



Municipal Corporations Act 1882

1882 CHAPTER 50

PART VIII

ADMINISTRATION OF JUSTICE.

County Justices.

154 Jurisdiction of county justices in borough.

- (1) Where a borough has not a separate court of quarter sessions, the justices of the county in which the borough is situate shall exercise the jurisdiction of justices in and for the borough as fully as they can or ought in and for the county.
- (2) No part of a borough having a separate court of quarter sessions shall be within the jurisdiction, exerciseable out of quarter sessions, of the justices of a county, where the borough was exempt therefrom before the passing of the Municipal Corporations Act, 1835.

Borough Justices.

155 Mayor and last mayor to be borough justices.

- (1) The mayor shall, by virtue of his office, be a justice for the borough, and shall, unless disqualified to be mayor, continue to be such a justice during the year next after he ceases to be mayor.
- (2) The mayor shall have precedence over all other justices acting in and for the borough, and be entitled to take the chair at all meetings of justices held in the borough at which he is present by virtue of his office of mayor; except that he shall not by virtue of this section have precedence over the justices acting in and for the county in which the borough or any part thereof is situate, unless when acting in relation to the business of the borough, or over any stipendiary magistrate engaged in administering justice.

156 Separate commission of peace.

It shall be lawful for the Queen, on the petition of the council of a borough, to grant to the borough a separate commission of the peace

157 Qualification of borough justice.

- (1) It shall be lawful for the Queen, from time to time, to assign to any persons Her Majesty's commission to act as justices in and for each borough having a separate commission of the peace.
- (2) A justice for a borough shall not be capable of acting as such until he has taken the oaths required to be taken by justices, except the oath as to qualification by estate, and made before the mayor or two other members of the council a declaration as in the Eighth Schedule.
- (3) He must, while acting as such, reside in or within seven miles of the borough, or occupy a house, warehouse, or other property in the borough.
- (4) He need not be a burgess or have such qualification by estate as is required for a justice of a county.

158 Jurisdiction of borough justices.

- (1) A justice for a borough shall, with respect to offences committed and matters arising within the borough, have the same jurisdiction and authority as a justice for a county has under any local or general Act with respect to offences committed and matters arising within the county ; except that he shall not, by virtue of his being a justice for the borough, act as a justice at any court of gaol delivery or quarter sessions, or in making or levying any county or borough rate.
- (2) A justice shall not be disabled from acting in the execution of this Act by reason of his being liable to the borough rate.

159 Clerk to borough justices.

- (1) The justices for a borough shall from time to time appoint a fit person to be their clerk, to be removeable at their pleasure.
- (2) They shall not appoint or continue as their clerk an alderman or councillor of the borough, or the clerk of the peace of the borough, or of the county in which the borough is situate, or the partner of any such clerk of the peace.
- (3) The clerk to the justices shall not, by himself or his partner or otherwise, be directly or indirectly employed or interested in the prosecution of any offender committed for trial by those justices, or any of them, at any court of gaol delivery or quarter sessions.
- (4) If any person acts in contravention of the last foregoing provision of this section, he shall for every offence be liable to a fine not exceeding one hundred pounds, recoverable by action.
- (5) One moiety of any fine so recovered shall, with costs, be paid to the person bringing the action to recover it.
- (6) Nothing in this Act shall prevent the justices for a borough from re-appointing as their clerk any person being clerk of the peace of the borough or of the county in which the

borough is situate, or partner of any such clerk of the peace, if the person re-appointed was, on the sixth of August one thousand eight hundred and sixty-one, or has not ceased to be at the time of re-appointment, the clerk of those justices.

160 Justices room.

- (1) The council of a borough having a separate commission of the peace shall provide and furnish a suitable justices room, with offices, for the business of the borough justices.
- (2) No room in a house licensed for the sale of intoxicating liquors may be used for this purpose.

Stipendiary Magistrate.

