CHAPTER 33.

An Act to amend the Summary Procedure Act, 1864.

[11th August 1881.]

WHEREAS, by an Act passed in the ninth year of King George the Fourth, chapter twenty-nine, intituled An Act to authorise additional Circuit Courts of Justiciary to be held and to facilitate criminal trials in Scotland, provision was made for the summary prosecution of offences before sheriffs of counties in certain cases:

And whereas by an Act passed in the Parliament held in the seventh year of King William the Fourth and the first year of Her present Majesty, chapter forty-one, intituled "An Act for the more "effectual recovery of small debts in the sheriff courts and for "regulating the establishment of circuit courts for the trial of small "debt causes by the sheriffs in Scotland," herein-after called the Small Debt Act, 1837, provision was made for the recovery of statutory penalties by way of action in the sheriff court, and a scale of fees was fixed for such prosecutions:

27 & 28 Vict. c. 53. And whereas by the Summary Procedure Act, 1864, further provision was made for the trial of offences punishable on summary conviction, and for the summary recovery of penalties:

42 & 43 Vict. c. 49. And whereas by the Summary Jurisdiction Act, 1879, additional powers were conferred upon courts of summary jurisdiction in England to mitigate and modify punishments in summary proceedings:

And whereas it is expedient to amend the Summary Procedure Act, 1864, to extend certain of the provisions of the Summary Jurisdiction Act, 1879, to Scotland, and also to regulate the costs and expenses of summary procedure in Scotland:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title. **1.** This Act may be cited as the Summary Jurisdiction (Scotland) Act, 1881, and shall be construed as one with the Summary Procedure Act, 1864, so far as consistent with the tenour of these Acts respectively, and these Acts may be cited together as the Summary Jurisdiction (Scotland) Acts, 1864 and 1881, and shall apply to Scotland only.

Commencement of Act. **2.** This Act shall commence on the first day of January one thousand eight hundred and eighty-two.

Application. **3.** The provisions of the Summary Jurisdiction (Scotland) Acts, 1864 and 1881, herein-after called the Summary Jurisdiction Acts, shall apply to all summary proceedings as enumerated and described in the third section of the Summary Procedure Act, 1864, and to all proceedings of the like nature which by any future Act are directed or authorised to be taken summarily, or under the provisions of the Summary Jurisdiction Acts, and the thirty-second section of the Summary Procedure Act, 1864, is hereby repealed: And it shall not be necessary in any case to keep a record of the evidence, except so far as may be required by the Act conferring jurisdiction in the matter of the prosecution, or by the sixth section

of the Summary Prosecutions Appeals (Scotland) Act, 1875. Whereas doubts have arisen whether the third section of the Summary Procedure (Scotland) Act, 1864, includes and applies to prosecutions under the twenty-third and twenty-fourth sections of the Salmon Fisheries (Scotland) Act, 1868, be it enacted, that the provisions of the Summary Jurisdiction Acts shall apply to such prosecutions, and in all similar cases when in addition to a penalty a forfeiture is provided by statute. The provisions of the Summary Jurisdiction Acts shall also apply to prosecutions under the Tweed Fisheries Acts: Provided always, that it shall be in the option of the prosecutor to proceed either under the forms of the Tweed Fisheries Acts, or under the forms of the Summary Jurisdiction Acts: Provided also, that where there is a general or local Police Act in force, it shall be optional in police prosecutions either to use the forms prescribed by such Act, or the forms provided by the Summary Jurisdiction Acts.

38 & 39 Vict. c. 62.

31 & 32 Vict. c. 123.

Regulation of of expenses.

4. The costs and expenses of all complaints and proceedings instituted under the Summary Jurisdiction Acts shall be regulated by the table of fees contained in the Schedule A. to this Act annexed, and no other or higher fees shall be allowed on taxation, and where expenses shall be awarded against a respondent the decree shall be subject to the following limitations:—

(*a.*) Where the penalty or penalties imposed shall not exceed twelve pounds, the total expenses decerned for shall not exceed three pounds:

(*b.*) Where the penalty or penalties imposed shall not exceed twelve pounds but it appears to the Court that the reasonable expenses of the complainer's witnesses, together with the other expenses, exceed the sums herein-before allowed, the Court may direct the expenses of such witnesses to be paid in whole or in part out of the penalty.

The directions contained in the schedule shall be deemed to be part of this enactment.

Amount of expenses to be stated in conviction or decree.

5. In all proceedings under the Summary Jurisdiction Acts in every conviction, order, decree of absolvitor, decree dismissing the complaint, or other decree disposing of the complaint, and not at any subsequent time, the Court may, subject to the foregoing provisions, when a finding of expenses is competent, find such sum to be due in name of expenses, if any, as it considers reasonable. Expenses shall in all cases be recovered as if they formed part of the penalty, and the same diligence shall follow in case of default in payment.

Power to mitigate penalties.

