, in the discretion of the Court and should be carefully adjusted, having regard to the nature of the offence and the character and antecedents of the accused.

Various Degrees of Imprisonment.—A person sentenced to a term of imprisonment is not awarded hard labour except in cases where such is allowed by Statute. A Court should therefore, before sentencing, be careful to ascertain the punishment appropriate and permitted in regard to the particular offence. Even in cases where hard labour is permissible it is not always desirable, and magistrates have a discretion as to the form of imprisonment which they impose. Imprisonment without hard labour is divided into three divisions, the first division being that of the most lenient character. Where imprisonment is awarded and no mention of the first or second division is made, the convicted person would be imprisoned in the third division. In every case, however, where, having regard to the nature of the offence and the antecedents of the offender, the Court considers that more lenient treatment is desirable, the order should be for imprisonment in the first or second division, as the case may be.

(2) *Detention*.—No person may be sent to prison for a period of less than five days. In the case, therefore, of offences which in the opinion of the Justices while meriting detention are of a less serious nature than to deserve imprisonment, they have, under the provisions of the Criminal Justice Administration Act, 1914, power to order the detention of the convicted person either for one day within the precincts of the Court, or for a period not exceeding four days at some place of detention other than a prison, if such exists.[2]

[1] In cases of theft the Court may order restitution of the stolen property.

[2] Criminal Justice Administration Act, 1914, ss. 12 and 13.

(3) *Fines*.—A fine is the penalty commonly inflicted by Justices at Petty Sessions for minor infringements of the law. If a fine is inflicted and in the opinion of the Justices the offender is unable immediately to find the required sum, time must be allowed for him to do so. In no case should a warrant for his committal to prison be issued, unless the Court is satisfied that he is a wilful defaulter or that he has no fixed abode within its jurisdiction, or that in their opinion there is some good reason for refusing time for payment.[1] In all cases in which fines are inflicted, a fixed term of imprisonment may follow upon failure to pay the required amount. The following scale applies :—

(*a*) Where the fine does not exceed ten shillings, imprisonment for seven days.

(*b*) Exceeding ten shillings but not exceeding one pound, fourteen days.

(*c*) Exceeding one pound but not exceeding five pounds, one month.

(*d*) Exceeding five pounds but not exceeding twenty pound, two months.

(*e*) Exceeding twenty pounds, three months.

Imprisonment in default of payment of a fine is without hard labour.[2] Where an accused person is ordered to pay a fine "and costs," the total amount so adjudged must be fixed, *e.g.* if the fine is ten shillings and the costs four shillings, the order of the Court is for payment of fourteen shillings.

(4) Apart from any statutory provision, Justices have always possessed the power of binding over a person found guilty of an offence, upon recognizances. The usual form of such binding over being that the accused undertakes under a penalty to come up for judgment if and when called upon. The effect of this is that no punishment is inflicted for the offence of which he is found guilty unless he repeats that offence or otherwise brings himself within the law.

[1] Criminal Justice Administration Act, 1914, s. 1.
[2] *Ibid.*, s. 16 ; see *ante*, p. 77, as to enforcement of fines.

(5) The more usual way now of dealing with first offenders, and with those cases in which leniency appears to be desirable, is to place the offender in the charge of the Probation Officer. There is now attached to every Court of Summary Jurisdiction a Probation Officer who is charged with the supervision of criminals placed in his hands by the Court. Such officer is appointed by the Probation Committee either for the county or for the district in which the Court is situated. It is his duty—

(*a*) To visit, or receive reports from the person under supervision at such intervals as the magistrates in their order direct, or, in default of such order at such times as he thinks fit.

(*b*) To report to the Court as to the probationer's conduct.

(*c*) To advise, assist and befriend him, and, when necessary, to endeavour to find him suitable employment.

(*d*) Where conditions are attached to the probation order, to see that those conditions are observed (*e.g.* it is not uncommon for an order to direct that the offender shall cease to associate with certain undesirable companions, or in the case of a sailor that he shall go to sea within a certain time, but the Court has power to vary the order in each particular case).[1]

It is also the duty of a Probation Officer, apart from individual offenders, to render to the Court during the month of January in each year, a report according to the form set out under the Probation of Offenders Act, 1907.[2] It is usual, where an offender is placed upon probation, to bind him over to fulfil the terms of the probation order. Wherever conditions are attached to the probation order, notice of these conditions must be served upon him before he leaves the precincts of the Court. This notice must be read over and explained to him by the Probationer Officer in the presence of a witness before he leaves.[3] In cases where a probationer

[1] Probation of Offenders Act, 1907, s. 4.
[2] Probation Rules, 1926, Rule 46.
[3] Summary Jurisdiction Rules, 1915, Rule 59.

resides outside the jurisdiction of the Court, he may be put in charge of a Probation Officer for the district where he resides.

Variation of Probation Orders.—The Court under whose supervision a probationer is, may from time to time vary the terms of the order, either in the direction of mitigation or of extension, provided in the latter case that the period does not exceed three years from the date of the original order. Before such variation can take place the probationer must be summoned to appear before the Court which is to make the order.[1]

Breach of Recognizances or of Probation Order.—Where a Court is satisfied that the conditions of a recognizance or probation order have been broken, they may, without further formalities, issue a warrant for the arrest of the probationer, and may summon him to appear before the Court and on his appearance may sentence him for the original offence.

Special Classes of Offenders.—(1) *Children and Young Persons.*—An infant under the age of seven years is legally considered to be incapable of committing a crime, and is not therefore punishable.

A " child " as regards criminal law is a person between the ages of seven and fourteen years. A " young person " is one between the age of fourteen and sixteen years. No person under the age of sixteen years may now be sent to prison.[2] Children and young persons must be dealt with at a special Court, known as a Juvenile Court, to which the public are not admitted.

When a child or young person is charged with any offence he may be dealt with as follows [3] :—

(*a*) By dismissing the charge.

(*b*) By discharging the offender on his entering into a recognizance.

(*c*) By discharging the offender and placing him under supervision of a Probation Officer.

[1] Criminal Justice Administration Act, 1914, s. 9.
[2] Children's Act, 1908, s. 102.
[3] *Ibid.*, s. 107.

(*d*) By committing the offender to the care of a relative or other fit person.

(*e*) By sending the offender to an industrial school.

(*f*) By sending the offender to a reformatory school.

(*g*) By ordering the offender to be whipped (a child sentenced to a whipping is to be whipped in private once only, and is not to be sentenced to more than six strokes of a birch rod). The whipping is to be inflicted by a constable in the presence of a police superintendent, and also in the presence of the parent or guardian, should he wish to attend.[1] But a young person not exceeding sixteen years of age may be sentenced to a maximum punishment of twenty-five strokes with a birch rod, in addition to any other punishment for various offences under the Larceny Act.[2]

(*h*) By ordering the offender to pay a fine, damages or costs.

(*i*) By ordering the parent or guardian of the offender to pay a fine, damages or costs, unless he can satisfy the Court that he has not conduced by his neglect to the commission of the crime.[3]

(*j*) By ordering the parent or guardian to give security for the good behaviour of the offender.

(*k*) By committing the offender to custody in a place of detention.

(*l*) Where the offender is a young person, sentencing him to imprisonment.

(*m*) By dealing with the case in some other manner suitable to the offence, provided it is lawful under the provisions of the Children's Act.[4]

A child cannot be sent to a reformatory until he is twelve years of age in the opinion of the Court.[5]

[1] Summary Jurisdiction Act, 1879, s. 10 (1) (d).

[2] Larceny Act, 1916, s. 37. He may also be whipped for carnal knowledge or attempted carnal knowledge of a girl under thirteen. —Criminal Law Amendment Act, 1885, s. 4.

[3] Children's Act, 1908, s. 99 (1).

[4] *Ibid.*, s. 107.

[5] *Ibid.*, s. 57 (1).

A young person is not to be sentenced to penal servitude for any offence, and if sentenced to imprisonment, the period for which he may be imprisoned is limited to three months. Where a fine is awarded the amount must not exceed ten pounds.[1]

He is not to be committed to prison unless the Court certifies either that he is so unruly that he cannot be kept in a place of detention under the Children's Act, or that he is of so depraved a character that he would contaminate other children.[2]

Protection of Children under Fourteen Years of Age.—A child under fourteen years of age may be brought before a Court of Summary Jurisdiction under the following circumstances :—

(*a*) If he or she is found begging.

(*b*) If found wandering and not having any settled home.

(*c*) If found wandering and without parents, or having a parent or guardian who fails to exercise proper control.

(*d*) If found destitute when his or her parents are undergoing penal servitude or imprisonment.

(*e*) Who is under the care of a parent or guardian who by reason of criminal or drunken habits is unfit to have the care of the child.

(*f*) Who is the daughter of a father convicted of the offence of incest with any of his daughters under the age of sixteen.

(*g*) Who seeks the company of any reputed thief or of any common prostitute.

(*h*) Who is lodging or residing in a house or part of a house used for prostitution, or under such circumstances as may favour the seduction or prostitution of the child.

In all of the above cases the magistrates, if satisfied that the allegations are true, may order the child to be sent to a certified industrial school.

[1] Summary Jurisdiction Act, 1879, s. 11.
[2] Children's Act, 1908, s. 102 (3).

(2) *Offenders between the Ages of Sixteen and Twenty-one.—Recommendation for Borstal.*—With a view to reclaiming boys and girls between the ages of sixteen and twenty-one who appear likely if left to themselves, or if sent to an ordinary prison, to degenerate into members of the criminal class, institutions have been started in different parts of the country known as Borstal Institutions, to train them for earning an honest livelihood. Where an offender of this class is brought before a Court of Petty Sessions and is found guilty of a crime, the magistrates may, if they are satisfied that by reason of his or her criminal tendencies or association with persons of bad character such special training is desirable, send the case to Quarter Sessions with a recommendation that the offender be sent to a Borstal Institution. In these cases the offender must be committed to prison by the Petty Sessions during the interval of waiting.

(3) *Lunatics and Mental Deficients.*—Lunatics and mental deficients stand in a category by themselves. They are not punishable in the ordinary way, but in the case of the latter are liable, if convicted, to be sent to special institutions. (See as to this subject, Chapter V, p. 107.)

(4) *Aliens.*—Where an alien is convicted of an offence for which imprisonment without the option of a fine can be imposed, and the Court considers that the alien should be expelled from the country, the Justices may forward a certificate to the Home Secretary recommending such expulsion. Such a certificate may also be given by a Court of Summary Jurisdiction in the case of aliens who have entered the United Kingdom after being sentenced abroad for a crime for which they could have been extradited. The duty of the Court in each case is limited to making a recommendation to the Home Secretary.

CHAPTER V

MENTAL DEFICIENCY IN RELATION TO CRIMINAL LAW

General.—The law has for long recognized that persons who are of unsound mind must receive special treatment, both as regards the safeguarding of their persons and property, and as to the degree of responsibility to be attached to their acts when they bring themselves within the provision of the Criminal Law.

The methods of dealing with lunatics are set out in Part III, Chapter V.

Cases of mental deficiency not amounting to lunacy are in a different category. Questions as to protection and punishment of mental deficiency are now settled by the provisions of the Mental Deficiency Acts of 1913 and 1927.

Definition.—The following are now deemed to be mental defectives for the purposes of the criminal law :—

(*a*) Idiots ; that is to say, persons in whose case there exists mental defectiveness of such a degree that they are unable to guard themselves against common physical dangers.

(*b*) Imbeciles ; that is to say, persons in whose case there exists mental defectiveness which, though not amounting to idiocy, is yet so pronounced that they are incapable of managing themselves or their affairs, or, in the case of children, of being taught to do so.

(*c*) Feeble-minded persons ; that is to say, persons in whose case there exists mental defectiveness which, though not amounting to imbecility, is yet so pronounced that

they require care, supervision and control for their own protection or for the protection of others, or, in the case of children, that they appear to be permanently incapable by reason of such defectiveness of receiving proper benefit from the instruction in ordinary schools.

(*d*) Moral imbeciles; that is to say, persons in whose case there exists mental defectiveness, coupled with strong, vicious or criminal propensities, and who require care, supervision and control for the protection of others.

Mental defectiveness means a condition of arrested or incomplete development of mind existing before the age of eighteen years, whether arising from inherent causes or induced by disease or injury.[1]

Offences against Mental Deficients.—Certain special offences have been created by Statute, relating to persons mentally deficient, the following being the most important.

A person is guilty of an offence if he falls within any of the following categories :—

(*a*) A person who holds office as commissioner, inspector, secretary, or servant of the Board of Control, although disqualified by being directly or indirectly interested in any certified institution, or house, or approved home.[2]

(*b*) A person who undertakes the care of more than one person, who is a defective, otherwise than in a certified house or approved home.[3]

(*c*) A person who fails to notify the Board of Control within forty-eight hours of his undertaking the care of a defective other than in a certified house.[4]

(*d*) A person who detains a patient after he has knowledge that the powers have expired.[5]

(*e*) A person appointed guardian who supplies intoxicants to a defective.[6]

[1] Mental Deficiency Act, 1927, s. 1.
[2] *Ibid.*, 1913, s. 24 (2).
[3] *Ibid.*, s. 51.
[4] *Ibid.*, s. 51 (2).
[5] *Ibid.*, s. 51 (3).
[6] *Ibid.*, s. 52.

(*f*) A person assisting a patient to escape from an institution or guardianship.[1]

(*g*) A person obstructing any commissioner, inspector, or visitor exercising his powers under the Mental Deficiency Act, 1913.[2]

(*h*) A person wilfully obstructing anyone authorised to visit and examine any person alleged to be defective.[3]

(*i*) A person employed in any institution, or having a defective in his care, who ill-treats or wilfully neglects the defective.[4]

(*j*) A person who unlawfully and carnally knows or attempts to procure any woman defective.[5] (This offence is not triable at Quarter Sessions.)

(*k*) A person who makes false entries in any book or return required to be kept by the Mental Deficiency Act, 1913.[6]

(*l*) A person making untrue statements with a view to obtaining a certificate of approval of a house for defectives from the Board of Control.[7]

Offences by Mental Deficients.—On the conviction by a Court of competent jurisdiction of any person of a criminal offence punishable in the case of an adult with penal servitude or imprisonment, or in the case of a child brought before a court under section 58 of the Children's Act, 1908, involving liability to be sent to an industrial school, the Court, if satisfied on medical evidence that he is a defective within the meaning of the Mental Deficiency Act, 1913, may either :—

(*a*) Postpone passing sentence, or making an order for committal to an industrial school, and direct that a petition be presented to a judicial authority under this Act with a view to obtaining an order that he be sent to an institution or placed under guardianship, or

[1] Mental Deficiency Act, 1913, s. 53. [2] *Ibid.*, s. 54.
[3] *Ibid.*, s. 54 (2). [4] *Ibid.*, s. 55. [5] *Ibid.*, s. 56.
[6] *Ibid.*, s. 57. [7] *Ibid.*, s. 58.

(*b*) In lieu of passing sentence, or making an order for committal to an industrial school, itself make any order which if a petition had been duly presented under the Mental Deficiency Act, 1913, the judicial authority might have made, which order shall have the same effect as if it had been made by a judicial authority on a petition under that Act.[1]

If the Court is a Court of Summary Jurisdiction, and the case one with which that Court has power to deal summarily, the Court, if it finds that the charge is proved, may give such directions or make such order without proceeding to a conviction, and such a person is deemed to be a person guilty of an offence.[2]

A lunatic found guilty of a criminal offence is detained in a Criminal Lunatic Asylum under an order of the Home Secretary.

[1] Mental Deficiency Act, 1913, s. 8.
[2] *Ibid.*, s. 8 (1).

CHAPTER VI

QUARTER SESSIONS

Definition.—Quarter Sessions, or more correctly General Quarter Sessions, is the name given to the sittings of the whole body of Justices in a county, or of a Recorder in a borough, held four times in each year, or oftener, for the purpose of transacting county business, of trying indictable offences, and of hearing appeals from Petty Sessional Courts. The term Quarter Sessions is applied to all the sittings of this Court whenever held, and includes adjournments of any sessions, and extra sessions held at periods intermediate between the ordinary Quarter Sessions.[1]

Dates of Quarter Sessions.—County Quarter Sessions must be held at least four times in every year, the dates being fixed by the Justices themselves. These Quarterly Sessions must, however, be fixed for a date within twenty-one days either before or after 25th March, 24th June, 29th September and 25th December. The word county includes a riding or division or other part of a county in which a separate Court of Quarter Sessions is held. It does not, however, include the County of London, nor the county of a city or the county of a town.[2] (There is special statutory authority for Sessions to be held in St. Albans and Hertford alternately for the whole county of Hertford.[3]) Although Quarter Sessions must be held at the times above mentioned, in the event of there being no criminal business to be dealt with, the Clerk of the Peace is empowered to dispense with the

[1] Criminal Justice Act, 1925, s. 49 (2).
[2] *Ibid.*, s. 22.
[3] *Ibid.*, s. 23.

attendance of Jurors and Grand Jurors,[1] and in the event of their being no case for trial except those in which the accused have already pleaded guilty, and a certificate to that effect has been lodged, he may, by notice, dispense with the attendance of Grand Jurors.[2]

Constitution of the Court.—In counties the whole body of County Justices (but not Borough Justices) are entitled to sit at Quarter Sessions. No sitting is valid unless at least two Justices be present. One Justice alone cannot even adjourn the sessions or perform any function connected with it.[3] In boroughs having their own Court of Quarter Sessions, all the borough magistrates are entitled to sit at Quarter Sessions, but have no voice in the determination of any matter, either civil or criminal, the Recorder of the borough being the sole judge of the Court. The mayor may, however, open and adjourn the Court in the absence of the Recorder.[4] In counties, Justices elect their own chairman and vice- (or deputy-) chairman from among themselves. These may be elected for life or for a definite period. The practice varies in different counties. The chairman, or in his absence the vice- or deputy-chairman, presides at Quarter Sessions and acts as the mouthpiece of the Court. In criminal matters he is the sole judge of the law. It is his duty to charge the Grand Jury, sum up the cases to the Petty Jury, and to pronounce sentence. In practice much responsibility devolves upon the chairman, who is usually a barrister or judge. So far as the criminal cases are concerned, the ordinary magistrate, though in theory one of the Judges, is in practice often only an onlooker, although he may ask to put questions to the witnesses through the mouth of the chairman, and is always entitled to give his opinion as to sentence when a prisoner is found guilty. In

[1] Assizes and Quarter Sessions Act, 1908, s. 1.

[2] Criminal Justice Act, 1925, s. 19. In this case the trial of prisoners proceeds as if a bill had been found by the Grand Jury.

[3] R. *v.* Westrington (1750), 2 Bott. pl. 881 ; R. *v.* Middlesex, J. T. (1834), 5 B. and Ad. 1113.

[4] Municipal Corporations Act, 1882, s. 167.

spite of the small part which he plays under these circumstances, his presence on the Bench will invalidate the proceedings should bias or interest on his part be shown to have existed. In appeals and in county business (*e.g.* the appointment of committees under the Licensing Act, etc.) every magistrate has an equal vote.[1]

Jurisdiction at Quarter Sessions.—Quarter Sessions has jurisdiction in the following matters :—

(1) In criminal cases which, while they are beyond the jurisdiction of Petty Sessions, are yet not of so serious a nature as to require the attendance of a Judge of the High Court.[2]

(2) In appeals from Petty Sessions in both civil and criminal matters. This jurisdiction is given by Statute.[3]

(3) Civil and administrative jurisdiction in matters relating to licensing, lunacy, prisons, highways, etc. This jurisdiction is in some cases conferred by Statute, and in others is implicit in the magistrate's commission.

Magistrates sitting at Quarter Sessions have a general power to state a case for the opinion of the High Court on a matter of law arising upon the hearing of a civil or criminal case which is heard before them. An appeal lies to the Court of Criminal Appeal, either as to conviction or sentence, in respect of all criminal cases heard before the Court.

Magistrates at Quarter Sessions forming what is termed a "Court of Record" have power to commit to prison for Contempt of Court if committed in the face of the Court.[4]

(1) **Proceedings at a Hearing of a Criminal Case.**—(*a*) *Finding of Bill by Grand Jury*.—Every charge made against a prisoner at Quarter Sessions (except in appeals) is made

[1] Part IV, p. 194.
[2] List of cases not triable at Quarter Sessions will be found in Appendix C, p. 205.
[3] Summary Jurisdiction Act, 1879, s. 19.
[4] R. *v.* Paton (1864), 33, L.J., M.C., 142.

by what is called an indictment. An indictment is a statement of the offence charged against the accused, and like the original information, must state clearly the nature of that offence. Forms for the framing of indictments are laid down in the Indictments Act, 1915.[1] The indictment must give reasonable particulars as to the place and time where the alleged offence is stated to have been committed, and must further state with particularity the nature of the offence and where intention (*e.g.* intent to defraud) is of the essence of the crime, must allege that the intent existed. The indictment is usually drawn by the Clerk of the Peace, but in case of difficulty is often drawn by a barrister. The Court before which a case is tried can amend an indictment where it is defective, but it cannot do so if the effect of such amendment would be to substitute some offence different from that originally charged. If in the case of amendment the Court considers that the prisoner might suffer hardship from the immediate trial of the case, they may order an adjournment in order that the prisoner may have an opportunity of dealing with the case as amended.

