

No. XVI.

AN ORDINANCE to provide for the establishment of Resident Magistrates Courts, and to make special provision for the Administration of Justice in certain cases. [7th November, 1846.]

RESIDENT MAGISTRATES COURTS.

WHEREAS it is expedient that provision be made for the more simple and speedy administration of justice in the Colony of New Zealand, and for the adaptation of the law to the circumstances of both races : Preamble.

BE IT ENACTED by the Lieutenant-Governor of New Zealand, with the advice and consent of the Legislative Council thereof, as follows :—

I.—RESIDENT MAGISTRATES.

1. For the purposes hereinafter mentioned there shall be appointed a fit number of persons, being Justices of the Peace, who shall be and be called Resident Magistrates. Power to Governor to appoint Resident Magistrates.

2. Every such Resident Magistrate shall be appointed by Her Majesty, her heirs and successors, and shall hold his office during Her Majesty's pleasure : Provided that it shall be lawful for the Governor to appoint any such Resident Magistrate provisionally until Her Majesty's pleasure shall be known ; and in case any Resident Magistrate shall, by reason of sickness absence suspension from office or other cause, be unable to discharge the duties of his office, it shall be lawful for the Governor to appoint a fit person, being a Justice of the Peace, to act in the place of such Resident Magistrate as long as such inability as aforesaid shall continue. Tenure of office.

3. Every Resident Magistrate so to be appointed as aforesaid shall have all such powers of dealing summarily with cases of assault and of admitting to bail persons charged with felony as may by law be exercised by any two Justices of the Peace, and also all such powers as are by any local Ordinance given to any two Justices of the Peace. May admit to bail &c.

II.—SUMMARY JURISDICTION IN CERTAIN CASES.

4. When any person shall be charged with larceny, and where the value of the property stolen shall not exceed twenty shillings, and where the circumstances of the case shall appear to any such Resident Magistrate or to any Justice of the Peace to be of so trivial a nature as to be unfit for prosecution, it shall be lawful for him to dismiss the case although a felony may have been proved. Trivial cases may be dismissed.

Resident Magistrates Courts.

Certain charges of larceny may be dealt with summarily.

5. When any person shall be charged with larceny, and where the value of the property stolen shall not exceed twenty shillings, it shall be lawful for any such Resident Magistrate, upon being satisfied of the value of such property, at his discretion to hear and determine such charge, and in case of conviction to sentence the offender to be imprisoned for any period not exceeding six calendar months. Such adjudication shall not be invalidated although it should subsequently be proved that the value of such property exceeded the aforesaid limits.

If party make confession he may be dealt with summarily.

6. Where any person shall be charged with larceny where the value of the property stolen shall not exceed five pounds, if such party shall, after hearing the information and evidence against him, voluntarily confess the offence, it shall be lawful for any such Resident Magistrate at his discretion to take such confession and to sentence the offender to imprisonment for any period not exceeding twelve calendar months.

III.—COMMITMENT, AND SUMMARY CONVICTION, ETC., OF NATIVES IN CRIMINAL CASES.

Committal of Natives.

7. And whereas it may be desirable that special provision be made for the administration of justice in criminal cases where persons of the Native race are concerned: Be it enacted that, except within the limits of any town, no person of the Native race shall be apprehended under any warrant or be committed to prison except upon a warrant or committal signed by any such Resident Magistrate.

In summary proceedings.

8. No information or complaint against any person of the Native race shall be heard or determined in a summary way except before such Resident Magistrate.

If Native make confession he may be dealt with summarily.

9. When any person of the Native race shall be charged with larceny or with receiving stolen goods, and shall, after hearing the information and evidence against him, voluntarily confess the same, it shall be lawful for any such Resident Magistrate at his discretion to take such confession and to sentence the offender to be imprisoned for any period not exceeding two years.

Natives convicted of theft may pay four times value of property stolen.

