

New South Wales



ANNO TERTIO

ELIZABETHÆ II REGINÆ

Act No. 32, 1954.

An Act to make further provision in relation to the taking and recording of the depositions of witnesses and other persons in proceedings before a justice or justices of the peace or a coroner; to make further provision in relation to the admissibility in evidence of, and the cross-examination of persons as to, depositions so taken and recorded; to enable costs to be awarded where an order is made under section 556A of the Crimes Act, 1900; for these and other purposes to amend the Justices Act, 1902, the Crimes Act, 1900, the Evidence Act, 1898, the Coroners Act, 1912, and certain other Acts; and for purposes connected therewith. [Assented to, 23rd November, 1954.]

Justices (Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title
and
citation.

1. (1) This Act may be cited as the "Justices (Amendment) Act, 1954."

(2) The Justices Act, 1902, as amended by subsequent Acts and by this Act, may be cited as the Justices Acts, 1902-1954.

(3) The Evidence Act, 1898, as amended by subsequent Acts and by this Act, may be cited as the Evidence Act, 1898-1954.

(4) The Coroners Act, 1912, as amended by subsequent Acts and by this Act, may be cited as the Coroners Act, 1912-1954.

Amendment
of Act No.
27, 1902.
Sec. 3.
(Interpre-
tation.)

2. The Justices Act, 1902, as amended by subsequent Acts, is amended—

(a) (i) by inserting in section three next after the definition of "Justice" the following new definitions:—

"Prescribed" means prescribed by this Act or the regulations.

"Regulations" means regulations made under this Act.

(ii) by inserting at the end of the same section the following new subsection:—

(2) (a) Any reference in sections thirty-five, thirty-nine, forty, forty-seven, seventy-three, one hundred and fifteen, one hundred and eighteen and one hundred and nineteen of this Act and in the Third Schedule to this Act to "deposition" or "depositions" shall, where the deposition or depositions was or were recorded by any of the means referred to in paragraph (b) of subsection four of section thirty-six or paragraph (b) of subsection four of section seventy of this Act,

Act,

Justices (Amendment).

Act, be read and construed as a reference to a transcript, certified in the manner prescribed, of the deposition or depositions as so recorded.

(b) The reference in section one hundred and twenty-six of this Act to "deposition" where firstly and lastly occurring shall, where the deposition was recorded by any of the means referred to in paragraph (b) of subsection four of section seventy of this Act, be read and construed as a reference to a transcript, certified in the manner prescribed, of the deposition as so recorded.

- (b) by omitting from subsection two of section thirty-five the words "and the depositions taken before them" and by inserting in lieu thereof the words "and, if the Justice or Justices so directs or direct, the depositions taken before him or them";
- (c) by omitting subsection four of section thirty-six and by inserting in lieu thereof the following subsection:—

Sec. 35.
(Where principal witnesses reside at some other place, Justices may order defendant to be taken there.)

Sec. 36.
(How evidence to be taken.)

(4) (a) Subject to paragraph (b) of this subsection, the deposition of every witness shall be taken down in writing in the presence of the defendant and shall be read over either to or by such witness as the Justice or Justices may direct and be signed by him and by the Justice or Justices.

(b) Where the Justice or Justices directs or direct that the deposition of a witness be recorded by such one of the following means as the Justice or Justices may specify, namely, by means of shorthand, stenotype machine or sound-recording apparatus or by such other means as may be prescribed, the deposition of that witness shall not be taken down in the manner specified in paragraph (a) of this subsection but shall be recorded in the presence of the defendant by the means so specified; and,
in

Justices (Amendment).

in such case, it shall not be necessary for the deposition as so recorded to be read or played over to or by the witness or to be signed by the witness and the Justice or Justices or for their signatures to be appended or affixed thereto.

Sec. 41.

(Procedure on hearing of charge of indictable offence.)

(d) (i) by omitting from subparagraph (a) of paragraph (i) of subsection four of section forty-one the words "whatever you say will be taken down in writing" and by inserting in lieu thereof the words "whatever you say will be recorded";

(ii) by inserting at the end of paragraph (ii) of the same subsection the following proviso:—

Provided that where the Justice or Justices has or have directed that any statement made by the defendant in answer is to be recorded by such one of the means referred to in paragraph (b) of subsection four of section thirty-six of this Act as the Justice or Justices may specify, whatever the defendant then says shall be recorded by the means so specified.

(iii) by inserting after the word "statement" in paragraph (iii) of the same subsection the words "if taken down in writing";

(iv) by omitting paragraph (iv) of the same subsection and by inserting in lieu thereof the following paragraph:—

(iv) Such statement—

(a) if taken down in writing, may be given in evidence at the trial of the defendant without further proof unless it be proved that the Justice or Justices by whom it purports to be signed did not in fact sign it;

(b) if in the form of a transcript, certified in the prescribed manner, of the record made pursuant to
the

Justices (Amendment).

the proviso to paragraph (ii) of this subsection, may be given in evidence at the trial of the defendant if it is proved on oath that the record so made is a true record of the statement made by the defendant and that the transcript is a correct transcript of the record so made.

- (e) by omitting subsection four of section seventy and by inserting in lieu thereof the following subsection:—

Sec. 70.
(How evidence to be taken.)

(4) (a) Subject to paragraph (b) of this subsection, the deposition of every witness shall be taken down in writing and shall be read over either to or by such witness as the Justice or Justices may direct and be signed by him and by the Justice or Justices.

(b) Where the Justice or Justices directs or direct that the deposition of a witness be recorded by such one of the following means as the Justice or Justices may specify, namely, by means of shorthand, stenotype machine or sound-recording apparatus or by such other means as may be prescribed, the deposition of that witness shall not be taken down in the manner specified in paragraph (a) of this subsection but shall be recorded by the means so specified; and, in such case, it shall not be necessary for the deposition as so recorded to be read or played over to or by the witness or to be signed by the witness and the Justice or Justices or for their signatures to be appended or affixed thereto.

- (f) (i) by inserting in subsection one of section seventy-three after the word "shall" the words " , on showing sufficient cause to the clerk of the Justice or Justices,";

Sec. 73.
(Person interested in conviction or order may obtain copies thereof and of the information, depositions, &c.)

Justices (Amendment).

Sec. 126.
(Conditions
subject to
which
depositions
may be
read as
evidence
on appeal.)

(ii) by omitting from subsection two of the same section the word "Such" and by inserting in lieu thereof the words "Subject to subsection one of this section, such";

(g) by omitting subparagraph (a) of paragraph (2) of section one hundred and twenty-six and by inserting in lieu thereof the following subparagraph:—

(a) (i) where the deposition was taken down in writing, that the deposition was taken in the presence of the other party; or

(ii) where the deposition is in the form of a transcript of the record made by any of the means referred to in paragraph (b) of subsection four of section seventy of this Act of the evidence of the witness, that the record so made is a true record of that evidence and was made in the presence of the other party and that the transcript is a correct transcript of the record so made; and;

Sec. 154.
(Regula-
tions.)

(h) by inserting next after subsection one of section one hundred and fifty-four the following new subsection:—

(1A) The Governor may make regulations not inconsistent with this Act—

(a) with respect to—

(i) the manner of, and the practice to be observed in relation to, the taking and recording of depositions, evidence and statements in proceedings under this Act and the Coroners Act, 1912-1954, before a Justice or Justices or a Coroner;

(ii)

Justices (Amendment).

- (ii) where any such depositions, evidence or statements are recorded otherwise than in writing, the making of transcripts of the recordings and the manner of certifying such transcripts;
- (b) prescribing any matter permitted to be prescribed by sections thirty-six and seventy of this Act.

3. The Crimes Act, 1900, is amended—

Amendment
of Act
No. 40,
1900.

- (a) by omitting from subsection one of section four hundred and nine the words “purporting to be signed by the Justice or coroner by or before whom it purports to have been taken,” and by inserting in lieu thereof the words “of a witness”;
- (b) by omitting from paragraph (a) of the same subsection the words “who made the deposition”;
- (c) by omitting paragraph (b) of the same subsection and by inserting in lieu thereof the following paragraph:—
 - (b) (i) the deposition, if taken down in writing and purporting to be signed by the Justice or coroner by or before whom it purports to have been taken, was taken in the presence of the accused; or
 - (ii) where the deposition is in the form of a transcript of the record made, by any means, other than writing, authorised by law for the taking of the deposition, of the matter deposed by the witness in proceedings before a Justice or coroner, the record so made is a true record

of

Justices (Amendment).

of the matter so deposed and was made in the presence of the accused and the transcript is a correct transcript of the record so made; and;

(d) by omitting from the proviso to the same subsection the words "no deposition" and by inserting in lieu thereof the words "no such deposition as is referred to in subparagraph (i) of paragraph (b) of this subsection";

(e) by inserting at the end of the same section the following new subsection:—

(4) The reference in subsection one of this section to "deposition" where firstly occurring and any reference in subsections two and three of this section to "deposition" or "depositions" shall, where the deposition or depositions was or were recorded by any means, other than writing, authorised by law for the taking of the deposition or depositions, be read and construed as a reference to a transcript, certified in the manner prescribed by regulations made under the Justices Acts, 1902-1954, of the deposition or depositions as so recorded.