Every indictment which is to be preferred before a Jury at Quarter Sessions must (except in the circumstances already mentioned) be found in the first instance by a Grand Jury. A Grand Jury is a body of not less than thirteen nor more than twenty-three inhabitants of the county summoned by the sheriff for the purpose of considering indictments. They are, in the first instance, charged or instructed by the chairman as to the law and their duties in regard to cases which are to come before them. Their duty is to ascertain whether there is, in fact, a *prima facie* case against a prisoner to be submitted to the decision of a Petty Jury, and they form an additional safeguard to ensure that no person shall be put on trial unless the evidence on which he is to be tried is of a cogent nature. It is not for the Grand Jury to inquire into the defence of a prisoner. Once it is established to their satisfaction that the prosecution can make out a case, they must return what is known as a "True Bill." The matter then proceeds.

[1] S. 1 and Sch. 1.

(*b*) *Arraignment.*—A "True Bill" having been found, a prisoner is arraigned, *i.e.* he is called upon by the Clerk of the Court to plead guilty or not guilty to the indictment. If he pleads guilty he can be sentenced without further proceedings. If he pleads not guilty, or if he makes no reply to the charge, he is put on trial before a Petty Jury.

Before he pleads to an indictment objection may be taken that the indictment is in some way or other bad. An indictment may be bad in various ways. It may not set out the offence charged with sufficient particularity for the prisoner to know of what he is accused. Or, again, it may so confuse two or more charges as to be embarrassing to the prisoner. In either of these cases the Court has power to amend the indictment so that the prisoner can have a fair trial, and if it contains two or more charges, may order the prosecution to elect upon which charge they intend to proceed. An indictment may further be bad by not disclosing any offence according to law, in which case the prisoner is entitled to be discharged at once, but apart from these technical difficulties an indictment may be bad for violating what is known as the Vexatious Indictments Acts.[1] By these Acts no bill of indictment may be presented to a Grand Jury in certain cases unless the prisoner has been committed by the Justices at Petty Sessions to take his trial upon the charge now made, or unless leave to prefer such indictment has been obtained from a Judge, or one of the law officers, or the Court before whom the case is to be tried. The offences which are within the provisions of the Vexatious Indictments Acts are set out in Appendix E, page 210. Where a True Bill has been found by a Grand Jury in regard to an offence within the scope of one of these Acts, and the provisions above mentioned have not been complied with, application may be made to the Court for the indictment to be quashed, and if this application is granted, the prisoner will not be put on trial. There is, however, one proviso which applies to these offences, and that is that if an accused person has been committed by the magistrates upon one

[1] Vexatious Indictments Act, 1859, amended by Indictments Act, 1915.

charge and the depositions taken upon that charge show that some other offence (which comes within the provisions of the Vexatious Indictments Acts) has been committed, a bill for this latter offence may be preferred before the Grand Jury, even though the Acts have not otherwise been complied with.

(*c*) *Hearing before Petty Jury*.—In what is known as felony,[1] a prisoner is entitled to challenge (*i.e.* object to) any individual person whose name is called upon the Petty Jury, and he may, in fact, exercise this right up to a number of thirty-six jurors. In practice, the right is not often exercised, or if exercised is used only to a limited extent, but in theory, trial might be seriously hampered if an inadequate number of jurors were summoned. In misdemeanours, *i.e.* cases where the crime is not a felony, a prisoner has no right of challenge, but if he can show that it would be unfair to him if any selected juror were to sit and try the case, the juror would, on his application, be taken out of the jury box. A Petty Jury is always twelve in number, and the jurors may be either men or women. In felonies, each juryman is sworn separately upon the New Testament (a Jew is sworn upon the Old Testament), and in misdemeanour are sworn four to a book. The trial is opened by a statement from the prosecuting counsel, and witnesses for the prosecution are examined by him, and are liable to be cross-examined either by the prisoner or his counsel if one is retained for him. At the conclusion of the case for the prosecution the prisoner may, if he chooses, give evidence, and may call witnesses on his own behalf. These are cross-examined by the prosecuting counsel in his turn. At the conclusion of the hearing the chairman sums up the case and directs the jury upon the law, and the jury are then invited to consider their verdict. In every criminal case the "onus" is on the prosecution, and they must prove the case to the reasonable satisfaction of the jury before a verdict of guilty can be returned. The verdict of the Petty Jury must be unanimous.

[1] As a general rule, all the more serious crimes are felonies, *e.g.* murder, manslaughter, rape, etc., but in many cases the distinction between a felony or a misdemeanour depends upon the words of the Statute creating the offence.

(*d*) *Defence of Prisoners*.—A prisoner who is possessed of means may instruct a solicitor and counsel at any time and in any way he pleases. It is further the right of any prisoner who is arraigned to select any member of the Bar present to defend him, and he is entitled to his services, however eminent he may be, on a payment of £1, 3s. 6d. for his services. A prisoner who is without means, and who has disclosed a defence at the hearing before the Justices, can apply either at the Petty Sessions or at the Quarter Sessions for legal aid, and solicitor and counsel or counsel alone may, in the discretion of the Court, be assigned to him, the fees to such solicitor and counsel being paid out of the county fund.

In case of application for legal aid being made to Justices at Petty Sessions, it is usually desirable that in a fit case they should grant the application rather than refer the matter to be dealt with by the Quarter Sessions.

(*e*) *Sentence*.—If the accused is found guilty by the unanimous vote of the Petty Jury, it becomes the duty of the Court to pass sentence. As regards this, all magistrates present are entitled to give their opinions, although the actual decision rests with the chairman, and sentence is passed by him. In the event of a Jury failing to agree within a reasonable time, that jury is discharged, and trial of the prisoner must take place either then or on some future day before another jury.

(2) **Prisoners Committed for Sentence.**—In addition to the ordinary criminal jurisdiction of Quarter Sessions, the Justices have certain duties in regard to special cases remitted to them by Justices in Petty Sessions :—

(*a*) *Incorrigible Rogues*.—The powers of Justices in Petty Sessions to deal with incorrigible rogues are limited by the provisions of the Vagrancy Act, 1824.[1] These persons must, on conviction, be sentenced to imprisonment with hard labour until the next Quarter Sessions, and are then brought up to be dealt with by that Court. The Justices at Quarter

[1] Vagrancy Act, 1824, s. 5.

Sessions must inquire into the whole circumstances, and may then order the offender to be further imprisoned with hard labour for a term not exceeding one year, and if a male, to be whipped during his imprisonment if expedient. An incorrigible rogue is a person who has previously been dealt with as a rogue and vagabond, and has repeated the offence, or who, being a rogue and vagabond, has resisted arrest or broken out of prison. As to the definition of a rogue and vagabond, see Chapter VII. The general run of incorrigible rogues committed to Quarter Sessions are persistent and fraudulent beggars, persons guilty of public indecency, men living on the earnings of prostitution, and the like. In every case committed to Quarter Sessions it is the duty of the Justices to make careful investigation both as to the antecedents of the offender and as to his physical and mental condition.

(*b*) *Persons Committed with a view to Borstal Treatment.*—Justices at Petty Sessions have now no power to commit to a Borstal Institution,[1] but in the event of a case coming before them in which such treatment seems appropriate, they must commit to the next Quarter Sessions, and the Justices there will deal with the offender. The discretion of the Justices at Quarter Sessions is unfettered, and if in their opinion the case is not one where Borstal treatment is desirable, they may deal with the offender in any way in which the original Court might have dealt with him.

(3) **Administrative Jurisdiction.**—(*a*) *General.*—Every Court of Quarter Sessions is called upon from time to time to deal with matters of a domestic nature, such as the appointment of the members of the Licensing and Rating Committees, Justices who are to exercise jurisdiction in lunacy, and the like.

(*b*) *Diversion and Stopping up of Highways.*—Apart from this the Court deals with applications for stopping up or diversion of highways within its jurisdiction (see page 187). Where a certificate has been granted by two Justices, and the

[1] Criminal Justice Act, 1925, s. 46; see p. 106.

other required formalities have been complied with, such as advertising the proposed diversion or stopping up, and no notice of opposition has been received, the order is obtained as of right, and the Court has no discretion to refuse it.[1] If notice of opposition has been given, the question whether the diversion or stopping up is for the public benefit has to be determined by a jury. Notice of opposition must be given fourteen clear days before the matter comes before the Court of Quarter Sessions, and the opposer must set out the grounds on which he claims to be aggrieved by the proposed order.[2] Any objection on a point of law is to be settled by the Justices (in practice the chairman of Quarter Sessions), and questions of fact by the Jury. The questions which the jury have to answer are : (1) whether the proposed new highway is nearer *or* more commodious than the old one (either will do) ; (2) where it is proposed to stop up a highway, whether it is, in fact, unnecessary ; (3) whether the opposer will be injured or aggrieved if the order is made.

Appeals from Petty Sessions.—An appeal lies from magistrates sitting at Petty Sessions to the Court of Quarter Sessions, in all criminal matters, and in the majority of civil proceedings, *e.g.* licencing, bastardy, rating, etc. The hearing of an appeal before Quarter Sessions is treated as a re-hearing of the case. If it is an appeal in a criminal matter the prosecution commence and must prove their case, just as in a prosecution before a jury. In bastardy the mother of the illegitimate child must prove the paternity, and the Justices at Quarter Sessions are bound by the same rules of evidence as the Justices in Petty Sessions.[3] On the hearing of an appeal, all magistrates are in theory equal, and are entitled to ask questions of the witnesses, etc., and may vote as to the decision of the Court. In practice, and for the sake of convenience, the chairman usually acts as the mouthpiece of the Court as in a criminal case, although, in fact, other magistrates may take part in the proceedings.

[1] Highway Act, 1835, s. 91.
[2] Quarter Sessions Act, 1849, s. 1.
[3] See Part III, Chap. II, p. 132.

CHAPTER VII

MISCELLANEOUS POWERS AND DUTIES

(1) **Vagrancy.**—Vagrants are divided into three classes :—

(*a*) Idle and disorderly persons.

(*b*) Rogues and vagabonds.

(*c*) Incorrigible rogues.

(*a*) *Idle and Disorderly Persons*.—A person committing one of the following offences is an idle and disorderly person :—

(i) Any person being able wholly or in part to maintain himself or herself or his or her family by work or other means, and wilfully refusing or neglecting to do so, thereby causing him or her or his or her family to become chargeable to the parish or union.[1]

(ii) Any woman neglecting to maintain her bastard child, being able wholly or in part do so so.[2]

(iii) Every person returning to and becoming chargeable to any parish or union, after being legally removed by an order of two Justices, unless he or she produce a certificate from some other parish that he or she is settled in the parish where he becomes chargeable.[3]

(iv) Any petty chapman or pedlar wandering abroad or trading without a licence.[4]

(v) Any person placing himself or herself in any public

[1] Vagrancy Act, 1824, s. 3.
[2] Poor Law Amendment Act, 1844, s. 6.
[3] Vagrancy Act, 1824, s. 3.
[4] *Ibid.*

place to beg or gather alms, or encouraging a child to do so.[1]

(vi) Any common prostitute wandering in the public streets or highway, or in any place of public resort, and behaving in a riotous or indecent manner.[2]

The punishment in any of the above cases by a Court of Petty Sessions may be imprisonment for one month, or a fine of five pounds.[3]

(*b*) *Rogues and Vagabonds*.—A person committing any of the following offences is deemed a rogue and vagabond, and punishable as such :—

(i) Any person committing one of the offences for which he may be classed as " an idle and disorderly person," and having been previously convicted as such.[4]

(ii) Any person pretending to tell fortunes or using a subtle craft, means or device, by palmistry or otherwise, to deceive any of His Majesty's subjects.[5]

(iii) Any person wandering abroad and lodging in any barn or outhouse, or in any deserted building, or in the open air, or under a tent, or in any cart or waggon, not having any visible means of subsistence and not giving a good account of himself.[6]

(iv) Any person wilfully exposing his person with intent to insult any female.[7]

(v) Any person wilfully exposing to view in any street or public place, or in the window of any shop, any obscene print, picture, etc.[8]

(vi) Any person wandering abroad and endeavouring by the exposure of wounds or deformities to gather alms.[9]

(vii) Any person going about as a gatherer or collector of alms, or endeavouring to obtain charitable contributions of any kind under any false or fraudulent pretence.[10]

[1] Vagrancy Act, 1824, s. 3. [2] *Ibid*.
[3] *Ibid*., s. 3, and Summary Jurisdiction Act, 1879, s. 20.
[4] Vagrancy Act, 1824, s. 4.
[5] *Ibid*. [6] *Ibid*. [7] *Ibid*.
[8] *Ibid*., and Vagrancy Act, 1838, s. 2.
[9] Vagrancy Act, 1824, s. 4. [10] *Ibid*.

(viii) Any person running away and leaving his wife or child chargeable to any parish or union.[1] Or a woman neglecting to maintain her bastard child and convicted for the second time.[2]

(ix) Any person playing or betting by way of wagering or gaming in any street or other public place to which the public are permitted to have access, with any table or instrument of gaming, or any article used as an instrument of such gaming, at any game or pretended game of chance.

(The punishment for this offence is three months imprisonment, or a penalty not exceeding forty shillings for the first offence or five pounds for any subsequent offence.[3])

(x) Any person having in his custody any picklock, key or other implement with intent feloniously to break into any dwelling-house, warehouse, etc.[4]

(xi) Any person armed with any gun, etc., or other offensive weapon, or having upon him any instrument, with intent to commit any felonious act.[5]

(xii) Any person being found in or upon any dwelling-house, warehouse, etc., or in any enclosed yard, garden or area for any unlawful purpose.[6]

(*Note*.—The unlawful purpose must be an offence rendering the person liable to a criminal prosecution, not immorality.)

(xiii) Any suspected person or reputed thief frequenting any river, canal, dock, etc., or any place of public resort, or any avenue leading thereto, with intent to commit a felony.[7]

(xiv) Any person apprehended as an idle and disorderly person, and violently resisting any constable so arresting him, and subsequently convicted of the offence for which he was apprehended.[8]

[1] Vagrancy Act, 1824, s. 4.
[2] Poor Law Amendment Act, 1844, s. 6.
[3] Vagrant Act Amendment Act, 1873, s. 3.
[4] Vagrancy Act, 1824, s. 4.
[5] *Ibid.* [6] *Ibid.* [7] *Ibid.* [8] *Ibid.*

(xv) Any male person who knowingly lives wholly or in part on the earnings of prostitution, or who in any public place persistently solicits or importunes for immoral purposes.[1]

When a male person is proved to live with or to be habitually in the company of a prostitute, or is proved to have exercised control, direction or influence over the movements of a prostitute in such a manner as to show that he is aiding, abetting or compelling her prostitution with any other person or generally, he shall, unless he can satisfy the court to the contrary, be deemed to be knowingly living on the earnings of prostitution.[2]

(*Note*.—The punishment for this offence is increased to imprisonment with hard labour for six months, and the defendant is deprived of his right to trial by jury under the S. J. Act, 1879, s. 17. If tried by indictment, he may be given two years hard labour, or, if guilty of a second or subsequent offence, he may be whipped privately, the number of strokes being specified by the Court making the order.[3] The wife or husband of a person charged with this offence may be called as a witness either for the prosecution or defence if such evidence be voluntary.[4]) See Evidence, Part I, Chapter IV, p. 30.

The punishment for any of these offences, if inflicted by one Justice, is, apart from special enactment, imprisonment for fourteen days, or if inflicted by a Petty Sessional Court, imprisonment for a period not exceeding three months, or a fine of five pounds.[5]

(*c*) *Incorrigible Rogues*.—Any person may be charged as an incorrigible rogue :—

(i) Who breaks out of prison before the expiration of

[1] Vagrancy Act, 1898, s. 1 (1).
[2] Vagrancy Act, 1898, s. 1 (3); Criminal Law Amendment Act, 1912, s. 7 (1).
[3] Criminal Law Amendment Act, 1912, s. 7 (2) and 7 (5).
[4] *Ibid*., s. 7 (6).
[5] Vagrancy Act, 1824, s. 4; Summary Jurisdiction Act, 1879, s. 20.

the term ordered to be inflicted under the Vagrancy Act, 1824.[1]

(ii) Who is convicted for the second time of being a rogue and vagabond.[2]

(iii) Who, when apprehended as a rogue and vagabond, resists any constable or other police officer arresting him, and who is subsequently convicted of the offence with which charged.[3]

The Justices in Petty Session before whom such a person is charged have the duty of committing him to prison with hard labour till next Quarter Sessions, by whom he will be finally dealt with as an incorrigible rogue.[4] The Quarter Sessions may examine into the circumstances of the case, and may order, if they think fit, that such an offender be further imprisoned with hard labour for a period not exceeding one year, and may order, if a male, that he be whipped during his imprisonment.[5]

Arrest of Vagrants.—Any person may apprehend without a warrant and convey before a Justice or to a police officer anyone found committing one of the offences detailed in the preceding paragraphs defining the three classes of vagrants.

Any police officer wilfully refusing or neglecting to take such an offender into his custody may be punished.[6]

Search Order.—The person so charged may be searched by order of the Justice, and any money found with or upon the offender may be applied by order of the Justice in defraying the costs of the prosecution and conveying him to the gaol.[7]

(2) **Riots and Unlawful Assembly.**—*Duty of Magistrates.*—It is one of the principal duties of magistrates to preserve peace and order, and in cases of riots and unlawful assemblies

[1] Vagrancy Act, 1824, s. 5.
[2] *Ibid.*
[3] *Ibid.*
[4] *Ibid.*; see p. 117.
[5] *Ibid.*, s. 10.
[6] *Ibid.*, s. 7.
[7] *Ibid.*, s. 8.

there is a special duty to disperse persons guilty of disturbing the peace.

Definition.—A riot is a tumultuous meeting of three or more persons who are guilty of actual violence.

A rout is a disturbance of the peace by persons who endeavour to commit an act which would make them rioters ; and an *unlawful assembly* is where three or more persons meet with an intention to make a riot, but neither carry their purpose into effect nor make any endeavours towards it.[1]

Proclamation of a Riot ("*Riot Act.*")—If twelve or more persons unlawfully riotously[2] and tumultuously be assembled together to the disturbance of the public peace, they may be required by any Justice of the Peace, sheriff, mayor, bailiff, etc., by proclamation to disperse peaceably in the following terms :—

"Our Sovereign Lord the King charges and commandeth all persons being assembled immediately and peaceably to depart to their habitations or lawful business upon the pain contained in the Act made in the first year of King George I for preventing tumults and riotous assemblies. God save the King."

The last four words must not be omitted. If the rioters do not disperse within the hour they may be apprehended and taken before the Justices without a warrant, and they may either bind them over to keep the peace or commit them for trial.[3] If it is considered that the police and other persons assisting cannot cope with the riot, the military should be communicated with and asked to hold themselves in readiness if required. The request for military assistance must be in writing by the magistrate, and it is[4] the duty of the magistrate to accompany the military. All orders to the troops must be given by the officer in command of the troops, but

[1] Chitty's *Criminal Law*, Vol. 2, 487; Hawkins' *Pleas of the Crown*, Bk. I, C. 65.
[2] Riot Act, 1714, s. 1.
[3] *Ibid.*, s. 3.
[4] King's Regulations, clause 59, s. 8.

he is not to give the order to fire unless requested to do so by the magistrate.[1] If unnecessary force is used, the magistrate and the officer are responsible, criminally and civilly.

(3) **Vaccination.**—*Statutory Duty*.—The vaccination of children is compulsory, subject to certain exceptions, and cases which arise before the Justices for decision relate either to the neglect of this duty or to applications by parents for certificates exempting them from the general law.

The parent or persons in charge of every child born in England must, within six months after the birth of the child, cause it to be vaccinated by a medical practitioner.[2]

Penalties.—Every parent or other person having custody of a child, who neglects to have it vaccinated, and fails to give reasonable excuse for his neglect, is liable to be fined twenty shillings.[3]

Exceptions.—(*a*) *Medical Certificates*.—It is a defence to a charge under the Act that the public vaccinator or a medical practitioner is of opinion that the child is not in a fit state to be vaccinated, and has given a certificate to that effect. Such certificate requires to be renewed every two months until the child is fit.[4]

(*b*) *Exemption*.—No parent or other person is liable to any penalty for failing to have a child vaccinated if within four months from the birth of the child he makes a statutory declaration that he conscientiously believes that vaccination would be prejudicial to the health of the child, and within seven days thereafter delivers or sends by post the declaration to the vaccination officer of the district.

The Statutory Declaration must be made before a Commissioner of Oaths or before a magistrate, or some other person qualified to receive a declaration.[5]

[1] King's Regulations, clause 61.
[2] Vaccination Act, 1867, s. 16; 1871, s. 4.
[3] *Ibid.*, s. 29.
[4] *Ibid.*, s. 18.
[5] *Ibid.*, 1907, s. 1.

