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SOUTH  AUSTRALIA

FIFTY-EIGHTH REPORT

of the

LAW REFORM COMMITTEE

of

SOUTH AUSTRALIA

to

THE ATTORNEY-GENERAL

**ON THE INHERITED IMPERIAL STATUTE
LAW WITH REGARD TO PROCEEDINGS
IN SUMMARY JURISDICTION**

1981

The Law Reform Committee of South Australia was established by Proclamation which appeared in the *South Australian Government Gazette* of 19 September 1968. The present members are:

THE HONOURABLE MR JUSTICE ZELLING, C.B.E., *Chairman.*

THE HONOURABLE MR JUSTICE WHITE, Deputy Chairman.

THE HONOURABLE MR JUSTICE LEGOE, Deputy Chairman.

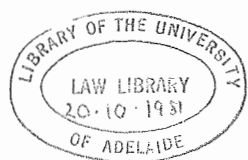
D. W. BOLLEN, Q.C.

M. F. GRAY, S.-G.

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**FIFTY-EIGHTH REPORT OF THE LAW REFORM COMMITTEE
OF SOUTH AUSTRALIA ON THE INHERITED IMPERIAL
STATUTE LAW WITH REGARD TO PROCEEDINGS IN SUM-
MARY JURISDICTION**

To:

The Honourable K. T. Griffin, M. L. C.,
Attorney-General for South Australia.

Sir,

In the Fifty-Fourth Report of this Committee we dealt with the general rules of governing the inheritance of imperial statute law in this State. We do not propose in this report to repeat what we there said.

We have not in this report dealt with indictable criminal offences, many of which for historical reasons in the Middle Ages and even down to the early nineteenth century, were dealt with by Justices of the peace, particularly in Quarter Sessions. We propose to deal with the whole of the inherited criminal law in a separate paper.

Fortunately for the law a great deal of the earlier learning on this subject was swept away by Sir John Jervis's Acts in 1848 and 1849, 11 & 12 Vict. cc. 42, 43 and 44 and 12 & 13 Vict. c.18. These reforms however came just too late and we inherited the law as it was twelve or thirteen years previously. The statute 11 & 12 Vict. c.42 was adopted by South Australian Ordinance 15 of 1849. The statute 11 & 12 Vict. c.43 was adopted by South Australian Ordinance 6 of 1850 and the Statute 11 & 12 Vict. c.44 was adopted by South Australian Ordinance 9 of 1849. Statute 12 & 13 Vict. c.18 dealt with the distribution of summary jurisdiction business as between county and borough courts and was for that reason not adopted in South Australia. Regrettably the three ordinances which adopted the English Statutes did not adopt the sections which repealed some at least of the previous law. As with so much South Australian legislation, that leaves the problem to be dealt with today and we have accordingly done so in this report.

The history of Sir John Jervis's reforms of 1848 and 1849 are well set out in an article in *1980 Criminal Law Review* 5 by Freestone and Richardson and we need not repeat what is there set out as to the history of the legislation drawn by Sir John Jervis and the effect of what became a complete code of practice and procedure for justices. There is a difference between English law and South Australian in that our Acts did not provide for practice and procedure at Quarter Sessions. That distinction was not taken up in the South Australian legislation.

Magna Carta (1225) 9 Hen. III cc. 1-37 (sometimes referred to as (1297) 25 Edw. I cc. 1-37).

Chapter 14: This deals with the nature of the assessment of fines. It is obsolete today but it was not repealed until the Criminal Law Act, 1967 Chapter 58, possibly as a result of the use of it by A. P. Herbert in his *Misleading Cases*. It can be repealed here.

The Statute of Merton (1235) 20 Hen. III cc. 1-11.

Chapter 11: This prevented lords imprisoning offenders at their own will. It was probably not received as part of our law in South Australia but for certainty it would be better to repeal it here. It was repealed in England by the Statute Law Revision Act, 1863.

The Statute Judicium Pillorie—Statutum incerti temporis; in Ruffhead 51 Hen. III statute 6.

Most of this Statute had become obsolete before 1836 but the offence of forestalling, that is of buying in all known quantities of a particular substance and then selling at the forestaller's price was still in existence in 1836. The statute was superseded and impliedly repealed by 5 & 6 Edw. VI c.14. Accordingly it would be as well to repeal the whole of the statute. It was repealed in England by the Statute 7 & 8 Vict. c.24.

Statute of Westminster I; 3 Edw. I cc. 1-51.

Chapter 10: This deals with what persons are fit to be coroners. It was impliedly repealed in South Australia by Ordinance 7 of 1850 but has never been actually repealed. It was repealed in England by the Coroners' Act, 1887, 50 & 51 Vict. c.71. It should be repealed here.