Amendment
of Act
No. 11,
1898,
sec. 55.

4. The Evidence Act, 1898, as amended by subsequent Acts, is amended by inserting at the end of section fifty-five the following new subsection:—

(Cross-examination as to previous statements in writing or deposition.)

(2) Any reference in subsection one of this section to "deposition" shall, where the deposition was recorded by any means, other than writing, authorised by law for the taking of the deposition, be read and construed as a reference to a transcript, certified in the manner prescribed by regulations made under the Justices Acts, 1902-1954, of the deposition as so recorded.

Justices (Amendment).

5. The Coroners Act, 1912, as amended by subsequent Acts, is amended—

Amendment
of Act No.
36, 1912.

- (a) by inserting next after section eight the following new section:—

New
sec. 8A.

8A. (1) Where a coroner holding any inquest or a justice or justices of the peace holding any inquiry touching the death of any person directs or direct that the deposition of a witness before the inquest or inquiry, as the case may be, be recorded by such one of the following means as the coroner, justice or justices of the peace may specify, namely, by means of shorthand, stenotype machine or sound-recording apparatus or by such other means as may be prescribed by regulations made under paragraph (b) of subsection (1A) of section one hundred and fifty-four of the Justices Acts, 1902-1954, the deposition of that witness shall not be taken down in writing but shall be recorded by the means so specified; and, in such case, it shall not be necessary for the witness and for the coroner, justice or justices of the peace, as the case may be, to sign the deposition as so recorded or append or affix their signatures thereto.

Depositions.

(2) Any reference in this Act to “depositions” shall, where the depositions were recorded by any of the means referred to in subsection one of this section, be read and construed as a reference to a transcript, certified in the manner prescribed by regulations made under the Justices Acts, 1902-1954, of the depositions as so recorded.

- (b) by omitting subsection four of section ten and by inserting in lieu thereof the following subsection:—

Sec. 10 (4).
(Copy
depositions
to
Attorney-
General.)

(4) The coroner shall transmit the depositions of the witnesses to the Attorney-General.

6.

Justices (Amendment).

Further amendment of Act No. 27, 1902.

Sec. 81.

(Justice may order costs to be paid by defendant, or, on order of dismissal, by plaintiff.)

6. The Justices Act, 1902, as amended by subsequent Acts, is further amended by inserting at the end of section eighty-one the following new subsection:—

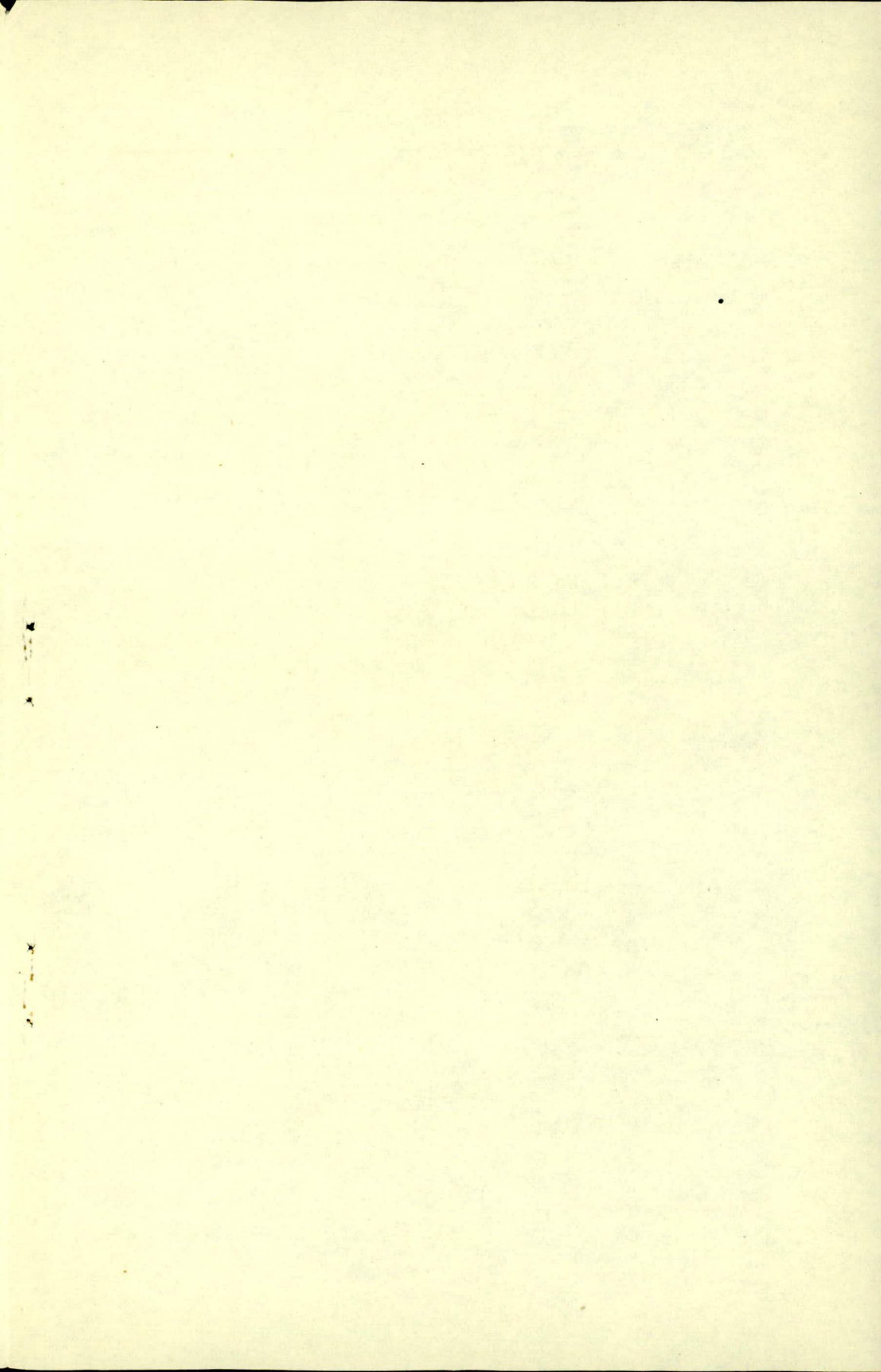
cf. 7 Edw. VII.
c. 17, s. 1 (3).

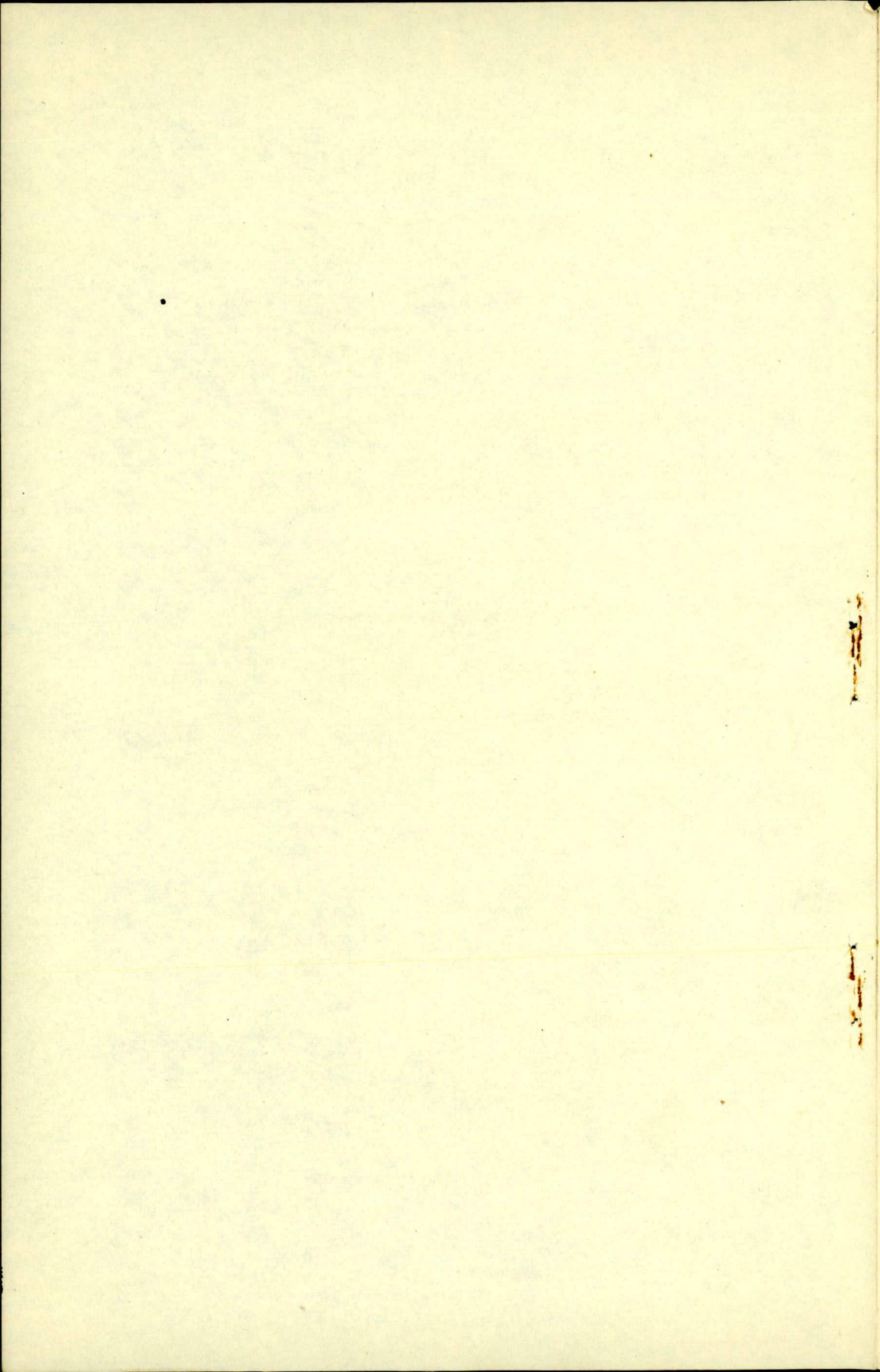
(3) (a) For the purpose of the exercise of the power conferred by subsection one of this section, any order made under subsection one of section 556A of the Crimes Act, 1900, as amended by subsequent Acts, shall have the like effect as a conviction.