PART III

JURISDICTION OF MAGISTRATES (CIVIL)

CHAPTER I

PROCEDURE

The Complaint.—Civil proceedings are commenced by a complaint, which need not be written unless a Statute provides otherwise. A short written statement is, however, advisable in the interests of justice. A magistrate, on a complaint being made to him verbally, issues a summons as he would in the case of a criminal information. He must, however, where an Act requires it, require that the complaint should be put into writing.[1]

Where there is a discrepancy between the complaint or the summons and the evidence adduced at the hearing, the defect can be remedied by amendment, inasmuch as the ultimate aim of the complaint is civil redress and not punishment.

Civil Debt.—A complaint, made for money claimed to be due, is deemed to be a civil debt,[2] and the costs in a civil case also constitute civil debts. No warrant may be issued to apprehend any person for failing to appear before the Court to answer a complaint. No order for payment of a civil debt, or any instalment thereof, or costs ordered to be

[1] Summary Jurisdiction Act, 1848, s. 8.

[2] Summary Jurisdiction Act, 1879, s. 6.

paid by either defendant or complainant, may in default of a distraint or otherwise, be enforced by imprisonment, unless either the Court which made the order for payment, or another similar Court in the same county, is satisfied that the defaulter has had since the date of the order the means to satisfy the claim and has failed to do so.[1] The amount of imprisonment which may be adjudged (whether by one or more orders) is six weeks without hard labour, or until the sum is paid, the prisoner being treated as a civil debtor only.[2]

Witnesses can be summoned to prove means and examined on oath or affirmation at the hearing of a Judgment Summons,[3] according to the rules in force.[4]

Particulars in Civil Cases.—Particulars of the claim should be supplied by the complainant, and these should contain the best obtainable dates and items. They must be embodied in the summons or annexed to it.[5] The summons is to be served in accordance with the Summary Jurisdiction Acts, and the proceedings at the hearing are similar to those in a summary case.[6] All civil defences are open to the defendant. The judgment of the Court at the hearing of a complaint is called an order, and not a conviction. An order is enforceable by distress or commitment to prison, but there is to be no imprisonment until an order for the same shall have been obtained at the hearing of a Judgment Summons.

Judgment Summons.—If default in payment is made the complainant may apply for the issue of a judgment summons. No such summons is to be issued until after service of the order under which payment is to be made. The Judgment Summons orders the debtor to attend the Court to be examined as to his means to pay, and the Court may hear witnesses, other than the parties, as to his means.[7] The

[1] Summary Jurisdiction Act, s. 35.
[2] *Ibid.*, s. 34; see also Debtor's Act, 1869, s. 5.
[3] *Ibid.*, s. 35.
[4] Summary Jurisdiction Rules, 1915, Rules 36–44.
[5] *Ibid.*, Rule 36.
[6] *Ibid.*, Rules 38–40; see Part II, Chap. I.
[7] Summary Jurisdiction Act, 1879, s. 35.

service of the debtor with the order for payment need not be personal [1] in the first instance, but the Judgment Summons must, whenever practicable, be served personally. If, however, it is made to appear on oath to the Court that prompt personal service is impracticable, the Court may make an order for substituted service, *i.e.* service in such other way as may be practical, such as by registered letter to the defendant's last-known place of abode. Service must be effected two clear days before the hearing, and it may be served outside the jurisdiction of the Court. Service may be proved either by an affidavit or solemn declaration.[2] The hearing of the Judgment Summons may be adjourned from time to time.[3] The rules as to attendance of witnesses at judgment summons are the same as in other summary cases.[4] When an order of commitment is made at the hearing, it is to be dated on the day on which it is made.[5]

The sum adjudged to be paid by a Court of Summary Jurisdiction may be paid to—

(1) the clerk of the Court by which the order was made, provided no warrant of distress or order for commitment has been made to the police.

(2) the police officer holding the warrant of distress or commitment order, or

(3) the Governor of the Prison in which the prisoner is confined, or any other person having lawful custody of him.[6]

[1] Haydon *v.* Haydon (1911), 2 K.B. 191.
[2] Summary Jurisdiction Rules, 1915, Rule 39.
[3] *Ibid.*, Rule 41.
[4] *Ibid.*, Rule 42.
[5] *Ibid.*, Rule 43.
[6] *Ibid.*, Rule 18.

CHAPTER II

BASTARDY

Nature of Bastardy Order; Who may Apply.—A Bastardy Order is an order made by Justices in Petty Sessions, providing for the maintenance of an illegitimate child by its alleged (in legal language "putative") father. It is also known as an "Affiliation Order."[1]

The foundation of such an order arises through the liability of a parish to maintain all persons who are themselves without means of support. With the object of relieving the ratepayers of this liability, Justices have from a very early date been entitled to make an order against the father of an illegitimate child for the cost of its maintenance. Any single woman[2] who has given birth to, or who is about to give birth to, an illegitimate child, may apply for a summons calling upon the alleged father to appear before the Justices and show cause why he should not be required to contribute towards the maintenance of the child.[3] The summons will then issue, and the defendant is given notice to appear at a Petty Sessions to be held not less than six days from the date of the application. No order can be made in respect of a still-born child.[4]

[1] Affiliation Orders Act, 1914, s. 7.

[2] This includes a widow and a married woman if separated from her husband, but an application cannot be made by a married woman living with her husband. Stacey *v.* Lintell (1879), L.R. 4, Q.B.D. 291. A Separation Order, however, confers on a married woman the status of a single woman for the purpose of bastardy proceedings, Boyce *v.* Cox (1922), 1 K.B. 149.

[3] This does not apply to the child of a foreign woman born abroad. R. *v.* Blane (1849), 13 Q.B. 769; R. *v.* Humphrys (1914), 3 K.B. 1237.

[4] R. *v.* De Brouquens (1811), 14 East 277.

Time for Applying and Jurisdiction.—Application must be made either before the birth of the child (in which case the mother must state on oath the name of the father), or at any time within twelve months from the date of birth.[1] The only exceptions to this rule are the cases: (1) Where the alleged father has ceased to live in England before the birth, or has gone abroad within twelve months after such birth, in either of which events the application may be made within twelve months of his return, and (2) where the alleged father has within twelve months after the child's birth voluntarily[2] paid money for its maintenance, in which case the application may be made at any time. Where application is made before the birth of the child the summons cannot be heard, or any order made until its actual birth. The application must be made in the place where the mother resides, but if she has no permanent abode she may apply to any Court of Petty Sessions wherever she may be.[3] Where an illegitimate child is chargeable to the guardians, the latter may themselves apply for an order against the father, for the cost of maintenance during such period as the child is being maintained by the guardians.[4] Where an application by a woman for an order has failed for want of evidence, she may make a second application to the Justices, and a further hearing must take place, provided the second application is made within the statutory twelve months.[5] Where, however, there has been an appeal to Quarter Sessions in respect of the first order, and the order has been quashed on its merits (*i.e.* not on some technical point), no second application is permitted.[6]

Hearing before the Justices.—(*a*) *Evidence for Complainant.*—At the hearing before the Justices in Petty Sessions,

[1] Bastardy Laws Amendment Act, 1872, s. 3.
[2] *i.e.* without legal compulsion.
[3] Lawrence *v.* Ingmire (1869), 20 L.T. 391.
[4] Bastardy Laws Amendment Act, 1872, s. 8.
[5] R. *v.* Machen (1849), 14 Q.B. 74.
[6] R. *v.* Glynne (1871), L.R. 7, Q.B. 16; and R. *v.* May (1880), 5 Q.B.D. 382 (where, the respondent having been absent from the hearing at Quarter Sessions through a mistake, a fresh application was allowed).

evidence must be given by the mother of the child in support of her allegation that the defendant is the father, and in addition to her evidence there must be corroboration of that evidence in some material particular to the satisfaction of the Justices.[1] This is a provision of the utmost importance, and one upon which too much stress cannot be laid. The words of the Act are in themselves very wide, but in order to form a proper corroboration the evidence must be (1) of something quite independent from the evidence given by the mother; (2) must in some way implicate the defendant; (3) must be of an unequivocal nature. Acts which are capable of a perfectly innocent interpretation are not, taken by themselves, to be construed as corroborative evidence. They may, however, in certain circumstances assume a sinister aspect, *e.g.* the mere opportunity by reason of walking out with the defendant would not in itself be corroborative evidence, but where the social position of the parties is so different as to render innocent association unlikely, such acts may in themselves afford corroboration.[2] Any act done by the defendant, or words spoken by him to or in the presence of some person other than the complainant, before or after the birth of the child, which point to his acceptance of liability as the father are corroboration.

The following are illustrations shewing what evidence has in practice been held to amount to corroboration, and what has not :—

(*a*) In the case of Hill *v.* Denmark[3] the fact that the defendant, when taxed with the paternity of the child, did not deny it, was held, in all the circumstances of the case, to amount to corroboration. The reasoning of Lord Russell, C.J., in his judgment may be noted. "The magistrates had the witnesses before them, and they could judge from their demeanour and the way the evidence was given what was the proper inference to be deduced as to the meaning of his silence."

[1] Bastardy Laws Amendment Act, 1872, s. 4.
[2] Harvey *v.* Anning (1903), 87 L.T. 687.
[3] (1895), 59 J.P. 345.

(*b*) In the two following cases the Court held the corroboration insufficient. They may be taken as illustrating the principle that a Court should be reluctant to draw unfavourable conclusions from acts in themselves innocent. In Burbury *v.* Jackson[1] the complainant was a farm servant, and the defendant was her employer's son. Her story was that he had had connection with her in a barn and other parts of the farm buildings. The only corroboration suggested was that the two had been seen together alone in the barn, each engaged upon their own work. This was held to be insufficient, as it was evidence of opportunity alone, and could not be said to point to a probability of intercourse.

In Thomas *v.* Jones[2] the Court held that neither the sending for a doctor when the complainant was taken ill, by a bachelor master, nor the fact that he allowed her to stay for six weeks in the house after her confinement, amounted to corroboration, as either of these acts might be the result of humanity and consideration for the girl.

It is important that every Justice should realise that he is prohibited by law from acting on the mother's statement alone unless such corroboration as is indicated is forthcoming. It need hardly be pointed out that in order to constitute corroboration the evidence adduced must be trustworthy. An admission by the defendant that he has had connection with the complainant on some occasion either before or after the material date alleged by her is sufficient corroboration, even though such connections could not possibly have resulted in the birth of the child.

At the conclusion of the case for the complainant, and before calling upon the defendant, the Justices should consider whether she has made out a case for him to answer, and unless they are satisfied by the evidence of the complainant, corroborated as already mentioned in some material particular, that the liability of the defendant is established, the case should be dismissed.

The jurisdiction in bastardy is one of the most important

[1] (1917), 1 K.B. 16.

[2] (1921), 1 K.B. 22.

functions which Justices perform. The onus of proving the case is always on the complainant, and where a doubt exists it is manifestly unjust that an order should be made. The fact cannot be ignored that cases occur from time to time in which a woman endeavours to fasten the responsibility of providing for her illegitimate child upon the wrong person from motives of cupidity, malice or revenge, and it is important that Justices should remember that they owe as great a duty to see that no man is unjustly condemned as to see that no woman is left to bear the expense of maintaining her illegitimate child through the meanness of the man responsible.

(*b*) *Evidence for the Defence*.—Cross-examination of the complainant is often of the greatest importance in testing the truth or falsity of her statements, and where a woman is telling the truth her case is often found to be stronger after she has been cross-examined than it is before. Like all other witnesses she (and the same applies to the defendant) may be asked questions to test her credibility, and to shew that she is such a person as ought not to be believed upon her oath. She may be asked questions not only as to her conduct in general, but as to her relations with men other than the defendant, but it is important for the Justices to know that no evidence may be called to contradict her answers unless such evidence directly affects the question of the paternity of the child. If, for instance, a child is born in December, no evidence may be called by the respondent to show misconduct by the complainant with other men twelve or fifteen months previously, but he would be entitled to call such evidence if the acts alleged took place in the previous March, *i.e.* at or about the time when the child must have been conceived. Questions sometimes arise as to the period of gestation, and every magistrate who deals with bastardy cases should, if possible, consult some recognised medical authority where any question of this kind arises. Apart from the evidence just indicated, the defendant may give general evidence that the complainant has a bad moral reputation. Such evidence, if forthcoming, comes best from some person of standing, such as a local police officer or member of a

vigilance committee, or the like, but the Court may not reject it at the mouth of anybody if such evidence is tendered, although in certain cases they may attach very little weight to it. As regards the story of the complainant, the defendant is entitled to give evidence, and like her he may be cross-examined both as to the facts he speaks to and as to any matters which affect his credibility. He may also call any further evidence he desires which contradicts or throws light upon the testimony given by the complainant or any of her witnesses.[1]

Nature and Extent of Order.—Assuming that the case has been established to the satisfaction of the Justices, it then becomes incumbent upon them to make an order against the alleged father. This order may be for a payment of a weekly amount not exceeding a sum of twenty shillings[2] for the maintenance and education of the child and for the expenses incidental to the birth, and may, at the discretion of the Justices, be calculated from the date of the birth if application be made before or within two months after the birth.[3] It may continue until the child attains the age of sixteen. Regard should, of course, be had to the circumstances and position both of the mother and of the person adjudged to be the father. Payment of a further sum may also be ordered for the expenses of confinement, for the funeral expenses of the child, if it has died before the date of hearing, and for the reasonable costs of the application. Where the mother has received, or is entitled to, maternity benefit under the National Insurance Act, 1911, she is, nevertheless, entitled to an order for the expenses of her confinement.[4] Where an order in bastardy is made against a soldier, a copy of any such order must be sent to the Army Council, who may order certain deductions to be appropriated from his pay against such order.[5] Similarly, orders regarding sailors should be sent to the Admiralty.[6]

[1] Subject to the limitations mentioned above.
[2] Bastardy Act, 1923, s. 2.
[3] Bastardy Laws Amendment Act, 1872, s. 5.
[4] National Health Insurance Act, 1924, s. 105.
[5] Army Act, 1881, s. 145; and Army and Air Force Act, 1921, s. 1.
[6] Naval Discipline Act, 1922, s. 98a.

Operation and Enforcement of Order.—If default is made by the father in the payments ordered by the Justices, an application may be made to any single Justice not less than one month from the date of the original order for a warrant to bring him before a Court of Summary Jurisdiction.[1] If he then fails or refuses to pay the amount due, the Justices may order a warrant of distress to issue against his goods, and they may further demand that he give security for his further appearance after the execution of the warrant. Failing the giving of such security, they may remand him in custody. In the event of insufficient money being raised by distress, the defaulter may be imprisoned for a period not exceeding three months. The term of imprisonment is to be proportionate to the amount due according to the scale laid down in the Summary Jurisdiction Act, 1879.[2] It should be noted that an order for imprisonment has been held to wipe out all arrears due at the date of such order. In the case of a soldier, no distress may be levied on his pay, arms, regimental necessaries, etc., neither may he be imprisoned.[3]

Appeal.—Either the complainant or the defendant to an application in bastardy may appeal to the Quarter Sessions for the county or borough having jurisdiction in the locality.[4] Notice of appeal must be given within seven days of the hearing, and a recognisance[5] must be entered into by the appellant to the satisfaction of the Justices, otherwise the notice of appeal is void. On the hearing of an appeal, the Court of Quarter Sessions is in the same position as the original Court. It may make an order, or may affirm, vary or discharge the original order, and both sides are entitled to call any additional evidence which they may desire to present. The same rules as regards the stating of a special

[1] Bastardy Laws Amendment Act, 1872, s. 4.
[2] Summary Jurisdiction Act, 1879, s. 5.
[3] Army Act, 1881, s. 145.
[4] Criminal Justice Administration Act, 1914, s. 37 (2).
[5] A recognisance is an undertaking made before a Court to do some act on a happening of some event, here, to pay a fixed sum on the failure to prosecute the appeal.

case by either party on a point of law or excess of jurisdiction for the High Court[1] by the Justices, and as to an application for a Writ of Certiorari apply to the case of Bastardy proceedings as to other orders made by a Court of Summary Jurisdiction.[2]

[1] Summary Jurisdiction Act, 1879, s. 33.

[2] See Part IV, pp. 195–197.

CHAPTER III

LICENSING

Definitions.—A "licence" for the purposes of this chapter may be defined as an authority granted by the State to do certain acts which without that authority would be unlawful. The sale of intoxicants, except under certain specified conditions, *e.g.* by a club to its registered members, is unlawful; so, too, in certain cases, is the keeping open of a house, room or other place for public music or dancing. A third case of a similar nature is where a room or other place, not being in a fully-licensed public-house, is used for public billiard or bagatelle playing.

As regards the two matters last mentioned, the functions of the Justices are of comparatively little importance, and it is only necessary to state that Justices' licences are required in the following cases :—

(1) For places where public music or dancing is held, but only in those urban areas where the Public Health Act, 1890, has been adopted.[1]

(2) For the opening of a room or place for use as a public billiard or bagatelle room.[2]

Licences for each of these purposes must be applied for either at the General Annual Licensing Meeting or at the Special Licensing Sessions.[3]

[1] Public Health Act, 1890, s. 51. (In Middlesex and within twenty miles of London these licences are granted by the county councils.) A licence is not required for a room kept by a dancing-master, to which the public may not be admitted. Bellis *v.* Burghall (1798), 2 Esp. 722.

[2] Gaming Act, 1845, s. 10. A Billiard Licence is not required for any fully-licensed public-house. *Ibid.*, s. 11.

[3] See *post*, p. 140.

Licences for the Sale of Intoxicating Liquors.—All persons who desire to sell intoxicants to the public must, before doing so, obtain a licence from the Justices of the county or borough in which the premises, upon which they desire to sell, are situated, and if they are already in possession of such a licence, must obtain a renewal of it at the expiration of the currency of the term. In theory, all such licences are held for a year only, ending on 5th April in each year, unless they are granted for a definite term.

Different Kinds of Licences.—Licences may be either: (*a*) On-licences, *i.e.* licences held in respect of premises in which the consumption of liquor is permitted, commonly known as public-houses. These licences carry also the right to sell liquor for consumption off the premises; (*b*) Off-licences, *i.e.* licences in respect of premises where the liquor may not be drunk on the premises, but must be carried away for consumption elsewhere. Instances of such licences are grocers' licences and chemists' licences for the sale of medicated wine. Licences may vary both as to the times when the sale of liquor is permitted (*e.g.* a licence may be only a six-day licence, in which case the holder may not sell intoxicants on Sunday), and in regard to the kinds of liquor which may be sold. A "full licence" entitles the holder to sell all kinds of intoxicants, a "beer licence" to sell only beer and cider. A "fully-licensed house" is technically known as an ale-house, one holding the more limited kind of licence as a "beer-house."

Jurisdiction of Justices.—The jurisdiction of Justices in regard to such licences is exercised: (*a*) as members of the Petty Sessional Bench in the granting, renewal, etc., of licences, and (*b*) as members of a higher authority sitting to confirm licences granted by local benches, or to award compensation for licences which are suppressed for reasons of redundancy, which higher authorities are known respectively as the "Confirming Authority" and the "Compensation Authority."[1]

[1] See *post*, p. 146, "Confirmation of New Licences."

Disqualification of Justices.—No Justice may act in matters connected with the granting or refusal of licences, either as a member of a Petty Sessional Bench or of a Confirming or Compensation Authority, if he is in any way interested, either as an individual, or as a shareholder in a company (otherwise than as a trustee), in a business which takes any part in the making or selling of intoxicating liquors in the district in which he acts as a Justice or in any adjoining district.[1] This rule is strictly enforced, and a Justice knowingly acting while disqualified is liable to a fine not exceeding £100 for each offence.[2] The mere fact of his being a shareholder in a railway company which sells drink does not disqualify him.[3] A Justice who is disqualified may not act in the election of members of a Licensing Committee.[4] Nor may he even take part in fixing the date of the General Annual Licensing Meeting. It should be noted that the fact of a Justice acting while personally disqualified by Statute does not invalidate the acts done with his concurrence, although he personally renders himself liable for penalties.

