

New Zealand.

ANALYSIS

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1885, No. 44.

Title.

AN ACT to amend "The Justices of the Peace Act, 1882."

[22nd September, 1885.]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

Short Title.

1. The Short Title of this Act is "The Justices of the Peace Act 1882 Amendment Act, 1885."

INDICTABLE OFFENCES.

Two Justices or Resident Magistrate to adjudicate on indictable offences.

2. In subsection two of section one hundred and eighteen of "The Justices of the Peace Act, 1882" (herein referred to as "the said Act"); all words after the word "before" when it first occurs in the said subsection shall be struck out, and the words "two Justices or a Resident Magistrate" shall be inserted in lieu thereof.

SUMMARY CONVICTIONS.

Summary jurisdiction in cases of obtaining property by false pretences.

3. The Second Schedule of the said Act is hereby amended in manner following, and shall be construed as if the said amendments had been originally made therein, that is to say,—

(1.) In the second part of the Second Schedule, after the figure and words "5. Embezzlement by a clerk or servant," there shall be inserted the figure and words,—

"5A. Obtaining property by false pretences, that is to say, committing any of the offences relating to property specified in the eighty-seventh and eighty-eighth sections of 'The Larceny Act, 1867,' or in either of such sections."

(2.) In the third part of the Second Schedule, after the paragraph commencing with the figure and words "5. Embezzlement by a clerk or servant" there shall be inserted the figure and words,—

"5A. Obtaining property by false pretences, that is to say, committing any of the offences relating to property specified in the eighty-seventh and eighty-eighth sections of 'The Larceny Act, 1867,' or in either of such sections, where the value of the whole of the property alleged to have been obtained does not, in the opinion of the Court before whom the charge is brought, exceed five pounds."

4. The term of imprisonment mentioned in section one hundred and seventy-eight of the said Act shall be six months instead of three months; and in the third part of the Second Schedule to the said Act the words "five pounds" shall be inserted in lieu of "forty shillings."

Punishment of adults tried in a summary way.

5. Notwithstanding anything contained in the said Act, whenever any person shall be charged with any offence mentioned in the second or third parts of the Second Schedule to the said Act, the Justices before whom such charge shall be made, if satisfied that the value of the property being the subject of such charge does not exceed forty shillings, may, in their discretion, hear and determine such charge without giving the person charged the option of being tried by a jury, and, except as herein provided, all the provisions of the said Act and this Act shall apply accordingly.

Larcenies may be dealt with in a summary way.

6. No adjudication under the said Act or this Act, or any Act repealed by this Act, shall be invalidated although it should subsequently be proved that the value of the property exceeded five pounds or forty shillings, as the case may be.

Adjudication valid although value greater than proved.

7. Sections one hundred and ninety-one, one hundred and ninety-two, and one hundred and ninety-three of the said Act are hereby repealed; but every conviction purporting to have been made under the said repealed sections, or either of them, and subsisting at the date of the passing of this Act, shall be deemed valid and effectual for all purposes whatsoever.

Sections 191, 192, and 193 of principal Act repealed.

APPEALS.

8. The appellant in every appeal made by way of case stated under Title I. of Part III. of the said Act shall, at the time he transmits such case to the Registrar of the Supreme Court, enter the same for hearing at the first practicable sitting of such Court.

Entering appeals for hearing.

The appellant in every appeal made under Title II. of Part III. of the said Act shall, within fourteen days after the conviction or making the order, deliver the form of appeal to the Registrar or

Clerk of the Court to which appeal is to be made, and shall at the same time enter the same for hearing at the first practicable sitting of such Court, as the case may be, subject to the provisions and the notice required by section two hundred and fifty-three of the said Act.

If any appeal under Titles I. and II. of Part III. of the said Act is not entered for hearing by the appellant, at the time the case stated or the form of appeal is transmitted or delivered to the Registrar or Clerk of the District Court, as the case may be, such Registrar or Clerk shall, within three days after receiving the case or form of appeal, enter the same for hearing at the first practicable sitting of such Supreme Court or District Court.

Dismissal of appeals.

9. If at any sitting of a Court for the hearing of any appeal as aforesaid, the appellant does not appear to prosecute the appeal, it shall stand dismissed, and the Registrar or Clerk of the Court where the appeal was to be heard shall transmit a certificate to that effect to the Clerk of the Justice from whose decision the appeal was made, and thereupon the same proceedings shall be had as if the appeal had been heard and the decision of such Justice had been confirmed.

Abandonment of appeal.

10. If in any appeal under Title I. or Title II. of Part III. of the said Act the case stated or the form of appeal is not transmitted or delivered to the Registrar or Clerk of the Court which is to hear the appeal within the fourteen days limited in that behalf respectively, the appeal shall be deemed to be abandoned.

Outstanding appeals.

11. Every appeal made before the passing of this Act, under Titles I. and II. of Part III. of the said Act,—

- (1.) Which is not transmitted or delivered by the appellant within thirty days after the passing of this Act to the Registrar of the Supreme Court or Clerk of the District Court which is to hear the appeal, and entered for hearing at the then first practicable sitting of such Court shall be deemed to be abandoned; or
- (2.) Which has been transmitted or delivered to the Registrar or Clerk of the Court aforesaid, but has not been entered for hearing, shall be entered by the said Registrar or Clerk for hearing at the first practicable sitting of such Court after thirty days after the passing of this Act.

Appellant may surrender himself to custody.