Chapter 33: This is a statute against maintainers of quarrels in what we would now call courts of summary jurisdiction. It is probably in force in South Australia. It deals with the ever present mediaeval fear of maintenance. We do not think that the mischief against which it is directed is in existence now. It was repealed in England by the Statute Law Revision Act, 1863 and can be repealed here.

Statute de Officio Coronatoris (1276); 4 Edw. I c.1.

This is a statute dealing with the matters into which a coroner shall enquire. It was impliedly repealed in South Australia by the Ordinance 7 of 1850 but has never actually been repealed here. It was repealed in England by the Coroners Act, 1887 and should be repealed here.

The Statute of Gloucester (1278); 6 Edw. I cc.1-15.

Chapter 8: This prohibits any suit in any of the King's Courts for goods of a less value than forty shillings. It has never been acted upon to the knowledge of any of us in this State. It was repealed in England by the Civil Procedure Acts Repeal Act, 1879, 42 & 43 Vict. c.59. This is obsolete today because of the Local and District Courts Act Amendment Act, 82 of 1974. It should be repealed here.

The Statute of Sheriffs (1315) 9 Edw. II st. 2.

This deals generally with the appointment of sheriffs and their duties. If it was not impliedly repealed before in South Australia, it must be taken to be impliedly repealed by the Act 82 of 1978 dealing with sheriffs. It was repealed in England by the Sheriffs Act, 1887 and can be repealed here.

Statute 1 Edw. III st. 2 c.16 (1327).

This is the statute which gives authority to appoint justices of the peace. There was a long argument in early South Australia over whether the Governor had any power to appoint justices of the peace. The argument is alluded to for example by Gwynne J. in the Full Court in *Carey v. Sutherland (1869) 3 S.A.L.R. 96 at 104* and the matter is dealt with in detail in *Daly: S.A. Justices Manual (1871)* pages 3-6. Generally speaking, as Daly says at page 6, the consensus of opinion came to be, although it was never decided in so many words, that the Governor's Commission together with three early Statutes of Edward III, this one and two others a little later, are the foundation for the appointment and the jurisdiction of Justices of the Peace in South Australia. For this reason we think that statute should not be repealed as yet. When all the remnants of the imperial supremacy have been swept away it will be

possible for the State simply to make provision for appointment, irrespective of any English source of power from whence it is now drawn. It is obvious from the careful way in which Napier C. J. (then Mr. Napier K. C.) skirted around the matter in the Justices Act, 1921 that he was well aware of the problem. The statute was repealed in England by the Statute Law Revision Act, 1948. We think that for the time being at least it should be retained in South Australia.

Statute 18 Edw. III st. 2 c.2 (1344).

This is the second of the three statutes dealing with the appointment of justices of the peace and their duties. It was repealed in England in 1948. For the reasons which we gave earlier, we think that it should remain in force in South Australia until all the remnants of the imperial authority have been swept away.

Statute 28 Edw. III c.6 (1354).

This deals with persons to be appointed as coroners. It probably was never in force in South Australia but in order to clear the statute book it would be as well to repeal it. It was repealed in England by the Coroners Act, 1887.

Statute 34 Edw. III c.1 (1361).

This is the third of the major statutes on justices of the peace and it is one which is in common use in our courts every day. Its use and application are discussed in detail in the judgment of the Full Court in *The Queen v. Wright; ex parte Klar (1971) 1 S.A.S.R. 103*, in *Mann v. Yannacos (1977) 16 S.A.S.R. 54 at 59* by Bray C. J. and most recently by Legoe J. in *Higgins v. Goldfinch* (unreported and delivered 13th March 1981). For the reasons we have given regarding the other two statutes, which apply equally to this one, we think that this statute should remain in force for the time being in South Australia. It is still partly in force in England.

Statute 36 Edw. III st. 1 c.12 (1362).

This fixes the times for Quarter Sessions. It appears that we had Quarter Sessions in the first few years of the Colony but not thereafter. Presumably this Statute was impliedly repealed by the Acts of 1849 and 1850 to which we have referred which did not take up the jurisdiction of Quarter Sessions. Nevertheless it has never been actually repealed in this State. It was repealed in England by the Criminal Justices Act, 1925, 15 & 16 Geo. V c.86. It can be repealed here.

Statute 38 Edw. III st. 1 c.4 (1364).

This provides that penal bonds in the third person are to be void. It does not appear that this statute has ever been repealed in England. As penal bonds are never drawn that way in South Australia, we can only assume that the observance of this statute has continued in this State. We think it can be repealed now. Perhaps from an abundance of caution a section in those terms should be placed in the Justices Act.

Statute 12 Ric. II c.10 (1388).

