against this Ordinance, or made at any time whatsoever to the knowledge of the purchaser with the view to evade the recovery of the penalties herein provided, shall as against the said liability to be sold for the purposes aforesaid, be void and of none effect. [*Amended by Ordinance No. 1 of 1846.*]

[*Suspended until amendment see C. O. D., No. 58, 20th November, 1844. Repealed by effect of H.M.'s Order in Council, 3rd March 1859, Government Notification, Gazette of 9th July, 1859.*]

No. 10 of 1844.

Title. [*See Orders. No. 6 of 1847; No. 5 of 1850; No. 16 of 1875*].

An Ordinance to regulate summary proceedings before Justices of the Peace, and to protect Justices in the execution of their office.

[10th April, 1844.]

Preamble. Proceedings before Justices.

WHEREAS it is expedient and necessary to make provision for regulating and for securing uniformity in summary proceedings before Justices of the Peace, and to afford due protection to Justices in the execution of their office. Be it thereof enacted by His Excellency the Governor of Hongkong, with the advice of the Legislative Council thereof, that from and after the passing and publication of this Ordinance, the provisions hereof shall extend to all cases wherein by any English law, or statute, or by any ordinance enacted in this Colony, any proceeding shall have been, or shall be or is by this Ordinance directed to be had, or matter authorized to be heard and determined, by or before any Magistrate of Police, or before any Justice or Justices of the Peace for the Colony of Hongkong, or in a summary way, and it shall be lawful for any one Justice to receive the information or complaint, and to issue the summons or warrant requiring the parties and witnesses to appear before himself, or before any two or more Justices as the case may require, and upon the appearance of the defendant, or his contempt by not appearing after having been duly summoned in manner hereinafter mentioned, and after sufficient time for his appearance and proof thereof on oath* to the satisfaction of the Justice or Justices as the case may be, such Justice or any two or more Justices, as the case may require, shall and may proceed to examine into, and hear and determine the matter in a summary way, and examine upon oath, all necessary witnesses produced, and give his or their judgment thereon, and in case

One Justice to adjudicate.

[**See Ord. No. 2 of 1860.*]

such Justice or Justices shall convict the defendant, and award against him or her, any fine or pecuniary penalty, and he shall neglect to pay the same fine or penalty, together with the costs and charges of and attending such conviction, to be assessed and ascertained by the said Justice or Justices, into the hands of the said convicting Justice or one of the said convicting Justices, in case there shall have been more than one, within one week next after such conviction, (without any previous demand of such penalty) or within such greater or lesser time, or at such intervals as the said Justice or Justices shall at his or their discretion determine, then it shall be lawful for such Justice or Justices or either of them, or for any other Justice of the Peace (at his or their discretion) to cause such fine or penalty and costs and charges to be levied by distress, and sale of the goods, and chattels of the offender, the overplus, if any after deducting the charges of such distress and sale, to be rendered to the said offender. Provided, that if upon the return of the officer charged with the execution of the said distress, it shall appear that no sufficient distress can be found, or the party adjudged to pay any money shall at the time of the said adjudication or conviction, declare or it shall otherwise appear that he has no goods or chattels on which the said distress can be levied, then the convicting Justice or Justices, or either of them, or any other Justice of the Peace, may by warrant commit such offender to one of Her Majesty's gaols, with or without hard labour, there to remain for a time in proportion to the amount of the penalty inflicted, and not exceeding *six* months in the whole, unless the said sum to be levied together with the costs shall be sooner paid.

How penalties to be levied.

Offender to be committed.