161 Appointment of stipendiary magistrate.

- (1) If the council desire the appointment of a stipendiary magistrate for the borough, they may present a petition for the appointment to the Secretary of State, and thereupon it shall be lawful for the Queen to appoint to that office a barrister of seven years standing.
- (2) He shall hold office during Her Majesty's pleasure.
- (3) He shall, by virtue of his office, be a justice for the borough.
- (4) There shall be paid to him such yearly salary, not exceeding, except with the consent of the council that mentioned in the petition, as Her Majesty from time to time directs.
- (5) It shall be paid by four equal quarterly payments, and in the same proportion up to the time of his death or ceasing to act.
- (6) On a vacancy, a new appointment shall not be made until the council again make application as before the first appointment.
- (7) More than one stipendiary magistrate may be appointed for a borough.

Borough Quarter Sessions: Recorder: Clerk of the Peace.

162 Grant of separate court of quarter sessions.

- (1) It shall be lawful for the Queen, on the petition to Her Majesty in Council of the council of a borough, to grant that a separate court of quarter sessions be hold en in and for the borough.
- (2) The petition shall set forth the grounds of the application and the salary which the council are willing to pay to the recorder.
- (3) The grant may be made on and subject to such terms and conditions, if any, as to Her Majesty in Council seem fit.
- (4) Within ten days after receipt of the grant the council shall send a copy thereof, sealed with the corporate seal, to the clerk of the peace of the county, or each county if more than one, in which the borough or any part thereof is situate.

163 The recorder.

- (1) It shall be lawful for the Queen from time to time to appoint for a borough having a separate court of quarter sessions a barrister of five years standing to be recorder of the borough.
- (2) He shall hold office during good behaviour.
- (3) He shall, by virtue of his office, be a justice for the borough.
- (4) He shall not act as recorder, or as a justice, until he has taken the oaths required to be taken by a borough justice, and made before the mayor or two other members of the council a declaration as in the Eighth Schedule.
- (5) He shall have precedence in all places within the borough next after the mayor.
- (6) He shall not, during his office, be eligible to serve in Parliament for the borough, or be an alderman, councillor, or stipendiary magistrate of the borough; but he may be appointed revising barrister for the borough, and shall be eligible to serve in Parliament except for the borough.
- (7) There shall be paid to him such yearly salary, not exceeding that stated in the petition on which the grant of a separate court of quarter sessions was made, as Her Majesty directs ; but the same may at any time be increased by resolution of the Council, approved by the Secretary of State, without the resignation and re-appointment of the recorder being necessary.
- (8) A person may be appointed recorder of two or more boroughs conjointly.

164 The clerk of the peace.

- (1) The council of a borough having a separate court of quarter sessions shall from time to time appoint a fit person to be the clerk of the peace for the borough.
- (2) The clerk of the peace shall hold office during good behaviour.
- (3) The clerk of the peace may from time to time, by writing signed by him, appoint a fit person to act as deputy for him, in case of his illness, incapacity, or absence.
- (4) The appointment of the deputy shall be signified in writing, signed by the clerk of the peace, to the council, and shall be recorded in their minutes.
- (5) Where a table of the fees to be taken by the clerk of the peace has been made by the council and confirmed by the Secretary of State, and is for the time being in force, the clerk of the peace, if paid by fees, may take the fees to which he appears by that table to be entitled.
- (6) The council may from time to time make a new table of the fees to be taken by the clerk of the peace, but shall submit every such table to the Secretary of State for confirmation, and he may confirm and allow the same, either as submitted, or with such alterations, additions, or abatements as he thinks proper, and any such table shall be of no validity until it is so confirmed.

165 Recorder to hold court of quarter sessions.

- (1) The recorder shall hold, once in every quarter of a year, or oftener, if and as he thinks fit, or the Secretary of State directs, a court of quarter sessions in and for the borough.