This again deals with Sessions of the peace and in particular Quarter Sessions. It has never been formally repealed in South Australia, if we in fact inherited it, which is arguable. It has been repealed in England by four Statutes of 1855, 1881, 1948 and 1962. It can be repealed here.

Statute 13 Ric. II st. 1 c.7 (1389).

This deals with what persons shall be appointed justices of the peace. It was repealed in England by the Statute Law Revision Civil Procedure Act, 1881 and can be repealed here.

Statute 14 Ric. II c.11 (1390).

This deals with the appointment of justices of the peace and with the payment of wages to them. Nothing of that kind has ever happened so far as any of us know in South Australia. The Act was repealed in part by the Criminal Justice Act, 1855, 18 & 19 Vict. c.126 and the residue by the Statute Law Revision Act, 1948. It can be repealed here.

Statute 17 Ric. II c.10 (1393).

This requires that counsel learned in the law must be included in every commission of gaol delivery. This is still the position in the law today here. However the Supreme Court Act and the practice of the Court is probably sufficient warrant without anything more today in this State. It was repealed in England by the Statute 19 & 20 Vict. c.64 and can we think safely be repealed here.

Statute 5 Hen. IV c.10 (1413).

This says that justices of the peace shall imprison no one except in the common gaol. This is probably still in force in South Australia. It was not repealed in England until 1948. However the practice as to imprisonment in South Australia is covered by the Justices Act and the Prisons Act and we see no reason why the statute should remain on the statute book in this State and we think it can be repealed.

Statute 2 Hen. V st.1 c.4 (1414).

This again deals with justices of the peace and with Quarter Sessions. It was repealed in England by Acts of 1863, 1872, 1925 and 1948. For the reasons we have dealt with on previous Acts on the same subject it can be repealed here.

Statute 2 Hen. V st.2 c.1 (1414).

This deals with the appointment of justices of the peace. It was repealed in England by the Justices of the Peace Act, 1949, 12, 13 & 14 Geo. VI c.101. It can be repealed here.

Statute 11 Hen. VI c.6 (1433).

This provides that proceedings before justices of the peace shall not be discontinued by the issue of a new commission of the peace. This statute is probably still in force in South Australia. It was not repealed in England until the Justices of the Peace Act, 1968 (1968 chapter 69). We think it can be repealed here but there ought to be a saving of the amendment to the law made by the statute.

Statute 11 Hen. VI c.10 (1433).

This statute deals with sureties of the peace to be given by those who obstruct an execution. We do not think that it is any longer necessary; the powers of the Court relating to contempt are sufficient for this purpose. It was repealed in England in 1863 and can be repealed here.

Statute 18 Hen. VI c.11 (1439).

This required justices of the peace to hold lands or tenements of the value of at least twenty pounds per annum. There has never been any

similar requirement in practice in South Australia although we probably did inherit the statute. It was repealed in England in 1863 and should be repealed here.

Statute 3 Hen. VII c.3 (1486).

This deals with the power of justices of the peace to grant prisoners bail. Some of this statute was repealed by 7 Geo. IV c.64 and 9 Geo. IV c.53 prior to the coming into existence of the colony. There was however a residue of the Statute which was not repealed until 1925 and 1948. There is no reason why the statute should not be repealed here. The matter appears to be covered here by Sections 143, 145 and 146-50 of the Justices Act, 1921. *Burn's Justice of the Peace, the 28th Edition (1837) Volume 1 pages 315-316* treats the statute as virtually repealed by 7 Geo. IV c.64.

Statute 4 Hen. VII c.12 (1487).

This is a statute dealing with how justices of the peace shall execute their commission and as to remedies if that be not done. We think that this is all covered adequately by the present law in South Australia. It was repealed in England by the Statute Law Revision Act, 1863 and can be repealed here.

Statute 1 Hen. VIII c.7.

This is an Act relating to coroners and was impliedly repealed in this State by the Ordinance 7 of 1850. It was repealed in England by the Coroners Act, 1887 and can be repealed here.

Statute 1 Mary st.2 c.8 (1553).

This provides that a sheriff shall not act as a justice of the peace during his term of office. We probably inherited this Act in 1836. It is referred to in *Burn (op. cit.) Volume 5 page 644* as being operative. It was not repealed in England until 1887 by the Sheriffs Act of that year. In fact we have known sheriffs to act as justices of the peace in South Australia notwithstanding the statute and no objection has been taken to their acts. It can be repealed in South Australia.

Statute 5 Eliz. I c.4 (1562).

This deals with the extensive powers granted to justices of the peace regarding labourers and wages. It was repealed in England in 1875 by 38 & 39 Vict. c.86. It is out of keeping with modern day views on employment and can be repealed here.