2. And be it further enacted, that in all cases in which no other mode of proceeding shall have been or or shall be in that behalf provided, the directing of any summons to any person whatsoever, whether a defendant, a witness, or otherwise in the name or names by which he is or has been usually known, whether the same be the real or the feigned or assumed name of such person, and the leaving a copy of such summons at his last usual place of abode, or the affixing a copy thereof, on one of the doors, or some other conspicuous part on the outside of such abode, (such service being proved on the oath of the persons so serving such summons, and it being also in like manner proved to the satisfaction of the sitting Justice or Justices at the hearing of the case, that the person so serving such summons hath endeavoured to serve the same on the party

Service of summons on witnesses and others.

without effect,) shall be deemed to be a legal and effectual service on such party, as fully to all intents and purposes, as if the same summons had been personally served on such party, and as if the same had been directed in his proper and real name, and that every summons may direct the party to appear, either before the Justice or Justices issuing the same, or before any one or more Justice or Justices generally, as the case may require, (without naming any Justice). Provided that such summons shall direct the party so to appear, at a time and place certain, to be named in such summons.

Evidence to be taken down and subscribed by witness and Justice. [**See Ord. No. 2 of 1860.*]

3. And be it enacted that the Justice or Justices, before whom any person may be convicted in manner aforesaid, shall take the evidence upon oath* of the witnesses, both for, and against the defendant, and also the statement of the defendant himself, and shall put the same, or the material parts thereof into writing, and shall cause the said witnesses, and the said defendant, to subscribe such depositions or statement, and he or they shall also subscribe the same and return the same in the manner hereinafter directed.

Justice to issue warrant for apprehension of defendant in certain cases.

4. And be it enacted, that it shall and may be lawful for any Justice of the Peace, when any information shall be exhibited before him, and in the opinion of such Justice it shall be fit and proper so to do, to grant a warrant under his hand, directed to some constable, peace officer, or other proper person, directing such constable, peace officer, or other proper person to take any offender, against whom such information shall be laid, and to bring him before such Justice or Justices of the Peace, as the case may require, at a time and place to be named in such warrant.

Offenders to be apprehended and conveyed before a Justice of the Peace.

5. And be it enacted, that it shall be lawful for any person whatsoever, to require any person, who shall commit in his presence any offence, which is or shall be punishable in a summary way, to accompany him forthwith to the nearest Justice of the Peace, or to tell his full name and place of abode; and in case such person shall, after being so required, offend by refusing to go before such Justice of the Peace, or to tell his real name, and place of abode, or by giving such a description of his place of abode, as shall be illusory for the purpose of discovery, it shall be lawful for the party so requiring as aforesaid, and also for any person acting in his aid, to apprehend such offender, and to convey him, or cause him to be conveyed, as soon as conveniently may be to the nearest Justice of the Peace, who shall have full power to

require security, for the due appearance of such person, and to commit him for want thereof, or shall make such order therein as the case may require. And any person offending against the provisions of this section (whether so apprehended or not,) shall, on conviction thereof, in a summary way, before any Justice of the Peace, forfeit and pay such sum of money, not exceeding fifty dollars, as to the convicting Justice shall seem meet in addition to any other penalty he may have incurred. Provided always, that no person so apprehended, shall on any pretence whatsoever, be detained for a longer period than twelve hours, and if he cannot on account of the absence, or distance of the residence of any such Justice of the Peace, be brought before a Justice of the Peace, within the time aforesaid, then the person so apprehended shall be discharged, but may nevertheless be proceeded against for his offence, by summons or warrant, as if no such apprehension had taken place.

Justice to return convictions to general quarter sessions.

6. And be it enacted, that every Justice of the Peace, before whom any person shall be convicted in a summary manner, shall transmit such conviction, with the depositions and examinations hereinbefore directed to be taken, to the next Court of general sessions of Magistrates which shall be holden in the said Colony of Hongkong, there to be kept by the proper officer, among the records of the said Court.