- (2) He shall sit as sole judge of the court.
- (3) The court shall be a court of record, and shall have cognisance of all crimes, offences, and matters cognisable by courts of quarter sessions for counties in England; and the recorder shall, notwithstanding his being sole judge, have power to do all things necessary for exercising that jurisdiction as fully as those courts.
- (4) But the recorder shall not, by virtue of his office, have power
 - (a) To allow, apportion, make, or levy any borough rate; or
 - (b) Subject to the provisions of this Act respecting appeals from a rate, to do any act in relation to the allowance, apportionment, making, or levying of any rate whatsoever ; or
 - (c) To grant any licence or authority to any person to keep an inn, alehouse, or victualling house to sell exciseable liquors by retail; or
 - (d) To exercise any power by this Act specially vested in the council.

166 Power to appoint deputy recorder.

- (1) The recorder may, in case of sickness or unavoidable absence, appoint, by writing signed by him, a barrister of five years standing to act as deputy recorder at the quarter sessions then next ensuing or then being held, and not longer or otherwise.
- (2) But the sessions shall not be illegal, nor shall the acts of a deputy recorder be invalid, by reason of the cause of the absence of the recorder not being unavoidable.

167 Powers of mayor in absence of recorder and deputy recorder.

- (1) In the absence of the recorder and deputy recorder, the mayor shall, at the times for the holding of the court of quarter sessions, open the court, and adjourn the holding thereof, and respite all recognisances conditioned for appearing thereat, until such day as he then and there, and so from time to time, causes to be proclaimed.
- (2) But nothing in this section shall authorize the mayor to sit as a judge of the court for the trial of offenders, or, save as aforesaid, to do any other act in the character of a judge of the court.

168 Power for recorder to form a second court.

- (1) If at any time it appears to the recorder that the quarter sessions are likely to last more than three days, including the day of assembling, he may in his discretion, but subject to the provisions of this section, order a second court to be formed, and appoint by writing signed by him a barrister of five years standing to preside therein, and try such felonies and misdemeanours as shall be referred to him therein.
- (2) The barrister so appointed shall be styled assistant recorder, and shall have and exercise the same powers, subject to the same regulations (save as regards the making of a declaration as in the Eighth Schedule) as the recorder ; and the proceedings had by and before the assistant recorder shall be as effectual as if had by or before the recorder, and shall be enrolled and recorded accordingly.
- (3) But the assistant recorder shall not have any power or jurisdiction except while the recorder is sitting in quarter sessions ; save that the assistant recorder may finish any case in which the prisoner has pleaded, and in the trial whereof the assistant recorder

is actually engaged at the time when the recorder ceases to sit, and may sentence any prisoner tried before him, but not then sentenced.

- (4) If at any time during the sitting of the second court the recorder is of opinion that it is no longer required, he may direct the assistant recorder at a proper opportunity to adjourn it.
- (5) Where a second court is so formed, the clerk of the peace shall, on the request of the recorder, appoint an assistant, and the recorder shall appoint an additional crier for the second court.
- (6) The recorder shall not exercise the powers given by this section unless—
 - (a) It has been before each quarter sessions certified to him in writing signed by the mayor or two aldermen or the town clerk that the council have resolved that it will be expedient that those powers be exercised ; and
 - (b) The name of the barrister to be appointed has at some previous time been approved by the Secretary of State as that of a fit person to be from time to time so appointed.
- (7) Where a resolution of the council is so certified, the resolution and certificate shall, if the resolution so provides, continue in force during twelve months from the date of the resolution, and during such continuance no fresh resolution or certificate shall be necessary.
- (8) An assistant recorder, assistant clerk of the peace, and additional crier shall have remuneration as appearing by the Fourth and Fifth Schedules.
- (9) The powers given to the recorder by this section may be exercised by the deputy recorder.
- (10) Appointments made and certificates given under this section shall not be subject to any stamp duty or other tax.

