New Zealand.

ANNO TRICESIMO

VICTORIÆ REGINÆ.

No. 48.

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AN ACT to protect Justices of the Peace from vexatious Actions for acts done by them in execution of their office. [*8th October* 1866.]

Title.

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

I. The Short Title of this Act shall be "The Justices Protection Act 1866."

Short Title.

II. "The Justices Protection Act 1848" is hereby repealed except as to proceedings now pending to which the same may be applicable.

Repeal clause.

III. This Act shall apply for the protection of all persons for anything done in the execution of their office in all cases in which "The Justices Protection Act 1848" would have been applicable if this Act had not passed and wherever in any Act "The Justices Protection Act 1848" is referred to such Act shall be read as referring to this Act and this Act shall apply for the protection of Justices of the Peace Resident Magistrates and Native Assessors acting in their civil or criminal jurisdiction.

Act to apply to persons protected by the repealed statutes.

IV. In every action hereafter to be brought against any Justice of the Peace for any act done by him in the execution of his duty as such Justice with respect to any matter within his jurisdiction as such Justice in the declaration or statement of the cause of action it shall be expressly alleged that such act was done maliciously and

No action to be brought against a Justice of Peace for any act done within his jurisdiction unless such act shall have been done maliciously

and without probable cause.

without reasonable and probable cause and if the defendant shall put in issue such allegation and at the trial of any such action the plaintiff shall fail to prove such allegation he shall be nonsuit or a verdict shall be given for the defendant.

For an act done by him without or exceeding his jurisdiction action may lie though act not done maliciously.

V. Any person injured by any act done by a Justice of the Peace in a matter of which by law he has not jurisdiction or in which he shall have exceeded his jurisdiction or by any act done under any conviction or order made or warrant issued by such Justice in any such matter may maintain an action against such Justice in the same case as he might have done before the passing of this Act without making any allegation in his declaration that the act complained of was done maliciously and without reasonable and probable cause

But not for an act done under a conviction or order until they have been quashed.

Provided nevertheless that no such action shall be brought for anything done under any such conviction or order until after such conviction or order shall have been quashed either upon appeal or upon application to the Supreme Court nor shall any such action be brought for anything done under any such warrant which shall have been issued by such Justice to procure the appearance of such party and which shall have been followed by a conviction or order in the same matter until after such conviction or order shall have been so

Nor for an act done under a warrant to compel appearance if a summons were previously served and not obeyed.

quashed as aforesaid or if such last-mentioned warrant shall not have been followed by any such conviction or order or if it be a warrant upon an information for an alleged indictable offence nevertheless if a summons were issued previously to such warrant and such summons were duly served upon such person and he did not appear according to the exigency of such summons in such case no such action shall be maintained against such Justice for anything done under such warrant.

If one Justice make a conviction &c. and another grant warrant action must be brought against the former.

VI. Where a conviction or order shall be made by one or more Justice or Justices of the Peace and a warrant of distress or of commitment shall be granted thereon by some other Justice of the Peace *bonâ fide* and without collusion no action shall be brought against the Justice who so granted such warrant by reason of any defect in such conviction or order or for any want of jurisdiction in the Justice or Justices who made the same but the action (if any) shall be brought against the Justice or Justices who made such conviction or order.

No action against Justices for the exercise of discretionary power.

VII. Where a discretionary power shall be given to a Justice of the Peace by any law no action shall be brought against such Justice for or by reason of the manner in which he shall have exercised his discretion in the execution of such power.

If a Justice refuse to do an act the Supreme Court may by rule order him to do it and no action shall be brought against him for doing it.

VIII. And whereas it would conduce to the advancement of justice and render more effective and certain the performance of the duties of Justices and give them protection in the performance of the same if some simple means not attended with much expense were devised by which the legality of any act to be done by such Justices might be considered and adjudged by a Court of competent jurisdiction and such Justice enabled and directed to perform it without risk of any action or other proceeding being brought or had against him Be it therefore enacted that in all cases where a Justice or Justices of the Peace shall refuse to do any act relating to the duties of his or their office as such Justice or Justices it shall be lawful for the party requiring such act to be done to apply to the Supreme Court upon an affidavit of the facts for a rule calling upon such Justice or Justices and also the party to be affected by such act to show cause why such act should not be done and if after due service of such rule good cause shall not be shown against it the said Court may make the same absolute with or without or upon payment of costs as to it shall

seem meet and the said Justice or Justices upon being served with such rule absolute shall obey the same and shall do the act required and no action or proceeding whatsoever shall be commenced or prosecuted against such Justice or Justices for having obeyed such rule and done such act so thereby required as aforesaid.

After conviction or order confirmed on appeal no action for anything done under a warrant upon it.

IX. In all cases where a warrant of distress or warrant of commitment shall be granted by a Justice of the Peace upon any conviction or order which either before or after the granting of such warrant shall have been or shall be confirmed upon appeal no action shall be brought against such Justice who so granted such warrant for anything which may have been done under the same by reason of any defect in such conviction or order.

If an action be brought where by this Act it is prohibited a Judge may set aside the proceedings.

X. In all cases where by this Act it is enacted that no action shall be brought under particular circumstances if any such action shall be brought it shall be lawful for a Judge of the Court in which the same shall be brought upon application of the defendant and upon an affidavit of facts to set aside the proceedings in such action with or without costs as to him shall seem meet.

Limitation of action.