Certiorari to be allowed in all cases on certain conditions. [*See Ord. No. 4 of 1865 s. 66; Ord. No. 7 of 1865 s. 98; Ord. No. 8 of 1865 s. 62; Ord. No. 10 of 1865 s. 31.*]

7. And whereas doubts may arise as to the application of divers acts and statutes of the Imperial Parliament of Great Britain, whereby the removal of convictions, orders, and other proceedings, had or made by or before Justices of the Peace, is denied and taken away. Be it enacted, that such acts and statutes aforesaid, as far as they relate to the non-removal of such convictions, orders, and other proceedings, shall be deemed and taken not to extend to this Colony, or its dependencies, nor to be in force within the same. Provided always, and be it enacted, that no writ of certiorari shall be granted, or allowed, to remove any conviction, judgment, or other proceeding, had or made by any Court of general sessions of Magistrates, or before any Justice or Justices of the Peace in a summary manner, unless the party or parties prosecuting such certiorari, before the allowance thereof, shall enter into a recognizance, with sufficient sureties, before the convicting Justice or Justices, as the case may be, or before any Judge of such Supreme Court of Judicature as may hereafter be erected at Hongkong, in the sum of two hundred dollars, in addition

to the pecuniary penalty, (if any shall have been inflicted,) with condition to prosecute such certiorari at his or their own charges with effect without any delay, and to pay the party or parties in whose favor, or for whose benefit, such judgment or order was made within one week after such judgment or order shall be confirmed, their full costs and charges, as between attorney and client; and in case the party or parties, prosecuting such certiorari shall not forthwith enter into such recognizance, or shall not perform the conditions aforesaid, it shall be lawful for the said Justice or Justices, to proceed and make such further order for the benefit of the party, or parties, for whom such judgment shall be given, in such manner as if no certiorari had been granted, nor shall any writ of certiorari be granted, issued forth, or allowed, unless it shall be moved and applied for on special grounds, within one month next after such conviction, judgment, order, or other proceeding, shall be had or made, nor unless it shall be duly proved that the party or parties suing forth the same, hath, or have given four days notice thereof in writing, to the convicting Justice or Justices, or any of them, containing the ground of his or their objections, to the end that such Justice or Justices may show cause, if he, or they shall so think fit, against the issuing, or granting of such certiorari; and upon the return of such certiorari, no objections shall be taken by the party suing forth the same, other than such as shall be stated in the said notice.

Witnesses not appearing.

8. And be it further enacted, that if any person shall be summoned to appear as a witness, to give evidence before any such Justice or Justices, touching any of the matters aforesaid, and shall neglect to appear at the time and place for that purpose appointed, without a reasonable excuse for such neglect, every such person shall for every such offence forfeit and pay a penalty of not more than one hundred dollars, which said penalty shall and may be recovered, by proceeding before any one Justice of the Peace, who is hereby authorized to hear and determine such offence in a summary way, and shall be levied and distributed in the manner by this Ordinance provided for other penalties.

Power to appeal and manner thereof. [*See Ord. No. 4 of 1858.*]

9. And be it further enacted, that in all cases wherein any person shall be convicted in any penalty exceeding fifty dollars, or shall be sentenced to undergo any imprisonment exceeding one month by any summary judgment or conviction of any Justice or Justices, under or by virtue of any statute or ordinance, (and no other mode of proceeding

shall have been, or shall be in that behalf provided, that it shall be lawful for such person to appeal against such judgment, or conviction, in the manner hereinafter provided, that is to say, if such person (in case a pecuniary penalty shall have been awarded) shall pay into the hands of the convicting Justice, or one of the convicting Justices, double the full amount of such penalty, together with the assessed costs and charges, within one week next after such conviction, or within such time greater or less, as the convicting Justice or Justices shall determine, or (in case no pecuniary penalty shall have been awarded) shall forthwith enter into a bond to Her Majesty, Her Heirs and Successors, in such reasonable amount as the convicting Justice or Justices may require with two sufficient sureties, to be approved by such convicting Justice or Justices, conditioned to prosecute such appeal with effect, and to abide the event of the same appeal, and to pay the full amount of all such penalties and costs as shall or may on such appeal be awarded against the appealing party, then it shall be lawful for such person to appeal from such judgment, or conviction, to such general sessions of Magistrates, as may hereafter be directed to be held from time to time in Hongkong, unless such sessions shall be held within six days next ensuing, and in that case to the general sessions next but one afterwards. And the Justices at such sessions so assembled, shall hear, and thereupon finally determine, the matter of every such appeal in a summary way, and their judgment thereon, shall be final and conclusive to all intents and purposes; (unless any writ of certiorari or error shall afterwards be allowed) and such Justices at such sessions so assembled, are upon such appeal hereby authorized to decide upon the matter *de novo*, and to award in a summary manner such greater, or lesser imprisonment, or penalty, than that appealed against, and such costs to be paid by either party or to make such other orders therein, as shall appear just and expedient, and the circumstances may require.