169 Liability of borough having quarter sessions for prosecutors expenses.

A municipal corporation of a borough having a separate court of quarter sessions shall be liable to pay the costs and expenses attending the prosecution of any felony committed or supposed to have been committed in the borough, and of any other offence committed or supposed to have been committed in the borough the costs and expenses attending the prosecution whereof are by law payable as in the case of a felony. The amount of those costs and expenses shall be ascertained as directed by law, and the order of the court for the payment thereof shall be directed to the treasurer of the borough.

Sheriff.

170 Appointment of sheriff in counties of cities and counties of towns.

- (1) The council of every borough being a county of itself, and of the city of Oxford, shall on the ninth of November in every year appoint a fit person to execute the office of sheriff.
- (2) The appointment shall be made at the quarterly meeting of the council immediately after the election of the mayor.

- (3) The sheriff shall hold office until the appointment of his successor.
- (4) He shall have the same duties and powers as" the sheriff or the person filling the office of sheriff in the respective borough or city would have had if this Act had not been passed.

Coroner.

171 Appointment, fees, &c. of borough coroner in boroughs having separate quarter sessions.

- (1) The council of a borough having a separate court of quarter sessions shall, within ten days next after receipt of the grant thereof by the council, and thenceforward from time to time, appoint a fit person, not an alderman or councillor of the borough, to be coroner of the borough; and thereafter no person other than the coroner so appointed shall take in the borough any inquisition belonging to the office of coroner.
- (2) The coroner shall hold office during good behaviour.
- (3) A vacancy in the office shall be filled up within ten days after it occurs.
- (4) The coroner shall have, by order of the recorder, remuneration as appearing in the Fourth and Fifth Schedules.

172 Power of borough coroner to appoint a deputy.

- (1) In case of illness or unavoidable absence, the coroner shall appoint by writing signed by him a fit person, being a barrister or solicitor, and not an alderman or councillor of the borough, to act for him as deputy coroner during his illness or unavoidable absence, but not longer or otherwise.
- (2) The mayor or two justices for the borough shall on each occasion certify by writing signed by him or them the necessity for the appointment of a deputy coroner. This certificate shall state the cause of absence of the coroner, and shall be openly read to every inquest jury summoned by the deputy coroner.

173 Returns by borough coroners.

On or before the first of February in every year the coroner shall send to the Secretary of State a return in writing, in such form as the Secretary of State directs, of the particulars of each case in which the coroner or his deputy was called upon to hold an inquest during the year ending on the then last thirty-first of December.

174 Acting of county coroner in borough.

- (1) Where a borough has not a separate court of quarter sessions no person other than the coroner for the county or district in which the borough is situate shall take in the borough any inquisition belonging to the office of coroner.
- (2) That coroner shall, for every inquisition duly taken by him within the borough, be entitled to such rateable fees and salary as would be allowed and due to him, and to be allowed and paid in like manner, as for any other inquisition taken by him within the county or district.

Borough Civil Court.

175 Judge of borough civil court where there is a recorder.

- (1) The recorder, if there is one, shall continue to be the judge of the borough civil court, except in the following cases, that is to say, where the court is regulated by a local Act of Parliament, or where a barrister of five years standing acted at the passing of the Municipal Corporations Act, 1835, as judge or assessor of the court.
- (2) The recorder, if judge, may, in case of his illness or unavoidable absence, appoint by writing signed by him a barrister of five years standing to act for him as deputy judge of the court at the court or courts then next to be holden, or then being holden, and not longer or otherwise.
- (3) The recorder on every occasion of his appointing a deputy judge shall forthwith send to the Secretary of State a statement of his reason for so doing.
- (4) A court shall not be illegal, nor shall the acts of the deputy judge be invalid, by reason of the absence of the recorder not being unavoidable.
- (5) The recorder, where judge, and the deputy judge, shall have such remuneration as the council fix by byelaw.
- (6) Where the recorder is judge, the court may in his absence be holden for all purposes within the competency of the court, except the trial of issues of fact or of law, before any person, being a barrister of five years standing or a solicitor of five years practice, from time to time appointed for that purpose by the recorder by writing signed by him.
- (7) Where the recorder or his deputy is judge, all orders, affidavits, and matters, except the trial of issues in law or in fact, relating to the business of the court, if not regulated by a local Act, may be made, sworn, or done in or out of court in the absence of the recorder and his deputy by or before the registrar or such other person, being a barrister of five years standing, or a solicitor of five years practice, as the recorder appoints by writing signed by him.