10. In case any person of the Native race shall be convicted upon any charge of theft or of receiving stolen goods in a summary way before the Resident Magistrate as aforesaid, every such person may after such conviction, by permission of the Court and at any time before sentence passed, pay into the Court four times the value of the goods so stolen or received as aforesaid: Provided that if the goods so stolen or received as aforesaid shall have been restored by the person so convicted, such person may, by permission of the Court and at any time before sentence passed, pay into the Court either four times the value of the goods so stolen or received as aforesaid, or such less sum as to the Court shall seem fit. If such payment shall be so made as aforesaid, or if security for such payment shall be given to the satisfaction of the Court, no sentence shall be passed, but the person so convicted and making such payment or giving such security as aforesaid shall be discharged from custody, and shall be in the same condition in all respects as if he had received sentence and undergone his punishment in the ordinary course of law: Provided always that for the purposes of this present provision such Court shall have power to delay passing sentence in any such case for any period not exceeding eight days.

Value in certain cases to be awarded to owner.

11. Where any such payment as last mentioned shall have been made, and it shall appear that restitution of the goods charged to have been stolen or received as aforesaid has not been or cannot be made, the Court shall have power, upon application then made by the owner of

Resident Magistrates Courts.

of such goods or his representatives, to award to such owner or representatives such part of the sum so paid into Court as aforesaid as shall be equal to the sworn value of such goods together with such costs as to the Court shall seem reasonable. The sum so paid into Court, or in either of the cases last mentioned the residue thereof, shall be duly accounted for and paid over to the Colonial Treasurer or Treasurer of the county or district for the use of Her Majesty, her heirs and successors, for the public uses of the Colony and for the support of the Government thereof.

IV.—SUMMARY JURISDICTION IN CIVIL CASES BETWEEN NATIVE AND EUROPEAN.

12. In every case of any claim or demand whatsoever of a civil nature, in which either party (but not both plaintiff and defendant) shall be of the Native race, and where the debt or damages claimed shall not exceed one hundred pounds, it shall be lawful for the Resident Magistrate, together with any one or more Justices of the Peace, upon proof of personal service of a summons upon the defendant, to hear and determine any such case by way of summary proceeding. And in any such case as aforesaid, where the debt or damage claimed shall not exceed twenty pounds, it shall be lawful for any such Resident Magistrate alone to hear and determine such case in a summary way.

Jurisdiction and mode of proceeding.

13. In every such case the said Resident Magistrate together with any one or more Justices of the Peace, or the said Resident Magistrate alone, as the case may be, shall have full power and authority to give such judgment between the parties as he or they shall find to stand with equity and good conscience, and to prescribe such terms and conditions as to the time and mode of satisfying such judgment as he or they shall deem just and reasonable. And in the hearing of every such case the said Resident Magistrate together with any one or more Justices of the Peace, or the said Resident Magistrate alone, as the case may be, shall be at liberty to receive or require any such evidence as to him or them shall appear fit whether the same shall be strictly legal evidence or not.

Judgment and evidence.

14. The judgment of such Resident Magistrate together with any one or more Justices of the Peace, or the said Resident Magistrate alone, as the case may be, as aforesaid, shall be final on all questions, nor shall any case be removed on behalf of either party into any Superior Court, by *certiorari* or otherwise, in any stage of the proceeding.

Judgment to be final.

15. Every such judgment may be enforced in the same manner as any order for payment of money made by any Justice of the Peace in any summary proceeding.

And how to be enforced.

16. In any such case it shall be lawful for such Resident Magistrate together with any one or more Justices of the Peace, or the said Resident Magistrate alone, as the case may be, at his or their discretion to demand and take any fees not exceeding the fees following, that is to say,—

Fees may be taken.

For every summons, any sum not exceeding	...	3s.
For every hearing, any sum not exceeding	...	6s.
For entering judgment or order	...	3s.
For every distress warrant or warrants to apprehend		6s.
For officer executing such warrant 1s. in the pound upon the sum levied or received, or for which the body is taken in execution.		

17. It shall be lawful for any Justice of the Peace to refuse to do any act in respect of which any fee shall be demandable unless such fee be first paid.

And may be required to be prepaid.

18. All

Resident Magistrates Courts.

And to be paid to
Colonial Treasurer.

18. All fees which shall have been demanded and taken under the authority hereinbefore given, shall be paid to the Colonial Treasurer or Treasurer of the county or district as the case may be.

V.—ARBITRATION COURTS FOR NATIVE CASES.

Courts of Arbitration
their constitution
and jurisdiction.