(b) The amount allowed for costs under subsection one of this section as extended by this subsection shall be specified in the order made under subsection one of the said section 556A and that order shall be deemed to be an order whereby a sum of money is adjudged to be paid within the meaning of this Act.

BY AUTHORITY:

L. H. PETTIFER, Government Printer, Sydney, 1954.





I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

H. ROBBINS,
Clerk of the Legislative Assembly.

Legislative Assembly Chamber,
Sydney, 16 November, 1954.

New South Wales



ANNO TERTIO

ELIZABETHÆ II REGINÆ

Act No. 32, 1954.

An Act to make further provision in relation to the taking and recording of the depositions of witnesses and other persons in proceedings before a justice or justices of the peace or a coroner; to make further provision in relation to the admissibility in evidence of, and the cross-examination of persons as to, depositions so taken and recorded; to enable costs to be awarded where an order is made under section 556A of the Crimes Act, 1900; for these and other purposes to amend the Justices Act, 1902, the Crimes Act, 1900, the Evidence Act, 1898, the Coroners Act, 1912, and certain other Acts; and for purposes connected therewith. [Assented to, 23rd November, 1954.]

BE

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

G. BOOTH,
Chairman of Committees of the Legislative Assembly.

Justices (Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title
and
citation.

1. (1) This Act may be cited as the "Justices (Amendment) Act, 1954."

(2) The Justices Act, 1902, as amended by subsequent Acts and by this Act, may be cited as the Justices Acts, 1902-1954.

(3) The Evidence Act, 1898, as amended by subsequent Acts and by this Act, may be cited as the Evidence Act, 1898-1954.

(4) The Coroners Act, 1912, as amended by subsequent Acts and by this Act, may be cited as the Coroners Act, 1912-1954.

Amendment
of Act No.
27, 1902.
Sec. 3.
(Interpre-
tation.)

2. The Justices Act, 1902, as amended by subsequent Acts, is amended—

(a) (i) by inserting in section three next after the definition of "Justice" the following new definitions:—

"Prescribed" means prescribed by this Act or the regulations.

"Regulations" means regulations made under this Act.

(ii) by inserting at the end of the same section the following new subsection:—

(2) (a) Any reference in sections thirty-five, thirty-nine, forty, forty-seven, seventy-three, one hundred and fifteen, one hundred and eighteen and one hundred and nineteen of this Act and in the Third Schedule to this Act to "deposition" or "depositions" shall, where the deposition or depositions was or were recorded by any of the means referred to in paragraph (b) of subsection four of section thirty-six or paragraph (b) of subsection four of section seventy of this Act,

Justices (Amendment).

Sec. 126.
(Conditions
subject to
which
depositions
may be
read as
evidence
on appeal.)

(ii) by omitting from subsection two of the same section the word "Such" and by inserting in lieu thereof the words "Subject to subsection one of this section, such";

(g) by omitting subparagraph (a) of paragraph (2) of section one hundred and twenty-six and by inserting in lieu thereof the following subparagraph:—

(a) (i) where the deposition was taken down in writing, that the deposition was taken in the presence of the other party; or

(ii) where the deposition is in the form of a transcript of the record made by any of the means referred to in paragraph (b) of subsection four of section seventy of this Act of the evidence of the witness, that the record so made is a true record of that evidence and was made in the presence of the other party and that the transcript is a correct transcript of the record so made; and;

Sec. 154.
(Regulations.)

(h) by inserting next after subsection one of section one hundred and fifty-four the following new subsection:—

(1A) The Governor may make regulations not inconsistent with this Act—

(a) with respect to—

(i) the manner of, and the practice to be observed in relation to, the taking and recording of depositions, evidence and statements in proceedings under this Act and the Coroners Act, 1912-1954, before a Justice or Justices or a Coroner;

(ii)

Justices (Amendment).

in such case, it shall not be necessary for the deposition as so recorded to be read or played over to or by the witness or to be signed by the witness and the Justice or Justices or for their signatures to be appended or affixed thereto.

Sec. 41.
(Procedure
on hearing
of charge
of
indictable
offence.)

(d) (i) by omitting from subparagraph (a) of paragraph (i) of subsection four of section forty-one the words "whatever you say will be taken down in writing" and by inserting in lieu thereof the words "whatever you say will be recorded";

(ii) by inserting at the end of paragraph (ii) of the same subsection the following proviso:—

Provided that where the Justice or Justices has or have directed that any statement made by the defendant in answer is to be recorded by such one of the means referred to in paragraph (b) of subsection four of section thirty-six of this Act as the Justice or Justices may specify, whatever the defendant then says shall be recorded by the means so specified.

(iii) by inserting after the word "statement" in paragraph (iii) of the same subsection the words "if taken down in writing";

(iv) by omitting paragraph (iv) of the same subsection and by inserting in lieu thereof the following paragraph:—

(iv) Such statement—

(a) if taken down in writing, may be given in evidence at the trial of the defendant without further proof unless it be proved that the Justice or Justices by whom it purports to be signed did not in fact sign it;

(b) if in the form of a transcript, certified in the prescribed manner, of the record made pursuant to the

Justices (Amendment).

Act, be read and construed as a reference to a transcript, certified in the manner prescribed, of the deposition or depositions as so recorded.

(b) The reference in section one hundred and twenty-six of this Act to "deposition" where firstly and lastly occurring shall, where the deposition was recorded by any of the means referred to in paragraph (b) of subsection four of section seventy of this Act, be read and construed as a reference to a transcript, certified in the manner prescribed, of the deposition as so recorded.

- (b) by omitting from subsection two of section thirty-five the words "and the depositions taken before them" and by inserting in lieu thereof the words "and, if the Justice or Justices so directs or direct, the depositions taken before him or them";
- (c) by omitting subsection four of section thirty-six and by inserting in lieu thereof the following subsection:—

Sec. 35.
(Where principal witnesses reside at some other place, Justices may order defendant to be taken there.)

Sec. 36.
(How evidence to be taken.)

(4) (a) Subject to paragraph (b) of this subsection, the deposition of every witness shall be taken down in writing in the presence of the defendant and shall be read over either to or by such witness as the Justice or Justices may direct and be signed by him and by the Justice or Justices.

(b) Where the Justice or Justices directs or direct that the deposition of a witness be recorded by such one of the following means as the Justice or Justices may specify, namely, by means of shorthand, stenotype machine or sound-recording apparatus or by such other means as may be prescribed, the deposition of that witness shall not be taken down in the manner specified in paragraph (a) of this subsection but shall be recorded in the presence of the defendant by the means so specified; and,
in

Justices (Amendment).

the proviso to paragraph (ii) of this subsection, may be given in evidence at the trial of the defendant if it is proved on oath that the record so made is a true record of the statement made by the defendant and that the transcript is a correct transcript of the record so made.

- (c) by omitting subsection four of section seventy and by inserting in lieu thereof the following subsection:—

Sec. 70.
(How
evidence
to be
taken.)

