SUPPLEMENT

TO THE

NEW SOUTH WALES

GOVERNMENT GAZETTE.

OF WEDNESDAY, SEPTEMBER 19, 1838.

Published by Authority.

SATURDAY, SEPTEMBER 22, 1838.

ANNO SECUNDO

VICTORIÆ REGINÆ.

No. 8.

By His Excellency Sir George Gipps, Knight, Captain General and Governor in Chief of the Territory of New South Wales and its Dependencies, and Vice Admiral of the same, with the Advice of the Legislative Council.

"*An Act for the more effectual recovery of "Fines and enforcement of forfeited Recog- "nizances imposed and entered into by and "before Justices of the Peace in New South "Wales.*"

WHEREAS doubts and difficulties have arisen as to the applicability, or mode of application, in New South Wales, of the Law of England relating to the recovery of Fines and enforcement of forfeited Recognizances imposed and entered into by and before Justices of the Peace, and it is therefore expedient to make special provision in that behalf, adapted to the circumstances of the Colony; Be it therefore enacted, by His Excellency the Governor of New South Wales, with the advice and consent of the Legislative Council thereof, That from and after the passing of this Act, all fines, issues, amerciaments, forfeited recognizances, sum and sums of money paid, or to be paid, in lieu or satisfaction of them, or any of them (save and except the same are, or shall be, by virtue of any Act or Acts of the Parliament of Great Britain, or of the Colonial Legislature for the time-being, lawfully constituted, directed to be otherwise levied, recovered, appropriated, or disposed of), which already are, or hereafter shall be set, imposed, lost, or forfeited by or before any Justice or Justices of the Peace in New South Wales, shall be, and are hereby required to be certified by the Justice or Justices of the Peace, by or before whom any such fines, issues, amerciaments, forfeited recognizances, sum or sums of money paid, or to be paid, in lieu or satisfaction of them, or any of them, shall be set, imposed, lost, or forfeited, to the Clerk of the Peace acting for the county, district, or place, or if there be none such, to the Clerk of the Peace acting for the nearest county, district, or place, for which any Clerk of the Peace shall act, containing the names and residences, trade, profession, or calling of the parties, the amount of the sum forfeited by each respectively, and the cause of each forfeiture, signed by such Justice or Justices of the Peace, on or before the ensuing General or Quarter Sessions of such county, district, or place, or nearest county, district, or place, respectively; and such Clerk of the Peace shall copy on a roll such fines, issues, amerciaments, forfeited recognizances, sum or sums of money paid, or to be paid, in lieu or satisfaction of them, or any of them, together with all fines, issues, amerciaments, forfeited recognizances, sum or sums of money paid, or to be paid, in lieu or satisfaction of them, or any of them, imposed or forfeited at such Court of General or Quarter Sessions, and shall, within such time as shall be fixed and determined by such Court, not exceeding twenty-one days after the adjournment of such Court, send a copy of such roll, with a writ of *distringas* and *capias*, or *fieri facias* and *capias*, according to the form and effect in the schedule marked A, annexed to this Act, to the Sheriff of the Colony, or to any Sheriff or other Officer, who shall, at the time-being, have lawful execution of process in the county, district, or place, which shall be the au-

(Adapted from 3 Geo. IV, c. 46, s. 2

thority to such Sheriff or other Officer, as aforesaid, for proceeding to the immediate levying and recovering of all such fines, issues, amerciaments, forfeited recognizances, sum or sums of money paid, or to be paid, in lieu or satisfaction of them, or any of them, on the goods and chattels of such several persons, or for taking into custody the bodies of such persons in case sufficient goods and chattels shall not be found whereon distress can be made for recovery thereof; and every person so taken shall be lodged in the common gaol until the next General or Quarter Sessions of the Peace, there to abide the judgment of the said Court.

(Adapted from 7 Geo. IV., c. 64.—Clerk of the Peace to prepare lists of defaulters bound by recognizance to appear, and lay them before the Chairman of Quarter Sessions, or any two Justices, without whose order Clerk of Peace shall not estreat, or put in process any such recognizance.)