176 Judge of borough civil court where there is no recorder.

Where there is a borough civil court, but no recorder, such officer of the borough as by the charter constituting the court, or by custom, is the judge of the court, shall continue to be and act as such judge ; and the council, whether the court is regulated by a local Act or not, shall have power for that purpose to appoint the necessary officer.

177 Tenure of judge.

Every judge or assessor of a borough civil court, other than the mayor, shall hold his office during good behaviour.

178 Registrar and other officers and fees.

- (1) Except where the town clerk acts as registrar, the council shall from time to time appoint a registrar of the borough civil court.
- (2) The council shall from time to time appoint other requisite officers and servants of the court.

- (3) The fees to be taken by the registrar and other officers of the court shall be from time to time fixed by the council, subject to the approval of the Secretary of State.
- (4) If and as far as the fees are not so fixed, they shall be those usually taken before the passing of the Municipal Corporations Act, 1835.

179 Solicitors.

- (1) The registrar of a borough civil court, or any other officer of the court, shall not himself, or by any partner or clerk, practise as a solicitor or attorney, in the court; nor shall any partner or clerk of the registrar act as agent for any other solicitor or attorney in the court.
- (2) Unless so disqualified, every solicitor of the Supreme Court of Judicature may practise as solicitor in the court.

180 Time of holding court.

- (1) Each borough civil court shall be holden for trial of issues of fact and of law four times at least in each year, and with no greater interval than four months between two successive courts.
- (2) Subject as aforesaid, where the recorder is judge, the court shall be holden at such times as the recorder thinks fit, or as the Secretary of State from time to time directs.

181 Procedure.

Every personal action brought in a borough civil court shall be commenced by writ of summons.

182 Power for judge to make rules of procedure.

- (1) Subject to the provisions of this Act, the judge of a borough civil court may from time to time make rules for regulating the times of holding the court and the procedure, practice, and pleadings therein, and the fees of solicitors therein, and may by any rule revoke or alter any former rule.
- (2) But where there is a recorder and he is not the judge of the court, every rule made by the judge shall be subject to the approval of the recorder in writing signed by him; save that this provision shall not apply where the recorder acts as deputy of the judge.
- (3) In every case (whether the recorder is judge or not) rules made by the judge under this section shall be subject to the approval of three judges of the High Court.

183 Jurisdiction of Court.

- (1) Where by the Municipal Corporations Act, 1835, jurisdiction was conferred on a borough civil court whereof the recorder is judge, or wherein a barrister of five years standing acts as judge or assessor, to try personal actions wherein the sum sought to be recovered does not exceed twenty pounds, and actions of ejectment between landowner and tenant wherein the annual rent of the property whereof possession is sought to be recovered does not exceed twenty pounds, no fine having been reserved or made payable, then that court shall continue to have that jurisdiction.

- (2) Any action wherein the title to land of any tenure, or to any tithe, toll, market, fair, or other franchise is in question shall not be tried in a borough civil court which before the passing of the Municipal Corporations Act, 1835, had not authority to try actions wherein such titles were in question. If it appears to such a court that such a title is in question in an action the jurisdiction of the court in the matter of the action shall cease; and the court may, if it thinks fit, award costs against the party commencing the action.

184 Saving for borough civil courts and for 35 & 36 Vict. c.86.

- (1) Nothing in this Act shall take away or abridge in respect of local extent, amount, or otherwise, any power, jurisdiction, or authority of a borough civil court, or of a judge, or assessor, or registrar thereof, or of any deputy of a judge, or assessor, or registrar thereof, or affect the constitution or procedure thereof; and, subject to the express provisions of this Act, such power, jurisdiction, authority, constitution, and procedure, shall continue and be as if this Act had not been passed.
- (2) Nothing in this Act shall affect the Borough and Local Courts of Record Act, 1872.

