



# Justices of the Peace Act 1979

## 1979 CHAPTER 55

### PART V

#### PROTECTION OF JUSTICES AND INDEMNIFICATION OF JUSTICES AND JUSTICES' CLERKS

#### **44 Acts done within jurisdiction**

If apart from this section any action lies against a justice of the peace for an act done by him in the execution of his duty as such a justice, with respect to any matter within his jurisdiction as such a justice, the action shall be as for a tort, in the nature of an action on the case; and—

- (a) in the statement or particulars of claim it shall be expressly alleged that the act in question was done maliciously and without reasonable and probable cause, and
- (b) if that allegation is not proved at the trial of the action, judgment shall be given for the defendant, if it is in the High Court, or, if it is in the county court, the plaintiff shall be non-suited or judgment shall be given for the defendant.

#### **45 Acts outside or in excess of jurisdiction**

(1) This section applies—

- (a) to any act done by a justice of the peace in a matter in respect of which by law he does not have jurisdiction or in which he has exceeded his jurisdiction, and
- (b) to any act done under any conviction or order made or warrant issued by a justice of the peace in any such matter;

and in the following provisions of this section " the justice ", in relation to any act falling within paragraph (a) above, means the justice of the peace by whom it is done, and, in relation to a conviction, order or warrant falling within paragraph (b) above, means the justice of the peace by whom the conviction or order is made or the warrant issued.

(2) Any person injured by an act to which this section applies may maintain an action against the justice without making any allegation in his statement or particulars of

claim that the act complained of was done maliciously and without reasonable and probable cause.

- (3) In respect of any act done under any such conviction or order as is mentioned in subsection (1)(b) above no action shall be brought against the justice until the conviction or order has been quashed, either on appeal or upon application to the High Court.
- (4) In respect of any act done under any such warrant as is mentioned in subsection (1)(b) above which was issued by the justice to procure the appearance of a person (in this subsection referred to as "the complainant")—
  - (a) where the issue of the warrant has been followed by a conviction or order in the same matter, no action shall be brought by the complainant against the justice until the conviction or order has been quashed, either on appeal or upon application to the High Court, and
  - (b) where the issue of the warrant has not been followed by any such conviction or order, or the warrant was issued upon an information for an alleged indictable offence, no action shall be brought by the complainant against the justice if, before the issue of the warrant, a summons was issued and was served on the complainant (either personally or by leaving it for him with some person at his last or most usual place of abode) and he did not appear in accordance with the summons.

#### **46 Warrant granted on a conviction or order made by another justice**

Where a conviction or order is made by a justice or justices of the peace, and another justice, in good faith and without collusion, grants a warrant of distress or warrant of commitment thereon, no action shall be brought against the justice who granted the warrant by reason of any defect in the conviction or order, or for any want of jurisdiction in the justice or justices who made it, but the action (if any) shall be brought against the justice or justices who made the conviction or order.

#### **47 Exercise of discretionary powers**

Where by an enactment a discretionary power is given to a justice of the peace, no action shall be brought against the justice by reason of the manner in which he exercises his discretion in the execution of the power.

#### **48 Compliance with, or confirmation on appeal to, superior court**

- (1) In all cases where a justice of the peace refuses to do any act relating to the duties of his office, the party requiring the act to be done may apply to the High Court for an order of mandamus ; and, if the High Court makes the order, no action or proceeding whatsoever shall be commenced or prosecuted against the justice for having obeyed the order.
- (2) Where a warrant of distress or warrant of commitment is granted by a justice of the peace upon any conviction or order which, whether before or after the granting of the warrant, is confirmed on appeal, no action for anything done under the warrant shall be brought against the justice by reason of any defect in the conviction or order.

**49 Distress warrant for rates**

- (1) Where a general rate has been made, approved and published, and a warrant of distress is issued against a person on whom the rate has been levied, no action shall be brought against the justice or justices who granted the warrant by reason of any irregularity or defect in the rate, or by reason that the person in question was not liable to the rate.
- (2) Any reference in this section to a general rate shall—
  - (a) in relation to the City of London, be construed as including a reference to a poor rate, and
  - (b) in relation to the Inner Temple and the Middle Temple, be construed as a reference to any rate in the nature of a general rate.
- (3) Subsection (2) above shall have effect without prejudice to the generality of section 26 of the Administration of Justice Act 1964 (whereby, for the purposes of the law relating to justices of the peace and other matters therein mentioned, the Temples are included in the City) in its application to this Act.

**50 Where action prohibited, proceedings may be set aside**

If any action is brought in circumstances in which this Part of this Act provides that no action is to be brought, a judge of the court in which the action is brought may, on the application of the defendant and upon an affidavit as to the facts, set aside the proceedings in the action, with or without costs, as the judge thinks fit.