II. Provided nevertheless, and be it enacted, That in every case in which any person bound by recognizance for his or her appearance, or for whose appearance any other person shall be so bound to prosecute or give evidence in any case of felony or misdemeanor, or to answer for any common assault, or to articles of the Peace, shall therein make default, the Clerk of the Peace shall, and is hereby required, to prepare a list in writing, specifying the name of every person so making default, and the nature of the offence in respect of which every such person, or his, or her surety was so bound, together with the residence, trade, profession, or calling of every such person or surety, and shall, in such list, distinguish the principals from the sureties, and shall state the cause, if known, why each such person has not appeared, and whether by reason of the non-appearance of such person the ends of justice have been defeated or delayed; and every such Clerk of the Peace shall, before any such recognizance shall be estreated, lay such list before the Chairman or two other Justices of the Peace who shall have attended such Court, who are respectively required to examine such list, and to make such order touching the estreating or putting in process of any such recognizance as shall appear to them respectively to be just, and it shall not be lawful for the said Clerk of the Peace to estreat or put in process any such recognizance without the written order of the Chairman or Justices of the Peace, before whom, respectively, such lists shall have been laid.

(3 Geo. IV., c. 46, s. 3.—Clerk of the Peace to make Oath to all Fines, &c., which shall be paid.)

III. And be it enacted, That the Clerk of the Peace shall, before he shall deliver the roll to such Sheriff, or other Officer as aforesaid, containing the fines, issues, amerciaments, forfeited recognizances, sum and sums of money paid, or to be paid, in lieu or satisfaction of them, or any of them, and he is hereby required to make oath before any Justice of the Peace of the county, district, or place, for which such Clerk of the Peace shall act, which oath shall be endorsed on the back of the writ, or of the said roll attached thereto, such Clerk of the Peace stating therein all such fines, issues, amerciaments, forfeited recognizances, sum or sums of money, which shall have been paid, or otherwise accounted for; and such oath shall be made in the form following:—

"*I,* , *make oath that this roll is truly and carefully made up and examined, and that all fines, issues, amerciaments, recognizances, and forfeitures, which were set, imposed, or forfeited, and, in right and due course of law, ought to be levied and paid, are, to the best of my knowledge and understanding, inserted in the said roll, with the exception of such as are now under reference to the Chairman of Quarter Sessions, upon a list submitted to him by me according to law, and as yet undetermined; and that in the said roll are also contained and expressed, all such fines as have been paid to, or received by me, either in Court or otherwise, without any wilful or fraudulent discharge, omission, misnomer, or defect whatever.*

"*So help me God*"

(3 Geo. IV., c. 46, s. 4.—Notices to be given to sureties.

IV. And be it further enacted, That each and every Justice of the Peace, before whom any recognizance shall be entered into or taken, shall, and is hereby required to give, at the time of entering into such recognizance, to the person or persons, surety or sureties, so entering into the same, and to each of them, a written paper or notice in the form, or to the effect, stated in the schedule marked B, to this Act annexed, adapting the same to the particular circumstances of the case; and each such Justice shall, in such recognizance, state and particularly specify, not only the profession, art, mystery, or trade, of every person so entering into such recognizance, together with his christian name and surname, but also his place of residence; and in case such residence shall be in Sydney, shall also specify the name of the street in which such person shall reside.

(3 Geo. IV., c. 46, s. 5.—Persons may appeal to Quarter Sessions against Fines, &c., upon giving security.)

V. Provided always, and be it further enacted, That if any person on whose goods and chattels such Sheriff shall be authorised to levy any such forfeited recognizance, or sum of money to be paid in lieu or satisfaction thereof, shall give security to the said Sheriff, or other Officer as aforesaid, for his appearance at the next General or Quarter Sessions, then and there to abide the decision of the Court, and also to pay such forfeited recognizance, or sum of money to be paid in lieu or satisfaction thereof, together with all such expenses as shall be ordered and adjudged by the Court, it shall be lawful for such Sheriff, or other Officer as aforesaid, and he is hereby authorised and required, to discharge such person, so giving security, out of custody: Provided always, that in case such party, so giving security, shall not appear in pursuance of his undertaking, it shall be lawful for the Court forthwith to issue a writ of *distringas* and *capias*, or *fieri facias* and *capias*, against the surety or sureties of the person so bound as aforesaid.

(3 Geo. IV., c. 46, s. 6.—Justices at Quarter Sessions to hear and determine Appeals.)

VI. And be it enacted, That the Court of General or Quarter Sessions, before whom any person so committed to gaol, or bound to appear, shall be brought, is hereby authorised and required

to enquire into the circumstances of the case, and shall, at its discretion, be empowered to order the discharge of the whole of the forfeited recognizance, or sum of money to be paid in lieu or satisfaction thereof, or of any part thereof; and such order shall be made in the form, or to the effect, of the schedule marked C, to this Act annexed, and shall be signed by the Clerk of the Peace, which said order shall be a discharge to such Sheriff, or other Officer as aforesaid, on the passing of his accounts before any Auditor, or other proper Officer duly authorised to pass the same; and it shall and may be lawful for the said Court of General or Quarter Sessions to award such costs, charges, and expenses, to be paid by either party to the other, as to the said Court shall seem just and reasonable.