(4) (a) Subject to paragraph (b) of this subsection, the deposition of every witness shall be taken down in writing and shall be read over either to or by such witness as the Justice or Justices may direct and be signed by him and by the Justice or Justices.

(b) Where the Justice or Justices directs or direct that the deposition of a witness be recorded by such one of the following means as the Justice or Justices may specify, namely, by means of shorthand, stenotype machine or sound-recording apparatus or by such other means as may be prescribed, the deposition of that witness shall not be taken down in the manner specified in paragraph (a) of this subsection but shall be recorded by the means so specified; and, in such case, it shall not be necessary for the deposition as so recorded to be read or played over to or by the witness or to be signed by the witness and the Justice or Justices or for their signatures to be appended or affixed thereto.

- (f) (i) by inserting in subsection one of section seventy-three after the word "shall" the words " , on showing sufficient cause to the clerk of the Justice or Justices,";

Sec. 73.
(Person
interested
in conviction
or order
may obtain
copies thereof
and of the
information,
depositions,
&c.)

(ii)

Justices (Amendment).

- (ii) where any such depositions, evidence or statements are recorded otherwise than in writing, the making of transcripts of the recordings and the manner of certifying such transcripts;
- (b) prescribing any matter permitted to be prescribed by sections thirty-six and seventy of this Act.

3. The Crimes Act, 1900, is amended—

Amendment
of Act
No. 40,
1900.

- (a) by omitting from subsection one of section four hundred and nine the words “purporting to be signed by the Justice or coroner by or before whom it purports to have been taken,” and by inserting in lieu thereof the words “of a witness”;
- (b) by omitting from paragraph (a) of the same subsection the words “who made the deposition”;
- (c) by omitting paragraph (b) of the same subsection and by inserting in lieu thereof the following paragraph:—
 - (b) (i) the deposition, if taken down in writing and purporting to be signed by the Justice or coroner by or before whom it purports to have been taken, was taken in the presence of the accused; or
 - (ii) where the deposition is in the form of a transcript of the record made, by any means, other than writing, authorised by law for the taking of the deposition, of the matter deposed by the witness in proceedings before a Justice or coroner, the record so made is a true record
of

Sec. 409.
(Depositions may be read as evidence for prosecution.)

Justices (Amendment).

of the matter so deposed and was made in the presence of the accused and the transcript is a correct transcript of the record so made; and;

- (d) by omitting from the proviso to the same subsection the words "no deposition" and by inserting in lieu thereof the words "no such deposition as is referred to in subparagraph (i) of paragraph (b) of this subsection";
- (e) by inserting at the end of the same section the following new subsection:—

(4) The reference in subsection one of this section to "deposition" where firstly occurring and any reference in subsections two and three of this section to "deposition" or "depositions" shall, where the deposition or depositions was or were recorded by any means, other than writing, authorised by law for the taking of the deposition or depositions, be read and construed as a reference to a transcript, certified in the manner prescribed by regulations made under the Justices Acts, 1902-1954, of the deposition or depositions as so recorded.

Amendment
of Act
No. 11,
1898,
sec. 55.

(Cross-
examina-
tion as to
previous
statements
in writing
or deposi-
tion.)

4. The Evidence Act, 1898, as amended by subsequent Acts, is amended by inserting at the end of section fifty-five the following new subsection:—

(2) Any reference in subsection one of this section to "deposition" shall, where the deposition was recorded by any means, other than writing, authorised by law for the taking of the deposition, be read and construed as a reference to a transcript, certified in the manner prescribed by regulations made under the Justices Acts, 1902-1954, of the deposition as so recorded.

5.

Justices (Amendment).

5. The Coroners Act, 1912, as amended by subsequent Acts, is amended—

Amendment
of Act No.
36, 1912.

- (a) by inserting next after section eight the following new section:—

New
sec. 8A.

8A. (1) Where a coroner holding any inquest or a justice or justices of the peace holding any inquiry touching the death of any person directs or direct that the deposition of a witness before the inquest or inquiry, as the case may be, be recorded by such one of the following means as the coroner, justice or justices of the peace may specify, namely, by means of shorthand, stenotype machine or sound-recording apparatus or by such other means as may be prescribed by regulations made under paragraph (b) of subsection (1A) of section one hundred and fifty-four of the Justices Acts, 1902-1954, the deposition of that witness shall not be taken down in writing but shall be recorded by the means so specified; and, in such case, it shall not be necessary for the witness and for the coroner, justice or justices of the peace, as the case may be, to sign the deposition as so recorded or append or affix their signatures thereto.

Depositions.

(2) Any reference in this Act to “depositions” shall, where the depositions were recorded by any of the means referred to in subsection one of this section, be read and construed as a reference to a transcript, certified in the manner prescribed by regulations made under the Justices Acts, 1902-1954, of the depositions as so recorded.

- (b) by omitting subsection four of section ten and by inserting in lieu thereof the following subsection:—

Sec. 10 (4).
(Copy
depositions
to
Attorney-
General.)

(4) The coroner shall transmit the depositions of the witnesses to the Attorney-General.

6.

Justices (Amendment).

Further amendment of Act No. 27, 1902. Sec. 81.

(Justice may order costs to be paid by defendant, or, on order of dismissal, by plaintiff.)

cf. 7 Edw. VII. c. 17, s.1(3).

6. The Justices Act, 1902, as amended by subsequent Acts, is further amended by inserting at the end of section eighty-one the following new subsection:—

(3) (a) For the purpose of the exercise of the power conferred by subsection one of this section, any order made under subsection one of section 556A of the Crimes Act, 1900, as amended by subsequent Acts, shall have the like effect as a conviction.

(b) The amount allowed for costs under subsection one of this section as extended by this subsection shall be specified in the order made under subsection one of the said section 556A and that order shall be deemed to be an order whereby a sum of money is adjudged to be paid within the meaning of this Act.

In the name and on behalf of Her Majesty I assent to this Act.

J. NORTHCOTT,
Governor.

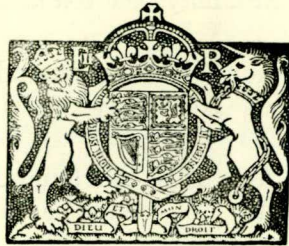
*Government House,
Sydney, 23rd November, 1954.*

This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

H. ROBBINS,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 6 October, 1954.*

New South Wales



ANNO TERTIO

ELIZABETHÆ II REGINÆ

Act No. , 1954.

An Act to make further provision in relation to the taking and recording of the depositions of witnesses and other persons in proceedings before a justice or justices of the peace or a coroner; to make further provision in relation to the admissibility in evidence of and the cross-examination of persons as to depositions so taken and recorded; to enable costs to be awarded where an order is made under section 556A of the Crimes Act, 1900; for these and other purposes to amend the Justices Act, 1902, the Crimes Act, 1900, the Evidence Act, 1898, the Coroners Act, 1912, and certain other Acts; and for purposes connected therewith.

Justices (Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the "Justices (Amendment) Act, 1954." Short title and citation.

(2) The Justices Act, 1902, as amended by subsequent Acts and by this Act, may be cited as the Justices Acts, 1902-1954.

(3) The Evidence Act, 1898, as amended by subsequent Acts and by this Act, may be cited as the Evidence Act, 1898-1954.

(4) The Coroners Act, 1912, as amended by subsequent Acts and by this Act, may be cited as the Coroners Act, 1912-1954.

2. The Justices Act, 1902, as amended by subsequent Acts, is amended— Amendment of Act No. 27, 1902.

(a) (i) by inserting in section three next after the definition of "Justice" the following new definitions:— Sec. 3. (Interpretation.)

"Prescribed" means prescribed by this Act or the regulations.

"Regulations" means regulations made under this Act.

(ii) by inserting at the end of the same section the following new subsection:—

(2) (a) Any reference in sections thirty-five, thirty-nine, forty, forty-seven, seventy-three, one hundred and fifteen, one hundred and eighteen and one hundred and nineteen of this Act and in the Third Schedule to this Act to "deposition" or "depositions" shall, where the deposition or depositions was or were recorded by any of the means referred to in paragraph (b) of subsection four of section thirty-six or paragraph (b) of subsection four of section seventy of this Act,

Justices (Amendment).

Act, be read and construed as a reference to a transcript, certified in the manner prescribed, of the deposition or depositions as so recorded.

5 (b) The reference in section one hundred and twenty-six of this Act to "deposition" where firstly and lastly occurring shall, where the deposition was recorded by any of the means referred to 10 in paragraph (b) of subsection four of section seventy of this Act, be read and construed as a reference to a transcript, certified in the manner prescribed, of the deposition as so recorded.

15 (b) by omitting from subsection two of section thirty-five the words "and the depositions taken before them" and by inserting in lieu thereof the words "and, if the Justice or Justices so directs or direct, the depositions taken before 20 him or them";

Sec. 35.
(Where principal witnesses reside at some other place, Justices may order defendant to be taken there.)