6. In all proceedings under the Summary Jurisdiction Acts—

(*a.*) Where the punishment of imprisonment is imposed by Act of Parliament, the Court may, if it thinks the justice of the case demands it, substitute for imprisonment a fine not exceeding twenty-five pounds or reduce the amount of imprisonment, and notwithstanding any enactment to the contrary impose the same without hard labour, and when the punishment of a penalty or fine is imposed it may reduce the amount of such fine, and when in the case either of imprisonment or a fine the respondent is required to come under his own obligation or to find caution or security for keeping the peace

and observing some other condition, or to do any of such things, the Court may dispense with any such requirement or any part thereof:

Provided that nothing in this Act shall authorise the Court to reduce the amount of a fine when the Act prescribing such amount carries into effect a treaty, convention, or agreement with a foreign state, and such treaty, convention, or agreement stipulates for a fine of minimum amount:

Provided further, that this section shall not apply to proceedings taken under any Act relating to any of Her Majesty's regular or auxiliary forces:

(*b.*) Where a warrant of imprisonment is granted, whether in default of payment of a penalty or expenses, or for failure to find caution or security, or in default of recovery of sufficient goods by poinding and sale, when the amount adjudged to be paid, or for which security is to be found—

Does not exceed ten shillings.	The period of imprisonment shall not exceed seven days.
Exceeds ten shillings but does not exceed one pound	Fourteen days.
Exceeds one pound but does not exceed five pounds -	One month.
Exceeds five pounds but does not exceed twenty pounds	Two months.
Exceeds twenty pounds -	Three months:

(*c.*) Where any sum is adjudged to be paid, the Court may do any or all of the following things:

(1.) Allow time for payment:

(2.) Direct payment to be made by instalments:

(3.) Require security or caution to be found for the payment of such sums or instalments at such time or times as the Court may prescribe:

Where a sum is directed to be paid by instalments and default is made in the payment of any one instalment, the same proceedings may be taken as if default had been made in payment of all the instalments then remaining unpaid.

The Court directing payment of a sum or of an instalment may direct the payment to be made at such times and places and to such person as the Court may specify, and every person to whom such sum or instalment is paid, where not the clerk of Court, shall as soon as may be pay over or account for the same to the clerk, to be applied by him in manner provided by the special Act. In complaints not founded on any special Act the maximum sentence shall continue to be as defined by the first recited Act.

Powers of sheriff.

7. In all prosecutions which might competently have been instituted by summary complaint and under the Summary Jurisdiction Acts, but which shall be instituted by criminal libel and shall be tried by the sheriff and a jury, the sheriff or his substitute shall have all the powers conferred by the preceding section upon the Court in proceedings under the Summary Jurisdiction Acts.

Imprisonment competent in default of recovery by poinding.

8. (1.) Subject to the provisions of section six, in all proceedings under the Summary Jurisdiction Acts where a warrant of poinding and sale is competent, a warrant of imprisonment in default

of recovery of sufficient goods shall likewise be competent for a period not exceeding three months, and the Court shall specify the term of imprisonment in the warrant.

Execution of warrants of poinding and sale. 7 Will. 4 & 1 Vict. c. 41.

(2.) All warrants of poinding and sale under the Summary Jurisdiction Acts shall be executed in manner provided by the Small Debt Act, 1837, provided that in place of the customary notice of sale, notice of every sale under such warrants shall be given by advertisement in some newspaper circulating in the place of sale on the day of sale or within three days preceding the same.

Procedure.

9. (1.) Every complaint at the instance of a private prosecutor or complainer under the Summary Jurisdiction Acts may be signed either by such private prosecutor or complainer, or by a duly qualified law agent on his behalf, and such law agent may, in the absence of the private prosecutor or complainer, appear in Court, and conduct the prosecution on his behalf.

(2.) In all cases where a warrant of citation or apprehension is to be granted on sworn information, such information may be sworn to before any justice of the peace or magistrate of a burgh, although the prosecution is to be before the sheriff.

(3.) Where an adjournment is granted on the respondent's application, the Court may, instead of ordaining the respondent to find security to appear, appoint the respondent to attend the sitting of the court to which the case is adjourned under a suitable penalty in case he shall fail to appear.

(4.) In all cases where an appeal is competent, it shall be in the power of the Court of Appeal, on the application of either party and on such terms as to the Court shall seem fit, to amend the case, and all appeals from proceedings under the Summary Jurisdiction Acts shall be taken to the High Court of Justiciary at Edinburgh or on circuit.

(5.) A warrant of imprisonment may be in the form contained in the Schedule B. to this Act annexed.

Boundaries of jurisdiction.