Statute 39 Eliz. I c.3 (1597).

This deals with the duties imposed on justices with regard to the relief of the poor. Again this statute belongs to the thinking of another age. It was repealed in England in 1863 and it should be repealed here.

Statute 43 Eliz. I c.2 (1601).

This extends the statute of 1597 and was for centuries the general statute casting duties on justices with regard to the poor. For the same reasons as we said with regard to the last statute, it should be repealed in South Australia. It was not repealed in England until 1967 (1967 number 9).

Statute 1 Jac. I c.6 (1604).

This is a further statute on the same topic as the last two statutes. It was repealed in England by the statute 19 & 20 Vict. c.64 and can be repealed here.

7 Jac. I c.5 (1609).

This statute related to justices' protection but was by no means as comprehensive as the later statutes. It was repealed in England by the Public Authorities Protection Act, 1893 and can be repealed here.

21 Jac. I c.5 (1623).

This is a continuation of 7 Jac. I c.5 and is a public authorities protection Act of a fairly limited nature. It was repealed in England by the Public Authorities Protection Act, 1893 and can be repealed here.

Statute 14 Car. II c.12 (1662).

This is another statute relating to the duties of justices of the peace and the poor. It was partly repealed by 35 Geo. III c.101 s.1 so that only part remained in force in 1836. The remainder of the statute was repealed in England by the Poor Law Act, 1927, 17 & 18 Geo. V c.14. It should be repealed here.

Statute 22 Car. II c.12 (1670).

This deals with the duties of justices of the peace with regard to highways and bridges. It was partly repealed by 7 Geo. III c.42 s.57. The whole subject is dealt with in highways and local government legislation in South Australia and it is not necessary for this statute to continue. The residue was repealed in England in 1973 by the statute 1973 chapter 39 and should be repealed here.

Statute 3 & 4 Will. III and Mary c.12 (1691).

This is another in the series of Acts relating to duties of the justices in regard to highways. It was repealed in England by the Statute Law Revision Act, 1867 and can be repealed here.

Statute 5 & 6 Will. III and Mary c.11 (1694).

This deals with certiorari to prevent delays of proceedings at Quarter Sessions and in general in relation to proceedings in courts of summary jurisdiction. We certainly would have inherited this statute when South Australia was founded but as far as the subject is concerned there is no doubt that the right has been taken away by Section 164 of the Justices Act. The difficulty however is that Section 164 of the Justices Act does not apply to an application on behalf of the Attorney-General: see *Montjoy v. Wood (1856) 2 Jurist (New Series) 452*. Accordingly it would still be possible for the Crown to make use of this statute even though the subject may not do so. We think it unlikely that it would be needed today. We recommend that the statute be repealed but with a saving of the change in the law brought about by the statute. It was repealed in England by the Administration of Justice (Miscellaneous Provisions) Act, 1938, 1 & 2 Geo. VI c.20.

Statute 8 & 9 Will. III c.30 (1696).

This is another of the long series of statutes casting duties on justices with regard to the relief of the poor. It was partly repealed by 50 Geo. III c.52 but we probably inherited the remainder of it in South Australia.

The residue of the statute was repealed in England by the Poor Law Act, 1927, 17 & 18 Geo. V c.14. It should be repealed here.

Statute 9 Will. III c.11 (1698).

This is an Act amending the last previous Act with regard to the relief of the poor. It was repealed in England by the Statute Law Revision Act, 1867 and should be repealed here.

1 Anne st.2 c.22 (in Ruffhead chapter 18) (1702).

This placed duties on justices of the peace with regard to the regulation of the duties of master and servant in the wool industry. It was almost certainly part of our law in 1836. It was repealed by the Master and Servant Act, 1889 in England and for the reasons we have expounded previously it should similarly be repealed in South Australia.

Statute 6 Anne c.32 (in Ruffhead 5 Anne c.32) (1706).

This set out in greater detail the duties of justices with regard to the vagrancy laws. It certainly became part of our law in 1836 at least in part. It was repealed in England by the Statute Law Revision Act, 1867 and it can be repealed here.

Statute 12 Anne c.18 (in Ruffhead Statute 12 Anne st.1 c.18) (1713).

This Act which among other things, provides duties on justices with regard to apprenticing poor children. It was repealed in England by the Statute Law Revision Act, 1867 and can be repealed here.

Statute 9 Geo. I c.7 (1722).

This is another of the statutes relating to justices and the poor law. It was repealed in England partly by the Poor Law Act, 1927, 17 & 18 Geo. V c.14, and the remainder by the Statute Law Revision Act, 1948. It can be repealed here.

Statute 9 Geo. I c.27 (1722).