19. And whereas for the settling of disputes and differences of a civil nature between persons of the Native race it is expedient to provide a more simple and expeditious procedure in such cases than that of the ordinary Courts of Law: Be it therefore enacted that it shall be lawful for any Resident Magistrate or any person appointed by His Excellency the Governor to act in that behalf, assisted by two Native Assessors, one to be chosen by each of the parties and to be appointed as hereinafter mentioned, to act as a Court of Arbitration, with power to hear and determine summarily all claims and demands whatsoever of a civil nature arising between persons of the Native race.

Appointment of
Assessors.

20. For the purpose of providing a sufficient number of persons fit to act as Assessors, it shall be lawful for His Excellency the Governor to select and appoint as such Assessors so many persons in each tribe or division of a tribe as he shall think fit. The persons so selected shall be men of the greatest authority and best repute in their respective tribes, and who shall be willing to act as such Assessors.

Their powers and
mode of proceeding.

21. Such Resident Magistrate, or other person as aforesaid, and Assessors, shall possess the same powers as to the hearing and determining of the cases last mentioned, the admission of evidence, and the enforcing of their judgment therein, as are hereinbefore given in cases where only one of the parties shall be of the Native race.

Cases how to be de-
termined.

22. Every such case shall be determined by the two Assessors (where agreed in their judgment therein), but in case of a difference of opinion, then by the judgment of the Resident Magistrate or other person as aforesaid and of one of the Assessors: Provided always that so long as such difference of opinion shall continue such judgment shall be recorded only, but that no act shall be done or proceeding taken to carry such judgment into execution until both the Assessors and the Resident Magistrate or other person as aforesaid shall concur therein.

Security may be re-
quired for obedience
to award.

23. In order to secure obedience to the award of such Court, it shall be lawful for the Resident Magistrate or other person as aforesaid, before entering upon the hearing of any complaint or demand, to require such security, either by deposit or otherwise, from the parties or either of them as he shall deem fit.

Payment of Assessors.

24. In every case in which the judgment of the Court shall have been carried into execution to the satisfaction of the Resident Magistrate or other person aforesaid, it shall be lawful for His Excellency the Governor to pay to each of the Assessors any sum not exceeding five pounds.

VI.—SUMMARY JURISDICTION IN CIVIL CASES GENERALLY.

Jurisdiction.

25. In every case of any claim or demand whatsoever of a civil nature, in which neither of the parties shall be of the Native race, and where the defendant shall reside beyond the distance of ten miles from the office of any Court of Requests, and where the debt or damage claimed shall not exceed twenty pounds, it shall be lawful for any such Resident Magistrate or any two or more Justices of the Peace to hear and determine the same by way of summary proceeding.

Mode of proceeding
&c.

26. Such Resident Magistrates or any two or more Justices of the Peace shall possess the same powers as to the hearing and determining of the cases last mentioned, the admission of evidence, the enforcing of their judgment, and the requiring of the payment of fees, as are hereinbefore

Cattle Trespass Repeal.

hereinbefore given in cases where one of the parties shall be of the Native race.

27. If any person shall wilfully insult such Resident Magistrate or Justice of the Peace whilst sitting in Court and acting in the execution of this Ordinance, or shall in any other manner be guilty of any wilful contempt in the face of the Court, it shall be lawful for such Resident Magistrate or Justice of the Peace, by warrant under his or their hands, to commit the person so offending to any common gaol for any term not exceeding one calendar month.

May commit for contempt of Court.

VII.—MISCELLANEOUS.

28. And whereas by various Ordinances now in force within the Colony certain acts are required to be done by and certain powers are given to Police Magistrates: Be it enacted that all such acts and powers may hereafter be done and exercised by any Resident Magistrate or any other person whom His Excellency the Governor shall from time to time designate or appoint for that purpose.

Duties required to be done by Police Magistrates may be performed by persons appointed by the Governor.

29. For the purposes of this Ordinance the word "Governor" shall be taken to include the Lieutenant-Governor or the Officer Administering the Government of the Colony for the time being.

Interpretation.

30. This Ordinance shall come into operation throughout the Colony on the first day of May, one thousand eight hundred and forty-seven, or on such earlier day, and either throughout the Colony or within any district or districts thereof, as His Excellency the Lieutenant-Governor shall by Proclamation direct and appoint.

Commencement of Ordinance.

