

## New Zealand.



### ANALYSIS.

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### 1909, No. 13.

Title.

AN ACT to make Further Provision for the Validity of the Judicial Proceedings of Inferior Courts notwithstanding Technical or Formal Errors. [24th December, 1909.]

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

Short Title and commencement.

1. This Act may be cited as the Inferior Courts Procedure Act, 1909, and shall come into operation on the first day of January, nineteen hundred and ten.

Interpretation.

2. In this Act the term "inferior Court" means—

- (a.) A Magistrate's Court;
- (b.) A Warden's Court; and
- (c.) A Magistrate, Justice of the Peace, Coroner, or Warden in respect of the exercise of any judicial authority conferred upon him by any Act.

Waiver of errors in civil proceedings before an inferior Court.

3. (1.) In any civil proceedings before an inferior Court any error, irregularity, omission, or defect, whether it relates to the jurisdiction of the Court, 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 waived or acquiesced in by any party to the proceedings.

(2.) When any such waiver or acquiescence by any party has taken place, the proceedings shall be as valid in all respects as against

that party as if no such error, irregularity, omission, or defect had existed.

(3.) Nothing in this section shall apply so as to make valid any judgment or order which on the face thereof is of such a nature that the Court giving or making the same could not under any circumstances have jurisdiction to give or make 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 or order, or to do any other act, which, in the absence of such waiver or acquiescence, would be invalid for want of jurisdiction or for any other reason.

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.

Grounds of jurisdiction need not be stated.

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.

Exemptions need not be negatived.

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 intendment.

Sufficiency of description of offence.

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 of 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, amend the conviction, order, judgment, or warrant by striking out that part thereof if it is severable from the residue, and may adjudicate thereon accordingly as if the part so struck out had not been inserted therein.

Amendment by striking out part of conviction, &c.

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 of any such writ, or on any application for a writ of prohibition, or on any application to quash or discharge any conviction,

Amendment by insertion of matter omitted.

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, 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 the conviction, order, judgment, or warrant, and adjudicate thereupon as if no such mistake or omission had existed.

Amendment of convictions or orders for two offences or matters.

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 of 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 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 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 that 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.

Amendment of conviction by substituting one offence for another.

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 offence of a similar character 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 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.

Convictions, &c., may be remitted to inferior Court for amendment.

11. In any of the cases mentioned in any of the four last preceding sections, the Court in which the appeal or application is heard or by which the writ is issued may, on such terms as to costs and otherwise as it thinks fit, instead of amending the conviction, order, judgment, or warrant, remit the same for amendment to the inferior Court by which the same was made, given, or issued, and may thereafter, if the same is duly amended accordingly, adjudicate thereupon as if no such mistake or omission had existed.

Power of Justices and Magistrates to amend convictions or orders.

12. (1.) If any omission or mistake is made in any conviction or order drawn up by any Justice of the Peace or Magistrate, and sufficient grounds were in proof before him to have authorised the drawing-up of that conviction or order free from that omission or

mistake, the Justice or Magistrate may at any time thereafter, before the conviction or order has been quashed by the Supreme Court or by any other Court having jurisdiction in that behalf, draw up an amended conviction or order in lieu of that in which the omission or mistake exists, and lodge the amended conviction or order with the Registrar of the Supreme Court, to be filed by him in accordance with the Justices of the Peace Act, 1908.

(2.) The powers hereby conferred upon a Justice of the Peace or Magistrate may be exercised notwithstanding the fact that the defective conviction or order has been theretofore already lodged and filed in the Supreme Court, or removed into the Supreme Court or any other Court of competent jurisdiction in that behalf by *certiorari* or otherwise, and notwithstanding the fact that proceedings by way of *certiorari* or otherwise have been theretofore already commenced in respect of that conviction or order.

(3.) The powers hereby conferred upon a Justice of the Peace or Magistrate may be exercised by him from time to time in respect of the same conviction or order.

(4.) When any proceedings are already pending in the Supreme Court or any other Court in respect of the validity of any conviction or order at the time when any such amended conviction or order is substituted therefor under the provisions hereinbefore contained in that behalf, the said Court may adjudicate in the matter as if the amended conviction or order had been substituted for the defective conviction or order before the commencement of those proceedings, and as if those proceedings related to the amended conviction or order accordingly.

13. (1.) An information or complaint laid before a Magistrate or Justice of the Peace shall not be deemed objectionable on the ground that it charges or alleges in the alternative several different matters, acts, or omissions, which are stated in the alternative in the enactment describing any offence or any matter of complaint.

Informations and complaints may be in the alternative.

(2.) The defendant may at any time during the hearing of any information or complaint which is so framed in the alternative apply to the Court to amend the same on the ground that it is so framed as to embarrass him in his defence.

(3.) The Court may, if satisfied that the defendant will be so embarrassed in his defence, order the informant or complainant to elect between the alternatives charged or alleged in the information or complaint, and the same shall thereupon be amended accordingly, and the trial shall proceed as if the information or complaint had been originally framed in the amended form.

(4.) The conviction or order made on any such alternative information or complaint shall be limited to one of the alternatives so charged or alleged.

14. Nothing in this Act shall be so construed as to restrict or exclude the operation of any other statutory provisions for the amendment or validity of the proceedings of an inferior Court.

This Act not to restrict other statutory provisions.

15. (1.) The Acts mentioned in the Schedule hereto are hereby repealed to the extent indicated in that Schedule.

Repeals.

(2.) The repeal of sections three hundred and eighteen to three hundred and twenty-two of the Justices of the Peace Act, 1908,

Saving.

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 or Magistrates without or in excess of their jurisdiction in the same manner in which that Court might have heretofore issued such a writ independently of the sections so repealed.

Schedule.

SCHEDULE.

ENACTMENTS REPEALED.

1908, No. 89.—The Judicature Act, 1908: Section 76.

1908, No. 91.—The Justices of the Peace Act, 1908: Section 324, and sections 318 to 322.

1908, No. 120.—The Mining Act, 1908: Section 354.