This is another example of master and servant legislation and deals this time with shoemakers. It was repealed in England by the Master and Servant Act, 1889, 52 & 53 Vict. c.24, and can be repealed here.

Statute 12 Geo. I c.34 (1725).

This is a statute relating to masters and servants in the wool industry. It probably was inherited in South Australia. It was repealed in England by the Master and Servant Act 1889. It has nothing to do with modern ideas of employment and should be repealed here.

Statute 5 Geo. II c.18 (1732).

This is another Act dealing with the qualifications of justices of the peace. Amongst other things it prevents solicitors from acting as justices of the peace although to the knowledge of the Committee a number have done so in South Australia. It was repealed in England by the Justices of the Peace Act 1906, 6 Edw. VII c.16. It should be repealed here.

Statute 6 Geo. II c.31 (1733).

This is a further poor law statute and in this case relating to the duties of justices in regard to illegitimate children. It was repealed in England by the Statute Law Revision Act 1867 and can be repealed here.

Statute 17 Geo. II c.5 (1743).

This is a statute with relation to the duties of justices with respect to rogues, vagabonds and disorderly houses. It probably was part of the law of South Australia in 1836. It was repealed in England partly by the Statute Law Revision Act 1867 and partly by the Statute Law Revision Act 1948. These matters are dealt with differently in modern law and the statute can be repealed in South Australia.

Statute 17 Geo. II c.38 (1743).

This is an amending Act to the Act of Elizabeth I with regard to relief of the poor. It was repealed in England by the General Rate Act 1967, 1967 chapter 9. For the reasons we have canvassed with regard to other statutes of this kind it should be repealed here.

Statute 18 Geo. II c.20 (1744).

There is a further Act relating to the qualification of justices of the peace. Some of the Act would certainly not have been in force in South Australia because it is local but there are other parts which we no doubt inherited. The whole Act was repealed in England by the Justices of the Peace Act 1906 and it should be repealed here.

Statute 20 Geo. II c.19 (1746).

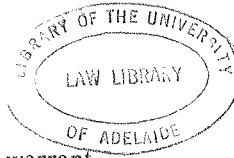
This is an amendment to the Statute of labourers and deals with wages, with regulation of servants and with apprentices. It was repealed in England in 1875 and it can be repealed here.

Statute 22 Geo. II c.27 (1748).

This statute deals with frauds by workmen, with what were then referred to as unlawful combinations, and with regard to wages. Probably some of it was in force in South Australia in 1836 and it certainly has never been repealed. Parts of the Act have been repealed by 14 Geo. III c.44 s.1, 17 Geo. III c.56 ss.1, 3, 7 and 8, 6 Geo. IV c.129 s.2 and 9 Geo. IV c.31 s.1. The remainder was repealed in England by the Theft Act 1968 (1968 chapter 60). The residue of the Act which we inherited in 1836 should be repealed here.

Statute 24 Geo. II c.44 (1751).

This is the statute which gives protection to justices, constables and others for what they do in the execution of their office. It certainly became part of the law in South Australia in 1836. Parts of it have been repealed by Acts of 1848, 1888 and 1948 but some of it is still in force in England. Probably most of it was impliedly repealed in South Australia by the Ordinance No. 9 of 1849 which seems to cover much the same ground as the statute of George II although the two are not identical. The matter is dealt with in the present Justices Act sections 190-200 and we think that should be a sufficient protection irrespective of the statute of George II. We think it can be repealed here. However, the Crown may wish to consider the question of whether some saving of the present law ought to be inserted in the repealing statute in that as we have pointed out the protection given by the imperial Act would appear to be rather wider than the protection given by section 53 of the Police Regulation Act 1952. It might for example be of importance to such persons as wardens acting under the powers given by the National Parks and Wildlife Act 1972.



Statute 24 Geo. II c.55 (1751).

This was the first statute that gave justices power to back a warrant to apprehend an offender out of the jurisdiction. The matter is now dealt with in Australia by section 18 of the Service and Execution of Process Act 1901 and it is not necessary to retain this provision in South Australia even though it probably came to us in 1836. It was repealed in England by the Statute Law Revision Act 1867 and can be repealed here.

Statute 25 Geo. II c.29 (1752).

This is a general statute relating to the appointment work and removal of coroners. All of this is now covered by the Coroners Act 1975 of South Australia and it is not necessary to retain the statute. Some parts of the statute were repealed in England by the Statute 7 Will. IV & 1 Vict. c.64 s.3 but this of course was just too late to affect the position in South Australia. Other parts of the statute were repealed in England by the Statute Law Revision Act 1867 and the Coroners Act 1887. It can be repealed in South Australia.

Statute 26 Geo. II c.14 (1753).

