

INFERIOR COURTS PROCEDURE BILL.

MEMORANDUM.

THIS Bill repeals section 76 of the Judicature Act 1908 (*Removal of Technical Defects*), and certain similar provisions in the Justices of the Peace Act, 1908, and substitutes more extensive provisions for the purpose of preventing the proceedings of inferior Courts from being invalidated by technical and formal errors. The repealed provisions have proved to be ineffective. See, for example, *In re White*, 26 N.Z.L.R. 1268. The following are the chief provisions of the Bill:—

(1.) Section 3 provides in effect that no defect or error can be raised as an objection, even though it goes to the jurisdiction of the Court, unless the objection is made at the earliest possible moment in the proceedings. At present, no error which relates to the jurisdiction of the Court can be waived by the parties, if the error appears on the face of the proceedings. Consequently, as the law now stands, a defendant in the Magistrate's Court could defend the case on the merits even to the Court of Appeal, and after being defeated on the merits, fall back on a verbal error in the plaint note by which the proceedings were initiated, nor is there any authority by which such an error could be amended.

(2.) Section 4 provides that the judgments and convictions and other process of inferior Courts need not show on the face of them the jurisdiction or authority on which they are based. Jurisdiction is to be presumed until its absence is proved. The existing rule is a relic of old law for which there is now no sufficient reason.

(3.) Section 5 makes a similar provision with respect to certain other formal requisites of the written process of inferior Courts.

(4.) Section 6 abolishes the old rule that a conviction by an inferior Court must set out in full detail every constituent of the offence. Under the Bill any descriptions sufficient which identifies the offence.

(5.) Section 7 abolishes the rule that if a conviction is bad in any part it is bad altogether.

(6.) Section 8 re-enacts section 76 of the Judicature Act, 1908 (*Removal of Technical Defects*), with amendments required to make it effective.

(7.) Section 9 provides that a conviction or order shall not be wholly bad because it relates to two offences or two matters instead of one. The Supreme Court may strike out one of the offences or matters and let the other stand.

(8.) Section 10 makes provision for the case of two closely related offences and a mistaken conviction for one of these instead of for the other.

(9.) Section 12 abolishes the existing appeal by way of prohibition under the Justices of the Peace Act. This is a wholly unnecessary duplication of remedies, the original purpose of which (if any) no longer exists. The true scope and meaning of the provisions repealed has proved to be a matter of some uncertainty and difficulty, and all necessary appeals are otherwise sufficiently provided for.

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INFERIOR COURTS PROCEDURE.

ANALYSIS.

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A BILL INTITLED

AN ACT to make Further Provision for the Validity of the Judicial Proceedings of Inferior Courts notwithstanding Technical or Formal Errors. Title.

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

1. This Act may be cited as the Inferior Courts Procedure Act, 1908. Short Title.

10 2. In this Act the term "inferior Court" means any Court other than the Supreme Court or Court of Appeal; and includes any Magistrate or Justice of the Peace in respect of the exercise by him of any judicial function conferred upon him by any Act. Interpretation.

15 3. (1.) In any judicial proceedings, whether civil or criminal, before an inferior Court any error, irregularity, omission, or defect, whether it relates to the constitution of the Court or to its jurisdiction, or to the procedure therein, or to any other matter, and whether it appears on the face of the record or of the proceedings or not, and whether it is within the knowledge of the Court or not, may be
20 waived or acquiesced in by any party to the proceedings.

(2.) On any such waiver or acquiescence the proceedings may be continued, and shall be as valid in all respects as against the said party as if no such error, irregularity, omission, or defect had existed.

25 (3.) Nothing in this section shall apply so as to make valid any judgment, order, conviction, or warrant which on the face thereof is of such a nature that the Court giving, making, or issuing the same could not under any circumstances have jurisdiction to give, make, or issue it.

(4.) No such waiver or acquiescence by a party shall so operate as to preclude the Court in which the proceedings are taking place from refusing, in the exercise of its discretion, to give or make any judgment, order, or conviction, or to do any other act which, in the absence of such waiver or acquiescence, would be invalid for want of jurisdiction. 5

Grounds of jurisdiction need not be stated.

4. No judgment, order, conviction, warrant, or other document or instrument made or issued by any inferior Court, or in pursuance of any proceedings in any such Court, shall, in any proceedings whatsoever, be quashed, or declared invalid, or held to be invalid because that judgment, order, conviction, warrant, document, or instrument does not state on the face of it the grounds of the jurisdiction by virtue of which it was so made or issued, or because it states those grounds imperfectly or erroneously; and it shall be presumed that sufficient grounds of jurisdiction existed, unless it is proved or appears on the face thereof that the judgment, order, conviction, warrant, document, or instrument was made or issued without or in excess of jurisdiction. 10 15

Exemptions need not be negatived.