Justices to decide the matter *de novo*.

10. And be it enacted that the person or persons to whom such writ of certiorari shall, or may be directed, shall, and he and they are hereby directed to return to the Supreme Court of Judicature aforesaid, with the conviction by such writ ordered to be returned the depositions, and examinations hereby ordered to be taken by such convicting Justice or Justices, and upon the hearing of such case it shall, and may be lawful for the said Court to inspect, and examine such depositions, and

Depositions to be returned with certiorari.

examinations, and to make such order thereon, as the substantial merits of the case may require.

Party acquitted or convicted and having suffered the punishment awarded to be released from all further proceedings for the same cause.

11. And be enacted if the Justice or Justices, upon the hearing of any complaint in a summary manner, shall deem the offence not to have been proved, or to be of so trifling a nature as not to merit any punishment and shall accordingly dismiss such complaint, he, or they shall forthwith make out a certificate under his or their hands, stating the fact of such dismissal, and shall deliver the certificate to the party against whom such complaint was preferred, and the party who shall have obtained such certificate, or having been convicted of any offence shall have paid the whole amount adjudged to have been paid under such conviction, or shall have suffered such other punishment as may have been awarded therein, shall be released from all further proceedings civil or criminal for the same cause.

Form of conviction defects of form not to vitiate any proceeding.

12. And be it enacted, that in all cases, except where a particular form of judgment or conviction shall have been, or shall be, by any such ordinance, directed to be used in that behalf, a judgment or conviction in the form, or to the effect of the form, (as the case shall happen to be) prescribed by the schedule to this Ordinance annexed, shall be good valid and effectual to all intents and purposes whatsoever, without setting forth or stating in such conviction, the name of any informer, or witness, or the particular place where the offence was committed or whether the defendant appeared, or was, or was not summoned to appear, and without setting forth, or stating the evidence of facts in any further or more particular manner, than shall be necessary to show that the offence was one against the true intent, and meaning of the law, and no conviction warrant of committal or distress, or other proceeding whatsoever, (whether under this, or any other ordinance, and whether a particular form shall have been or shall be in that behalf directed or not) shall be quashed in any case, for any mere error, or mistake in any name, or date, or title, or in any matter of description only, and where any distress shall be made for levying any money, the distress itself shall not be deemed unlawful, nor the party making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceedings relating thereto, nor shall the party distraining, be deemed a trespasser *ab initio*, on account of any irregularity afterwards committed by him, but the person aggrieved by such irregularity, may recover

satisfaction for the special damage, if any, by an action on the case, and in all cases whatsoever, regard shall be had alone to the substantial merits and justice of the case.

Protection of Justices.

13. And for the protection of Justices, and others acting under their authority, be it enacted, that all actions and prosecutions to be commenced against any Justice, or person acting under his authority, shall be commenced within six months after the fact committed, and not otherwise; and notice in writing of such action, and of the cause thereof, shall be given to the defendant, one month at least before the commencement of the action, and in any such action, the defendant, may plead the general issue, and give any statute, or ordinance, and the special matter in evidence at any trial to be had thereupon, and no plaintiff shall recover in any such action, if tender of sufficient amends shall have been made before such action brought, or if a sufficient sum of money shall have been paid into Court, after such action brought by, or on behalf of the defendant, and if a verdict shall pass for the defendant, or the plaintiff shall become nonsuit, or discontinue any such action after issue joined, or if upon demurrer, or otherwise judgment shall be given against the plaintiff, the defendant shall recover his full costs as between attorney and client, and have the like remedy for the same as any defendant hath by law in other cases; and though a verdict shall be given for the plaintiff, in any such action, such plaintiff shall not have costs against the defendant, unless the Judge, before whom the trial shall be, shall certify his approbation of the action and of the verdict obtained thereon.