This Act deals with the settling and ascertaining of fees by clerks to justices. It is doubtful whether the Act ever came into force in South Australia. It was repealed in England by the Criminal Justice Administration Act 1914, 4 & 5 Geo. V c.58, and it can be repealed here.

Statute 26 Geo. II c.27 (1753).

This statute deals with correction of defects in orders made by justices. There is ample power to do that in this State contained in sections 182, 183 and 185 of the Justices Act and we do not think that the Act of Geo. II need be retained in this State. It was repealed in England by the Statute Law Revision Act 1948, and can be repealed here.

Statute 27 Geo. II c.20 (1754).

This is a statute to make more effectual proceedings on distresses issued by justices' warrants. There is sufficient power in relation to this contained in Section 90 of the Justices Act 1921 and we do not think this Act needs to be retained. It was repealed in England by the Summary Jurisdiction Act 1848 and it can be repealed here.

Statute 29 Geo. II c.33 (1756).

This is an amendment to the Act of 12 Geo. I dealt with previously by us. It deals with unlawful combinations in the woollen trade. It was almost certainly part of the law of South Australia in 1836. It is, as we have already said before, quite foreign to modern notions of the proper solution of problems of this kind. It was repealed in England by the Statute Law Revision Act 1867 and can be repealed here.

Statute 31 Geo. II c.11. (1758).

This is another in the long series of statutes casting duties on justices with regard to the poor law. It was repealed in England by the Poor Law Act 1927, 17 & 18 Geo. V c.14, and can be repealed here.

Statute 1 Geo. III c.13 (1760).

This statute deals with the continuance of justices' commissions notwithstanding a demise of the Crown. The statute is in force in South Australia. It was not repealed in England until the Statute Law Revision Act 1948. England, as we have pointed out in the Fifty-Fourth Report,

has general demise of the Crown legislation and we have not. We recommend that this statute remain in force until this Committee reports generally to you on the subject.

Statute 6 Geo. III c.25 (1766).

This statute deals with the duties of justices in relation to the regulation of apprentices. It was repealed in England in 1875 and can be repealed here.

Statute 7 Geo. III c.9 (1767).

This prevents justices having to take and subscribe new oaths on the issue of a new commission of the peace. It is probably still in force in South Australia. It was repealed in England by the Statute Law Revision Act 1964. It can be repealed here but with a saving of the alteration in the law made by the statute.

Statute 12 Geo. III c.71 (1772).

This is another milestone for repealing some of the laws in the long struggle of Parliament against forestallers and regraters: an early form of price control legislation. It was repealed in England by the Statute Law Revision Act 1871 and should be repealed here.

Statute 14 Geo. III c.25 (1774).

This is another statute relating to the control of woollen manufacture. It was probably in force in South Australia in 1836. It was repealed in England in 1889 and can be repealed here.

Statute 14 Geo. IV c.44 (1774).

This is a further statute with regard to spinning and weaving of wool and was probably in force in South Australia in 1836. It was likewise repealed by the Master and Servant Act 1889 and can be repealed here.

Statute 15 Geo. III c.14 (1775).

This amends the statute of the previous year with relation to woollen manufactures. It probably was in force in South Australia in 1836. It was repealed in England by the Summary Jurisdiction Act 1884 and can be repealed here.

Statute 15 Geo. III c.39 (1775).

This is an Act to empower justices of the peace to administer oaths where any penalty is to be levied or distress to be made in pursuance of any Act of Parliament, but there is no express direction in that Act. The Act is still in force in South Australia. Our Justices Act obviously treats the law as being contained in the English statute. We think it can be repealed here but if so a section to the effect of the Statute must be inserted in our Justices Act.

Statute 18 Geo. III c.19 (1778).

This statute deals with the payment of charges to parties and to constables and to witnesses in relation to the work of justices of the peace out of Sessions. This became obsolete in practice with the beginnings of the Police Force but was probably still in force in South Australia in 1836. It was repealed in England by the Statute Law Revision Act 1887 and can be repealed here.

Statute 18 Geo. III c.47. (1778).

This statute deals further with the duties of justices with regard to apprentices. It was repealed in England by the Poor Law Act 1927 and can be repealed here.

Statute 19 Geo. III c.70. (1779).

This is a statute to prevent frivolous and vexatious arrests in relation to inferior courts. It was possibly inherited in South Australia although this is doubtful. However, it would be wise to put the matter beyond doubt by repealing the statute in its application to this State. It was repealed in England by the Administration of Justice Act 1965 (1965 chapter 2).

Statute 22 Geo. III c.83 (1782).

This was a further statute dealing with the duties of the justices in relation to the poor law. It was repealed in England by the Statute Law Revision Act 1871 and can be repealed here.

Statute 27 Geo. III c.29 (1787).