12. Any appellant who has been liberated from custody upon recognizance pending the hearing of an appeal under Part III. of the said Act may surrender himself and apply to any Justice of the Peace for the discharge of such recognizance, and such Justice may forthwith commit such appellant to prison for the unexpired term of the period originally adjudged; and thereupon the sureties of such appellant shall be discharged from their obligation under such recognizance.

Surety may apply for discharge from recognizance.

13. Any surety for an appellant liberated as aforesaid may apply to any Justice of the Peace to be discharged from his obligation under any recognizance conditioned for the appearance of such appellant; and thereupon such Justice may issue his warrant for the apprehension of the appellant, if he has not surrendered himself, and for his committal to prison for safe custody pending the result of the appeal.

Upon the apprehension of such appellant his sureties shall be discharged from their obligation under the aforesaid recognizance.

14. When any person who has been liberated from custody upon recognizance under Part III. of the said Act is again committed to custody for any unexpired term of the period originally adjudged, the time between his release and his return to prison shall not be taken to be any part of the term of his sentence.

Computation of term of sentence.

15. On the application of the appellant or respondent, or of any surety of either of them, in any appeal under Part III. of the said Act to any Justice of the Peace, the said Justice shall cause application to be made by the Clerk of such Justice to the Registrar of the Supreme Court or Clerk of the District Court in which such appeal was to be heard to ascertain if the appeal has been transmitted or delivered to him; and the said Registrar or Clerk of the District Court shall notify accordingly to the Clerk of the said Justice whether or not the appeal has been so transmitted or delivered.

Application in case of delay in prosecuting appeal.

16. Upon notification from the Registrar or Clerk of the District Court that he has not received the appeal, and if the time limited for transmitting or delivering the same has expired, the original conviction or order shall forthwith be enforced as if no appeal therefrom had been made.

Procedure on abandonment of appeal.

17. Whenever an appeal shall be heard before the Supreme Court or District Court in which it may be allowed by or under the said Act that evidence should be given on the hearing of such appeal, any such Court shall have all such jurisdiction and authority to hear and receive evidence as the Justice from whose decision such appeal is made had or could have exercised.

Appeal Court to have same authority as Justices to receive evidence.

18. In the first paragraph of section two hundred and forty-nine of the said Act the words "to the Court" shall be read "of the Court."

Section 249 of said Act amended.

JURIES.

19. Every Registrar, Clerk, or proper officer of the Supreme Court and District Courts respectively, when issuing a precept to the Sheriff for the summoning of either common or special jurors to attend or serve at any criminal trials, shall send together with such precept a list of the names of the Justices by whom the persons to be tried were respectively committed for trial.

Justices committing offenders not to serve as jurors on their trial.

And the Sheriff in balloting for the jury shall, in the event of any parchment being drawn out of the ballot-box bearing the number corresponding to the name of any of such Justices, replace such parchment in the box; and no such Justice shall be summoned by the said Sheriff to serve on any such trial.

ROTA OF JUSTICES.

20. At noon on the second Monday of the month of November next after the passing of this Act, and thereafter at the same time and place in every succeeding year, the Justices of the Peace residing within a radius of three miles from the courthouse where a Resident Magistrate's Court is held if within a borough, or within a radius of five miles if such Court is held within a town district, shall meet at such courthouse, and the Justices present at such meeting

Justices to settle rota of attendance; in default, Governor may do so.

shall form a list of the several Justices resident within the respective radii, and shall settle and determine a rota for the attendance of the Justices within such radii respectively for their attendance in rotation at such Court or elsewhere where their attendance will be required during the twelve months commencing on the first of January then next ensuing, and so as to apportion as equally and conveniently as may be the duty of attendance of such Justices.

Where two or more courthouses at which Courts are held in boroughs are nearer than six miles, and in town districts nearer than ten miles, to each other, every Justice shall be placed on the list for attendance at the courthouse nearest to his place of residence, and on no other list.

The Clerk of the Court where the meeting is to be held shall give not less than seven days' notice to each Justice within the radius of the borough or town district, as the case may be, in each year of the meeting to be held as aforesaid.

At every such meeting three Justices shall form a quorum, and the Justices then present shall elect one of those present to be Chairman of the meeting.

The rota to be prepared as aforesaid shall be signed by the Chairman, and shall be delivered by him to the Clerk aforesaid, who shall transmit a copy of such rota on or before the first day of December next after the settling thereof to each Justice whose name is on such rota.

If the said Justices shall at any time be unable to agree upon or settle such rota of attendance amongst themselves, the Governor shall from time to time, by warrant under his hand, settle the same.

21. If at any time any Justice shall absent himself from attendance when required according to such rota, unless such Justice shall at the time of such absence be in attendance upon the session of Parliament as a member of either House of the General Assembly, he shall be specially summoned on the next occasion when the attendance of Justices is required; and if on such last-mentioned occasion such Justice shall again fail to attend, the Clerk of the Court shall notify the same to the Minister of Justice, and the said Justice shall *ipso facto* cease to be a Justice of the Peace, unless within a month from the date of the last-mentioned occasion he shall satisfy the Governor that his second absence resulted from some reasonable cause. Every Justice of the Peace whose office becomes vacated as aforesaid shall be disqualified from being reappointed for the space of one year from the date on which notification shall be gazetted that he has ceased to be a Justice of the Peace by virtue of this Act: Provided that when any Justice shall desire temporarily to leave the colony it shall be competent to the Governor to grant leave of absence to such Justice.

REPEALS.

22. "The Justices of the Peace Act 1882 Amendment Act, 1883," and "The Justices of the Peace Act 1882 Amendment Act, 1884," are hereby repealed.

Justice twice absenting himself from attendance to vacate his office.

Acts repealed.