(Adapted from 4 Geo. IV., c. 37, s. 1—Justices in Sessions may insert in following rolls, all such Fines, &c., as have not been levied or accounted for by the Sheriff, &c., or that have not been discharged.)

VII. And be it enacted, That it shall be lawful for the Justices assembled at any General or Quarter Sessions of the Peace, and they are hereby authorised and required, at the following or any subsequent General or Quarter Sessions held after the return of the writ and roll issued from any preceding General or Quarter Sessions, at the opening of the Court, to insert or cause to be inserted in any following roll all such fines, issues, amerciaments, forfeited recognizances, sum or sums of money to be paid in lieu or satisfaction of them or any of them, which have not been duly levied or recovered or properly accounted for by the Sheriff or other Officer, or have not been discharged on appeal before the General or Quarter Sessions, or by warrant or authority of His Excellency the Governor, or other officer having lawful authority for the time being to remit or dispense with the enforcement of debts due to the Crown, in New South Wales, and so to continue such process from Sessions to Sessions till it shall be duly ascertained that the party in default has not any goods or chattels, lands or tenements, upon which a levy can be made, and that he is not to be found, or that his body cannot be lodged in any of Her Majesty's gaols: Provided always, that the said Sheriff or other Officer to whom the writ of *distringas* and *capias*, or *fieri facias*, or other writ deemed necessary by the Justices at any such General or Quarter Sessions to meet the exigency of the case shall be sent by order of the said Court, shall keep and detain in his possession the writ or writs so directed to him, and the roll or rolls attached to such writ or writs, delivering to the said Court of General or Quarter Sessions a copy of such roll or rolls, on the first day of the sitting of the said Court, and also a copy of any former roll or rolls, where the fines, issues, amerciaments, forfeited recognizances, sum or sums of money paid, or to be paid, in lieu or satisfaction of them, or any of them, shall not have been delivered, and such original writ, and roll, or writs and rolls, shall continue in force and effect, and shall be sufficient authority without any further writ or roll; and such Sheriff, or other Officer, is hereby required, in the event of quitting his office, or division of the territory or district over which his office shall extend, to deliver over to his successor, or to his successor in any particular district, county, or division of territory, as the case may be, all rolls and writs in his possession, relating to the office and duty of any such successor, particularising any fines, issues, amerciaments, forfeited recognizances, sum and sums of money paid, or to be paid, in lieu or satisfaction of them, or any of them, in order that the Sheriff, or other Officer coming into office, may use every means in his power for recovering the sums so unpaid, and not charged to his predecessor on the passing of his accounts before the proper Officer; and the Officer or Officers entrusted with the execution of the process in any county, district, or place, shall be duly and diligently examined on oath by the Court, at the delivery of the roll, or whenever thereunto required by the Court, as to the execution, or the circumstances attending the non-execution of any such writ or writs as aforesaid; and every such examination shall be duly recorded by the Clerk of the Peace, or other proper Officer, in order that the Sheriff, or other officer, may be chargeable with all sums not satisfactorily accounted for on the final passing of his accounts.

(Adapted from 4 Geo. IV., c. 37, s. 3.—Sheriff may follow the party or his goods, &c., into another jurisdiction, if his own be too limited.)

VIII. And be it enacted, That in case, by any means, the Sheriff, or other Officer, to whom any such writ or writs shall be directed as aforesaid, shall not have, or shall cease to have, execution of process throughout the whole Colony, and in case any party incurring, or subject to, any fine, issue, amerciament, forfeited recognizance, sum or sums of money, to be paid in lieu or satisfaction of them or any of them, shall reside, or shall have fled or removed from, or out of, the jurisdiction of such Sheriff, or other Officer as aforesaid, it shall be lawful for such Sheriff, or other Officer, and he is hereby required to issue his warrant, together with a copy of the writ, directed to the Sheriff, or other Officer acting for the county, district, or place, in which such person shall then reside or be, or in which any goods or chattels, or other his property, shall be found, requiring such last-mentioned Sheriff, or other Officer, to execute such writ; and every such last-mentioned Sheriff, or other Officer, is hereby authorised and required to act, in all respects, under such warrant, in the same manner as if the original writ had been directed to him by order of a Court of General or Quarter Sessions, held within the county, district, or division of territory, within which he shall act; and the said last-mentioned Sheriff, or other Officer, is hereby required, within thirty days after the receipt of such warrant, to return to the Sheriff, or other Officer, from whom he shall have received the same, what he shall have done in the execution of such process, and whether the party shall have given good and sufficient security to appeal at the ensuing General or Quarter Sessions, to be held for the county, district or place, from which the writ issued; and in case a levy shall have been made, to pay over all monies, received in pursuance of the warrant to the Sheriff, or other Officer, from whom he shall have received the same.