This statute obviates objections to the competency of witnesses where the fine goes to the benefit of the local government area. The statute was probably in force in South Australia in 1836. It was repealed in England by the Statute Law Revision Act 1861. There should be a repeal of the statute here saving the amendment of the law affected by the statute.

Statute 32 Geo. III c.45 (1792).

This deals in detail with rogues, vagabonds and other idle and disorderly persons and the duties of justices in respect thereto. This has all been swept away in South Australia in recent years. It was repealed in England by the Statute Law Revision Act 1861 and can be repealed here.

Statute 32 Geo. III c.57 (1792).

This statute deals in detail with the duties of justices with regard to apprentices. It was repealed in England by the Poor Law Act 1927 and can be repealed here.

Statute 33 Geo. III c.55 (1793).

This was to compel justices of the peace to give proper protection to apprentices and also relating to warrants of distress in general. The statute was probably in force in South Australia in 1836; certainly the part relating to warrants was. That part is however now covered fully by the Justices Act. The whole Act was repealed in England in 1966 and it can be repealed here.

Statute 42 Geo. III c.73 (1802).

This was the first of the series of Factories Act. How far behind present practice it is can be gauged from the provision that no apprentice shall have to work more than twelve hours a day. It is likely but not certain that the Act applied in South Australia. It was repealed in England by the Factory and Workshop Act 1878 and should be repealed here.

Statute 43 Geo. III c.141 (1803).

This is a further Act to protect Justices of the Peace in the execution of their duty. Parts of it have been repealed and part is still in force in

England. As we said with regard to the previous Act, we think that Sections 190-200 of the Justices Act provide sufficient protection for Justices of the Peace in this State and this Act can be repealed in its application to South Australia.

Statute 53 Geo. III c.40 (1813).

This was a statute which enabled Justices of the Peace on application to fix rates of wages for workmen. It is completely obsolete now. It was repealed in England by the Statute Law Revision Act 1873 and should be repealed here.

Statute 54 Geo. III c.96 (1814).

This is a further statute with regard to the duties of Justices of the Peace with regard to labourers. Parts of it are still in force in England, part has been repealed in 1873 and in 1888. It is not useful in South Australia today and should be repealed here.

Statute 59 Geo. III c.28 (1819).

This permitted justices' courts to sit in one or more divisions concurrently. The organization of courts of summary jurisdiction is governed by the provisions of the Justices Act today and this Act has no application now. It was repealed in England by the Statute Law Revision Act and can be repealed here.

Statute 1 Geo. IV c.37 (1820).

This gives a power to justices to appoint special constables in the event of tumult riot or felony. The power to appoint special constables is now vested in the Commissioner or a Special Magistrate by Part IV of the Police Regulation Act 1952. This we think impliedly repeals the Act of Geo. IV although that is not said expressly. The Act was repealed in England by the Statute Law Revision Act 1861 and should be repealed here.

Statute 3 Geo. IV c.23 (1822).

This provides that where matters can be heard before two Justices of the Peace, one Justice may receive the original information or complaint and provides that convictions are not to be set aside for defect of form if the time for appeal has expired. The powers to be exercised by a single Justice are set out in detail in the Justices Act 1921—see for example section 44—and we think therefore that the first of the two matters has been impliedly repealed. The second would seem to be covered by Section 187 of the Justices Act although this section does not expressly say that the failure to appeal after a hearing on the merits is a defence to any argument based on a defective conviction or warrant. We think that in the circumstances the Act should be repealed but that the amendment to the law contained in section III of the Act which says that convictions are not to be set aside for defect of form where the merits have been tried and there has been no appeal, should be preserved either by an amendment to the Justices Act, or by stating in the statute following this report that the repeal does not affect the amendment of the law made by section III of the Statute.

Statute 3 Geo. IV c.46 (1822).

This deals with improved methods of recovering fines, penalties, forfeitures and recognizances. Sufficient powers in regard to all these matters seem to be covered by the Justices Act 1921 and we think this

Act can be repealed. It was repealed in England by two statutes, partly by 7 Geo. IV c.37 s.2 and the balance by the Criminal Justice Act 1967 (1967 Chapter 80).

Statute 3 Geo. IV c.77 (1822).

This is a comprehensive measure for licensing hotels and other places selling liquor. It was probably in force in 1836 when the State was founded. It was repealed in England by the Statute Law Revision Act 1873. The whole of the matters dealt with comprehensively in this Act are now dealt with in the Licensing Act 1967. There is no necessity for the statute to be retained in South Australia and it should be repealed here.

Statute 4 Geo. IV c.34 (1823).

This is a long statute dealing with the powers of Justices in dealing with matters as between master and servant or master and apprentice. It is archaic today. It was repealed in England in 1875 and it can be repealed here.