(c) by omitting subsection four of section thirty-six and by inserting in lieu thereof the following subsection:—

Sec. 36.
(How evidence to be taken.)

25 (4) (a) Subject to paragraph (b) of this subsection, the deposition of every witness shall be taken down in writing in the presence of the defendant and shall be read over either to or by such witness as the Justice or Justices may direct and be signed by him and by the Justice or Justices.

30 (b) Where the Justice or Justices directs or direct that the deposition of a witness be recorded by such one of the following means as the Justice or Justices may specify, namely, 35 by means of shorthand, stenotype machine or sound-recording apparatus or by such other means as may be prescribed, the deposition of that witness shall not be taken down in the manner specified in paragraph (a) of this subsection but shall be recorded in the presence of 40 the defendant by the means so specified; and, in

Justices (Amendment).

in such case, it shall not be necessary for the deposition as so recorded to be read or played over to or by the witness or to be signed by the witness and the Justice or Justices or for their signatures to be appended or affixed thereto.

5

(d) (i) by omitting from subparagraph (a) of paragraph (i) of subsection four of section forty-one the words "whatever you say will be taken down in writing" and by inserting in lieu thereof the words "whatever you say will be recorded";

10

(ii) by inserting at the end of paragraph (ii) of the same subsection the following proviso:—

15

Provided that where the Justice or Justices has or have directed that any statement made by the defendant in answer is to be recorded by such one of the means referred to in paragraph (b) of subsection four of section thirty-six of this Act as the Justice or Justices may specify, whatever the defendant then says shall be recorded by the means so specified.

20

(iii) by inserting after the word "statement" in paragraph (iii) of the same subsection the words "if taken down in writing";

25

(iv) by omitting paragraph (iv) of the same subsection and by inserting in lieu thereof the following paragraph:—

30

(iv) Such statement—

(a) if taken down in writing, may be given in evidence at the trial of the defendant without further proof unless it be proved that the Justice or Justices by whom it purports to be signed did not in fact sign it;

35

(b) if in the form of a transcript, certified in the prescribed manner, of the record made pursuant to the

40

Justices (Amendment).

5 the proviso to paragraph (ii) of this subsection, may be given in evidence at the trial of the defendant if it is proved on oath that the record so made is a true record of the statement made by the defendant and that the transcript is a correct transcript of the record so made.

10 (e) by omitting subsection four of section seventy and by inserting in lieu thereof the following subsection:—

Sec. 70.
(How evidence to be taken.)

15 (4) (a) Subject to paragraph (b) of this subsection, the deposition of every witness shall be taken down in writing and shall be read over either to or by such witness as the Justice or Justices may direct and be signed by him and by the Justice or Justices.

20 (b) Where the Justice or Justices directs or direct that the deposition of a witness be recorded by such one of the following means as the Justice or Justices may specify, namely, by means of shorthand, stenotype machine or sound-recording apparatus or by such other
25 means as may be prescribed, the deposition of that witness shall not be taken down in the manner specified in paragraph (a) of this subsection but shall be recorded by the means so specified; and, in such case, it shall not be
30 necessary for the deposition as so recorded to be read or played over to or by the witness or to be signed by the witness and the Justice or Justices or for their signatures to be appended or affixed thereto.

35 (f) (i) by inserting in subsection one of section seventy-three after the word "shall" the words ", on showing sufficient cause to the clerk of the Justice or Justices,";

Sec. 73.
(Person interested in conviction or order may obtain copies thereof and of the information, depositions, &c.)

(ii)

Justices (Amendment).

- (ii) by omitting from subsection two of the same section the word "Such" and by inserting in lieu thereof the words "Subject to subsection one of this section, such";
- 5 (g) by omitting subparagraph (a) of paragraph (2) of section one hundred and twenty-six and by inserting in lieu thereof the following subparagraph:—
- 10 (a) (i) where the deposition was taken down in writing, that the deposition was taken in the presence of the other party; or
- 15 (ii) where the deposition is in the form of a transcript of the record made by any of the means referred to in paragraph (b) of subsection four of section seventy of this Act of the evidence of the witness, that the record so made is a true record of that evidence and was made in the presence of the other party and that the transcript is a correct transcript of the record so made; and;
- 20
- 25 (h) by inserting next after subsection one of section one hundred and fifty-four the following new subsection:—
- (1A) The Governor may make regulations not inconsistent with this Act—
- 30 (a) with respect to—
- 35 (i) the manner of, and the practice to be observed in relation to, the taking and recording of depositions, evidence and statements in proceedings under this Act and the Coroners Act, 1912-1954, before a Justice or Justices or a Coroner;
- (ii)

Sec. 126.
(Conditions subject to which depositions may be read as evidence on appeal.)

Sec. 154.
(Regulations.)

Justices (Amendment).

- 5 (ii) where any such depositions, evidence or statements are recorded otherwise than in writing, the making of transcripts of the recordings and the manner of certifying such transcripts;
- (b) prescribing any matter permitted to be prescribed by sections thirty-six and seventy of this Act.

10 **3.** The Crimes Act, 1900, is amended—

Amendment
of Act
No. 40,
1900.

- 15 (a) by omitting from subsection one of section four hundred and nine the words “purporting to be signed by the Justice or coroner by or before whom it purports to have been taken,” and by inserting in lieu thereof the words “of a witness”;
- (b) by omitting from paragraph (a) of the same subsection the words “who made the deposition”;
- 20 (c) by omitting paragraph (b) of the same subsection and by inserting in lieu thereof the following paragraph:—
 - 25 (b) (i) the deposition, if taken down in writing and purporting to be signed by the Justice or coroner by or before whom it purports to have been taken, was taken in the presence of the accused; or
 - 30 (ii) where the deposition is in the form of a transcript of the record made, by any means, other than writing, authorised by law for the taking of the deposition, of the matter deposited by the witness in proceedings before a Justice or coroner,
 - 35 the record so made is a true record of

Sec. 409.
(Depositions may be read as evidence for prosecution.)

Justices (Amendment).

of the matter so deposed and was made in the presence of the accused and the transcript is a correct transcript of the record so made; and;

5

(d) by omitting from the proviso to the same subsection the words "no deposition" and by inserting in lieu thereof the words "no such deposition as is referred to in subparagraph (i) of paragraph (b) of this subsection";

10

(e) by inserting at the end of the same section the following new subsection:—

(4) The reference in subsection one of this section to "deposition" where firstly occurring and any reference in subsections two and three of this section to "deposition" or "depositions" shall, where the deposition or depositions was or were recorded by any means, other than writing, authorised by law for the taking of the deposition or depositions, be read and construed as a reference to a transcript, certified in the manner prescribed by regulations made under the Justices Acts, 1902-1954, of the deposition or depositions as so recorded.

15

20

25 **4.** The Evidence Act, 1898, as amended by subsequent Acts, is amended by inserting at the end of section fifty-five the following new subsection:—

Amendment of Act No. 11, 1898, sec. 55.

(2) Any reference in subsection one of this section to "deposition" shall, where the deposition was recorded by any means, other than writing, authorised by law for the taking of the deposition, be read and construed as a reference to a transcript, certified in the manner prescribed by regulations made under the Justices Acts, 1902-1954, of the deposition as so recorded.

30

35

(Cross-examination as to previous statements in writing or deposition.)

Justices (Amendment).

5. The Coroners Act, 1912, as amended by subsequent Acts, is amended— Amendment of Act No. 36, 1912.

(a) by inserting next after section eight the following new section:— New sec. 8A.

5 8A. (1) Where a coroner holding any inquest Depositions.
or a justice or justices of the peace holding any
inquiry touching the death of any person directs
or direct that the deposition of a witness before
the inquest or inquiry, as the case may be, be
10 recorded by such one of the following means
as the coroner, justice or justices of the peace
may specify, namely, by means of shorthand,
stenotype machine or sound-recording apparatus
or by such other means as may be prescribed
15 by regulations made under paragraph (b) of
subsection (1A) of section one hundred and fifty-
four of the Justices Acts, 1902-1954, the
deposition of that witness shall not be taken
down in writing but shall be recorded by the
20 means so specified; and, in such case, it shall
not be necessary for the witness and for the
coroner, justice or justices of the peace, as the
case may be, to sign the deposition as so recorded
or append or affix their signatures thereto.

25 (2) Any reference in this Act to "deposi-
tions" shall, where the depositions were
recorded by any of the means referred to in
subsection one of this section, be read and con-
30 strued as a reference to a transcript, certified
in the manner prescribed by regulations made
under the Justices Acts, 1902-1954, of the
depositions as so recorded.

(b) by omitting subsection four of section ten Sec. 10 (4).
and by inserting in lieu thereof the following (Copy depositions to
35 subsection:— Attorney-General.)

(4) The coroner shall transmit the
depositions of the witnesses to the Attorney-
General. **6.**

Justices (Amendment).