(3 Geo. IV., c. 46, s. 10.—Fees of Clerk of Peace, and other Officers.

IX. And be it enacted, That the Clerk of the Peace and other Officers shall be entitled to their usual and legal fees on the discharge of any forfeited recognizance and other duties performed

under this Act, the amount thereof to be fixed where the same may not otherwise be ascertained by law, by the Judges of the Supreme Court of New South Wales; and in case any Sheriff or other Officer as aforesaid, or any Clerk of the Peace shall refuse or neglect to do and perform any duty, act, or thing, imposed upon or required from him, in manner by this Act directed, then and in every such case such Sheriff or other Officer, or Clerk of the Peace so refusing or neglecting, shall forfeit the sum of Fifty pounds to be recovered by any person or persons who will sue for the same, together with full costs of suit by action of debt, or on the case in any competent Court in New South Wales, wherein no essoin, protection, wager of law, or any more than one imparlance shall be allowed.

(Adapted from 3 Geo. IV., c. 46, s. 14.—Clerk of the Peace to make annual returns to the Colonial Treasurer.)

X. And be it enacted, That every Clerk of the Peace in New South Wales, do and shall on or before the Thirty-first day of January in each year, make and deliver to the Colonial Treasurer or at such other time, and to such other Officer, as the Governor, or person administering the Government of the Colony for the time being, shall direct and require, a true and perfect duplicate on certificate, of all such fines, issues, amerciaments, and forfeited recognizances, and sum and sums of money, and other forfeitures whatsoever, paid in lieu or satisfaction of them, or any of them, as shall be contained in the several rolls or copies which shall be so sent out to the Sheriff for the purpose of levying as aforesaid, during the year ending the Thirty-first December then preceding, to the intent that the Sheriff or Sheriffs, or other Officer or Officers respectively, may be duly charged with the monies levied by them in respect thereof, and all parties entitled to any share of such fines, forfeitures, or sum or sums of money, may be at liberty to claim the same according to law.

(Adapted from 4 Geo. IV., c. 37, s. 4.—Sheriff also to make an annual return.

XI. And be it further enacted, That the Sheriff or Sheriffs, or other Officer or Officers, as the case may be, having execution of any writ or writs to be sent to him or them by any Clerk of the Peace as aforesaid, shall, and he is hereby required to make up, or cause to be made up, annually, on or before the Thirty-first day of January in each year, or within one month after the expiration of his or their office, if the same shall expire at any other time than the Thirty-first day of December, an account, in writing, containing the names and residences of all persons incurring fines, issues, amerciaments, forfeited recognizances, sum or sums of money paid, or to be paid, in lieu or satisfaction of them, or any of them, which he has been authorised or required to levy by virtue of any writ or writs issued to him, or to any predecessor in office; and in case any fine, issue, amerciament, forfeited recognizance, sum or sums of money paid, or to be paid, in lieu or satisfaction of them or any of them, shall not have been levied or paid, the causes of non-payment shall be fully and particularly stated; and such account every such Sheriff, or other Officer, is hereby required to transmit on or before such Thirty-first day of January in each year, or within one month after expiration of office as aforesaid (as the case may be), to the Colonial Treasurer of New South Wales, or at or within such other period, and to such other Officer, as the Governor, or Officer administering the Government of the Colony, for the time being, shall direct and require, in order that such account may be duly examined, checked, and inspected, in such manner as shall be, from time to time, lawfully appointed in that behalf.

(This Act not to interfere with the operation of English laws, except so far as the same is expressly modified to suit the Colony.)

XII. Provided lastly, and it is hereby declared and enacted, That nothing herein contained shall be intended or construed to prevent the application of the Law of England to any matter, except so far as such law is not by this Act expressly modified to suit the circumstances of the Colony; but that such law shall be deemed and taken to apply, except as aforesaid, in like manner, in all respects, as before the passing of this Act.