185 Power to extend jurisdiction of borough civil court.

It shall be lawful for the Queen, by Order in Council, on the joint petition of the justices of a county in quarter sessions and of the council of a borough, to grant that the jurisdiction of the borough civil court shall extend over any district adjacent to the borough within the jurisdiction of those quarter sessions ; and the same shall extend accordingly.

Borough Juries.

186 Provisions as to juries in boroughs.

- (1) Every burgess of a borough having a separate court of quarter sessions or a borough civil court shall, unless by law exempt or disqualified, be qualified and liable to serve on grand juries in the borough, and on juries for the trial of issues joined in either of those courts.
- (2) The clerk of the peace shall give public notice of the time and place of holding the court of quarter sessions ten days at least before the holding thereof, and shall, seven days at least before the holding thereof, summon a sufficient number of persons, qualified and liable, to serve as grand jurors at the sessions.
- (3) The clerk of the peace and registrar of the borough civil court respectively shall also summon a sufficient number of persons, qualified and liable, to serve as jurors at every such sessions, and at the holding of every such civil court for the trial of causes, if there is any cause then to be tried.
- (4) The summons may be made by showing to the person to be summoned, or, if he is absent from his usual place of abode, by leaving with some person therein inhabiting a notice containing its substance, and signed by the clerk of the peace or registrar, as the case may be.
- (5) The clerk of the peace and registrar shall make out lists containing the surnames and other names, abodes, and descriptions of the persons summoned by them respectively.

- (6) No person shall be summoned under this section to serve as a juror more than once in any year, unless every person qualified and liable so to serve has been already summoned once in that year.
- (7) If any person, having been duly summoned under this section, fails to attend according to the summons, or, being thrice called, does not answer to his name, or after his appearance wilfully withdraws himself from the court, he shall (unless some reasonable excuse is proved by him to the satisfaction of the court), be liable to pay a fine of such amount as the court thinks fit.
- (8) If the person on whom any such fine is imposed refuses to pay it to the person authorized by the court to receive it, the court may, then or at the next sitting, by order of the court signed by the clerk of the peace or registrar, cause to be levied, by distress and sale of the goods of the person on whom the fine is imposed, the fine and the reasonable charges of the distress and sale.
- (9) Nothing in this Act shall affect the Juries Act, 1870.

Exceptional Provisions.

187 Grants to boroughs not affected by subsequent grants to counties.

The grant to a borough of a separate commission of the peace, or of a separate court of quarter sessions, shall not be prejudicially affected by any subsequent grant to or for any county of a commission of the peace or other commission.

188 Trial of offences committed in counties of cities and counties of towns.

- (1) Until Her Majesty is pleased to direct a commission of oyer and terminer and gaol delivery to be executed within any borough being a county of a city or county of a town, all bills of indictment for offences committed within that borough shall be preferred, and all proceedings thereon shall be had, in the manner authorized by the Act of the thirty-eighth year of the reign of King George the Third, chapter fifty-two, "to regulate the trial of causes, " indictments, and other proceedings which arise within the counties " of certain cities and towns corporate within the kingdom."
- (2) For the purposes of that Act each borough named in the Sixth Schedule shall be considered as next adjoining the county named in conjunction therewith.

189 Jurisdiction in places separated from borough.

Where under any Act a place has ceased or ceases to be part of a borough or the liberties thereof, all matters by virtue of a local Act of Parliament or otherwise cognisable by a justice or by the quarter sessions having jurisdiction within that place shall be cognisable by the justices or the quarter sessions of the county, liberty, or jurisdiction within which the place is situate, in the same manner and subject to the same provisions as they were within the jurisdiction of the justices or the quarter sessions for that place.