General Annual Licensing Meeting.—Justices of each Petty Sessional division and borough are required to meet once in each year for the purpose of granting or renewing licences within their district.[5] This meeting must be held in the first fortnight in February at a date fixed by the Justices themselves, and is popularly known as "Brewster Sessions," but in the technical words of the Acts as the "General Annual Licensing Meeting." As regards any business not concluded at the first meeting, an adjournment is to be made to any date within a month of the original meeting, provided not less than five days elapse between the various dates on which the Justices meet. Every adjourned meeting is in law a continuation of the General Annual Licensing Meeting, and all business may be trans-

[1] Licensing (Consolidation) Act, 1910, s. 40.
[2] *Ibid.*, s. 40 (4).
[3] *Ibid.*, s. 40 (5).
[4] A. G. *v.* Willett (1896), 60 J.P. 643.
[5] Licensing (Consolidation) Act, 1910, s. 10.

acted at it which is properly within the scope of the General Annual Licensing Meeting. There must in every case be, at any rate, one such adjourned meeting in order to give an opportunity of applying to a person who, by inadvertence, has failed to do so at the proper time. The matters to be considered at the General Annual Licensing Meeting are: (*a*) the granting of new licences; (*b*) the renewal of old licences; (*c*) the removal of old licences, *i.e.* the removal of a licence from one set of premises to another. The General Annual Licensing Meeting is not technically a Court, and the Justices are in consequence unable to make any order as regards costs, or to state a case for the High Court.[1] They have, on the other hand, more freedom to act on their own knowledge in regard to any matters before them. They are, however, not protected in making defamatory remarks as when acting judicially.[2]

Grant of New Licences.—In a county area the authority for the grant of new licences is the whole body of Justices of a Petty Sessional Division. In boroughs where there are ten or more Justices, this duty is exercised by a borough licensing committee, and in smaller boroughs where there are less than ten Justices, by the whole body of the Borough Justices. Upon an application being made for the grant of a new licence, the Justices at the General Annual Licensing Meeting may, subject to confirmation by the confirming authority, make an order granting a new licence in respect of premises deemed by them to be suitable.[3] Such a licence may either be an annual licence or may be for a term not exceeding seven years.[4] They are required to provide that the monopoly value of any new licence granted shall be secured for the public. This means the payment by the person to whom the licence is granted of a sum equivalent to the estimated value to him of the licence which he receives, *i.e.* the difference between

[1] Boulter *v.* Kent, J.J. (1897), A.C. 556.
[2] Attwood *v.* Chapman (1914), 3 K.B. 275.
[3] Licensing (Consolidation) Act, 1910, ss. 9 and 12.
[4] *Ibid.*, s. 14.

the value which the premises would bear, if the licence attaches and the value of the same unlicensed. They may further attach to the grant any condition which they think necessary for securing the good management of the house. The payment of the monopoly value may be either in one lump sum or by instalments according to the discretion of the Justices, but it cannot be varied subsequently by them.[1] Before granting a new licence the Justices must satisfy themselves upon the following matters :—

(1) That the proper notices have been given by the applicant.

(2) That the applicant is duly qualified to hold a licence.

(3) That the premises or proposed premises are duly qualified.

Notices.—Every applicant for a new licence, whether an On-licence or an Off-licence, must give notice of his intention to apply to the following persons :—

(1) The rating authority of the district in which the house is situated.[2]

(2) The Superintendent of Police.

(3) The Clerk to the Licensing Justices.

Each of these notices must be given at least twenty-one days before the date of the hearing. The notice may be served personally or may be sent by post, but in cases (1) and (2) the letter must be registered.[3]

The notice must be displayed between 10 a.m. and 5 p.m. on two consecutive Sundays within twenty-eight days before the hearing of the application—

(1) On the door of the premises in respect of which the licence is desired.

(2) On the door of the church or chapel of the parish,

[1] R. *v.* Amendt (1915), 2 K.B. 593.

[2] Rating and Valuation Act, 1925, s. 62. In a rural parish, under a parish council, to the chairman of the parish council, otherwise on the chairman of the parish meeting. Overseer's Transfer Order, 1927, s. 14.

[3] Licensing (Consolidation) Act, 1910, s. 108.

or if such do not exist, on some other conspicuous place within the parish or place.

The notice must further be advertised in some paper circulating in the district on some day, not more than four and not less than two weeks, before the date of the application, and on such other day or days as the Justices may order.[1]

Plans.—Plans of the premises, whether completed or proposed, must be deposited with the Justices' Clerk not less than twenty-one days before the hearing.[2]

Qualification of Applicant.—The Justices must satisfy themselves that the applicant for a licence is a trustworthy and responsible person. Apart from this general obligation, they must be careful to ascertain that he is not actually disqualified. The following persons are disqualified from holding a licence during the whole of their lives [3] :—

(1) Any person convicted of felony.

(2) Any person convicted of forging a Justice's licence or knowingly making use of a forged licence.

(3) Any holder of a licence convicted of permitting his premises to be used as a brothel.

The following are also disqualified :—

(1) Any sheriff's officer, bailiff of a county court or other officer of a like nature during the tenure of his office.

(2) Any person who has been disqualified on conviction for selling liquor without a Justice's licence for such period as is mentioned in the sentence.

(3) Certain persons disqualified by Act of Parliament, *e.g.* a pilot under 5-48 of the Pilotage Act, 1913, or a person twice convicted under s. 1 of the Sale of Beer Act, 1795.

Qualification of Premises.—Premises are not qualified to receive a licence unless they are, in the opinion of the

[1] *Ibid*., s. 15 (1) (a).
[2] *Ibid*., s. 15 (1) (d).
[3] Licensing (Consolidation) Act, 1910, s. 35.

Licensing Justices, structurally adapted to the class of licence which is required, and they must contain, exclusive of the rooms occupied by the inmates, two rooms for the accommodation of the public in the case of a fully-licensed house, or one such room in the case of a beer-house.[1] The premises must also be of a certain annual value, varying with the locality in which they are situated.[2] Certain premises are further disqualified from being licensed by reason of their previous user, viz. if the licence previously held in respect of such premises has been twice forfeited within a period of two years, such disqualification to continue for one year from the date of the last forfeiture.[3]

Nature and Extent of Licences.—Licences granted may, as previously pointed out, be either On-licences or Off-licences. Further, a licence granted may vary both as to the nature of the liquor to be sold and as to the times of opening.[4]

Provisional Grants.—Application is often made to the Justices for the grant of a licence in respect of premises which have not yet been erected. In such a case the Justices, if satisfied by production of the plan of the proposed premises that they will be structurally suitable, may make a provisional grant (subject to confirmation), which provisional grant can be turned into a complete licence by a final order after the erection of the premises. The requirements as to notices in this case are the same as those in respect of an application for a present licence, except that the notice to be put up on the door may be put up in any conspicuous position on the site of the proposed building.[5] The holder of a provisional grant must come before the Justices again, either at a General Annual Licensing Meeting or at a Special Licensing Sessions, after the buildings are completed, for a "Final Order," without which the licence is not valid.

[1] Licensing (Consolidation) Act, 1910, s. 37.
[2] *Ibid.*, Sch. 5, I.
[3] *Ibid.*, s. 36.
[4] See *ante*, p. 139.
[5] Licensing (Consolidation) Act, 1910, s. 33.

Removal.—Where a removal of a licence from one set of premises to another within the same licensing district is granted by the Justices at their General Annual Licensing Meeting, such removal is treated as the grant of a new licence, and the grant must be reviewed by the Confirming Authority. Such a removal is known as an Ordinary Removal, and must be distinguished from a Special Removal (see below), which is granted when the premises have to be vacated owing to some circumstance over which the licensee has no control, *e.g.* the destruction of the premises by fire, or the taking over of the premises for some public work.[1]

Alterations.—Any alteration in the nature of the licence, *e.g.* from a six-day to a seven-day licence, which extends the facilities for drinking, is treated as the grant of a new licence and requires confirmation.[2] Any structural alteration which gives increased facilities for drinking, or which affects the supervision of the premises by concealing any part used for drinking, or relates to the communication between that part used for drinking and other parts, requires the consent of the Justices before such alteration may be carried out, and they may require plans of any proposed alterations to be deposited with their clerk. If the alterations are of so extensive a character as entirely to alter the nature of the premises, the grant by the Justices will be treated as that of a new licence, which will require confirmation. It is a question of fact for the Justices at the General Annual Licensing Meeting whether the alterations are of so radical a nature that the identity of the premises has been so far destroyed so as to require the grant of a new licence.[3]

In all boroughs which have their own Court of Quarter Sessions an appeal on the question of structural alterations lies either to Borough Quarter Sessions or to County Quarter

[1] Licensing (Consol.) Act, 1910, s. 24.
[2] R. *v.* Crewkerne, J.J. (1888), 21 Q.B.D. 85.
[3] R. *v.* Raffles (1875), 1 Q.B.D. 207.

Sessions at the option of the applicant; in other cases the appeal is to the County Quarter Sessions.[1]

Confirmation of New Licences.—A grant of a new licence by the local Justices, or the removal of an old licence, must be considered by the confirming authority before it becomes operative.[2] In counties the confirming authority is a Licensing Committee of Quarter Sessions, appointed by the Justices of the county from among their number. Each Quarter Sessions makes its own rules for the election of this committee, subject to the approval of the Home Secretary.[3] In boroughs, not being county boroughs, where there are not ten Justices, the confirming authority is a joint committee consisting of three County Justices, appointed at Quarter Sessions, and three Borough Justices, appointed by the Borough Justices.[4] In other boroughs the confirming authority is the whole body of Borough Justices acting together.[5] Once a licence is granted by the local Justices, it becomes necessary for the applicant further to apply for the confirmation of the grant. The hearing of this application cannot take place until at least twenty-one days has elapsed since the grant of the licence. The confirming authority must hear evidence, and although, like the local Justices, the members of it may rely upon facts within their own knowledge, they sit as a Court, and any evidence given before them must be upon oath.[6] The confirming authority has full discretion as to confirming or refusing to confirm the grant made, but no person may appear before them to oppose the grant of a new licence who did not appear at the original hearing.[7] A provisional grant of a Justices' licence made by local Justices must come before the confirming authority before it becomes operative. The confirming authority may with the consent of the local Justices vary the order, both as to the conditions upon which a licence is granted and as to the amount to be paid for monopoly value.[8]

[1] Licensing (Consol.) Act, 1910, s. 72 (2).
[2] *Ibid.*, s. 12.
[3] *Ibid.*, s. 2 (2) (c).
[4] *Ibid.*, s. 4.
[5] *Ibid.*, s. 2 (2) c.
[6] R. *v.* Sunderland, J.J. (1901), 2 K.B. 357.
[7] Licensing (Consol.) Act, 1910, s. 13.
[8] *Ibid.*, s. 14.

Renewal of Licences.—At the General Annual Licensing Meeting all licences in the district come up for renewal. Formerly, all licensees were required to attend, but it is now sufficient if application is made by letter or through an agent, unless the Justices require the personal attendance of the licensee.[1] The person actually in occupation of the licensed premises at the time of the General Annual Licensing Meeting is the person who is entitled to claim a renewal. It is necessary that some application should be made every year, otherwise the licence may lapse. In county districts the Justices of a Petty Sessional Division are the renewal authority. In small boroughs the jurisdiction is exercised by the whole body of Justices, and in county boroughs (*i.e.* boroughs with 50,000 or more inhabitants which have been declared to be county boroughs) the Borough Licensing Committee. It will be observed that in one class of boroughs, *i.e.* those which are not county boroughs, but which possess ten or more Borough Justices, the authorities for the granting and the renewal of licences differ. The General Annual Licensing Meeting is fixed by the Justices as a whole, but where an application is made for the grant of a new licence, only those Justices who are members of the Licensing Committee are entitled to sit, while the whole body adjudicates in the matter of renewals.

At one time the discretion of Justices in regard to the renewal of licences was to a large extent unfettered, but since 1904 their powers have been limited and are now defined.[2] It may be stated generally that where a house is ill-conducted, or where the applicant is not of good character, or the house is not qualified, a renewal of a licence may be summarily refused by the local Bench. In cases where there is no valid objection either to the licensee or to the house, but where at the same time the Justices are satisfied that a licence is redundant, their duty is to refer it to the appropriate Compensation Authority for further consideration and for compensation. The exact powers of the Justices to

[1] Licensing (Consol.) Act, 1910, s. 16.

[2] Licensing (Consol.) Act, 1910, ss. 17 and 18; and Sch. 1, Part 2.

refuse without compensation, vary according to the date and character of the licence. The following table sets out the considerations applicable to various licences :—

On-licences, i.e. *Licences for the Sale of Liquors for Consumption on the Premises.*

(*a*) Licences for sale of wine alone or sweets alone.	Discretion absolute.
(*b*) Any licence or provisional licence granted prior to August 15th, 1904, and in force on that date.	Discretion limited to (1) that premises are ill-conducted, structurally deficient or unsuitable; (2) grounds connected with the character or fitness of the applicant; (3) that the renewal would be void.
(*c*) Licences for the sale of beer and cider granted prior to 1869. ("*Ante* 1869, Beer Houses.")	Discretion limited to (1) failure of the applicant to produce satisfactory evidence of good character; (2) disorderly character of the house or adjoining premises owned or occupied by the applicant; (3) previous misconduct of the applicant resulting in forfeiture of the licence or disqualification; (4) that the applicant is not duly qualified.
(*d*) Licences granted since August 15th, 1904.	Unless these have been granted for a fixed period, the discretion is unfettered.

Off-licences, i.e. *Licences for the Sale of Intoxicants to be Consumed Elsewhere.*

(*a*) Licences in force prior to June 25th, 1902.	In these cases the discretion is limited to the same four grounds as set out under (*c*) above, with the further ground added that the licence may be refused summarily where the licensee has sold surreptitiously under such licence, or has in the opinion of the Licensing Justices been guilty of misconduct. This privilege in respect of old Off-licences is personal to the holder on 25th June 1902.
(*b*) All other Off-licences.	Discretion absolute.

Conditions of Renewal by Licensing Justices.—It may happen that the Justices, though willing to renew a licence, are of opinion that some structural alteration is required on the licensed premises. They may then couple their renewal of the licence with an order that the necessary alterations shall be made by a certain date. An appeal against such an order lies to Quarter Sessions. In a borough this appeal lies either to the Court of Quarter Sessions of the borough or to the county at the option of the applicant.[1] In the event of such an order being made and complied with, no further requisition of a like nature can be made within the next five years.[2]

Appeal.—In every case where a licence is refused on one of the permitted grounds, an appeal lies to Quarter Sessions (not the Quarter Sessions Committee, but the full Court). This is always to the Quarter Sessions for the county, a Recorder having no power to grant a licence.

Compensation.—*Refusal of Redundant Licences.*—Justices sitting as a renewal authority, having no power to refuse a licence outright, except upon one or other of the specified grounds, must, if they desire to close a public-house on the ground that the licence is redundant, *i.e.* where the number of licences is, in their opinion, greater than that required by the needs of the neighbourhood, or on some other ground not permitted in the case of the particular licence under consideration, refer the matter to the compensation authority[3] to be determined by it. Their reference to the compensation authority is in the form of a report setting out the grounds upon which the reference is based. The Justices, when considering the question of redundancy, are entitled to act upon their own knowledge, and may themselves initiate

[1] Licensing (Consol.) Act, 1910, s. 72 (2).

[2] In the event of default by the licensed holder, he is liable to a fine not exceeding 20s. for every day the default continues. Licensing (Consol.) Act, 1910, s. 72 (4). A Licensing Justice who ordered the prosecution must not sit on the Bench when the case is being heard.

[3] See p. 150, "Compensation Authority."

objections to the renewal of licences. The practice obtains in many Petty Sessional Divisions of appointing a committee from among the Justices to investigate the conditions obtaining, and to make recommendations as to the closing of houses. It is, however, necessary for the Justices, although they are not a Court, to hear evidence before referring a licence for compensation, and that evidence must show the grounds upon which that particular licence is selected, *i.e.* differentiating between the various licensed houses in the congested area. Before a house can be referred for compensation, notice must be given to the licensed person, and he must be given an opportunity of appearing before the renewal authority. An objection may be made at any adjournment of the General Annual Licensing Meeting to the renewal of a licence which has not yet been renewed, and the hearing of that particular case may be adjourned to a date beyond the month.

Compensation where Licences are taken away on the ground of Redundancy, etc.—Where the renewal of a licence is withheld by local Justices it should be referred to the Compensation Authority for the particular area in which the licensed premises are situated.

Compensation Authority.—The Compensation Authority in a county is a committee of Quarter Sessions, usually the same as that sitting as the Confirming Authority. In a county borough[1] it is the whole body of Borough Justices or a committee of them. In the case of other boroughs, it is the committee of the County Quarter Sessions.

Compensation Fund.—Under the provisions of the Licensing Act[2] an annual levy must be made in respect of all old On-licences, *i.e.* licences in force or provisionally granted on 15th August 1904, according to a scale set out in the schedule to the Act, so as to provide a fund out of which those interested in the licences which are taken away by the Compensation authority shall receive an amount to cover the estimated loss by the refusal of the renewal of the licence.

[1] See p. 147.

[2] *Licensing (Consol.) Act, 1910, s. 21.*

The amount to be levied in each year is fixed by the Compensation authority, unless they certify that a levy in any particular year is unnecessary.

Meetings of Compensation Authority.—In every year, in the event of the renewal of any licence being refused by a renewal authority and referred for compensation to a Compensation authority, the latter must hold a *Preliminary Meeting* between the 30th April and the 31st May.[1] This meeting is for a private consideration of the report or reports received from the renewal authorities, and is for the purpose of considering whether sufficient grounds are shown in those reports or any of them for a further consideration of the question of compensation. Assuming that the members of the authority decide that there is a *prima facie* case for a refusal of some licence or licences, they must then hold what is known as the *Principal Meeting*.[2] This meeting must take place not less than fourteen days after the conclusion of the preliminary meeting, and notice of its date must be published and must be sent to the licensee and the registered owner of the premises affected, and to the renewal authority concerned in any case. At this principal meeting the Justices must consider in open Court the question of the refusal of any licence referred to them by the renewal authority. They have at this point no question to consider as to the amount of compensation, but they must be satisfied by evidence that a case is made out for the extinction of one or more of the licences referred, and as to the grounds upon which a particular licence is selected. A Justice who has sat upon the renewal authority which has referred a licence for compensation is, if a member of the licensing committee of Quarter Sessions, not debarred from sitting upon it by the fact that he was a party to the report.[3] Further, a member of the Compensation Authority may give evidence before it, but if he does so, he cannot adjudicate upon the case under

[1] Licensing Rules, 1910, Rule 9.
[2] *Ibid.*, Rule 14.
[3] R. *v.* Cheshire Licensing, J.J. (1906), 1 K.B. 36.

consideration. Evidence given before the Compensation Authority must be given upon oath, and all persons interested in the licensed premises, or in the question of the renewal or refusal of the licence, are entitled to be heard. The report of the renewal authority is not in itself evidence, and the Compensation Authority cannot, therefore, act upon that alone, but so soon as the facts contained in it are proved upon oath, that will be sufficient for them to act upon it, provided the grounds contained in it are adequate. Where the Compensation Authority are equally divided upon the question of whether a licence should be renewed or not, the licence should be renewed as a matter of right.[1] They may, however, if they prefer, decide to adjourn the matter for consideration at a future date. As soon as a decision is reached by the Compensation Authority, notice of such decision must be sent to the parties interested, and if the licence is refused, to the Commissioners of Customs and Excise.[2]

Supplemental Meeting.—Where a licence is refused at the principal meeting, it becomes necessary for the authority to hold a *Supplemental Meeting* for the ascertainment of the persons entitled to compensation, and of the amount to which they are respectively entitled. This supplemental meeting cannot take place until at least a month has elapsed from the date of the principal meeting. It is the duty of the authority where they have decided to refuse the renewal of a licence to publish in two local newspapers notice of their decision, and within twenty-one days after publication of such notice any person other than the licensee or registered owner of the premises claiming to be interested in the licence must send notice of his claim to the clerk to the authority.[3] Notice of the supplemental meeting must be sent to every person so claiming not less than seven days before the date fixed for the meeting.[4] The total amount of

[1] R. *v.* Surrey, J.J. (1921), 90 L.J., K.B. 305.
[2] *Licensing Rules*, 1910, Rule 18, and Form 5 in Appendix to Rules.
[3] *Ibid.*, 1910, Rule 21.
[4] *Ibid.*, Rules 22, 23.

compensation which must be awarded for the extinction of a licence is the difference in value between the premises as they stand with a licence attached, and their value without the licence. It is part of the policy of the Act that the parties themselves shall submit to the Compensation Authority what they consider the fair amount to be given as compensation. If this is done and the Compensation Authority approve the amount, the authority then proceeds to the question of division. Where the parties do not agree to any total amount, or the amount agreed is not accepted by the Compensation Authority, the matter is referred by the latter to the Inland Revenue Commissioners,[1] subject to an appeal from them to the High Court.[2] Once the amount of compensation money is settled, it is for the Compensation Authority to settle the proportions in which it should be divided, subject to the restriction laid down in the Act that a tenant who is the licensee shall in no case receive a less amount than he would have been entitled to had he been a yearly tenant of the premises, notwithstanding any agreement to the contrary.[3] In the event of any question arising, which in the opinion of the Compensation Authority can more conveniently be determined by the County Court, they are empowered to refer the question to that Court.[4]

Permitted Hours of Sale of Liquor.—Under the present law, Justices at the General Annual Licensing Meeting[5] have, within certain limits, the power of determining the hours during which the sale of intoxicating liquor in the licensed premises is permitted within their district on week days.[6] The hours of sale, known as " permitted hours," are to be on week-days eight hours in ordinary districts and nine hours in the Metropolis, subject to the proviso that

[1] Licensing (Consol.) Act, 1910, s. 20 (2).
[2] Finance Act, 1894, s. 10 (3).
[3] Licensing (Consol.), Act, 1910, s. 20 (2).
[4] *Ibid.*, s. 20 (3).
[5] Licensing Rules, 1921, Rule 3.
[6] Licensing Act, 1921, s. 1.

in any licensing district, if they are satisfied that the special requirements of the district make it desirable, the Justices may substitute 8½ for 8 hours. The Licensing Justices of any district outside the Metropolis may extend the permitted hours according to their discretion to 8½ hours per diem, provided that no sale shall take place earlier than nine in the morning, or later than half-past ten at night, and that there shall be a break of at least two hours during the afternoon. In the Metropolis the permitted hours may, in the discretion of the Justices, continue until 11 p.m. On Sundays, Christmas Day, and Good Friday, the permitted hours are five only, of which not more than two shall be between 12 noon and 3 p.m., and not more than three between 6 p.m. and 10 p.m. In Wales and Monmouthshire there are no permitted hours on Sundays. The above regulations apply both to On-licences and Off-licences.