Action against Justices.

14. And be it enacted, that no action or suit shall be brought or instituted against any Justice of the Peace, for or on account of any conviction of any person or persons whatever, by reason of any thing done, or commanded to be done, by such Justice, in or about the levying of any penalty, apprehending any party or for or about the carrying of such conviction into full effect, except and unless the Justice by or before whom such conviction shall have been made, shall have convicted such person of some offence, not punishable on summary conviction, by virtue of any statute, law, or ordinance, or unless such Justice shall have convicted such person in some penalty, either pecuniary or otherwise, not authorized to be imposed on the offence or offences of which such offender shall or may have been guilty, or unless it shall be expressly alleged in the bill of complaint, plaint, or declaration in such action and proved on the trial

of such cause, that such acts were done maliciously and without probable cause.

Action against prosecutor.

15. And be it enacted that no action or suit shall be brought against any person or persons, by whom, or on whose account, any information shall have been laid or exhibited before any Justice of the Peace, and by such Justice or Justices, received for or on account of such information, or for, or on account of any matter or thing done under, or in pursuance of such information, unless it shall be expressly alleged in the bill of complaint, plaint, or declaration of such action, and proved on the trial of such cause, that such information was laid and exhibited maliciously, and without probable cause.

Government Notification sufficient proof of right to exercise office of Justice of the Peace.

16. And be it enacted, if any question shall arise, as to the right of any person to exercise the office of a Justice of the Peace, that a Government Notification in any public newspaper, to the effect that such person has taken the oaths, as a Justice of the Peace, shall (in the absence of express proof that such Notification was unauthorized) be deemed, and held sufficient proof of such right, in all proceedings whatsoever, and it shall not be necessary to produce any commission, appointment, or any oath, affidavit or other document, in proof of such right as aforesaid.

Governor to authorize fees to be taken by Justice.

17. And be it enacted, that it shall be lawful for His Excellency the Governor in Council, to authorize the taking of such fees, in any proceedings before any Justice, as may be deemed expedient; and it shall be lawful for any Justice to refuse to do any act, for which any fee shall be demandable, unless such fee shall be first paid, and that if any such act shall be done, and the fee due thereon shall not be paid, it shall be lawful for any Justice of the Peace, to summon the person from whom such fee shall be due, and to proceed to recover the same, in like manner as any penalty recoverable by summary proceedings.

Table of fees to be hung up in public office.

18. And be it enacted, that in some conspicuous part of each of the public offices of the Justices within the said Colony, there shall be affixed a table of the fees, which may legally be taken at such offices respectively.

Justice to account for and pay over fees and penalties.

19. And be it enacted, that the Justices at each of the public offices within the said Colony, and their clerks respectively, shall, in books to be provided for that purpose, keep a full, true, and particular account of all fees taken, and received, at each of the said offices, together with all penalties, and forfeitures which shall have been recovered, levied, or

received in pursuance of any adjudication, conviction, or order, had or made at any of the said offices, or any process, or warrant, and shall be strictly accountable for such fees, penalties, and forfeitures, to Her Majesty, Her Heirs and Successors, and shall pay over the same to the Colonial Treasurer, from time to time, as they may be required.

Distribution of penalties.