6. The Justices Act, 1902, as amended by subsequent Acts, is further amended by inserting at the end of section eighty-one the following new subsection:—

Further amendment of Act No. 27, 1902.

Sec. 81.

(Justice may order costs to be paid by defendant, or, on order of dismissal, by plaintiff.)

5 (3) (a) For the purpose of the exercise of the power conferred by subsection one of this section, any order made under subsection one of section 556A of the Crimes Act, 1900, as amended by subsequent Acts, shall have the like effect as a conviction.

cf. 7 Edw. VII. c. 17, s.1(3).

10 (b) The amount allowed for costs under subsection one of this section as extended by this subsection shall be specified in the order made under subsection one of the said section 556A and that order shall be deemed to be an order whereby a sum of money is adjudged to be paid within the meaning of this Act.

15

No. , 1954.

A BILL

To make further provision in relation to the taking and recording of the depositions of witnesses and other persons in proceedings before a justice or justices of the peace or a coroner ; to make further provision in relation to the admissibility in evidence of and the cross-examination of persons as to, depositions so taken and recorded ; to enable costs to be awarded where an order is made under section 556A of the Crimes Act, 1900 ; for these and other purposes to amend the Justices Act, 1902, the Crimes Act, 1900, the Evidence Act, 1898, the Coroners Act, 1912, and certain other Acts ; and for purposes connected therewith.

[MR. SHEAHAN ;—21 *September*, 1954.]

Justices (Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the "Justices (Amendment) Act, 1954." Short title and citation.

(2) The Justices Act, 1902, as amended by subsequent Acts and by this Act, may be cited as the Justices Acts, 1902-1954.

(3) The Evidence Act, 1898, as amended by subsequent Acts and by this Act, may be cited as the Evidence Act, 1898-1954.

(4) The Coroners Act, 1912, as amended by subsequent Acts and by this Act, may be cited as the Coroners Act, 1912-1954.

2. The Justices Act, 1902, as amended by subsequent Acts, is amended— Amendment of Act No. 27, 1902.

(a) (i) by inserting in section three next after the definition of "Justice" the following new definitions:— Sec. 3. (Interpretation.)

"Prescribed" means prescribed by this Act or the regulations.

"Regulations" means regulations made under this Act.

(ii) by inserting at the end of the same section the following new subsection:—

(2) (a) Any reference in sections thirty-five, thirty-nine, forty, forty-seven, seventy-three, one hundred and fifteen, one hundred and eighteen and one hundred and nineteen of this Act and in the Third Schedule to this Act to "deposition" or "depositions" shall, where the deposition or depositions was or were recorded by any of the means referred to in paragraph (b) of subsection four of section thirty-six or paragraph (b) of subsection four of section seventy of this Act,

Justices (Amendment).

Act, be read and construed as a reference to a transcript, certified in the manner prescribed, of the deposition or depositions as so recorded.

5 (b) The reference in section one hundred and twenty-six of this Act to "deposition" where firstly and lastly occurring shall, where the deposition was recorded by any of the means referred to in paragraph (b) of subsection four of section seventy of this Act, be read and construed as a reference to a transcript, certified in the manner prescribed, of the deposition as so recorded.

10 (b) by omitting from subsection two of section thirty-five the words "and the depositions taken before them" and by inserting in lieu thereof the words "and, if the Justice or Justices so directs or direct, the depositions taken before him or them";

15 Sec. 35.
(Where principal witnesses reside at some other place, Justices may order defendant to be taken there.)

20 (c) by omitting subsection four of section thirty-six and by inserting in lieu thereof the following subsection:—

25 Sec. 36.
(How evidence to be taken.)

(4) (a) Subject to paragraph (b) of this subsection, the deposition of every witness shall be taken down in writing in the presence of the defendant and shall be read over either to or by such witness as the Justice or Justices may direct and be signed by him and by the Justice or Justices.

30 (b) Where the Justice or Justices directs or direct that the deposition of a witness be recorded by such one of the following means as the Justice or Justices may specify, namely, by means of shorthand, stenotype machine or sound-recording apparatus or by such other means as may be prescribed, the deposition of that witness shall not be taken down in the manner specified in paragraph (a) of this subsection but shall be recorded in the presence of the defendant by the means so specified; and,

35 in

40

Justices (Amendment).

in such case, it shall not be necessary for the deposition as so recorded to be read or played over to or by the witness or to be signed by the witness and the Justice or Justices or for their signatures to be appended or affixed thereto.

5 (d) (i) by omitting from subparagraph (a) of paragraph (i) of subsection four of section forty-one the words "whatever you say will be taken down in writing" and by inserting in lieu thereof the words "whatever you say will be recorded";

Sec. 41.
(Procedure on hearing of charge of indictable offence.)

10 (ii) by inserting at the end of paragraph (ii) of the same subsection the following proviso:—

15 Provided that where the Justice or Justices has or have directed that any statement made by the defendant in answer is to be recorded by such one of the means referred to in paragraph (b) of subsection four of section thirty-six of this Act as the Justice or Justices may specify, whatever the defendant then says shall be recorded by the means so specified.

20 (iii) by inserting after the word "statement" in paragraph (iii) of the same subsection the words "if taken down in writing";

25 (iv) by omitting paragraph (iv) of the same subsection and by inserting in lieu thereof the following paragraph:—

30 (iv) Such statement—

(a) if taken down in writing, may be given in evidence at the trial of the defendant without further proof unless it be proved that the Justice or Justices by whom it purports to be signed did not in fact sign it;

35 (b) if in the form of a transcript, certified in the prescribed manner, of the record made pursuant to the

40

Justices (Amendment).

the proviso to paragraph (ii) of this subsection, may be given in evidence at the trial of the defendant if it is proved on oath that the record so made is a true record of the statement made by the defendant and that the transcript is a correct transcript of the record so made.

- 5
- 10 (e) by omitting subsection four of section seventy and by inserting in lieu thereof the following subsection:—

Sec. 70.
(How evidence to be taken.)

- 15 (4) (a) Subject to paragraph (b) of this subsection, the deposition of every witness shall be taken down in writing and shall be read over either to or by such witness as the Justice or Justices may direct and be signed by him and by the Justice or Justices.

- 20 (b) Where the Justice or Justices directs or direct that the deposition of a witness be recorded by such one of the following means as the Justice or Justices may specify, namely, by means of shorthand, stenotype machine or sound-recording apparatus or by such other
- 25 means as may be prescribed, the deposition of that witness shall not be taken down in the manner specified in paragraph (a) of this subsection but shall be recorded by the means so specified; and, in such case, it shall not be
- 30 necessary for the deposition as so recorded to be read or played over to or by the witness or to be signed by the witness and the Justice or Justices or for their signatures to be appended or affixed thereto.

- 35 (f) (i) by inserting in subsection one of section seventy-three after the word "shall" the words " , on showing sufficient cause to the clerk of the Justice or Justices,";

Sec. 73.
(Person interested in conviction or order may obtain copies thereof and of the information, depositions, &c.)

(ii)

Justices (Amendment).

(ii) by omitting from subsection two of the same section the word "Such" and by inserting in lieu thereof the words "Subject to subsection one of this section, such";

5 (g) by omitting subparagraph (a) of paragraph (2) of section one hundred and twenty-six and by inserting in lieu thereof the following subparagraph:—

Sec. 126.
(Conditions subject to which depositions may be read as evidence on appeal.)

10 (a) (i) where the deposition was taken down in writing, that the deposition was taken in the presence of the other party; or

15 (ii) where the deposition is in the form of a transcript of the record made by any of the means referred to in paragraph (b) of subsection four of section seventy of this Act of the evidence of the witness, that the record so made is a true record of that evidence and was made in the presence of the other party and that the transcript is a correct transcript of the record so made; and;

25 (h) by inserting next after subsection one of section one hundred and fifty-four the following new subsection:—

Sec. 154.
(Regulations.)

(1A) The Governor may make regulations not inconsistent with this Act—

30 (a) with respect to—

35 (i) the manner of, and the practice to be observed in relation to, the taking and recording of depositions, evidence and statements in proceedings under this Act and the Coroners Act, 1912-1954, before a Justice or Justices or a Coroner;

(ii)

Justices (Amendment).

- 5 (ii) where any such depositions, evidence or statements are recorded otherwise than in writing, the making of transcripts of the recordings and the manner of certifying such transcripts;
- (b) prescribing any matter permitted to be prescribed by sections thirty-six and seventy of this Act.

10 **3.** The Crimes Act, 1900, is amended—

Amendment
of Act
No. 40,
1900.