Occasional Licences.—Justices are empowered to grant an occasional licence to sell intoxicants at places not otherwise licensed. It is granted usually in cases of fairs, balls, sports, stock sales, etc. The person to whom the occasional licence is granted must be already the holder of a Justice's On-licence, and it can only be granted in respect of liquor which he is already authorised to sell. The Justices may determine the hours during which the sale is permitted, but except in the case of a public dinner or ball, the hours are limited to those between sunrise and 10 p.m. Before the grant of an occasional licence, notice must be given by the applicant to the Superintendent of Police for the district in which the sale is to be held at least twenty-four hours before application to the Justices.[1] Such licences may be granted at any Petty Sessional Court, or by any two Justices acting together. An occasional licence can only be granted for a period not exceeding three consecutive days.

Transfer of Licences and Protection Orders.—Among other matters dealt with by magistrates of the Petty Sessional

[1] Licensing (Consol.) Act, 1910, s. 64.

Division or Borough, is the transfer of licences from one holder to another. A " transfer " is the term applied to the issue of a Justices' licence to one person in place of another who already holds a licence in respect of the premises.[1] Where the *locus* of the licence is changed, it is known as a " Removal."

A " special removal " is an application made on the ground : (*a*) that the premises are to be pulled down or occupied under any Act for road improvement or other public purposes ; (*b*) that the premises have been rendered unfit for use for the business by fire, tempest or other unforeseen and unavoidable calamity.[2]

Transfers may be granted either at the General Annual Licensing Meeting or at special tranfer Sessions, which must be held at equal or nearly equal intervals throughout the year. Such Sessions are to be fixed at the General Annual Licensing Meeting, and must be not less than four or more than eight in number. The power of the Justices in this matter is strictly limited by Statute, both as to when a transfer may be granted, and as to the person to whom the licence may be transferred. The following table gives the rules contained in the Act :[3]—

Cases in which a Transfer may be Granted.	*Persons to whom a Transfer is Permitted.*
(1) Death of the licensed holder.	The representatives of the holder, or the new tenant or occupier of the premises.
(2) Incapacity of the licensed holder to carry on owing to sickness or other infirmity.	Assignees of the holder or a new tenant or occupier of the premises.
(3) Bankruptcy of the licensed holder.	The trustee in bankruptcy or the new tenant or occupier of the premises.
(4) Where the licensed holder gives up occupation.	The new tenant or occupier of the premises or the person to whom the interest in the premises has been *bona fide* conveyed.

[1] Licensing (Consol.) Act, 1910, s. 23 (1).
[2] *Ibid.*, s. 24 (2).
[3] Licensing (Consol.) Act, 1910, Sch. iv.

Cases in which a Transfer may be Granted.	*Persons to whom a Transfer is Permitted.*
(5) Where the occupier of premises who is about to leave wilfully neglects to apply for a renewal.	The new tenant or occupier of the premises.
(6) Where the licence has been forfeited or the holder has become disqualified and the owner has obtained a temporary authority to carry on business.	The owner or any person applying on his behalf, the licence being treated as still subsisting, notwithstanding forfeiture.

In all these cases the Justices must further satisfy themselves that the proposed tenant is a fit and proper person to hold a licence.

No. 6 requires some little explanation. Stated generally, a licence is forfeited by the holder if he is convicted of a felony or of certain grave offences connected with the licensed premises.[1] This proviso is intended to protect innocent owners of a licensed house where the licensee suffers a first conviction.

Protection Order.—A protection order is a temporary authority to sell intoxicants which may be granted by Justices at any Sessions, and lasts only until the next transfer Sessions. It is intended to preserve the licence in cases of urgency, and may be granted in all cases where the Justices may grant a transfer. The attendance of both the transferor and transferee is necessary except in case of death, or in cases where the attendance is dispensed with by the Justices. A transfer of a licence lasts only until the 5th April next ensuing. An appeal to Quarter Sessions lies against a refusal to transfer.

Forfeiture of Licences.—A licence is forfeited :—

(*a*) Where the holder is convicted of making an internal communication between the licensed premises and a house

[1] See below.

of public resort, *e.g.* a shop or refreshment house, a cricket ground, or a railway platform.

(*b*) For permitting the premises to be used as a brothel.

(*c*) For forging a Justice's licence or using such a licence knowing it to be forged.

(*d*) For the breach of a condition of a licence granted for a term of years.

(*e*) If the licensee is convicted a second time for selling liquor not authorised by his licence, or for selling in a place not so authorised.

(*f*) If he is convicted a second time for permitting gaming, or the frequenting of his house by bad characters, or any other act in contravention of his licence.

(*g*) Where the licensee has altered the premises without consent of the Justices.

Clubs.—Clubs do not require a licence from the Justices to sell intoxicating liquors, but it is necessary for every club in which intoxicating liquor is supplied to members or their guests to be registered with the clerk of the Petty Sessional Division in which the club is situated. Such a registration entitles the club to sell intoxicants during permitted hours, but only to its members. Under the Licensing Act of 1921[1] a club in which the sale of intoxicants is only made as part of a meal may sell such intoxicants for the space of one hour after the close of the permitted hours for the district,[2] and where liquor is supplied during permitted hours, a further half-hour is allowed to the member for the consumption of that liquor, provided it is taken with a meal.[3]

If a club is shown to be not a *bona fide* club, or to have sold intoxicants to persons other than its members, or if intoxicants are sold at hours other than those permitted, it may be proceeded against under the ordinary law, and its name may be removed from the register.

[1] Licensing Act, 1921, s. 20.
[2] *Ibid.*, s. 3.
[3] *Ibid.*, s. 5 (d).

Appeals to Quarter Sessions.—As already mentioned, an appeal lies to Quarter Sessions—

(*a*) From refusals of the Justices to renew a licence or to grant a special removal of a licence in cases where, under the Acts, they have the power to do so, and

(*b*) In cases where they order structural alterations to be made in licensed premises.

Procedure on Appeal.—It is open to the owner or the licensee of the premises affected to enter the appeal. Notice must be given to the clerk to the Licensing Justices of the intention to appeal within five days after the decision shall have been given, and the appellant must further, within the same five days, enter into a recognisance[1] before a Justice of the Peace acting in and for the county or place. It is important to observe that the recognisance must be entered into before a Justice acting for the particular county or place, and may not be entered into before any other Justice, or the recognisance will be void. Notice of appeal must be in writing, and fourteen days must elapse between the giving of the notice and the hearing at Quarter Sessions. If, therefore, notice is given, say, ten days before the ensuing Quarter Sessions, it cannot come on until the next subsequent date of Sessions.

[1] See p. 136.

CHAPTER IV

RATING

Definition.—A rate may be defined as a tax levied upon the occupier of certain classes of property for local or municipal as opposed to national requirements. The foundation of the law of rating is to be found in an Act passed in the year 1601 which authorised overseers to raise sums of money "weekly or otherwise" for the relief of the poor.[1] Since this enactment there have been various extensions of the law of rating so as to include rates levied for a variety of local purposes.

This definition does not include :—

(*a*) Any rate which is assessed under any commission of sewers, or in respect of any drainage, wall, embankment, or other work for the benefit of the land.

(*b*) Any rate of the description commonly known as "church rate," a tithe rate or a rector's rate, or any other rate of a similar character.

(*c*) Any rate which is leviable by the conservators of a common.

(*d*) Any rate payable by consumers for a supply of water.

(*e*) Any rate of the description commonly known as a garden or square rate, if levied by any person other than a rating authority.[2]

[1] 43 Eliz., chap. 2. The necessity for this provision probably arose through the friendlessness of the poorer classes consequent upon the dissolution of the monasteries which had previously been the almoners of the poor.

[2] Rating and Valuation Act, 1925, s. 68.

Jurisdiction of Magistrates.—Except in cases of default in payment, magistrates, as such, have since the Rating Act of 1925 jurisdiction in rating matters only as members of a committee of Quarter Sessions appointed under that Act. This committee is chosen by the Court of Quarter Sessions to hear rating appeals in accordance with the rules made by each Court individually. The chairman is required, if possible, to be some person with judicial or legal experience, and the members of the Court should, in general, be those who have some judicial or practical experience of rating. This committee will hear appeals from the various assessment committees in the country, and, unlike the full Court of Quarter Sessions, has power to sit in various places and to fix the time of its sitting so as to suit the convenience of the parties to an appeal. Although the size of the committee is not defined by the Act, the number of its members who may hear an appeal is limited to a number not less than five and not more than seven, and in the case of an equal division of opinion, the chairman of the committee is to have a second or casting vote.[1]

Property Subject to Rates.—Under the original Statute of Elizabeth, the liability to be rated fell upon all the "inhabitants" as such, but since the passing of the Poor Rates Exemption Act, 1840, the liability falls upon the occupiers only of certain classes of property. It is customary to speak of various classes of property as being "rateable." In strictness, this is incorrect. It is not the property which is rateable, but the occupier, who is rateable in respect of the property which he occupies. The following are now the subjects of rating: land, houses, mines of all kinds,[2] tithes, woods and plantations, rights of sporting (where held separately from the occupation of land). By the Act of 1925, certain classes of machinery are also made subject to rating.[3]

[1] Rating and Valuation Act, 1925, s. 32.
[2] Originally coal mines only were rateable.
[3] Rating and Valuation Act, 1925, s. 24 and Sch. 3.

Who are not Rateable.—Certain persons and the occupiers of certain properties are exempt from rateability :—

(1) Property occupied by the Crown or servants of the Crown, *e.g.* Assize Courts, Police Quarters, Gaols, Post Offices, etc.[1]

(2) Property occupied by the Ambassadors of foreign powers and their staffs.

(3) Property occupied exclusively for religious worship, *i.e.* churches, chapels and the like. This exemption applies even though part of the premises are used for Sunday or infant schools or for charitable education. It does not, however, apply to private buildings such as college chapels.[2]

(4) Property occupied exclusively for the purpose of science, literature or the fine arts, including music, and supported wholly or in part by voluntary contributions, provided that any division of money among the members is prohibited by the rules of the society, and that the necessary certificate of the chief registrar of friendly societies is obtained.[3]

(5) Burial grounds.[4]

(6) Lighthouses and certain other property occupied by Trinity House or the Board of Trade.[5]

(7) Certain canals and other land exempted or partly exempted under special Acts.[6] By a series of Acts,

[1] Where property is owned by the Crown, but is occupied by some other person, say under a lease, the property is rateable, notwithstanding the fact that it is Crown property, because the liability to a rate rests on the occupier and not on the owner.

[2] Poor Rates Exemption Act, 1833, ss. 1 and 2.

[3] Sunday and Ragged Schools Act, 1869, s. 1. Voluntary Schools Act, 1897, s. 3. Scientific Societies Act, 1843, s. 1.

[4] Burial Act, 1855, s. 15.

[5] Merchant Shipping Act, 1894, s. 731.

[6] By a local Act, 7 Geo. III, chap. xxxvii, the embankment near Blackfriars Bridge was vested in the owners free from all taxes and assessments whatsoever. This exemption, while applying to poor rates, paving rates, etc., does not exempt land from rates subsequently imposed, *e.g.* by the Commissioners of Sewers.

agricultural land and buildings used in connection with it are now to be exempted.[1]

(8) "Industrial Hereditaments" as defined by the Rating and Valuation (Apportionment) Act, 1928,[1] are in future to receive special treatment.

Who are Rateable.—Essentials to Rateability.—In order that property may be rateable there must be what is known as beneficial occupation of it, *i.e.* there must be someone who can be said to occupy it, and that occupation must be of value to him. This does not necessarily imply a pecuniary benefit, but means that the occupation confers some privilege or special enjoyment. There are cases where land is held by public bodies, trustees or others, who are by the terms of their charter or deed expressly prohibited from obtaining any benefit from their occupation. Instances of such occupation without benefit are to be found in the case of land occupied by Drainage Commissioners, and in certain instances by Dock Companies, where any money received is by a special act ear-marked for use in the public interest. Similarly the trustees of Brockwell Park were held not to be liable for rates on the park because the London County Council, who were the occupiers, could make no profit from it.[2] Land which is either by its inherent condition [3] or by law incapable of being of value to anybody is said to be "struck with sterility," and therefore the occupier is not rateable.

Occupation generally is largely a matter of fact, and it is for the Justices to determine whether or not there is anybody in occupation. Where a house stands empty and is entirely unused, the owner is not rateable, because there is no one in occupation, but if a part of the house is occupied, even one room, that is occupation, and the whole of it is rateable. (This would, however, not apply to the case of a house containing several independent tenements, such as flats.[4]) If

[1] *See* Rating and Valuation (Apportionment) Act, 1928.
[2] Lambeth Overseers *v.* L.C.C. (1897), A.C. 625.
[3] *e.g.* a highway.
[4] Allchurch *v.* Hendon Union (1891), 2 Q.B. 436. Two flats in one house under one roof are separately rateable.

furniture is placed in a house, a question of fact arises in each case as to whether the house is occupied as a house, or merely as a storehouse for the furniture, and the magistrates have to decide the question according to the evidence applicable to the particular circumstances. An occupation by a servant or caretaker renders the employer liable to be rated. Difficult questions sometimes arise as to who is, in fact, the occupier. A lodger must be distinguished from an independent occupier of a part of the premises, *e.g.* a flat, the occupation in the former case being in the landlord of the whole house. In order to render an occupier liable for rates, he must not only be in occupation, but must be in exclusive occupation. Under this rule it was held that Messrs. W. H. Smith & Son were not liable to be rated on their bookstalls because they had only limited rights, *e.g.* they had not exclusive use of their bookstalls at night, and the railway companies had in each case over-riding authority.[1] Questions have from time to time arisen as to whether the user of a quarry or gravel pit gives to the person using it exclusive occupation. The question in each case is, does the grant to the person who digs for minerals give him physical possession of the soil with the right to prevent his landlord from permitting any others to make use of the particular land for similar purposes ? Where a person is in occupation of land or premises for a part only of the period of a rate, he is liable to pay only for the value of the premises during the period of his actual occupation.

Liability of Owners.—In the case of certain small properties, the liability to pay the rates falls upon the owner and not the occupier. Every rating authority has the power to order that in the case of all premises within their authority, the rent of which is collected oftener than once a quarter, *e.g.* weekly tenancies, and the rateable value of which does not exceed £13, or such higher limit that is in force on 22nd December 1925,[2] the owners shall be rated instead of the occupiers. In these cases a commission may be allowed by the rating

[1] Smith *v.* Lambeth (1882), 10 Q.B.D. 327.
[2] Rating and Valuation Act, 1925, s. 11.

authority to the owners in consideration of the payment or collection of rates.[2]

Measure of Value.—When the preliminary question of occupation has been determined, the magistrates on appeal from an assessment committee, have to determine what is, after all, the main question in most rating appeals, viz. what is the rateable value of the premises in question. The rateable value is taken to be the sum at which the premises would let from year to year, provided the tenant undertook to be responsible (*a*) for all tenants' rates and taxes and tithe rent charge if any, (*b*) the annual cost of repairs, insurance and any other expense necessary to maintain the premises in a state to command the rent (*e.g.* where the tenant holds on what is known as a repairing lease, the actual amount which he pays to his landlord would *prima facie* be the criterion of the value of his house). It will at once be noticed that in regard to certain classes of property, *e.g.* tithe rent charge, the outgoings will be negligible, whereas in the case of other classes, *e.g.* railways or factories, the outgoings are necessarily heavy. Calculations as to the cost of repairs, etc., have been greatly simplified by the rules laid down in the Rating and Valuation Act, 1925, Schedule 2. Prior to the passing of this Act it was customary in all valuations to fix in the first instance the sum known as the gross estimated rental. This means the sum which a tenant might be expected to pay if he undertook to pay all usual tenants' rates and taxes and tithe rent charge, while the landlord bore the cost of repairs, insurance and other expenses necessary to maintain the hereditament. An instance of such a rental is to be found in the case of most farm tenancies where the landlord is responsible for all the expenses of the latter class. From this gross estimated rental had to be deducted the cost of the landlord's repairs, etc., and the resulting sum was known as the net annual value on which the rates were based. The calculation of gross estimated rental is still necessary in the case of dwelling houses, but the deductions

[1] Rating and Valuation Act, 1925, s. 11 (2).

are now fixed by a scale set out in Schedule 2, Part 1, of the Act of 1925. Further, it is still necessary in the case of premises which are not dwelling-houses, *e.g.* factories, to calculate the gross estimated rental and also the amount to be deducted for repairs, etc., but it appears to be unnecessary for the Court to name any gross value, inasmuch as the figure required for rating purposes is only the rateable value on which the rate must be levied.

General Principles of Valuation.—The value of the premises to be considered must be taken as it is at the time when the assessment is made, *i.e.* according to the Latin phrase, *rebus sic stantibus*. This means that the actual value alone at the time must be considered, and not any prospective value which may arise owing to altered circumstances, *e.g.* where premises may at some future time become part of some general scheme of town-planning, they are to be valued as they are at the time of assessment, say, as cottages or warehouses, or whatever they may be at present adapted for, and not as they will be in future—with this proviso, that where in the event of the premises becoming vacant, a tenant could be found who would give a higher rent than that at present paid by the occupant, that higher rent is the rateable value, and not the actual rent paid. Similarly, in the case of premises to which special privileges attach, these privileges are to be taken into account, even though they may at some subsequent time be withdrawn. On this principle a public-house, *i.e.* a house which has a licence attached to it, must be rated as such, even though the licence is, in theory, merely an incident, which may be taken away at the end of the year. Although by the wording of the Acts the rateability of any premises depends upon the value which would be paid by a tenant for taking them from year to year, there is in practice always an assumption that the tenancy will continue for a reasonable time.

Special Classes of Property.—The unit of area in rating is the parish, and in the case of ordinary property this raises no difficulty. There are, however, certain classes of property, *e.g.* railways, canals, waterworks, etc., which extend

into a number of different parishes, and which cannot, therefore, be rated in one lump sum. Further, few railways, in fact, pay rent for their property, and the ordinary criterion derived from rents paid for similar property by others in the neighbourhood is not available. In general, the value of such property as stations, waterworks and other buildings is arrived at by ascertaining the structural cost of such buildings, and by charging a percentage upon that structural cost upon the principle that if the company in question could have rented premises such as they desired they would have been willing to pay the sum equivalent to the interest upon their actual outlay. As regards the lines and other works in a parish, the gross receipts in that parish are taken, and from them the working expenses, rates and cost of upkeep are deducted. In the case of gasworks, waterworks, etc., it is usual to make a valuation of the whole undertaking, and to apportion the value among the different parishes in which it is situated.

Recovery of Rates.—If a rate has been duly demanded and remains unpaid the rating authority may apply by summons to the Justices in Petty Sessions for the issue of a distress warrant authorising a levy on the defaulter's goods. If the rate appears on the face of it to be good the Justices are obliged to issue the warrant, and in default of sufficient distress the Justices *may* order the defaulter to be imprisoned for a space not exceeding three calendar months. The Justices are, however, not obliged to send the defaulter to prison if they are of opinion that the failure to pay is due to "circumstances beyond his control," *i.e.* to poverty. They may in such a case either remit the rate altogether, or may simply refuse their warrant of commitment. In the latter case the rating authority may renew their application at a later date if the defaulter's circumstances change.[1] The rating authority have also the power to remit a rate if in their opinion the ratepayer is unable owing to poverty to pay what is demanded.[2]

[1] Rating and Valuation Act, 1925, s. 2 (3) (b).

[2] *Ibid.*, s. 2 (4).

CHAPTER V

LUNACY AND MENTAL DEFICIENCY

General Law and Classes of Lunatics.—The legislature has taken care to prevent persons being confined as lunatics without good cause being shewn. No person may be received and detained as a lunatic in an institution for lunatics, or as a single patient, without a reception order made by "a Judicial Authority" (as explained later), except in very special circumstances set out below,[1] unless he is a "lunatic so found by inquisition." This latter expression means that he has been found to be of unsound mind by a master in lunacy, either with or without a jury. This is an expensive process, and is usually employed only in cases of persons having large property, but it is sometimes resorted to where the person deemed to be a lunatic desires to dispute the allegation.

