



# Municipal Corporations Act 1882

## 1882 CHAPTER 50

### PART XII

#### LEGAL PROCEEDINGS.

#### **219 Prosecution of offences and recovery of fines.**

- (1) In summary proceedings for offences and fines under this Act the information shall be laid within six months after the commission of the offence.
- (2) Any person aggrieved by a conviction of a court of summary jurisdiction under this Act may appeal therefrom to a court of quarter sessions.
- (3) Any fine incurred under this Act and not recoverable summarily may be recovered by action in the High Court.

#### **220 Exclusion of certiorari.**

A conviction, order, warrant, or other matter made or done or purporting to be made or done by virtue of this Act shall not be quashed for want of form, and shall not, unless it is an order of the council for payment of money out of the borough fund, be removed by certiorari or otherwise into the High Court.

#### **221 Application of penalties in quarter sessions boroughs.**

- (1) Where by any Act passed or to be passed, any fine, penalty, or forfeiture is made recoverable in a summary manner before any justice or justices and payable to the Crown or to any body corporate, or to any person whomsoever, the same if recovered and adjudged before any justice of a borough having a separate court of quarter sessions shall, notwithstanding anything in the Act under which it is recovered, be recovered for and adjudged to be paid to the treasurer of the borough.
- (2) But this section shall not apply to a fine, penalty, or forfeiture, or part thereof, where the Act under which it is recovered—
  - (a) Directs payment thereof to the informer or to any person aggrieved; or

- (b) If passed since the Municipal Corporations Act, 1835, directs that the same shall go in any other manner and not to the borough fund; or
- (c.) Relates to the customs, excise, or post office, or to trade or navigation, or to any branch of the revenue of the Crown.

## **222 Duties of clerk of peace as to fines and forfeitures.**

Where the offices of town clerk and clerk of the peace for a borough are not held by the same person, -the clerk of the peace shall perform all duties imposed on the town clerk by the Act of the third year of King George the Fourth, chapter forty-six, " for " the more speedy return and levying of fines, penalties, and " forfeitures, and recognizances estreated;" and the clerk of the peace shall make all returns, issue all processes, and do all other acts required by that Act to be made, issued, and done by the town clerk.

## **223 Service of summons or warrant.**

Any summons for appearance, warrant to enforce appearance, warrant for apprehension, or search warrant, may, if issued by a justice for a borough, be served or executed in any county wherein the borough or any part thereof is situate, or within any distance not exceeding seven miles from the borough, and, within those limits, shall have the same effect as if it had been issued or indorsed by a justice having jurisdiction in the place where it is served or executed, and may be served or executed by the constable or special constable to whom it is directed.

## **224 Procedure in penal actions against corporate officers.**

- (1) An action to recover a fine from any person for acting in a corporate office without having made the requisite declaration, or without being qualified, or after ceasing to be qualified, or after becoming disqualified, may not be brought except by a burgess of the borough, and shall not lie unless the plaintiff has, within fourteen days after the cause of action arose, served a notice in writing personally on the person liable to the fine of his intention to bring the action, nor unless the action is commenced within three months after the cause of action arose.
- (2) The court or a judge shall, on the application of the defendant within fourteen days after he has been served with writ of summons in the action, require the plaintiff to give security for costs.
- (3) Unless judgment is given for the plaintiff, the defendant shall be entitled to costs, to be taxed as between solicitor and client.
- (4) Where any such action is brought against a person on the ground of his not being qualified in respect of estate, it shall lie on him to prove that he was so qualified.
- (5) A moiety of the fine recovered shall, after payment of the costs of action, be paid to the plaintiff.

## **225 Quo warranto and mandamus.**

- (1) An application for an information in the nature of a quo warranto against any person claiming to hold a corporate office shall not be made after the expiration of twelve months from the time when he became disqualified after election.