Statute 5 Geo. IV c.18 (1824).

This is an Act for the more effectual recovery of penalties before Justices and Magistrates and for facilitating the execution of warrants. It would have been in force in South Australia in 1836 but it was repealed in England by the Summary Jurisdiction Acts 1848 and 1849, and when those Acts were copied in South Australia, this Act should then have been repealed. It has not, and we recommend that it be repealed now.

Statute 5 Geo. IV c.83 (1824).

This is the Vagrancy Act 1824. It was in force and in daily use in this State for many years and still is in some parts of Australia. However, much of it is out of line with modern thinking on punishment, and in any case the relevant parts of it which are still of modern use seem to be covered by the Police Offences Act, 1953, as amended. It has been extensively amended in England but parts of it are still in force in that country. We do not think that any part of it needs to be kept in force here and the Act can be repealed in this State.

Statute 6 Geo. IV c.129 (1825).

This is the notorious Combination Act under which, along with some later legislation, the Tolpuddle Martyrs and others were prosecuted and transported to Australia. The thrust of the Statute is blunted by the Trade Union Act, 1876 of South Australia. Its retention on the statute book is merely mischievous in this State. It was repealed in England by the Statute 34 & 35 Vict. c.32 s.7 and it should be repealed here.

Statute 10 Geo. IV c.52 (1829).

This extends the powers of justices under 4 Geo. IV c.34 in determining master and servant complaints. It is archaic today. It was repealed in England in 1875 and should be repealed here.

Statute 11 Geo. IV & 1 Will. IV c.64 (1830).

This extends the licensing provisions of justices to cider and porter. As we said in relation to the previous Licensing statute, there is now a comprehensive code in our Licensing Act, 1967 and these provisions are not required. Parts of the Act are still in force in England but the whole Act can be repealed here.

Statute 1 & 2 Will. IV c.32 (1831).

This is the consolidating Act relating to the laws on taking game. Some parts of it are still in force in England. It was in force in South Australia from the commencement of the colony, and ridiculous as it may seem today, people were prosecuted under that law for taking and killing rabbits. It is completely obsolete in relation to modern thought today. In any event we have our own legislation with regard to game preservation. The statute can be repealed in South Australia.

Statute 1 & 2 Will. IV c.41 (1831).

This is an extended Act for the appointment of special constables. As we said with regard to the last similar statute, the question of the appointment of special constables in South Australia is completely covered by Part IV of the Police Regulation Act, 1952. However, it is possible that the appointment of such persons as wardens which we referred to earlier in our report may conceivably not be so covered. The statute was repealed in England in 1964 and it can be repealed here.

Statute 4 & 5 Will. IV c.1 (1834).

This is another in the long line of Factories Act legislation. It is graciously permitted children under the age of thirteen years to work not more than ten hours in any one day. It was repealed by the Statute Law Revision Act, 1874 and can be repealed here.

Statute 5 & 6 Will. IV c.50 (1835).

This is the consolidating Highways Act in England. Parts of it are still in force in that country. Most of what is in it is covered in our Highways Act 1926-1975. It has however provided a sort of common law, or background of common reference, in relation to a great deal of highway law. We think that it can be repealed in this State but that the amendments to the general law, as distinct from duties placed on boards and district surveyors and parishes which would have no application here, should be preserved by the repealing statute.

Statute 5 & 6 Will. IV c.76 (1835).

This is the consolidating Municipal Corporation Act in England. Much the same remarks apply as to the Highways Act with which we have just dealt. The subject of municipal corporations and councils generally is dealt with in detail in the Local Government Act, 1934. We doubt whether the preservation of the provisions of this statute matter as much as with the previous statute on highways where there is still a fair amount of common law. Most of our corporation law by now is statutory. It was repealed in England by the Municipal Corporations Act, 1882. On the whole we think it can be safely repealed here without any saving clause.

Statute 6 & 7 Will. IV c.89 (1836).

This authorised post mortems at inquests. The matter is now covered by section 13 (e) of the Coroners Act, 1975. Accordingly there is no need to preserve this power in South Australia. It was repealed in England in 1887 and it can be repealed here.

Statute 6 & 7 Will. IV c.111 (1836).

This is the original evidentiary section relating to the fact that previous convictions should not be given in evidence except in specially defined circumstances. The matter is now dealt with by section 18 of the Evidence

Act and in any event is the subject of recommendations to you by the Mitchell Committee. The statute serves no useful purposes in South Australia today and it can be repealed.

We have the honour to be

HOWARD ZELLING
J. M. WHITE
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D. W. BOLLEN
M. F. GRAY
D. F. WICKS
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Law Reform Committee of South Australia