From the point of view of the law, lunatics[2] are divided into three classes :—

(*a*) Private lunatics, including those "so found by inquisition."

(*b*) Pauper lunatics, supported at the cost of the parish or county.

(*c*) Criminal lunatics, those detained in legal custody after having been charged with or convicted of crime.

So far as the duties of magistrates are concerned, these are mainly exercised by Special Justices, appointed annually in

[1] Lunacy Act, 1890, s. 4.

[2] The term "lunatic" includes idiots and persons of unsound mind.

every county and Quarter Sessions Borough at Michaelmas in the case of the counties and at a special Sessions held in October in the boroughs. These Special Justices are known as the *Judicial Authorities*,[1] and they act on behalf of the Bench of Magistrates in all matters relating to lunatics and mental defectives.

The Lord Chancellor may, without the intervention of a Judicial Authority, authorise the chairman of a board of guardians to sign orders for the reception of persons as pauper lunatics.[2]

Every "Judicial Authority" has the same jurisdiction and power as regards summoning and examination of witnesses, the administration of oaths, etc., as if he were acting in the exercise of his ordinary jurisdiction, and will be assisted by the same officers.

The appointment of Justices as the "Judicial Authority" must be recorded by the Clerk of the Peace of the county or borough, or in the case of boroughs not having separate Quarter Sessions, by the Clerk to the Justices.[3] The names should also be communicated to the Commissioners in Lunacy, 66 Victoria Street, S.W., and to the Master in Lunacy, Royal Courts of Justice, London.

A Justice appointed a "Judicial Authority" may exercise the powers of that authority even though he has not otherwise jurisdiction in the place where the lunatic is found. He may transfer a petition presented to him to any other judicial authority willing to receive it, whether he has jurisdiction in that place or not.[4]

(*a*) **Private Lunatics.** — *Summary Reception Orders.*— Private lunatics, if not "so found by inquisition," require two medical certificates and an order by a "Judicial Authority" before they can be detained by force in an institution.

Any police officer or relieving officer who has knowledge of

[1] Lunacy Act, 1890, ss. 9, 10.
[2] *Ibid.*, 1891, s. 25.
[3] *Ibid.*, 1890, s. 10 (6).
[4] *Ibid.*, 1891, s. 24.

a person in his district who is not a pauper and not wandering at large, who is deemed to be a lunatic and who is not under proper care and control, or who is cruelly treated or neglected by any relative or other person having the care or charge of him, must give information upon oath to a Justice who is a Judicial Authority. An application may also be made to the Justices for an order of detention by any person who has charge or custody of a supposed lunatic. Any such Justice may then visit the alleged lunatic and must authorise any two medical practitioners whom he thinks fit to visit and examine the alleged lunatic and to certify their opinion as to his mental state. If the Justice is satisfied that the alleged lunatic is a lunatic either by the certificate of such medical practitioners, or after such further inquiry as he may think necessary, he may direct the lunatic to be received and detained in any institution for lunatics to which if a pauper he might be sent, and the police officer or relieving officer must convey the lunatic to the institution named in the reception order.[1]

Suspension of Removal Order.—A summary reception order may be suspended by the Justice for fourteen days, and he may give such directions for the care and maintenance of the lunatic as he may think proper.[2]

Medical Certificates.—The certificate signed by the medical practitioner on which the reception order is founded must state the facts upon which he bases his opinion, distinguishing the facts observed by himself and those communicated to him by others. The reception order must not be made on a certificate founded only on facts communicated by others. The certificate must contain a statement that it is expedient for the welfare of the lunatic or for the public safety that he should be placed under care and treatment.[3]

The medical certificate must not be signed by the petitioner or by the person signing the urgency order,[4] or by the husband or wife, father or father-in-law, mother or mother-

[1] Lunacy Act, 1890, s. 13.
[2] *Ibid*., s. 19 (2).
[3] *Ibid*., s. 28.
[4] See below.

in-law, daughter or daughter-in-law, brother or brother-in-law, sister or sister-in-law, partner or assistant of the petitioner or of the person signing the order.[1]

Urgency Orders.—In case of urgency, when it is expedient, either for the welfare of a person (not a pauper) alleged to be a lunatic, or for the public safety, that the alleged lunatic should be forthwith placed under care and treatment, he may be received and detained in an institution for lunatics, or as a single patient, upon an urgency order, made in the prescribed form and manner (if possible) by the husband or wife, or by a relative of the alleged lunatic, accompanied by *one* medical certificate.

An urgency order, if made before a petition has been presented, must be referred to in the petition, and if made after the petition has been presented, a copy must be sent by the petitioner to the Judicial Authority to whom the petition has been presented.

An urgency order remains in force for seven days from its date; or if a petition for a reception order is pending, until it is disposed of.[1]

Duty of Magistrates as to Licensed Asylums.—The duty of Magistrates in general in regard to lunatics consists mainly in the appointment at Quarter Sessions of three or more Justices, and of one or more medical practitioners to act as visitors of houses licensed as asylums for lunatics within the county or borough. Quarter Sessions also grants licences to qualified persons for the reception in their houses of private lunatics.[3] This function is exercised in boroughs by the Borough Justices in special sessions.[4]

The visitors must at their first meeting make the declaration required to be made by a commissioner. No one who has been interested in such a licensed house within one year may be appointed a visitor.[5]

The Clerk of the Peace usually acts as the Clerk to the Visitors.[6]

[1] Lunacy Act, 1890, s. 30. [2] *Ibid.*, s. 11. [3] *Ibid.*, s. 807.
[4] *Ibid.*, s. 209. [5] *Ibid.*, s. 177. [6] *Ibid.*, s. 178.

In county boroughs the visitors and clerk must be approved by the Recorder of the Borough.[1]

(*b*) **Lunatics Wandering at Large.**—Any police constable or relieving officer having knowledge of any person (whether pauper or not) wandering at large within his district who is deemed to be a lunatic, may immediately apprehend and take the alleged lunatic before any Justice.

Any Justice, upon the information on oath of any person, may by order require a constable or relieving officer to apprehend an alleged lunatic and bring him before a Justice.[2]

A medical practitioner must examine the alleged lunatic, and the Justice should make such inquiries as he thinks advisible, and, if satisfied either that the alleged lunatic is a lunatic and a proper person to be detained, or that he is a lunatic wandering at large, and the medical practitioner having signed the medical certificate in the prescribed form, may direct by order that the lunatic be received in any institution for lunatics named by him.[3]

(*c*) **Pauper Lunatics.**—Any relieving officer who has knowledge, either by notice from a medical officer or otherwise, that any pauper resident within the district is deemed to be a lunatic, must, within three days after obtaining such knowledge, give notice thereof to any Justice having jurisdiction in the place where the pauper resides.[4]

The Justice, on receiving this notice, need not require the relieving officer to bring the alleged lunatic before him,[5] but the Justice, or some other Justice of the same county or borough, may visit him at such time and place as is mentioned in the order, but within three days of the time of notice being given to the Justice.[6]

If satisfied that the person so brought before him is a lunatic he may make a reception order.

[1] Lunacy Act, 1890, s. 180. [2] *Ibid.*, s. 15. [3] *Ibid.*, s. 16.
[4] Not necessarily a Judicial Authority.
[5] Lunacy Act, 1890, s. 17. [6] *Ibid.*, s. 14.

When Lunatic may be Treated as a Pauper.—The Justice must not sign the reception order for a person as a pauper lunatic unless he is satisfied that the alleged pauper is in receipt of relief or requires relief for his proper care. If the person is visited by the Union medical officer for his examination he is deemed to be in receipt of relief.[1]

Removal to a Workhouse.—A Justice may order the lunatic to be received in a workhouse as a pauper lunatic, but the period of detention in such workhouse must in no case exceed fourteen days, unless all formalities have been completed required for the detention of lunatics in workhouses, *i.e.* unless the workhouse medical officer certifies that the person is a lunatic and that there is proper accommodation in the workhouse for the lunatic.[2]

(*d*) **Criminal Lunatics.**—When a prisoner is certified to be insane, a Secretary of State may, by warrant, direct him to be removed to any asylum, and there detained until he ceases to be deemed a criminal lunatic, by being remitted to prison, or by absolute discharge, or by the termination of the sentence of penal servitude or imprisonment.[3]

A criminal lunatic is defined as :—

(*a*) Any person for whose safe custody, during the Crown's pleasure, the Crown or the Admiralty is authorised to give order, or

(*b*) Any prisoner whom a Secretary of State or the Admiralty has, in pursuance of any Act of Parliament, directed to be removed to an asylum or other place for the reception of insane persons.[4]

This definition includes not only criminals who, after conviction, have become lunatics, but also those charged with crime who are unfit to plead owing to lunacy, or who, on their trial, are found guilty of the act charged, but insane.

The duty of Magistrates as regards criminal lunatics is mainly in connection with cases in which persons are

[1] Lunacy Act, 1890, s. 18.
[2] *Ibid.*, ss. 20, 21.
[3] Criminal Lunatics Act, 1884, s. 2.
[4] *Ibid.*, s. 16.

found to be insane on indictment, or found guilty but insane, as they are not concerned with prisoners who become insane after imprisonment.

It is usual to order that such persons should be "detained during His Majesty's pleasure."

The Court of Criminal Appeal may, if of opinion that the appellant was insane at the time he committed the act alleged against him, quash any sentence passed, and may order him to be kept in custody as a criminal lunatic.[1]

[1] Criminal Appeal Act, 1907, s. 5 (4).

CHAPTER VI

MATRIMONIAL CASES

Separation Order.—A married woman may obtain a summary remedy having the same effect as that of a Judicial Separation in the Divorce Court by applying to the Justices in Petty Sessions for a separation order.

Such an order may be granted to her by a Court of Summary Jurisdiction :—

(*a*) When her husband has been convicted summarily of an aggravated assault upon her.

(*b*) When her husband has been convicted on indictment of an assault upon her and sentenced to pay a fine of more than £5, or to a term of imprisonment exceeding two months.

(*c*) When her husband has deserted her.

(*d*) When her husband has been guilty of persistent cruelty to her or wilful neglect to provide reasonable maintenance for her or her infant children, whom he is legally liable to maintain.

(*e*) When her husband is a habitual drunkard.[1]

[1] Habitual Drunkards' Act, 1879; Licensing Act, 1902, s. 5 (1). "Habitual Drunkard" is defined as a person who, not being amenable to any jurisdiction for lunacy, is, notwithstanding, by reason of habitual intemperate drinking of intoxicating liquor or the habitual taking or using, except upon medical advice, of opium or other dangerous drugs, at times dangerous to himself or herself, or to others, or incapable of managing himself or herself and his or her affairs. (Habitual Drunkards' Act, 1879, s. 3, and Summary Jurisdiction (Separation and Maintenance) Act, 1925, s. 3.)

(*f*) When her husband has been guilty of persistent cruelty to her children.[1]

(*g*) When her husband, whilst suffering from a venereal disease, and knowing that he is so suffering, insists on having sexual intercourse with her.[2]

(*h*) When her husband has compelled her to submit herself to prostitution, and when the husband has, in the opinion of the Court, been guilty of such conduct as was likely to result and has resulted in her submitting herself to prostitution, he is deemed to have compelled her so to submit herself.[3]

It is not a necessary condition that a wife should have left her husband before applying for the order,[4] but no separation and maintenance order is enforceable whilst they are living together, and any such order ceases to have effect if for a period of three months after it is made the married woman continues to reside with her husband.[5]

A man may apply for a separation order if his wife is guilty of persistent cruelty to his children,[6] or if she is a habitual drunkard.[7]

Scope of Order.—The Court may make an order to the following effect :—

(1) That applicant be no longer bound to cohabit with the husband or wife.

(2) That he or she may have the legal custody of any children of the marriage.

(3) That the husband shall pay to the wife personally, or for her use to an officer of the Court or some other person on her behalf, a weekly sum not exceeding £2 per week, and further weekly sums not exceeding 10s. for the maintenance of each child of the marriage until such child attains sixteen years of age.

(4) That the payment of costs shall be made by one or both of the parties to the summons.[8]

[1] Summary Jurisdiction (Separation and Maintenance) Act, 1925, s. 1 (2). [2] *Ibid.*, s. 1 (1). [3] *Ibid.*, s. 1 (4). [4] *Ibid.*, s. 1 (3).
[5] S. J. (Married Women) Act, 1895, s. 5 ; Licensing Act, 1902, s. 5 (2). [6] *Ibid.* [7] Licensing Act, 1902, s. 5 (2).
[8] Gipps *v.* Gipps (1864), 11 H.L., Cas. 1.

Adultery of Wife.—No order is to be made on the application of a married woman if it be proved that she has committed adultery, unless the husband has condoned, connived at, or by his wilful neglect or misconduct brought about the adultery.[1]

"Conniving" means wilfully abstaining from taking any steps to prevent adulterous intercourse.[2]

Interim Orders.—The Court may adjourn the hearing of an application for a maintenance order from time to time, and may order interim payments to be made to the wife or to an officer of the Court or to a third person on her behalf. The weekly sum thus fixed must not exceed an amount which may be ordered to be paid under a final order. Such an interim order cannot remain in operation for more than three months from the date on which it is made, but it may be enforced in the same manner as a final order.[3]

Variation or Discharge of Order.—On the application of either party to the marriage, the Court, upon fresh evidence, may alter, vary or discharge the order, provided the weekly sum does not exceed £2. The amount may also be varied according to the change in the means of the husband, or of the circumstances, such as a child being placed in the husband's care.[4]

Avoidance of Order.—If the wife resides with her husband for three months after the order is made, she forfeits all benefits under it. If cohabitation is resumed after living apart from him, the order is void and unenforceable.[5]

Enforcement of Order.—If the husband makes default in payment of the weekly sums, he will be dealt with as in the case of an affiliation order,[6] *i.e.* he can be brought up on a warrant before the Justices, who, if the amount due is not paid, may then order a distress warrant to issue.

If the children are not handed over to the applicant in

[1] Summary Jurisdiction (Married Women) Act, 1895, s. 6. [2] *Ibid.*
[3] Summary Jurisdiction (Separation and Maintenance) Act, 1925, s. 6 (1). [4] Summary Jurisdiction (Married Women) Act, 1895, s. 7.
[5] Summary Jurisdiction (Separation and Maintenance) Act, 1925, s. 2 (2). [6] Summary Jurisdiction (Married Women), 1895, s. 9.

accordance with the order, a copy of the order may be served upon the person who has the control of them to deliver them up to the applicant, and in default of compliance an application for a writ of Habeas Corpus may be made to the High Court.[1]

Definitions of Matrimonial Offences.—"*Desertion*" has been defined as abandonment, and implies an active withdrawal from a cohabitation that exists, but the conduct of the party charged must be considered as well as that of the applicant to see if there is a just and reasonable cause.[2]

"Condonation" is forgiveness of a conjugal offence with a full knowledge of all the circumstances, and is a question of fact, not of law, depending upon the circumstances of each particular case.[3]

Refusal to Issue an Order.—Where a case presents difficulties, the Court may decide that the matters in question between the parties would be more conveniently dealt with by the High Court (Probate, Divorce and Admiralty Division), and may then refuse to adjudicate. From such a refusal of the Court of Summary Jurisdiction there is no appeal.[4]

[1] Summary Jurisdiction (Separation and Maintenance) Act, 1925, s. 5.
[2] Pulford *v.* Pulford (1923), P. 18.
[3] Peacock *v.* Peacock (1858), 27 L.J. (P.) 71.
[4] Summary Jurisdiction (Married Women) Act, 1895, s. 10.

CHAPTER VII

JURISDICTION UNDER SPECIAL ACTS

(i) Recovery of Possession of Small Tenements.—*Powers of Justices.*—When a tenant or occupier of premises, let at a rental of under £20 per annum and for a period of seven years or less, remains on the premises after the tenancy has expired, or has been determined by a notice to quit, the Bench may issue a "Warrant of Possession" on the application of the landlord.

Procedure.—The landlord must serve his tenant with a notice that he will attend at the Court of Summary Jurisdiction named in the notice at a specified date and hour. The notice should also state that application will be made to recover possession of the land or building in question.[1] If the tenant does not appear at the Court, or fails to shew cause why a warrant of possession should not be issued, the landlord or his agent on proof of the following facts :—

(1) That the tenancy has expired, or been terminated by notice to quit ;

(2) The landlord's right to possession ;

(3) Where the landlord's interest has changed hands since the letting of the premises, of the title of the transferee of the interest to possession ;

(4) Neglect by the tenant to give up possession,

is, *prima facie*, entitled to claim a warrant to give possession within a period to be named (not less than twenty-one or more than thirty days).

[1] Small Tenements Recovery Act, 1838, s. 2.

No entry is to be made under the warrant on Sunday, Good Friday, or Christmas Day, but may be made on any other day between the hours of 9 a.m. and 4 p.m. The notice given by the landlord need not be served personally, but may be left at the tenant's residence. It must be read over and explained to the tenant by the process server, or to the person who is served with the notice at the tenant's residence. No action or prosecution will lie against Justices issuing the warrant, or any constable or peace officer on account of the person for whose benefit the warrant was obtained having no right to possession of the premises.[1]

Rent Restriction Acts.—Notwithstanding the above provisions, orders of Justices for possession of premises are at the present time restricted by the operation of the provisions of the Rent Restriction Acts, which provide that no order for the recovery of possession of any dwelling-house to which the Act applies (*i.e.* one of which the annual amount of standard rent in the Metropolitan Police District and the City of London does not exceed £105, in Scotland £90, and elsewhere £78) shall be made unless :—

(1) Any rent lawfully due from the tenant has not been paid ; or

(2) The tenant or any person residing or lodging with him or being a sub-tenant has been guilty of conduct which is a nuisance to adjoining occupiers, or has been convicted of using the premises for an immoral or illegal purpose, or the condition of the dwelling-house has deteriorated owing to acts of waste by or the neglect of the tenant, or when the occupier is a lodger or sub-tenant, the Court is satisfied that the tenant has not taken such steps as he ought reasonably to have taken for the removal of the lodger or sub-tenant ; or

(3) The tenant has given notice to quit, and in consequence the landlord has contracted to sell or let the dwelling-house, or has taken other steps as a result of which he would be seriously prejudiced if he could not obtain possession ; or

[1] Small Tenements Recovery Act, 1838, ss. 2 and 5.

(4) The dwelling-house is reasonably required by the landlord for occupation as a residence for himself or for any son or daughter of his over eighteen years of age, or for any person *bona fide* residing with him, or for some person engaged in his whole-time employment, and the Court is satisfied that alternative accommodation is available ; or

(5) The dwelling-house is reasonably required for the purpose of the execution of the statutory duties of a local authority, or statutory undertaking, or in the public interest, and the Court is satisfied that alternative accommodation is available ; or

(6) The landlord became the landlord after service in any of His Majesty's Forces during the War and requires the house for his personal occupation and offers the tenant accommodation on reasonable terms in the same dwelling-house ; or

(7) The dwelling-house is required for occupation as a residence by a former tenant thereof, who gave up occupation in consequence of his service in any of His Majesty's Forces during the War ; or

(8) The tenant without the consent of the landlord has, at any time since 31st July 1923, assigned or sub-let the whole dwelling-house, or sub-let part of the dwelling-house, the remainder being already sub-let ; or

(9) The dwelling-house consists of or includes premises licensed for the sale of intoxicating liquor, and the tenant has committed an offence as holder of the licence and has not conducted the business to the satisfaction of the Licensing Justices or the police authority, or has carried it on in a manner detrimental to the public interest, or the renewal of the licence has for any reason been refused.[1]

Alternative accommodation is not to be a condition of an order when :—

(1) The tenant was in the employment of the landlord or a former landlord, and the house was let to him in

[1] Rent and Mortgage Interest Restrictions Act, 1923, s. 4.

consequence of his employment, and he has ceased to be in that employment.

(2) The Court is satisfied that the house is required by the landlord for the occupation of a person engaged on work necessary for the proper working of an agricultural holding, or with whom a contract for employment on such work has been entered into conditional on housing accommodation being provided.

(3) The landlord gave up occupation of the house in consequence of his service in His Majesty's Forces during the War.

(4) The landlord or husband or wife of the landlord became the landlord before 30th June 1922, and the house is reasonably required by him for occupation as a residence for himself or for any son or daughter over eighteen years of age.

(5) The landlord or husband or wife of the landlord did not become the landlord before 30th June 1922, and the house is reasonably required by him for occupation as a residence for himself or for any son or daughter over eighteen years of age, and that greater hardship would be caused by refusing to grant an order or judgment of possession than by granting it.