10. In all proceedings for the trial of offences under the Summary Jurisdiction Acts—

(1.) Where the offence is committed in any harbour, river, arm of the sea, or other water (tidal or other) which runs between or forms the boundary of the jurisdiction of two or more courts, such offence may be tried by any one of such courts:

(2.) Where the offence is committed on the boundary of the jurisdiction of two or more courts, or within the distance of five hundred yards of any such boundary, or is begun within the jurisdiction of one court and completed within the jurisdiction of another court, such offence may be tried by any one of such courts:

(3.) Where the offence is committed on any person, or in respect of any property in or upon any carriage, cart, or vehicle whatsoever employed in a journey, or on board any vessel whatsoever employed in a navigable river, lake, canal, or inland navigation, the person accused of such offence may be tried by any court through whose jurisdiction such carriage, cart, vehicle, or vessel passed in the course of the journey or voyage during which the offence was committed, and where the side, bank, centre, or other part of the highway, road,

river, lake, canal, or inland navigation along which the carriage, cart, vehicle, or vessel passed in the course of such journey or voyage is the boundary of the jurisdiction of two or more courts a person may be tried for such offence by any one of such courts:

(4.) Any offence which is authorised by this section to be tried by any court may be dealt with, heard, tried, determined, adjudged, and finished, as if the offence had been wholly committed within the jurisdiction of such court.

Application to Government prosecutions.

11. The Summary Jurisdiction Acts shall apply to all summary proceedings under the statutes relating to the Post Office.

Every offence under the statutes relating to the Post Office for which a person is liable to forfeit a sum not exceeding twenty pounds may be prosecuted in manner provided by the Summary Jurisdiction Acts.

The Summary Jurisdiction Acts shall, notwithstanding any special provisions to the contrary contained in any of the statutes relating to Her Majesty's revenue under the control of the Commissioners of Inland Revenue or the Commissioners of Customs, apply to all summary proceedings under or by virtue of any of the said statutes; and in such proceedings it shall be lawful to grant decree for the condemnation of goods seized as forfeited under the provisions of the said Acts, and prosecutions under the Revenue Acts shall continue to be subject to appeal to quarter sessions and to the Court of Exchequer in Scotland in manner therein provided:

Provided that where the sum adjudged by conviction under or by virtue of any of the said statutes to be paid exceeds fifty pounds, the period of imprisonment imposed in respect of the non-payment of such sum, or in respect of the default of a sufficient distress to satisfy such sum, may exceed three months but shall not exceed six months.

27 & 28 Vict. c. 53.

And the twenty-fifth section of the Summary Procedure Act, 1864, is hereby repealed in so far as it applies to proceedings under any of the statutes relating to Her Majesty's revenue.

Summonses, &c. may be served by police constables.

12. All summonses, complaints, warrants, orders, or other process in prosecutions under the Summary Jurisdiction Acts at the instance of procurators fiscal, parochial boards, or school boards may be served and executed by police constables within the county, burgh, or police district in which the persons upon whom the same are to be served or executed shall reside or may be found.

SCHEDULE A.

TABLE OF FEES.

I.—TO THE PROCURATOR FISCAL OR QUALIFIED LAW AGENT ACTING FOR A PRIVATE PROSECUTOR.

	£	*s.*	*d.*
Framing the complaint and whole proceedings prior to trial - - - - - -	0	7	6
Each copy of complaint for service - - -	0	1	0
Attending at trial—			
If plea of guilty - - - - - -	0	5	0
If proof led - - - - - -	0	7	6
If case adjourned for second diet - - -	0	5	0

II.—COURT OR CLERK'S DUES.

	£	s.	d.
For each complaint	0	2	6
For whole proceedings at trial—			
If plea of guilty	0	2	6
If proof led	0	5	0
Extract of any judgment, conviction, or order	0	1	0
To the bar officer for whole proceedings—			
If plea of guilty	0	0	6
If proof led	0	1	0

III.—OFFICER'S FEES.

For serving each complaint and returning execution	0	1	6
For citing each witness	0	0	6
For apprehending a respondent or witness	0	2	6
For each hour the prisoner is necessarily in the custody of the officer beyond the first	0	1	0

For travelling expenses, poinding, sale, or arrestment, the same allowances as in I. Vic., cap. 41.

In any case where a concurrent or assistant is required he will be allowed a sum equal to two thirds of the fee payable to the officer for the same business.

Where an officer or concurrent has to charge for a conveyance, the mileage rates will not be allowed.

SCHEDULE B.

Decerns and adjudges the said to be imprisoned for the space of , and thereafter to be set at liberty, and for that purpose grants warrant to officers of law to convey the said to the prison of , thereafter to be dealt with in due course of law.

If the sentence of imprisonment is alternative the necessary variation will be made in this form.

CHAPTER 34.

An Act to amend the Metropolitan Open Spaces Act, 1877. [11th August 1881.]

WHEREAS by the Metropolitan Open Spaces Act, 1877, certain facilities were provided for making available the open spaces in the metropolis for the use of the inhabitants thereof for exercise and recreation, and it is expedient to amend and extend the said Act, and to provide greater facilities for the purpose aforesaid: 40 & 41 Vict. c. 35.

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Interpretation clause.

1. In this Act, unless the context otherwise requires—

"Open space" means any land (whether inclosed or uninclosed) which is not built on, and which is laid out as a garden or is used for purposes of recreation, or lies waste and unoccupied; but shall not include any inclosed land which has not a public road or footpath completely round the same;