**51 No action in county court if defendant justice objects**

No action shall be brought in the county court against a justice of the peace for anything done by him in the execution of his office as such a justice if he objects to it; and if within six days after being served with a summons in any such action the justice, or his solicitor or agent, gives written notice to the plaintiff that the justice objects to being sued in the county court in respect of the cause of action in question, all subsequent proceedings in the county court in the action shall be null and void.

**52 Limitation of damages**

- (1) The provisions of this section shall have effect where, in any action brought against a justice of the peace for anything done by him in the execution of his office as such a justice, the plaintiff is (apart from this section) entitled to recover damages in respect of a conviction or order, and proves the levying or payment of a penalty or sum of money under the conviction or order as part of the damages which he seeks to recover, or proves that he was imprisoned under the conviction or order and seeks to recover damages for the imprisonment, but it is also proved—
  - (a) that the plaintiff was actually guilty of the offence of which he was so convicted, or that he was liable by law to pay the sum he was so ordered to pay, and
  - (b) where he was imprisoned, that he had undergone no greater punishment than that assigned by law for the offence of which he was so convicted or for non-payment of the sum he was so ordered to pay.
- (2) In the circumstances specified in subsection (1) above, the plaintiff shall not be entitled to recover the amount of the penalty or sum levied or paid as mentioned in that

subsection or (as the case may be) to recover any sum beyond the sum of one penny as damages for the imprisonment, and shall not be entitled to any costs.

### **53 Indemnification of justices and justices' clerks**

- (1) Subject to the provisions of this section and of section 54 below, a justice of the peace or justices' clerk may be indemnified out of local funds in respect of—
- (a) any costs reasonably incurred by him in or in connection with proceedings against him in respect of anything done or omitted in the exercise or purported exercise of the duty of his office, or in taking steps to dispute any claim which might be made in such proceedings;
  - (b) any damages awarded against him or costs ordered to be paid by him in any such proceedings ; or
  - (c) any sums payable by him in connection with a reasonable settlement of any such proceedings or claim ;

and shall be entitled to be so indemnified if, in respect of the matters giving rise to the proceedings or claim, he acted reasonably and in good faith.

- (2) Any question whether, or to what extent, a person is to be indemnified under this section shall be determined by the magistrates' courts committee for the area for which he acted at the material time; and a determination under this subsection with respect to any such costs or sums as are mentioned in paragraph (a) or paragraph (c) of subsection (1) above may, if the person claiming to be indemnified so requests, be made in advance before those costs are incurred or the settlement made, as the case may be:

Provided that any such determination in advance for indemnity in respect of costs to be incurred shall be subject to such limitations, if any, as the committee think proper and to the subsequent determination of the amount of the costs reasonably incurred and shall not affect any other determination which may fall to be made in connection with the proceedings or claim in question.

- (3) An appeal shall lie to a person appointed for the purpose by the Lord Chancellor—
- (a) on the part of the person claiming to be indemnified, from any decision of the magistrates' courts committee under subsection (2) above, other than a decision to postpone until after the conclusion of the proceedings any determination with respect to his own costs or to impose limitations on making a determination in advance for indemnity in respect of such costs;
  - (b) on the part of the local authority, from any determination of the magistrates' courts committee under that subsection, other than a determination in advance for indemnity in respect of costs to be incurred by the person claiming to be indemnified.
- (4) The Lord Chancellor may by statutory instrument make rules prescribing the procedure to be followed in any appeal under this section; and any statutory instrument made by virtue of this subsection shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) In this section " justices' clerk" includes a person appointed by a magistrates' courts committee to assist a justices' clerk and any member of the staff of a part-time justices' clerk assisting the clerk in his duties as such; " local funds ", in relation to a justice or a justices' clerk, means funds out of which any salary or allowance to which he is entitled (or, if he is entitled to more than one, is entitled in the relevant capacity) is

payable; and " local authority " means the authority responsible for the payment of any such salary or allowance.

(6) Subsection (5) above shall not apply to the inner London area, but in the application of the other provisions of this section to that area—

- (a) for any reference to local funds there shall be substituted a reference to the metropolitan police fund ;
- (b) for any reference to a magistrates' courts committee there shall be substituted a reference to the committee of magistrates set up under section 35 of this Act; and
- (c) for any reference to a local authority there shall be substituted a reference to the Receiver,

and " justices' clerk " includes any officer employed by the committee of magistrates.

#### **54 Provisions as to prerogative proceedings and membership of Crown Court**

(1) Section 53 of this Act shall not apply to proceedings for an order of prohibition, mandamus or certiorari, or to proceedings arising out of anything done or omitted by any person in his capacity as a member of the Crown Court.

(2) The Lord Chancellor may, if he thinks fit, defray out of moneys provided by Parliament any costs awarded against a justice or justices' clerk in proceedings for an order of prohibition, mandamus or certiorari (other than proceedings relating to the jurisdiction of the Crown Court) or any part of such costs.

(3) In this section " justices' clerk " has the same meaning as in section 53 of this Act.