(ii) **Possession of Rectories, Vicarages, etc.**—With the object of compelling rectors and vicars to reside on their benefices if required by the bishop, it is provided in the Pluralities Act, 1838, s. 59, that any agreement made for the letting of the house of residence belonging to any benefice, to which house any spiritual person may be required by order of the bishop to proceed and reside therein, must be made in writing, and must contain a condition that the letting may be annulled on a copy of the bishop's order being served on the occupier. The penalty for any person holding over (*i.e.* remaining in possession) after service of the order is forty shillings per day.[1]

A Justice must issue a warrant for possession on application

[1] Rickard *v.* Graham (1910), 1 Ch. 722.

of the incumbent and production of the order of the bishop. The Rent Restriction Acts do not apply[1] to such cases.

(iii) **Deserted Premises.**—Where a tenant holds land at a rack rent (*i.e.* the full annual value of it), or three-fourths of the yearly value of such premises, and after six month's rent has fallen due deserts the premises without leaving sufficient distress thereon, two Justices may, at the request of the landlord or his bailiff, enter on and view the land. At this view, they must post up a notice in some conspicuous place, stating the day on which they will return to view the premises a second time. Fourteen days must elapse between the two views. If upon the second view the tenant does not appear personally or by a deputy, and pay the rent, the justices may put the landlord into possession and the lease becomes void.[2]

Any decision of the Justices under this authority is examinable in a summary way at the next assizes,[3] or in the City of London and the County of Middlesex by the King's Bench Division of the High Court.

(iv) **Restoration of Goods of Under-tenants, etc.**—Where a superior landlord in levying a distress on his tenant has seized the goods of an under-tenant or lodger, such under-tenant or lodger may serve the superior landlord with a declaration in writing setting forth that the superior landlord's immediate tenant has no interest in the goods seized. This declaration should contain, or have annexed to it, a proper inventory of the goods claimed, and it must also set out the amount of rent then due to the superior landlord and the amounts to become due, with dates. The under-tenant must also undertake to pay to the superior landlord

[1] Pluralities Act, 1838, s. 59; Reeves *v.* Davies (1921), 2 K.B. 486.

[2] Distress for Rent Act, 1738, s. 16; and Distress Act, 1817, s. 1.

[3] Distress, etc., Act, 1738, s. 17. See *ex parte* Evans (1908), 72 J.P. (N.) 568.

the future rent as it becomes due under his tenancy. On proof of the facts contained in the declaration, and if satisfied as to the undertaking for future rent, the Bench can grant an order on summons for the restoration of the goods.

Similar relief may be given to any other person not being a tenant and not having any beneficial interest in any tenancy of the premises as regards furniture, etc., distrained upon.[1]

The penalty for proceeding with a distress on the goods after the undertaking has been given or payment made is that the landlord is guilty of an illegal distress, and is liable to an action, and the Justices may issue a restoration order.[2]

(v) **Fraudulent Removal of Goods.**—Any tenant fraudulently or clandestinely removing his goods and chattels in order to prevent the landlord from distraining for any rent due, and any persons wilfully and knowingly aiding the tenant in such removal, are liable to forfeit double the value of the goods removed or concealed. When the value of the goods does not exceed fifty pounds, then, on a complaint in writing made before the Justices, the offenders may be summoned to appear before the Bench, who may order the double value of the goods to be paid to the landlord. This sum may be recovered by distress, or, for want of distress, imprisonment without hard labour may be awarded according to the scale in S. J. Act, 1879.[3]

An appeal lies to Quarter Sessions.[4]

(vi) **Land Compensation Claims.**—Compensation claims up to £50 in value, where the land is compulsorily taken for a public undertaking, can be settled by two Justices. On the application of either party, one Magistrate can issue a summons to the other party to attend before two Justices, who can settle the dispute after hearing the witnesses on oath.

[1] Law of Distress Am. Act, 1908, s. 1.
[2] *Ibid.*, s. 2.
[3] Distress for Rent Act, 1738, s. 4; Summary Jurisdiction Act, 1884, s. 3.; Criminal Justice Administration Act, 1914, s. 16 (1).
[4] *Ibid.*, ss. 5 and 16; Summary Jurisdiction Act, 1884, s. 3.

Two Justices may assess the compensation payable to tenants from year to year or tenants for one year certain.[1]

(vii) **Employers and Workmen.** — Disputes between employers and workmen may be adjudicated upon by two or more Justices. In adjusting such differences they can exercise the following powers :—

(1) They can settle claims for wages, damages or otherwise.

(2) They can rescind contracts and apportion wages.

(3) Where damages are awardable for breach of contract, the Court can, where the defendant is willing to give security, accept the same for the due performance of the unperformed part of the contract.[2]

The security should be an undertaking by the defendant, and one surety or more, that the defendant will perform his contract or the amount specified will be forfeited.

Any sum paid by a surety in regard to such a security is a debt which the Court may order the defendant to pay.[3]

The jurisdiction of Magistrates in this matter is limited to ten pounds. No order can be made for payment exceeding this amount and no security may be required beyond that sum.[4]

Any sums payable by order of the Court may be enforced in the same way as for civil debts under the Debtors Act, 1869, s. 5, which limits the term of imprisonment to six weeks.[5]

(viii) **Apprentices.**—A Court of Summary Jurisdiction may deal with disputes between masters and apprentices upon whose binding either no premium was paid or where the premium did not exceed £25.[6]

This applies only to apprentices coming within the definition of "a labourer, servant in husbandry, journeyman, artificer, handicraftsman, miner or otherwise engaged in manual

[1] Lands Clauses Consolidation Act, 1845, ss. 24 and 121.
[2] Employers and Workmen Act, 1875, s. 4. [3] *Ibid.*, s. 3.
[4] *Ibid.*, s. 4. [5] *Ibid.*, s. 9. [6] *Ibid.*, s. 12.

labour who has entered into or works under a contract with an employer."[1]

Any disputes between an apprentice, as thus defined, and his master arising out of, or incidental to, their relation may be heard and determined by the Magistrates in the same manner as disputes between employers and workmen.[2]

The Court may also:—

(1) Make an order directing the apprentice to perform his duties under the apprenticeship.

(2) If it rescinds the apprenticeship contract, it may order the whole or part of the premium paid to be repaid.[3]

Punishment for Breach of Order.—The Court may, if satisfied that where an apprentice has been ordered to perform his duties he has failed to comply with such an order within one month, order him to be imprisoned for a period not exceeding fourteen days.[4] An appeal from such an order lies to the Quarter Sessions.[5]

Sea Service.—Any wages due to apprentices to the sea service may be recovered in a Court of Summary Jurisdiction.[6] Such Court may rescind the contract,[7] and punishments may be awarded for misconduct, desertion, etc.,[8] and wages may be forfeited.[9]

Enlistment.—A master of an apprentice who enlists as a soldier of the regular forces may claim him if under the age of twenty-one years.[10]

(ix) Trade Disputes.—Modern law on the subject of trade disputes is based on the Conspiracy and Protection of

[1] Employers and Workmen Act, 1875, s. 10.
[2] *Ibid.*, ss. 5 and 6.
[3] *Ibid.*, s. 6.
[4] *Ibid.*, s. 6.
[5] Summary Jurisdiction Act, 1879, s. 19.
[6] Merchant Shipping Act, 1894, s. 164.
[7] *Ibid.*, s. 168.
[8] *Ibid.*, ss. 220, 221 and 225.
[9] *Ibid.*, s. 231.
[10] Army Act, 1881, s. 96.

Property Act, 1875, as by that Act the liability of persons to indictment for criminal conspiracy ceased, if what was done was in the contemplation of trades disputes between employer and workmen, and if the conduct was such that if one person only were guilty it would not be punishable as a crime. This indemnity was further extended by the Trades Disputes Act. 1906, and very considerably modified by the Trade Disputes and Trade Unions Act, 1927. There are, however, certain acts done in connection with trades disputes with which Magistrates may have to deal.

Gas, Water and Electric Light Supply.—Any person employed by a municipal authority or company on whom is imposed by Act of Parliament the duty of supplying gas, water, or electric light to a place, who wilfully and maliciously breaks a contract knowing that the probable consequences of his so doing will be to deprive the inhabitants of that place of their supply of gas, water, or electric light, is liable on conviction by a Court of Summary Jurisdiction to a penalty of £20, or to be imprisoned for three months.[1] A notice to this effect must be posted up in the works. The penalty for failing to do this is £5. Anyone defacing this notice is liable to a penalty of £2.[2]

Conspiracy in Trade Disputes.—A person convicted of an agreement or combination to do an illegal act in contemplation or furtherance of a dispute between employers and workmen is liable to imprisonment not exceeding three months.[3]

Intimidation.—The penalty for intimidation of fellow-workmen or their families is a fine not exceeding £20, or three months imprisonment.[4]

Besetting.—It is unlawful for one or more persons, even if acting in contemplation or furtherance of a trade dispute, to attend at the house or place where a person resides or works

[1] Conspiracy and Protection of Property Act, 1875, s. 4; and Electric (Supply) Act, 1919, s. 31.
[2] Conspiracy, etc., Act, 1875, s. 4.
[3] *Ibid*., s. 3.
[4] *Ibid*., s. 7; Trade Disputes Act, 1906, s. 2.

for the purpose of obtaining information or of persuading any person to work or abstain from working. Such action is " besetting," and is punishable as for intimidation.[1]

Illegal Strikes.—Any strike or lock-out is illegal :—

(1) If it has any object other than, or in addition to, the furtherance of a trade dispute within the trade or industry in which the strikers or employers are engaged.

(2) If it is a strike or lock-out designed or calculated to coerce the Government, either directly or by inflicting hardship on the community.

It is also illegal to apply any sums in furtherance of such illegal strike or lock-out.

The penalty on summary conviction for such offences may be a fine not exceeding £10, or three months imprisonment,[2] or on indictment two years imprisonment.

(x) **Highways.**—The greater part of the duties of construction and maintenance of highways is now vested in the county and district councils. Magistrates, however, have still jurisdiction to deal with highways in regard to :—

(1) Non-repair.
(2) Closing and diversion.
(3) Their ceasing to be repairable at public expense.

(1) *Non-repair.*—Justices have jurisdiction to deal with cases of non-repair of highways when the person summoned does not dispute his obligation to repair them. If he disputes the matter the Justices can only direct an indictment to be prepared for trial at the Assizes or Quarter Sessions.[3] If there be a dispute as to whether the road is a highway or not, the Justices have no jurisdiction, and the complainant must take his remedy under the Common Law.

(2) *Closing and Diversion.*—On application being made to divert or close a highway, with the consent of the councils

[1] Trade Disputes and Trade Unions Act, 1927, s. 3.
[2] *Ibid.*, s. 1.
[3] Highway Act, 1835, s. 95.

concerned, two Justices must view the highway, and proceedings are continued by the Justices giving their certificate, if satisfied. Such decision, before being valid, must be confirmed and recorded by Quarter Sessions.[1]

(3) *Ceasing to be Repairable at Public Expense.*—The Justices may order that a highway, repairable by the inhabitants, but which has become unnecessary, shall cease to be repaired at the public expense.[2]

If anyone considered himself aggrieved by such decision an appeal lies to the Quarter Sessions.

(xi) Adoption of Children.—*Power of Court.*—A Court of Summary Jurisdiction under the Adoption of Children Act, 1926, has power concurrently with the High Court and County Courts, at the option of the applicant, to deal with applications to adopt an infant, *i.e.* person under twenty-one years of age who has never been married. The order of the Court authorising the adoption of the infant is an "adoption order."

The main points to be noted are :—

(1) Application may be made by a person over twenty-five years, and not less than twenty-one years older than the infant, unless the applicant and infant are within the prohibited degrees of consanguinity.

(2) When the sole applicant is a male and the infant a female, the adoption order should not be made unless there are special circumstances to justify it.

(3) The consent of the parents or guardians of the infant must be obtained, unless the parent or guardian has deserted the infant or cannot be found.

(4) Where one of two spouses makes an application the consent of the other of them is necessary.

(5) The applicant must be resident and domiciled in

[1] Highway Act, 1835, ss. 85–90 ; *see* p. 118.
[2] Highways and Locomotives Am. Act, 1878, s. 24 ; Highway Act, 1864, s. 21.

England or Wales, and the infant must be a British subject and so resident.[1]

Condition of Issue of Adoption Order.—The Court must be satisfied—

(1) That the persons whose consent has been given understand the nature and effect of the adoption order which will permanently deprive the parent or guardian of all parental rights.

(2) That the adoption order will be for the welfare of the infant, consideration being given to the wishes of the infant, having regard to the age and understanding of the infant.

(3) That no payment or other reward has been given or promised in consideration of the adoption, except such as the Court may sanction.[2]

Terms and Conditions.—The Court may impose such terms and conditions as it may think fit, and may require the adopter to make provision by bond or otherwise for the child.[3]

Procedure.—The application should be made to a Court of Summary Jurisdiction, where either the applicant or the infant resides. At the first hearing a guardian *ad litem*, *i.e.* some person of full age to whom the Court confides the duty of protecting the interests of the child on the hearing of the application, is appointed. A written consent of the parent or guardian must be given in the form provided.

Effect of Adoption Order.—On the adoption order being made all rights, duties, obligations, and liabilities of the parent or guardian in relation to the future custody, maintenance and education of the child are extinguished, and vest in and are exercisable by the adopter as though the child had been born to him in lawful wedlock.

Register of Adopted Children.—A register of adopted children is to be kept by the Registrar-General, and the

[1] Adoption of Children Act, 1926, s. 2.

[2] *Ibid.*, s. 3.

[3] *Ibid.*, s. 4.

Register of Births will have the word "adopted" entered against the entry of the birth of the child.[1]

(xii) Guardianship of Infants.—*Jurisdiction.*—A Court of Summary Jurisdiction has now power to exercise the function of a Court for the purposes of the Guardianship of Infants Act, 1886, with the following exceptions :—

(1) It may not entertain any application (other than an application for variation or discharge of an existing order under the Act of 1886) relating to an infant who has attained the age of sixteen years, unless the infant is physically and mentally incapable of self-support.

(2) It may not entertain any application involving the administration or application of any property belonging to or held in trust for an infant or the income thereof.

(3) It may not award the payment of sums towards the maintenance of any infant exceeding twenty shillings a week.[2]

Appeal.—If the Court refuses an order, an appeal will lie to the High Court unless the Court considers that the matter could more conveniently be dealt with by the High Court in the first instance, in which case the Court may refuse the application, and then there is no appeal from that refusal to the High Court.[3]

Consent to Marriage.—The Court has power to deal with applications for consent to the marriage of an infant when the responsible persons concerned (parents or guardians) have either refused consent or for special reasons it has not been possible to obtain such consent. Such proceedings may, if the Court thinks it will be in the interests of the infant, be heard *in camera*.[4]

Appointment of Guardian.—The Court has the power to

[1] Adoption of Children Act, 1926, s. 11.
[2] Guardianship of Infants Act, 1925, s. 7.
[3] *Ibid.*, s. 7 (3).
[4] Guardianship of Infants Rules, 960/L/24, 1925, Rule 3.

appoint a guardian in cases where the parents are dead or refuse to act.[1]

Principle on which Questions Decided.—In any proceedings before a Court where the custody, upbringing, etc., of an infant is in question, the welfare of the infant is always to be the first and paramount consideration. The Court must not consider the question whether from any other point of view the claim of the father is superior to that of the mother, or that of the mother to that of the father.[2]

(xiii) Statutory Declarations.—In a number of cases Magistrates are empowered to attest statutory declarations made for different purposes.[3] A Magistrate attesting such a declaration should, after signing his name, add the letters J.P., and should name the county or borough for which he is appointed. He is not responsible in any way for the truth of the declaration unless he knows as a fact that the statements in it are untrue. He does, however, in certain cases vouch in his magisterial capacity the fitness of persons making application for particular privilege.[4]

[1] Guardianship of Infants Act, 1925, ss. 4 and 5.
[2] *Ibid.*, s. 1.
[3] *e.g.* Declarations by Parliamentary candidates as to their expenses.
[4] *e.g.* for the purpose of obtaining passports.

PART IV

APPEALS FROM MAGISTRATES

A.—APPEALS TO QUARTER SESSIONS

Jurisdiction.—The convictions and orders of Justices sitting in Petty Sessions are, in general, subject to review on appeal both by the Court of Quarter Sessions for the particular county or borough and by the High Court of Justice. In criminal cases any person who is aggrieved by a conviction may appeal, and even a person who has pleaded guilty may appeal against sentence.[1] There is, however, an exception to this right in the case of a person who is charged with an indictable offence, and who elects to be dealt with summarily and pleads guilty.[2] In civil cases the right of appeal is regulated by a variety of special Acts, but generally there is a right of appeal to Quarter Sessions subject to the proper formalities being complied with. An exception to this right exists in the case of an order for Judicial Separation granted by a Bench of Magistrates in Petty Sessions, the appeal from whom is to the Divisional Court of the High Court of Justice.

Procedure on Appeal.—Any person desiring to appeal must give notice within seven days of the decision appealed against. This notice must be in writing, signed by the appellant or his agent (usually his solicitor), and must be served upon the other party and upon the Clerk to the Justices. The notice must state the grounds of his appeal.

[1] Criminal Justice Act, 1925, s. 25.
[2] Moseley *v.* Director of Public Prosecutions (1920), 1 K.B. 16.

Within three days after giving notice, the appellant must enter into a recognisance before Justices to prosecute his appeal and to abide the judgment of the Court. The amount of the recognisance is fixed by the Justices before whom it is taken, and occasionally the appellant is required actually to deposit money. It is important to note that the recognisance must be fixed after the notice of appeal is given, otherwise it is void and the appeal is of no effect. In general the recognisance may be entered into before any Court of Summary Jurisdiction, but in the case of a licensing appeal it must be a Court of the Borough or County in which the appeal actually arises. The appeal must be entered by the appellant at the office of the Clerk of the Peace, and comes on for hearing at the next Court, which is held not less than fifteen days after the making of the decision which is appealed against.

Practice at Quarter Sessions.—Before the appeal is heard the appellant may be called upon to prove the validity of his notice or of his recognisances, but as a rule this formality is dispensed with and the hearing commences directly the case is called on. The hearing at Quarter Sessions is, in fact, a rehearing of the case, and the party on whom the burden of proof rests must begin just as at Petty Sessions, *e.g.* in the case of an appeal against a conviction, the prosecution must begin and prove their case, just as in the Court below. Evidence before the Court of Quarter Sessions is not confined to that adduced in the first instance, but the Court may hear any fresh evidence which may be forthcoming. In hearing an appeal at Quarter Sessions, all the Justices have a right to vote; the votes of the majority decide the case. The chairman has no casting vote, and in the event of an equality of voting the case should be adjourned to the next sitting of the Court, which should consist of an uneven number of Magistrates, for re-trial. No Justice who has sat on the hearing of the case in the Court below may sit on the appeal.[1] In the case of a borough, the appeal on matters other than the refusal of licences is to the Recorder of

[1] R. *v.* Cheshire Licensing, J.J. (1906), 1 K.B. 362.

that borough, who is the sole judge of the Court of Quarter Sessions. The Court of Quarter Sessions has power to deal with the case in all respects as the Justices at Petty Sessions could have dealt with it, and it may therefore confirm, reverse or alter the decision arrived at in the Court below. It has also full discretion in the matter of costs. The Court of Quarter Sessions may, in their discretion, state a case on a point of law for the decision of the High Court of Justice, but cannot be compelled to do so.

B.—APPEALS TO THE HIGH COURT

Appeals may be made to the High Court either by :—

(1) Case stated.
(2) Writ of mandamus.
(3) Writ of certiorari.
(4) Writ of prohibition.

(1) **Appeal by Case Stated.**—Any person who is aggrieved by an order or determination of a Court of Summary Jurisdiction may apply to the Court for the statement of a case for the High Court on any point of law, and the Justices are bound in such an event to grant the application, unless in their opinion the point is merely frivolous. A case may also be stated by the Court of Quarter Sessions, but that Court cannot be compelled to do so. A person who has applied for a case to be stated cannot simultaneously appeal to Quarter Sessions.

Procedure on Appeal.—The party desiring the case to be stated must apply in writing, within seven days of the determination of the Court, to the Clerk of the Court, and copies of such application must, at the same time, be left with the Clerk addressed to each of the Justices who were parties to the decision. Before the case is delivered to the applicant, he is required to enter into recognisances[1] before Justices exercising the same jurisdiction as those from whom he is appealing to prosecute his appeal and to abide by the decision of the Court. The case must be stated within three months

[1] *See* p. 136.

from the date of the application, and the applicant after receiving it must, within three days, enter it at the Crown Office for hearing, and must, before doing so, give notice of appeal to the other party. The case must contain a statement of all the facts upon which the Justices have come to their conclusion, and must set out the questions upon which the decision of the High Court is requested. Usually a case is agreed upon between the two parties, but in the event of a difference of opinion, it must be settled by the Justices who heard the case. It is always open to the Justices, if they disagree with the case as stated, to amend it so as to make it agree with the facts proved before them. The case should be signed by all the Justices who sat to hear it, whether they, in fact, agreed with the decision or not.