- (2) In the case of such an application, or of an application for a mandamus to proceed to an election of a corporate officer, the applicant shall give notice in writing of the application to the person to be affected thereby (in this section called the respondent) at any time not less than ten days before the day in the notice specified or making the application. .
- (3) The notice shall set forth the name and description of the applicant, and a statement of the grounds of the application.
- (4) The applicant shall deliver with the notice a copy of the affidavits whereby the application will be supported.
- (5) The respondent may show cause in the first instance against the application.
- (6) If sufficient cause is not shown, the court, on proof of due service of the notice, statement, and copy of affidavits used in support of the application, may, if it thinks fit, make the rule for the information or mandamus absolute.
- (7) The court may, if it thinks fit, direct that any issue of fact on an information be tried by jury in London or at Westminster.
- (8) The court may, if it thinks fit, direct that any writ of mandamus issued shall be peremptory in the first instance.

#### **226 Provisions for protection of persons acting under Act.**

- (1) An action, prosecution, or proceeding against any person for any act done in pursuance or execution or intended execution of this Act, or in respect of any alleged neglect or default in the execution of this Act, shall not lie or be instituted unless it is commenced within six months next after the act or thing is done or omitted, or, in case of a continuance of injury or damage, within six months next after the ceasing thereof.
- (2) Where the action is for damages, tender of amends before the action was commenced may, in lieu of or in addition to any other plea, be pleaded. If the action was commenced after the tender, or is proceeded with after payment into court of any money in satisfaction of the plaintiff's claim, and the plaintiff does not recover more than the sum tendered or paid, he shall not recover any costs incurred after the tender or payment, and the defendant shall be entitled to costs, to be taxed as between solicitor and client, as from the time of the tender or payment; but this provision shall not affect costs on any injunction in the action.
- (3) Subject and without prejudice to any other powers, the council, where the defendant in any such action, prosecution, or other proceeding is their officer, agent, or servant, may, if they think fit, except so far as the court before which the action, prosecution, or other proceeding is heard and determined otherwise directs, pay out of the borough fund or borough rate all or any part of any sums payable by the defendant in or in consequence of the action, prosecution, or proceeding, whether in respect of costs, charges, expenses, damages, fine, or otherwise.

#### **227 Power for borough constables to take bail.**

- (1) Where a person charged with a petty misdemeanour is brought without the warrant of a justice into the custody of a borough constable during his attendance at a watch-house in the borough, at any time (by day or night) at which a justice is not actually

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*Status: This is the original version (as it was originally enacted).*

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sitting for the public administration of justice at the justices' room, or town hall, or other place used for that purpose in the borough, the constable may, if he thinks fit, take bail without fee from that person, by recognisance conditioned for his appearance for examination within two days before a justice in the borough at some time and place therein specified.

- (2) A recognisance so taken shall be of equal obligation on the parties entering into the same, and liable to the same proceedings for the estreating thereof, as if taken before a justice.
- (3) The constable shall enter in a book, kept for that purpose in every watch-house, the name, residence, and occupation of the person entering into the recognisance, and of his surety or sureties, if any, with the condition of the recognisance, and the sums acknowledged.
- (4) The constable shall lay the book before the justice present at the time when and place where the recognisor is required to appear.
- (5) If the recognisor does not appear at the time and place required, or within one hour after, the justice shall cause a record of the recognisance to be drawn up and signed by the constable, and shall return the same to the next court of quarter sessions for the borough, or, if the borough has no separate court of quarter sessions, for the county in which the borough is situate, with a certificate at the back thereof, signed by the justice, that the recognisor has not complied with the obligation therein contained.
- (6) The clerk of the peace shall make the like estreats and schedules of every such recognisance as of recognisances forfeited in quarter sessions.
- (7) If the recognisor applies by any person on his behalf to postpone the hearing of the charge against him, and the justice thinks fit to consent thereto, the justice may enlarge the recognisance to such further time as he appoints.
- (8) When the matter is heard and determined, either by the dismissal of the charge, or by binding over the recognisor to answer the matter of the complaint at quarter sessions, or otherwise, the recognisance for his appearance before a justice shall be discharged without fee.