XI. No action shall be brought against any Justice of the Peace for anything done by him in the execution of his office unless the same be commenced within six calendar months next after the act complained of shall have been committed.

Notice of action.

XII. No such action shall be commenced against any Justice of the Peace until one calendar month at least after a notice in writing of such intended action shall have been delivered to him or left for him at his usual place of abode by the party intending to commence such action or by his solicitor or agent in which notice the cause of action and the Court in which the same is intended to be brought shall be clearly and explicitly stated and upon the back thereof shall be indorsed the name and place of abode of the party so intending to sue and also the name and place of abode or of business of his solicitor or agent if such notice have been served by such solicitor or agent.

Plea and evidence under it.

XIII. In every such action the defendant shall be allowed to plead a general denial of the allegations contained in the declaration and at the time of settling the issues to propose any special matter of defence excuse or justification for issue upon such plea or if the action be in the District Court to give any special matter of defence excuse or justification in evidence at the trial although he shall not have given notice of his intention so to do.

No action in Resident Magistrate's Court against Justices.

XIV. No action shall be brought in any Resident Magistrate's Court Petty Sessions Court or before Justices of the Peace against any Justice of the Peace for anything done by him in the execution of his office.

Justice not to be sued in District Court if he objects thereto.

XV. No action shall be brought in any District Court against a Justice of the Peace for anything done by him in the execution of his office if such Justice shall object thereto and if within six days after being served with a summons in any such action such Justice or his attorney or agent shall give a written notice to the plaintiff in such action that he objects to being sued in such District Court for such cause of action all proceedings afterwards had in such District Court in any such action shall be null and void and if the plaintiff in any such action shall take any proceeding thereon after such notice given it shall be lawful for the Judge of such Court upon application of the defendant and upon proof of the service of such notice to set aside such proceedings with such costs to the defendant as the Judge shall think fit.

Tender and payment of money into Court.

XVI. In every such case after notice of action shall be given as

aforesaid and before such action shall be commenced the Justice to whom such notice shall be given may tender to the party complaining or to his solicitor or agent such sum of money as he may think fit as amends for the injury complained of in such notice and after such action shall have been commenced and at any time before issues shall have been settled therein or if the action be in the District Court within such time as may be fixed by the rules regulating the practice of the Court for paying money into Court such defendant if he have not made such tender or in addition to such tender shall be at liberty to pay into Court such sum of money as he may think fit and which said tender and payment of money into Court or either of them may afterwards under a plea of the general denial at the settlement of issues be proposed for issues by the defendant or if such action be in the District Court may be given in evidence upon the trial by way of defence by the defendant and if the jury at the trial or the Judge where the trial is without a jury shall be of opinion that the plaintiff is not entitled to damages beyond the sum so tendered or paid into Court or beyond the sums so tendered and paid into Court then they shall give a verdict or judgment for the defendant and the plaintiff shall not be at liberty to elect to be nonsuit and the sum of money if any so paid into Court or so much thereof as shall be sufficient to pay or satisfy the defendant's costs in that behalf shall thereupon be paid out of Court to him and the residue if any shall be paid to the plaintiff or if where money is so paid into Court in any such action the plaintiff shall elect to accept the same in satisfaction of his damages in the said action he may obtain from any Judge of the Court in which such action shall be brought an order that such money shall be paid out of Court to him and that the defendant shall pay him his costs to be taxed and thereupon the said action shall be determined and such order shall be a bar to any other action for the same cause.

In what cases nonsuit or verdict for defendant.

XVII. If at the trial of any such action the plaintiff shall not prove that such action was brought within the time hereinbefore limited in that behalf or that such notice as aforesaid was given one calendar month before such action was commenced or if he shall not prove the cause of action stated in such notice then and in every such case such plaintiff shall be nonsuit or there shall be a verdict or judgment for the defendant.

Damages.

XVIII. In all cases where the plaintiff in any such action shall be entitled to recover and he shall prove the levying or payment of any penalty or sum of money under any conviction or order as parcel of the damages he seeks to recover or if he prove that he was imprisoned under such conviction or order and shall seek to recover damages for any such imprisonment he shall not be entitled to recover the amount of such penalty or sum so levied or paid or any sum beyond the sum of two-pence as damages for such imprisonment or any costs of suit whatsoever if the defendant shall prove under an issue stated or if the action be in the District Court shall allege and prove in defence that the plaintiff was actually guilty of the offence of which he was so convicted or that he was liable by law to pay the sum he was so ordered to pay and (with respect to such imprisonment) that he had undergone no greater punishment than that assigned by law for the offence of which he was so convicted or for non-payment of the sum he was so ordered to pay.

Costs.

XIX. If the plaintiff in any such action shall recover a verdict or judgment be given in his favor or the defendant shall allow judgment to pass against him by default such plaintiff shall be entitled to costs in such manner as if this Act had not been passed or if in such case

it be stated in the declaration or in the summons and particulars in the District Court if he sue in that Court that the act complained of was done maliciously and without reasonable and probable cause the plaintiff if he recover a verdict or obtain judgment for any damages or if the defendant allow judgment to pass against him by default shall be entitled to his full costs of suit to be taxed as between solicitor and client and in every action against a Justice of the Peace for anything done by him in the execution of his office the defendant if he obtain judgment upon verdict or otherwise shall in all cases be entitled to his full costs in that behalf to be taxed as between solicitor and client.

Commencement of Act.

XX. This Act shall commence and take effect on the first day of January in the year of our Lord one thousand eight hundred and sixty-seven.

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