5. It shall not be necessary in any judgment, order, conviction, or warrant given, made, or issued by an inferior Court to negative (either specially or by general words) any exemption, exception, proviso, or condition expressed in the statutes, regulations, by-laws, or other authorities in pursuance of which the judgment, order, conviction, or warrant is given, made, or issued. 20

Sufficiency of description of offence.

6. No conviction by an inferior Court for any offence shall in any proceedings whatever be quashed, or declared to be invalid, or held to be invalid, because of any error or omission in the description of the offence, provided that the conviction sufficiently describes the offence to enable it to be identified by reasonable intentment. 25

Amendment by striking out part of conviction, &c.

7. If on any appeal, whether by way of case stated or otherwise, or on any application for a writ of *certiorari* or *habeas corpus*, or on the return to any such writ, or on any application for a writ of prohibition, or on any application to quash or discharge any conviction, order, judgment, or warrant made, given, or issued by any inferior Court, it is found that there is any ground of invalidity which affects any such conviction, order, judgment, or warrant in part only, the Court in which that appeal or application is heard or by which that writ has been issued may, on such terms as to costs and otherwise as it thinks fit, instead of quashing or discharging the conviction, order, judgment, or warrant, or holding it to be wholly invalid, amend it by striking out the said part thereof if that part is severable from the residue, and may adjudicate thereon accordingly as if the part so struck out had not been inserted therein. 30 35 40

Amendment by insertion of matter omitted.

8. If on any appeal, whether by way of case stated or otherwise, or on any application for a writ of *certiorari* or *habeas corpus*, or on the return to any such writ, or on any application for a writ of prohibition, or on any application to quash or discharge any conviction, order, judgment, or warrant, made, given, or issued by any inferior Court, any objection is made on account of any omission or mistake in the drawing-up of any such conviction, order, judgment, or warrant, and it is shown to the satisfaction of the Court in which that appeal or application is heard or by which that writ is issued that sufficient grounds were in proof before the inferior Court by which the conviction, order, judgment, or warrant was made, given, or issued, 45 50

tion, order, judgment, or warrant was made, given, or issued, to have authorised the drawing-up thereof free from omission or mistake, the Court in which that appeal is heard or by which that writ is issued may, on such terms as to costs and otherwise as it thinks fit, amend
 5 the conviction, order, judgment, or warrant, and adjudicate thereupon as if no such mistake or omission had existed.

9. If on any appeal, whether by way of case stated or otherwise, or on any application for a writ of *certiorari* or *habeas corpus*, or on the return to any such writ, or on any application for a writ of
 10 prohibition, or on any application to quash or discharge any conviction, order, judgment, or warrant made, given, or issued by an inferior Court, an objection is made that any such conviction, order, judgment, or warrant wrongly comprises more than one offence or matter, whether alternatively or cumulatively, the Court in which
 15 that appeal or application is heard or by which that writ has been issued may, on such terms as to costs and otherwise as it thinks fit, amend the conviction, order, judgment, or warrant in this respect by striking out such part thereof as the Court thinks fit, and may adjudicate thereon as if that part had not been inserted therein.

20 10. If on any appeal, whether by way of case stated or otherwise, from a conviction made by an inferior Court for any offence it appears to the Court in which the appeal is heard that the evidence in the inferior Court was insufficient to support a conviction for that offence, but was sufficient to support a conviction for some other
 25 offence within the jurisdiction of the inferior Court, and that the appellant has not been misled or prejudiced in his defence by the course of trial in the inferior Court, the Court in which the appeal is heard may, on such terms as to costs or otherwise as it thinks fit, amend the conviction by substituting the last-mentioned offence for
 30 the offence mentioned in the conviction, and shall thereupon adjudicate upon the appeal in the same manner as if the conviction had originally been made in its amended form on an information duly charging the appellant with the offence so substituted.

35 11. (1.) Section seventy-six of the Judicature Act, 1908, is hereby repealed.

(2.) Section three hundred and twenty-four of the Justices of the Peace Act, 1908, is hereby repealed.

40 12. (1.) Part XI of the Justices of the Peace Act, 1908, is hereby repealed as from the first day of January, nineteen hundred and *nine*.

(2.) This repeal shall not be so construed as to take away or affect the powers of the Supreme Court to issue a writ of prohibition in respect of any proceedings of Justices of the Peace without or in excess of their jurisdiction in the same manner as the said Court
 45 might have heretofore issued such a writ independently of the sections so repealed.

Amendment of convictions or orders for two offences or matters.

Amendment of conviction by substituting one offence for another.

Repeals. 1892, No. 10, sec. 2.

1882, No. 15, secs. 272, 273.

Repeal. Ibid, secs. 266-270

Saving.