- 15 (a) by omitting from subsection one of section four hundred and nine the words “purporting to be signed by the Justice or coroner by or before whom it purports to have been taken,” and by inserting in lieu thereof the words “of a witness”;
- (b) by omitting from paragraph (a) of the same subsection the words “who made the deposition”;
- 20 (c) by omitting paragraph (b) of the same subsection and by inserting in lieu thereof the following paragraph:—
- (b) (i) the deposition, if taken down in writing and purporting to be signed by the Justice or coroner by or before whom it purports to have been taken, was taken in the presence of the accused; or
- 25 (ii) where the deposition is in the form of a transcript of the record made, by any means, other than writing, authorised by law for the taking of the deposition, of the matter deposed by the witness in proceedings before a Justice or coroner, the record so made is a true record
- 30 of
- 35

Justices (Amendment).

of the matter so deposed and was made in the presence of the accused and the transcript is a correct transcript of the record so made; and;

5

(d) by omitting from the proviso to the same subsection the words "no deposition" and by inserting in lieu thereof the words "no such deposition as is referred to in subparagraph (i) of paragraph (b) of this subsection";

10

(e) by inserting at the end of the same section the following new subsection:—

(4) The reference in subsection one of this section to "deposition" where firstly occurring and any reference in subsections two and three of this section to "deposition" or "depositions" shall, where the deposition or depositions was or were recorded by any means, other than writing, authorised by law for the taking of the deposition or depositions, be read and construed as a reference to a transcript, certified in the manner prescribed by regulations made under the Justices Acts, 1902-1954, of the deposition or depositions as so recorded.

15

20

25 **4.** The Evidence Act, 1898, as amended by subsequent Acts, is amended by inserting at the end of section fifty-five the following new subsection:—

Amendment of Act No. 11, 1898, sec. 55.

(2) Any reference in subsection one of this section to "deposition" shall, where the deposition was recorded by any means, other than writing, authorised by law for the taking of the deposition, be read and construed as a reference to a transcript, certified in the manner prescribed by regulations made under the Justices Acts, 1902-1954, of the deposition as so recorded.

30

35

(Cross-examination as to previous statements in writing or deposition.)

Justices (Amendment).

5. The Coroners Act, 1912, as amended by subsequent Acts, is amended— Amendment of Act No. 36, 1912.

(a) by inserting next after section eight the following new section:— New sec. 8A.

5 8A. (1) Where a coroner holding any inquest or a justice or justices of the peace holding any inquiry touching the death of any person directs or direct that the deposition of a witness before the inquest or inquiry, as the case may be, be recorded by such one of the following means as the coroner, justice or justices of the peace may specify, namely, by means of shorthand, stenotype machine or sound-recording apparatus or by such other means as may be prescribed by regulations made under paragraph (b) of subsection (1A) of section one hundred and fifty-four of the Justices Acts, 1902-1954, the deposition of that witness shall not be taken down in writing but shall be recorded by the means so specified; and, in such case, it shall not be necessary for the witness and for the coroner, justice or justices of the peace, as the case may be, to sign the deposition as so recorded or append or affix their signatures thereto. Depositions.

25 (2) Any reference in this Act to “depositions” shall, where the depositions were recorded by any of the means referred to in subsection one of this section, be read and construed as a reference to a transcript, certified in the manner prescribed by regulations made under the Justices Acts, 1902-1954, of the depositions as so recorded.

(b) by omitting subsection four of section ten and by inserting in lieu thereof the following subsection:— Sec. 10 (4). (Copy depositions to Attorney-General.)

35 (4) The coroner shall transmit the depositions of the witnesses to the Attorney-General. **6.**

Justices (Amendment).

6. The Justices Act, 1902, as amended by subsequent Acts, is further amended by inserting at the end of section eighty-one the following new subsection:—

Further amendment of Act No. 27, 1902.

Sec. 81.
(Justice may order costs to be paid by defendant, or, on order of dismissal, by plaintiff.)

5 (3) (a) For the purpose of the exercise of the power conferred by subsection one of this section, any order made under subsection one of section 556A of the Crimes Act, 1900, as amended by subsequent Acts, shall have the like effect as a conviction.

cf. 7 Edw. VII. c. 17, s.1(3).

10 (b) The amount allowed for costs under subsection one of this section as extended by this subsection shall be specified in the order made under subsection one of the said section 556A and that order shall be deemed to be an order whereby a sum of money is adjudged to be paid within the meaning
15 of this Act.

JUSTICES (AMENDMENT) BILL, 1954.

EXPLANATORY NOTE.

THE objects of this Bill are—

- (a) to enable the depositions of witnesses in committal and summary proceedings before justices and at coroners' inquests and magisterial enquiries to be recorded, if the justices or coroner so direct or directs, by such one of the following means as the justices or coroner may specify, namely, by means of shorthand, stenotype machine or sound-recording apparatus or by such other means as may be prescribed;
- (b) to provide that certified transcripts of depositions as so recorded may be read as evidence—
 - (i) on an appeal to quarter sessions from a conviction or order of a justice or justices if the other party consents or if certain matters are proved on oath (s. 126 of the Justices Act, 1902);
 - (ii) at the trial of an accused if certain matters are proved on oath (s. 409 of the Crimes Act, 1900);
- (c) to provide that a witness may be cross-examined as to a certified transcript of a deposition as so recorded (s. 55 of the Evidence Act, 1898);
- (d) to provide that where an order is made under s. 556A (1) of the Crimes Act, 1900, costs may be awarded.

1911

Department of the Interior

General Land Office

Washington, D. C.

Dear Sir:

I have the honor to acknowledge the receipt of your letter of the 10th inst.

in relation to the application for a patent for an improvement in a

method of measuring the area of irregularly shaped land.

The same has been referred to the proper authorities for their consideration.

Very respectfully,
John W. Foster, Commissioner

U. S. DEPARTMENT OF THE INTERIOR

GENERAL LAND OFFICE

PROOF

No. , 1954.

A BILL

To make further provision in relation to the taking and recording of the depositions of witnesses and other persons in proceedings before a justice or justices of the peace or a coroner; to make further provision in relation to the admissibility in evidence of, and the cross-examination of persons as to depositions so taken and recorded; to enable costs to be awarded where an order is made under section 556A of the Crimes Act, 1900; for these and other purposes to amend the Justices Act, 1902, the Crimes Act, 1900, the Evidence Act, 1898, the Coroners Act, 1912, and certain other Acts; and for purposes connected therewith.

[MR. SHEAHAN;—21 September, 1954.]

Justices (Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the "Justices (Amendment) Act, 1954." Short title and citation.

(2) The Justices Act, 1902, as amended by subsequent Acts and by this Act, may be cited as the Justices Acts, 1902-1954.

(3) The Evidence Act, 1898, as amended by subsequent Acts and by this Act, may be cited as the Evidence Act, 1898-1954.

(4) The Coroners Act, 1912, as amended by subsequent Acts and by this Act, may be cited as the Coroners Act, 1912-1954.

2. The Justices Act, 1902, as amended by subsequent Acts, is amended— Amendment of Act No. 27, 1902.

(a) (i) by inserting in section three next after the definition of "Justice" the following new definitions:— Sec. 3. (Interpretation.)

"Prescribed" means prescribed by this Act or the regulations.

"Regulations" means regulations made under this Act.

(ii) by inserting at the end of the same section the following new subsection:—

(2) (a) Any reference in sections thirty-five, thirty-nine, forty, forty-seven, seventy-three, one hundred and fifteen, one hundred and eighteen and one hundred and nineteen of this Act and in the Third Schedule to this Act to "deposition" or "depositions" shall, where the deposition or depositions was or were recorded by any of the means referred to in paragraph (b) of subsection four of section thirty-six or paragraph (b) of subsection four of section seventy of this Act,

Justices (Amendment).

Act, be read and construed as a reference to a transcript, certified in the manner prescribed, of the deposition or depositions as so recorded.

5 (b) The reference in section one hundred and twenty-six of this Act to "deposition" where firstly and lastly occurring shall, where the deposition was recorded by any of the means referred to in paragraph (b) of subsection four of section seventy of this Act, be read and construed as a reference to a transcript, certified in the manner prescribed, of the deposition as so recorded.

10 (b) by omitting from subsection two of section thirty-five the words "and the depositions taken before them" and by inserting in lieu thereof the words "and, if the Justice or Justices so directs or direct, the depositions taken before him or them";

Sec. 35.
(Where principal witnesses reside at some other place, Justices may order defendant to be taken there.)

20 (c) by omitting subsection four of section thirty-six and by inserting in lieu thereof the following subsection:—

Sec. 36.
(How evidence to be taken.)

25 (4) (a) Subject to paragraph (b) of this subsection, the deposition of every witness shall be taken down in writing in the presence of the defendant and shall be read over either to or by such witness as the Justice or Justices may direct and be signed by him and by the Justice or Justices.