20. And be it further enacted, that in all cases where, by any ordinance, a pecuniary penalty is or shall be imposed, the amount of every such penalty, within the limits prescribed, shall be in the discretion of the convicting Justice, and that every penalty awarded by such Justice, and declared to be payable to Her Majesty, Her Heirs and Successors, shall (except it shall be otherwise specially provided by any ordinance) be paid one moiety thereof, and such other part thereof as shall not be adjudicated to be paid in the manner hereinafter next mentioned, to the use of Her Majesty, Her Heirs and Successors, for the public uses of the Colony of Hongkong, and the support of the Government thereof; and the other moiety, or such part thereof as shall be adjudged by the Justice convicting, to the use of the informer, or party prosecuting, or complaining, or who shall have suffered any damage from the act of the offender, and such parties shall, if the convicting Justice shall so order, but not otherwise, also be entitled to their costs and charges, over, and above such penalty, to be ascertained and assessed as aforesaid.

Witnesses not to be rendered incompetent by interest.

21. And be it enacted, that no person shall, by reason of the application of any penalty to his use, or of his being otherwise interested in the event of the cause, directly or indirectly, be deemed to be incompetent as a witness, before any Court of Justice, or Justice of the Peace, in any proceeding whatsoever, whether civil or criminal.

Justice to take recognizance for good behaviour.

22. And be it enacted, that in all cases where any complaint shall be made against any person, the Justice, by or before whom such complaint shall be heard, may, if he shall so think proper, require the party complained against, and whether such party shall be convicted or not, on such complaint, to enter into a recognizance, with two sufficient sureties for his good behaviour, for such term, and in such sum, as such Justice shall think proper, so as such term do not exceed twelve months, nor such sum two hundred dollars.

Limitation of prosecutions.

23. And be it enacted, that from and after the taking effect of this Ordinance, no person shall be liable to be convicted by any Justice, in a summary manner as aforesaid, unless upon information laid, and had before a Justice of the Peace, authorized to receive the same, within the

space of six calendar months, next after the commission of such offence or offences. Provided always, that nothing herein contained shall extend to prevent any person from being indicted for any offence, as if this Ordinance had not been passed.

Interpretation of the word month.

24. And be it enacted, that the word month, in this and all other ordinances, shall be deemed to mean, a calendar, and not a lunar month.

Chinese offenders to be punished according to Chinese usage.

25. And be it enacted, that in lieu of the whole, or any part of any penalty, provided by any law, statute, or ordinance whatsoever, it shall be lawful for the Court, or Justice, before whom the matter shall be adjudicated upon, to sentence any offender, being a native of China, or a native of Hongkong of Chinese origin, to undergo such punishment, in conformity with the usages of China, as has hitherto been usually inflicted on natives of China, committing offences in this Colony. [*Repealed by Ordinance No. 16 of 1875.*]

Above Ordinance repealed by 10 of 1890

SCHEDULE.

BEING THE FORM OF JUDGMENT OR CONVICTION BY THIS ORDINANCE REFERRED TO.

HONGKONG

Be it remembered, that on this day of 184 . (*name*) of (*place*) was duly convicted before me A. B. (*or us A. B. & C. D.*) one (*or two, or more, as the case may be*) of Her Majesty's Justices of the Peace, upon an information in that behalf exhibited before (*name of the Justice or Justices*) on the day of now last past, for that on the day of 184 , (*state the fact or offence in respect of which the judgment or conviction is had*) and I (*or we*) do (*if the conviction is made for an offence against any particular statute or ordinance, state it*) award, order, and adjudge, that (*set forth the adjudication, and if awarding a penalty, as follows*) the said (*offender*) do for such offence (*where necessary add being his second, or third, or subsequent offence, as the case may be*) forfeit and pay the sum of to be distributed as in manner following; that is to say, (*describe the mode of distribution,*) (*or if a Chinese offender describe the substituted punishment*) besides the costs and charges of, and attending this conviction (*if given*) which said costs and charges, I (*or we*) the said Justice (*or Justices,*) do hereby ascertain and assess, at the sum of

Given under my hand and seal (*or our hands and seals*) the day and year first above written.