"GEORGE GIPPS."

Passed the Legislative Council, this twenty-first day of August, One thousand eight hundred and thirty-eight.

WM. MACPHERSON,
Clerk of Councils.

SCHEDULE A.

Victoria, by the grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.

To the Sheriff of the Colony of New South Wales [or the Sheriff or Officer (as the case may be) of the County, District, or place (as the case may be],—greeting,

You are hereby required and commanded, as you regard yourself and all yours, that of all the goods and chattels, lands and tenements, of all and singular the persons in the several extracts to this writ annexed, you cause to be levied all and singular the debts and sums of money upon them in the same extracts severally imposed and charged, so that the money may be ready for payment at the next General or Quarter Sessions of the Peace, to be paid over in such manner as is or shall be lawfully appointed; and if any of the said several debts cannot be levied by reason of no goods or chattels being to be found belonging to the parties, then in all cases, that you take the bodies of the parties refusing to pay the aforesaid debts, and lodge them in the proper gaol, there to await the decision of the Justices assembled at the next General or Quarter Sessions, unless the parties shall have given sufficient security for their appearance at such Sessions, for which you will be held answerable, and have you then there this writ.

Witness Esquire,
Chairman of the Quarter Sessions of the Peace for the of
in the Colony of New South Wales, the
day of in the
year of our reign.

Clerk of the Peace.

SCHEDULE B.

Colony of New South Wales, }
To wit, }

Take notice, that you
of are bound in the sum
of pounds, and your sureties
in the sum
of pounds each, to appear at the
Quarter or General Sessions of the Peace to be
holden at in the Colony
of New South Wales, on the
day of next, and unless you
personally make your appearance accordingly, the
recognizances entered into by yourself and your
sureties will be forthwith levied on you and your
bail. Dated this day of
one thousand eight hundred and

Justice of the Peace.

SCHEDULE C.

To the Sheriff or Officer (as the case may be),

Whereas hath
appeared before the Justices assembled at the
General or Quarter Sessions (as the case may be)
held at having forfeited
the sum of [here describe
the nature of the fine or forfeiture] and having
made it appear, to the satisfaction of the Justices
so assembled, that he should be relieved from the
payment of the said sum of
[or if the penalty is mitigated, state from what
part thereof] you are thereby required to dis-
charge the said sum of
from the Estreat roll delivered to you after the
Quarter Sessions held at
on the day of
for which discharge, this warrant shall be your
authority, and shall exonerate you from the said
charge on the passing of your accounts before the
proper officer.

By order of the Court,

Clerk of the Peace.

ANNO SECUNDO
VICTORIÆ REGINÆ.
No. 9.

By His Excellency Sir George Gipps, Knight, Captain General and Governor in Chief of the Territory of New South Wales and its Dependencies, and Vice-Admiral of the same, with the Advice of the Legislative Council.

"*An Act to authorise the Abolition of certain "Fees heretofore paid on the Registration "of Vessels in the Colony of New South "Wales.*"

WHEREAS by an Act of the Governor and Legislative Council of New South Wales, 6 Geo. IV. No. 20. passed in the sixth year of the reign of His late Majesty King George the Fourth (after reciting certain Acts of Parliament 59 Geo. III. ch. 114. therein mentioned,) it was enacted, among other things, that all Fees or other sums of money which may have been collected, levied, or received, under and by virtue of 4 Geo. IV. ch. 96. a certain Proclamation therein mentioned, should be taken to be as valid and lawful as if the same had been imposed by the authority of the Legislature; and whereas, in pursuance thereof, certain Fees have been heretofore and are still levied and paid for the Registration of Vessels in said Colony; and whereas it is expedient to abolish the same: Be it enacted, by the Governor of New South Wales, with the advice of the Legislative Council thereof, That, from and after the passing of this Act, all Fees heretofore charged and collected for the Registration of Vessels in the said Colony, shall cease, and that henceforth it shall not be lawful for any person to demand, collect, levy, or receive, any Fees, or sum or sums of money whatever, for or on account of the Registry of any Vessel or Vessels in the said Colony, any thing in any Statute or Act of the Governor and Council to the contrary notwithstanding.

Fees on Registration of Vessels to cease.

"GEORGE GIPPS."

Passed the Legislative Council, this twenty-second day of August, One thousand eight hundred and thirty-eight.

WM. MACPHERSON,
Clerk of Councils.

Printed at the "Herald Office," Lower George-street.—Price 0s. 9d.