30 (b) Where the Justice or Justices directs or direct that the deposition of a witness be recorded by such one of the following means as the Justice or Justices may specify, namely, by means of shorthand, stenotype machine or sound-recording apparatus or by such other means as may be prescribed, the deposition of that witness shall not be taken down in the manner specified in paragraph (a) of this subsection but shall be recorded in the presence of the defendant by the means so specified; and,
in

35

40

Justices (Amendment).

in such case, it shall not be necessary for the deposition as so recorded to be read or played over to or by the witness or to be signed by the witness and the Justice or Justices or for their signatures to be appended or affixed thereto.

5

(d) (i) by omitting from subparagraph (a) of paragraph (i) of subsection four of section forty-one the words "whatever you say will be taken down in writing" and by inserting in lieu thereof the words "whatever you say will be recorded";

10

(ii) by inserting at the end of paragraph (ii) of the same subsection the following proviso:—

15

Provided that where the Justice or Justices has or have directed that any statement made by the defendant in answer is to be recorded by such one of the means referred to in paragraph (b) of subsection four of section thirty-six of this Act as the Justice or Justices may specify, whatever the defendant then says shall be recorded by the means so specified.

20

(iii) by inserting after the word "statement" in paragraph (iii) of the same subsection the words "if taken down in writing";

25

(iv) by omitting paragraph (iv) of the same subsection and by inserting in lieu thereof the following paragraph:—

30

(iv) Such statement—

(a) if taken down in writing, may be given in evidence at the trial of the defendant without further proof unless it be proved that the Justice or Justices by whom it purports to be signed did not in fact sign it;

35

(b) if in the form of a transcript, certified in the prescribed manner, of the record made pursuant to

40

the

Justices (Amendment).

the proviso to paragraph (ii) of this subsection, may be given in evidence at the trial of the defendant if it is proved on oath that the record so made is a true record of the statement made by the defendant and that the transcript is a correct transcript of the record so made.

10 (e) by omitting subsection four of section seventy and by inserting in lieu thereof the following subsection:—

Sec. 70.
(How evidence to be taken.)

15 (4) (a) Subject to paragraph (b) of this subsection, the deposition of every witness shall be taken down in writing and shall be read over either to or by such witness as the Justice or Justices may direct and be signed by him and by the Justice or Justices.

20 (b) Where the Justice or Justices directs or direct that the deposition of a witness be recorded by such one of the following means as the Justice or Justices may specify, namely, by means of shorthand, stenotype machine or sound-recording apparatus or by such other
25 means as may be prescribed, the deposition of that witness shall not be taken down in the manner specified in paragraph (a) of this subsection but shall be recorded by the means so
30 specified; and, in such case, it shall not be necessary for the deposition as so recorded to be read or played over to or by the witness or to be signed by the witness and the Justice or Justices or for their signatures to be appended or affixed thereto.

35 (f) (i) by inserting in subsection one of section seventy-three after the word "shall" the words ", on showing sufficient cause to the clerk of the Justice or Justices,";

Sec. 73.
(Person interested in conviction or order may obtain copies thereof and of the information, depositions, &c.)

(ii)

Justices (Amendment).

(ii) by omitting from subsection two of the same section the word "Such" and by inserting in lieu thereof the words "Subject to subsection one of this section, such";

5 (g) by omitting subparagraph (a) of paragraph (2) of section one hundred and twenty-six and by inserting in lieu thereof the following subparagraph:—

Sec. 126.
(Conditions subject to which depositions may be read as evidence on appeal.)

10 (a) (i) where the deposition was taken down in writing, that the deposition was taken in the presence of the other party; or

15 (ii) where the deposition is in the form of a transcript of the record made by any of the means referred to in paragraph (b) of subsection four of section seventy of this Act of the evidence of the witness, that the record so made is a true record of that evidence and was made in the presence of the other party and that the transcript is a correct transcript of the record so made; and;

20
25 (h) by inserting next after subsection one of section one hundred and fifty-four the following new subsection:—

Sec. 154.
(Regulations.)

(1A) The Governor may make regulations not inconsistent with this Act—

30 (a) with respect to—

35 (i) the manner of, and the practice to be observed in relation to, the taking and recording of depositions, evidence and statements in proceedings under this Act and the Coroners Act, 1912-1954, before a Justice or Justices or a Coroner;

(ii)

Justices (Amendment).

- 5 (ii) where any such depositions, evidence or statements are recorded otherwise than in writing, the making of transcripts of the recordings and the manner of certifying such transcripts;
- (b) prescribing any matter permitted to be prescribed by sections thirty-six and seventy of this Act.

10 **3.** The Crimes Act, 1900, is amended—

Amendment
of Act
No. 40,
1900.

- (a) by omitting from subsection one of section four hundred and nine the words “purporting to be signed by the Justice or coroner by or before whom it purports to have been taken,” and by inserting in lieu thereof the words “of a witness”;
- 15 (b) by omitting from paragraph (a) of the same subsection the words “who made the deposition”;
- 20 (c) by omitting paragraph (b) of the same subsection and by inserting in lieu thereof the following paragraph:—
- (b) (i) the deposition, if taken down in writing and purporting to be signed by the Justice or coroner by or before whom it purports to have been taken, was taken in the presence of the accused; or
- 25 (ii) where the deposition is in the form of a transcript of the record made, by any means, other than writing, authorised by law for the taking of the deposition, of the matter deposed by the witness in proceedings before a Justice or coroner,
- 30 the record so made is a true record of
- 35

Justices (Amendment).

of the matter so deposed and was made in the presence of the accused and the transcript is a correct transcript of the record so made; and;

5

(d) by omitting from the proviso to the same subsection the words "no deposition" and by inserting in lieu thereof the words "no such deposition as is referred to in subparagraph (i) of paragraph (b) of this subsection";

10

(e) by inserting at the end of the same section the following new subsection:—

(4) The reference in subsection one of this section to "deposition" where firstly occurring and any reference in subsections two and three of this section to "deposition" or "depositions" shall, where the deposition or depositions was or were recorded by any means, other than writing, authorised by law for the taking of the deposition or depositions, be read and construed as a reference to a transcript, certified in the manner prescribed by regulations made under the Justices Acts, 1902-1954, of the deposition or depositions as so recorded.

15

20

25 **4.** The Evidence Act, 1898, as amended by subsequent Acts, is amended by inserting at the end of section fifty-five the following new subsection:—

Amendment of Act No. 11, 1898, sec. 55.

(2) Any reference in subsection one of this section to "deposition" shall, where the deposition was recorded by any means, other than writing, authorised by law for the taking of the deposition, be read and construed as a reference to a transcript, certified in the manner prescribed by regulations made under the Justices Acts, 1902-1954, of the deposition as so recorded.

30

35

(Cross-examination as to previous statements in writing or deposition.)

Justices (Amendment).

5. The Coroners Act, 1912, as amended by subsequent Acts, is amended—

Amendment of Act No. 36, 1912.

(a) by inserting next after section eight the following new section:—

New sec. 8A.

5

10

15

20

25

30

35

8A. (1) Where a coroner holding any inquest or a justice or justices of the peace holding any inquiry touching the death of any person directs or direct that the deposition of a witness before the inquest or inquiry, as the case may be, be recorded by such one of the following means as the coroner, justice or justices of the peace may specify, namely, by means of shorthand, stenotype machine or sound-recording apparatus or by such other means as may be prescribed by regulations made under paragraph (b) of subsection (1A) of section one hundred and fifty-four of the Justices Acts, 1902-1954, the deposition of that witness shall not be taken down in writing but shall be recorded by the means so specified; and, in such case, it shall not be necessary for the witness and for the coroner, justice or justices of the peace, as the case may be, to sign the deposition as so recorded or append or affix their signatures thereto.

Depositions.

(2) Any reference in this Act to "depositions" shall, where the depositions were recorded by any of the means referred to in subsection one of this section, be read and construed as a reference to a transcript, certified in the manner prescribed by regulations made under the Justices Acts, 1902-1954, of the depositions as so recorded.

(b) by omitting subsection four of section ten and by inserting in lieu thereof the following subsection:—

Sec. 10 (4). (Copy depositions to Attorney-General.)

(4) The coroner shall transmit the depositions of the witnesses to the Attorney-General.

6.

Justices (Amendment).

6. The Justices Act, 1902, as amended by subsequent Acts, is further amended by inserting at the end of section eighty-one the following new subsection:—

Further amendment of Act No. 27, 1902.

Sec. 81.

(Justice may order costs to be paid by defendant, or, on order of dismissal, by plaintiff.)

5 (3) (a) For the purpose of the exercise of the power conferred by subsection one of this section, any order made under subsection one of section 556A of the Crimes Act, 1900, as amended by subsequent Acts, shall have the like effect as a conviction.

cf. 7 Edw. VII. c. 17, s.1(3).

10 (b) The amount allowed for costs under subsection one of this section as extended by this subsection shall be specified in the order made under subsection one of the said section 556A and that order shall be deemed to be an order whereby a sum of money is adjudged to be paid within the meaning
15 of this Act.