The hearing of a case stated by Justices is by the Divisional Court of the King's Bench Division. The Justices, as a rule, are no parties to the appeal, and are not entitled to appear, but where they are parties they may appear by counsel, and may then become liable either to pay or to receive costs. At the hearing of the case the Court may either decide the matter one way or the other, or may remit the case to the Justices for further information, or where the Justices have erred on a point of law, may order them to sit and determine the case in accordance with the true view of the law, and may make such order as regards costs as they deem fit.

(2) **Writ of Mandamus.**—Where the Justices have failed to do some act which is part of the duty of their office, the Divisional Court of the King's Bench, on the application of a party aggrieved, will order them to perform the requisite act. In order to obtain this order, the applicant must apply within two months to the Divisional Court for what is known as a "rule nisi," calling upon the Justices to do what is required.[1] This rule nisi is then served upon them, and either they or the other party to the case may appear by counsel at the hearing to argue the question. A writ of mandamus will not be issued where the Justices have properly

[1] Crown Office Rules, 1906, No. 68.

exercised their discretion, but only where they have failed to adjudicate in matters properly before them. Instances of cases where a mandamus has issued are as follows :—

(*a*) When the Justices refused to grant a summons against a number of persons for conspiracy to break the peace, and acting on some extraneous knowledge, declined jurisdiction.[1]

(*b*) Where from a mistaken opinion as to their summary jurisdiction the Justices refused to adjudicate.[2]

(*c*) Where an order which had not been appealed against was in force and the Justices declined to enforce it.[3]

But where the Justices have considered on the merits all the circumstances of a case, and have exercised their discretion, the King's Bench will not interfere with their decision.[4]

(3) **Writ of Certiorari.**—A further power possessed by the High Court is the issue of a writ of certiorari. This is a power to bring up and quash proceedings where the Justices have done something which is outside their jurisdiction, or where their proceedings are tainted with irregularity, *e.g.* where some of the Justices have sat and taken part in a decision who were disqualified from so acting either by Statute or by reason of interest or bias.[5]

(4) **Writ of Prohibition.**—A writ of prohibition will issue to Justices who have done or purported to do some act which is not within their province. In order that proceedings of this nature may be taken, it is necessary that the order in question shall shew upon its face the want of jurisdiction. In cases where Justices are parties to an application by way

[1] R. *v.* Adamson and Others (Tynemouth, J.J.) (1875), 1 Q.B.D. 201.
[2] R. *v.* Biron (1884), 14 Q.B.D. 474.
[3] R. *v.* Swindon, J.J. (1878), 42 J.P. 407; R. *v.* Lancashire, J.J. (1925), 1 K.B. 200.
[4] R. *v.* Gravesend, J.J. (1891), 55 J.P. 277.
[5] Crown Office Rules, (1906), Nos. 12–31.

of mandamus, certiorari or prohibition, they are entitled to appear by counsel and defend their action, but may then have an order for costs made against them.[1]

C.—APPEAL TO THE COURT OF CRIMINAL APPEAL

Who may Appeal.—Every prisoner who is convicted on indictment, or who is dealt with as an incorrigible rogue, or ordered to be detained in a Borstal institution before a Court of Quarter Sessions, has a right of appeal to the Court of Criminal Appeal either against conviction or sentence. Facilities are given to all prisoners who are in gaol of entering their appeals.

Procedure.—Notice of appeal must be given within ten days of the date of conviction, but the time for appealing may, in special cases, be extended by the Court of Criminal Appeal.[2] Notice of appeal must state the grounds upon which the prisoner desires to appeal, and must be signed by him. Such grounds may be founded either on a point of law alone, or with leave of the Court of Appeal, or on certificate of the Judge who tried the case, that it is a fit case for appeal against conviction, on any ground, either fact or mixed law and fact.[3] A prisoner may also, with the leave of the Court, appeal against sentence.[4] The chairman of the Court of Quarter Sessions is required by the Criminal Appeal Act to furnish his notes of the trial, and to give his opinion upon any point arising in the appeal.[5]

Powers of Court.—The Court of Criminal Appeal, besides the general power to quash a conviction wrongly obtained, may vary the punishment awarded, making it either more or less severe, but this latter power may only be exercised if the appeal is against the sentence.[6]

[1] Crown Office Rules, Nos. 70, 71 and 126.
[2] Criminal Appeal Act, 1907, s. 7. [3] *Ibid.*, s. 3.
[4] *Ibid.*, s. 4 (3). [5] *Ibid.* [6] *Ibid.*, s. 8.

APPENDIX A

POWERS OF A SINGLE MAGISTRATE

ONE Magistrate acting alone has power to :—

(1) Receive information and complaints and issue summonses and warrants to secure the attendance of an accused person.

(2) Grant summonses for the attendance of witnesses and warrants for the forcible detention of material witnesses for the prosecution, if satisfied that their attendance is necessary, and that they will not voluntarily appear.[1]

(3) Issue search, distress and other warrants, and to do whatever is necessary to help forward a case.

(4) Constitute by himself a Court of Summary Jurisdiction, with the general limitation that he may not impose a greater term of imprisonment than fourteen days, or inflict a fine of more than one pound.[2]

(5) Deal with charges of Sunday trading.[3]

(6) Deal with charges of cursing and swearing.[4]

(7) Deal with charges of keeping of lotteries.[5]

(8) Deal with cases of refractory paupers.[6]

(9) Deal with vagrants who neglect to maintain their

[1] Summary Jurisdiction Act, 1848, s. 16. None of these restrictions apply to Metropolitan Police Magistrates, or Stipendiaries, or to the Lord Mayor or any Alderman of the City of London, who have the full powers of a Court of Petty Sessions.

[2] Summary Jurisdiction Act, 1879, s. 20 (7).

[3] Sunday Observance Act, 1677, ss. 1 and 2.

[4] Profane Oaths Act, 1745, ss. 1 and 7.

[5] Gaming Act, 1802, s. 2.

[6] Poor Law Act, 1927, s. 232 ; and Vagrancy Act, 1824, s. 3.

families, paupers who return after order of removal, prostitutes who misbehave, unlicensed pedlars, fortune tellers, exposers of their persons, fraudulent displayers of wounds, possessors of house-breaking implements, and those who resist lawful arrest,[1] persons who trespass for game in the daytime and who refuse their name and address,[2] also persons charged with small offences relating to adulteration of bread, not selling by weight and refusal to weigh bread.[3]

(10) Punish railway officials who are ill-behaved, trespassers on railway land, and obstructors of railway officials.[4]

(11) Exercise limited jurisdiction over numerous street offences, *e.g.* ferocious dogs which are a public danger, street drunkenness, misconduct in police stations, chimneys on fire, drunken cab-drivers, and those who leave cabs unattended in a street.[5]

(12) Try cases of anglers fishing in private waters during the daytime.[6]

(13) Deal with thefts of animals not punishable at Common Law, hunting deer in chases, killing hares in warrens, and pigeons under certain circumstances, and subject to statutory restrictions, also thefts of trees, fences, shrubs, plants, killing and wounding animals other than cattle, damaging trees, shrubs, plants and telegraphs [7]

(14) Try persons charged with personating seamen in order to endeavour to receive their pay.[8]

(15) Deal with disputes as to bad coin, and possessors of more than five counterfeit foreign coins.[9]

[1] Vagrancy Act, 1824, ss. 3 and 4.
[2] Game Act, 1831, ss. 30 and 31.
[3] Bread Act, 1836, ss. 4, 6, 7 and 8.
[4] Railway Regulation Act, 1840, ss. 13 and 14.
[5] Town Police Clauses Act, 1847, ss. 28, 29, 31, 61 and 62.
[6] Larceny Act, 1861, ss. 12, 14, 15, 17, 21, 22–24, 33–37 and 97.
[7] Malicious Damage Act, 1865, ss. 22–25, 37, 38 and 41.
[8] Admiralty Act, 1865, s. 8 (punishment is limited to six months with hard labour).
[9] Coinage Offences Act, 1861, ss. 23 and 26.

(16) Try deserters from the Royal Navy.[1]
(17) Deal with offenders in regard to the Sea Fisheries.[2]
(18) Deal with casual paupers damaging tools and declining to work.[3]
(19) Deal with officials who omit names from the rate-book.[4]
(20) Deal with printers who neglect to keep copies of newspapers.[5]
(21) Deal with certain offenders possessing guns, and refusing name and address, etc.[6]
(22) Deal with offenders who, being inmates of workhouses, damage property of guardians, etc.[7]
(23) Deal with unlicensed hawkers.[8]
(24) Deal with persons found drunk in public places or licensed premises.[9]
(25) Issue a Justice's order for temporary relief of the poor.[10]
(26) Enforce the law against paupers returning within twelve months of the issue of removal order and becoming chargeable to the parish.[11]

[1] Naval Discipline Act, 1866, s. 25.
[2] Sea Fisheries Act, 1868, ss. 22, 23, 26, 32, 41, 49, 53, 57.
[3] Poor Law Act, 1927, s. 232.
[4] Poor Rate Assessment, 1869, s. 19.
[5] Newspaper Printers, etc., Repeal Act, 1869, Sch. 2.
[6] Gun Licence Act, 1870, s. 9.
[7] Paupers Act, 1876, s. 44; Paupers Act, 1882, s. 7; Poor Law Act, 1927, s. 232.
[8] Hawkers Act, 1888, s. 6 (iii).
[9] Licensing Act, 1872, s. 12; Criminal Justice Am. Act., 1914, s. 38; *see* Paley's *Summary Convictions*, 9th ed., 150–152.
[10] Poor Law Act, 1927, s. 74.
[11] *Ibid.*, s. 131.

APPENDIX B

STATUTORY LIMITATIONS OF SUMMARY JURISDICTION

INFORMATION must be laid for the following offences, punishable under Statute by Summary Conviction within the special periods noted in each case :—

Statutes.	*Period, dating from commission of the offence or time matter arose.*
Aliens Restriction Act, 1914; Aliens Order, 1920, s. 18 (8).	Two months.
Bankruptcy Act, 1914.	One year after discovery by trustee or official receiver, or three years after discovery by a creditor.
Bread Act, 1836, ss. 14 and 31.	Forty-eight hours, or such longer period as a Magistrate may allow.
Children (Employment Abroad) Act, 1913, s. 3.	Three months.
Coal Mines Act, 1914, s. 2.	Six months after breach of the regulation, or six months after report made or inquest concluded.
Criminal Justice Act, 1925, s. 28 (false statement in regard to marriages, births or deaths).	Twelve months.
Employment of Children Act, 1903, s. 7.	Six months.
Factory and Workshops Act, 1901, s. 146.	Three months.
Fertilisers and Feeding Stuffs Act, 1906.	Three months from the date of the invoice being received by the purchaser.
Food and Drugs (Sale of) Act, 1899.	Twenty-eight days from the time of purchase for test.
Game Act, 1831, s. 41	Three months.

Statutes.	*Period, dating from commission of the offence or time matter arose.*
London Hackney Carriage Act, 1843, s. 38.	Seven days.
Merchandise Marks Act, 1887, s. 15.	Three years from the date of the offence, or one year after discovery, whichever expires first.
Merchant Shipping Act, 1894, s. 683.	Six months after the commission of the offence, or two months after both parties arrive in this country.
National Health Insurance Act, 1924, s. 9 (3).	Three months from the date when the contribution is due.
Prevention of Corruption Act, 1916, s. 3.	Six months after the offence is discovered by the prosecutor.
Profane Oaths Act, 1745, s. 12.	Eight days.
Refreshment Houses Act, 1860, s. 30.	Three months, unless a shorter period specified.
Reserve Forces Act, 1882, s. 26 (2).	Two months after the offence is known to commanding officer.
Roads Act, 1920, s. 13 (1).	Twelve months.
Seeds Amendment Act, 1925, s. 1.	Twelve months.
Special Constables Act, 1831, s. 15.	Two months after a refusal to serve.
Sunday Observance Act, 1677, s. 4.	Ten days.
Territorial and Reserve Forces Act, 1907, s. 25 (2).	Two months after the offence is known to the commanding officer.
Unemployment Insurance (No. 2) Act, 1924, s. 11.	Twelve months from the time when the matter arose.
Vaccination Act, 1871, s. 11.	One year.
Vagrancy Act, 1824, s. 14.	Two years from the time of chargeability for wife desertion.

There are also limitations of time in regard to proceedings relating to certain indictable offences, the most important of which are as follows :—

In prosecutions for unduly solemnising a marriage, for revenue and income-tax offences, and for offences under the Merchandise Marks Act, three years.

For offences under the Night Poaching Act, 1828, twelve months.

For corrupt and illegal practices at elections, twelve months from the date of the offence, or three months from

a report by commissioners, whichever is the longest, provided the prosecution is commenced within two years.

For carnally knowing girls under sixteen, twelve months.

For wrongful acts, neglect or default in connection with duties imposed by Statute by public bodies, six months.

For offences under the Riot Act, twelve months.

For blasphemy, the "information" for blasphemy by words spoken must be laid within four days of the speaking, and the prosecution must be within three months of the information.

APPENDIX C

JURISDICTION OF QUARTER SESSIONS

THE Court of Quarter Sessions has jurisdiction[1] to try any indictable offence except the following :—

(1) Murder or manslaughter.
(2) Infanticide.
(3) Treason.
(4) Any felony which when committed by a person not previously convicted of felony is punishable by penal servitude,[2] except offences against P.O. Act, 1908, ss. 50–56, and similar offences against the Post Office enumerated in the Larceny Act, 1916, ss. 12, 18.
(5) Misprision of treason.
(6) Offences against the King's title, prerogative, person or government or against either House of Parliament.
(7) Offences subject to the penalties of *Præmunire*.
(8) Blasphemy, and offences against religion.
(9) Administering or taking unlawful oaths.
(10) Perjury, or subornation of perjury, except offences under s. 5 of the Perjury Act, 1911, regarding statutory declarations.[3]
(11) Forgery (except under s. 2 (2) (a) or s. 7 (a) of the Forgery Act, 1913, regarding documents of a value not exceeding £20).[4]

[1] Quarter Sessions Act, 1842, s. 1.
[2] Penal Servitude Acts, 1857, s. 2 ; 1891, s. 1 ; 1926, s. 1. This includes such offences as arson, coining, sodomy, bestiality and offences of a like nature.
[3] Criminal Justice Act, 1925, Sch. 1 ; Perjury Act, 1911.
[4] Criminal Justice Act, 1925, Sch. 1 ; Forgery Act, 1913.

(12) Bigamy and offences against the laws relating to marriage.
(13) Abduction of women and girls.
(14) Endeavouring to conceal the birth of a child.
(15) Composing, printing or publishing blasphemous, seditious or defamatory libels.
(16) Unlawful combinations and conspiracies (except conspiracies or combinations to commit any offence which Quarter Sessions has jurisdiction to try when committed by one person).[1]
(17) Stealing or fraudulently taking or injuring or destroying records or documents belonging to any Court of Law or Equity, or relating to any proceedings therein.
(18) Stealing or fraudulently destroying or concealing any wills, or testamentary papers or any document or written instrument, being or containing evidence of the title to any estate, or to any interest in lands, tenements or hereditaments.
(19) Offences under the Night Poaching Act, 1828, s. 9.
(20) Conversion and embezzlement by Directors and Trustees (except those offences mentioned in the Larceny Act, 1916, ss. 20 (1) (iv), 23 (2) and 24).
(21) Corrupt practices at Parliamentary and Municipal Elections.[2]
(22) Offences against the False Personation Act, 1874, s. 3.
(23) Indictable offences against the Criminal Law Amendment Act, 1885 (except offences under Section 13).
(24) Offences against the Punishment of Incest Act, 1908, s. 4 (2).
(25) Misdemeanours under the Prevention of Corruption Act, 1906.
(26) Offences under the Official Secrets Acts, 1911 and 1920.

[1] Except also unlawful combinations and conspiracies to cheat and defraud, which are now triable at Quarter Sessions (Criminal Justice Act, 1925, s. 18 and Sch. 1).
[2] Corrupt and Illegal Practices Act, 1883; Municipal Elections Act, 1884.

(27) Offences under the Honours (Prevention of Abuses) Act, 1925.

(28) Offences under the Mental Deficiency Act, 1913, s. 56 (4).

Burglary may be tried at Quarter Sessions, unless the examining Justices are of opinion that it is expedient in the interests of justice, owing to a case being a grave and difficult one, that the accused should be committed to the Court of Assizes.[1]

An indictment against a corporation cannot be tried at Quarter Sessions.

The following offences (referred to above) which were not formerly triable at Quarter Sessions have been brought within its jurisdiction by the Criminal Justice Act, 1925 :—

Offences under the Malicious Damage Act, 1861, ss. 16 and 17.

Unlawful combinations and conspiracies to cheat and defraud.

Offences under the Criminal Law Amendment Act, 1885, s. 13.

Offences under Post Offices Act, 1908, s. 50–56.

Offences under Perjury Act, 1911, in relation to statutory declarations.

Offences under the Forgery Act, 1913, ss. 2 (2) (a) and 7 (a).

Offences under the Larceny Act, 1916, ss. 12, 18 and 20 (1) (4), 24 and 23 (2).[2]

[1] Larceny Act, 1916, s. 38.
[2] Criminal Justice Act, 1925, s. 18 and Sch. 1.

APPENDIX D

THE fiat of the Attorney-General is necessary in certain proceedings under the following Acts[1] :—

Agricultural Credits Act, 1928, s. 10 (3).
Auctions (Bidding Agreements) Act, 1927, s. 1 (3).
Coinage Offences Act, 1861, s. 17.
Criminal Appeal Act, 1907, s. 1 (6).
Customs Consolidation Act, 1876, s. 255.
Dangerous Drugs Act, 1920.
Dangerous Drugs and Poisons (Amendment) Act, 1923, s. 2 (2a).
Explosive Substances Act, 1883, s. 7 (1).
Firearms Act, 1920.
Geneva Convention Act, 1911, s. 1 (4).
Inland Revenue Reg. Act, 1890, s. 21.
Judicial Proceedings (Regulation of Reports) Act, 1926, s. 1 (3).
Larceny Act, 1861, s. 80.
Larceny (Advertisements) Act, 1870, s. 3.
Larceny Act, 1901.
Larceny Act, 1916, s. 21.
Law of Property Act, 1859, s. 24.
Law of Property Act, 1925, s. 183.
Lotteries Act, 1802, s. 2.
Lotteries Act, 1806, s. 59.
Lunacy Act, 1890, s. 317 (3).
Marine Insurance (Gambling Policies) Act, 1909, s. 1 (3).
Metropolitan Gas Act, 1860, s. 45.
Moneylenders Act, 1900 and 1911, s. 2 (3). (*See*, however, Moneylenders Act, 1927.)

[1] This list has been supplied by kind permission of the Law Officers' Department of the Crown.

Newspapers Libel and Registration Act, 1881, s. 3.
Newspapers, Printers and Reading Rooms Repeal Act, 1869, s. 1, Sch. 2.
Offences against the Person Act, 1861, s. 53.
Official Secrets Act, 1911, s. 8.
Official Secrets Act, 1920.
Prevention of Corruption Act, 1906, s. 2 (1).
Prevention of Corruption Act, 1916.
Public Bodies Corrupt Practices Act, 1889, s. 4 (1).
Public Health Act, 1875, s. 253.
Public Health Acts Amendment Act, 1890.
Punishment of Incest Act, 1908, s. 6.
Solicitors Act, 1928, s. 2 (2).
Stamp Act, 1891, s. 121.
Supreme Court of Judicature (Consolidation) Act, 1925, s. 51.
Trade Disputes and Trade Unions Act, 1927, s. 7.
Vexatious Indictments Act, 1859.

Application for the fiat of the Attorney-General should be made to the Chief Clerk, Law Officers' Department, Room 545, Royal Courts of Justice, London, W.C.2, from whom particulars of the documents required can be obtained.

The Attorney-General must be served with a copy of the Petition and Affidavit made under the provisions of the Legitimacy Declaration Act, 1858, s. 6 ; Legitimacy Declaration Act, 1926.

The following Acts refer to the duties of the Director of Public Prosecutions :—

Prosecution of Offences Act, 1879.
Prosecution of Offences Act, 1884.
Prosecution of Offences Act, 1908.

APPENDIX E

LIST of Offences to which the Vexatious Indictments Act applies :—

(1) Perjury and Subornation of Perjury.
(2) Conspiracy.
(3) Obtaining Property by False Pretences (not, however, the attempt to obtain).
(4) Indecent Assault.
(5) Keeping a Gambling House or Disorderly House.
(6) Criminal Libels.
(7) Misdemeanours under Part II of fhe Debtors Act, 1869.
(8) Misdemeanours under the Bankruptcy Act, 1914.
(9) Misdemeanours under the Criminal Law Amendment Act, 1885.
(10) Indictable Offences under the Merchandise Marks Act, 1887.
(11) Offences under the Prevention of Corruption Act, 1906.
(12) Offences under the Punishment of Incest Act, 1908.
(13) Misdemeanours under Part II of the Children's Act, 1908.

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Printed by J. & J. Gray Edinburgh.