

No. V.

SUMMARY
PROCEEDINGS.

AN ORDINANCE to regulate Summary Proceedings before Justices of the Peace. [21st January, 1842.]

Preamble.

WHEREAS it is expedient to prescribe by law one uniform course of practice for the regulation of Summary Proceedings in all cases before Justices of the Peace :

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

Form of information.

1. Every information or complaint laid before any Justice of the Peace of any matter which may be heard and determined in a summary way shall be in the form in Schedule A hereunto annexed, or to the effect thereof.

Summons.

2. Such Justice may summon the party charged to appear before him or before any Justice or Justices as the case may require, and if such party shall not appear according to the tenor of the summons, the Justice shall on being satisfied of the service of such summons issue his warrant for apprehending and bringing such party before him or before such Justice or Justices, in order that such information or complaint may be heard and determined.

Service of summons.

3. Every summons may be served by delivering a copy thereof to the party summoned, or by delivering a copy thereof to the wife or servant or to some adult inmate of the family of such party, at his usual place of abode, and explaining the purport thereof to such wife, servant, or inmate.

Warrant.

4. Every Justice of the Peace may issue his warrant in the first instance without any summons, whenever good grounds for so doing shall be stated on oath before him.

Attendance of witnesses.

5. Every Justice of the Peace may issue a summons to be served in manner aforesaid on any witness to appear and give evidence before him upon the matter of any offence cognizable in a summary way at the time and place appointed for hearing the information or complaint, and may by warrant, upon proof of the service of such summons, require any person to be brought before him who shall neglect or refuse to appear to give evidence, and may imprison any person so brought before him who shall refuse to give evidence for any term not exceeding fourteen days, or until such person shall sooner submit himself to be examined.

Form of conviction.

6. Every conviction upon such information or complaint as aforesaid shall be in the form set forth in Schedule B hereunto annexed, or to the effect thereof.

Costs.

7. It shall be lawful for any Justice of the Peace who shall hear and determine any charge or complaint to award such costs as to him shall seem meet, to be paid to or by either of the parties to the said charge or complaint.

8. All

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8. All penalties informations and sums of money which shall be ordered to be paid by any Justice or Justices of the Peace in cases of summary conviction, and all sums of money which any person shall be bound to pay under any recognizances taken before any Justice or Justices, in case of non-payment thereof either immediately or within such period as the said Justice or Justices may appoint, may be levied (with the costs of all proceedings rendered necessary by such non-payment) by distress and sale of the goods and chattels of the person liable to pay the same, by warrant under the hand of any Justice of the Peace, and the overplus (if any) of the money so raised shall be returned on demand to the party whose goods and chattels shall have been distrained. Penalties how levied.

9. No distress to be made under the authority of this Ordinance shall be deemed unlawful nor shall any party making the same be deemed a trespasser on account of any defect or want of form in the information summons warrant of apprehension conviction warrant of distress or other proceeding relating thereto, nor shall such party be deemed a trespasser from the beginning by reason of any irregularity which shall be afterwards committed by him, but all persons aggrieved by such defect or irregularity may recover satisfaction for the special damage by action at law. Distress not to be unlawful for want of form.

10. If upon return of such warrant it shall appear that no sufficient distress can be had, or in case it shall appear to the satisfaction of the Justice or Justices that the party has not sufficient goods and chattels to satisfy such levy as aforesaid if a warrant were to be issued, it shall be lawful for the Justice or Justices by warrant to commit such party to some common gaol or house of correction, there to remain for any time not exceeding one calendar month for every five pounds or fractional part of five pounds so to be paid: Provided that the time of imprisonment shall in no case exceed four calendar months, and shall cease at any time upon payment of the penalty forfeiture or sum of money ordered to be paid, together with costs. Insufficient distress.

11. All fines forfeitures and penalties shall, unless provision be made to the contrary by the Ordinance imposing or authorizing the same, be recovered in a summary way in manner hereinbefore prescribed, and be paid to the use of Her Majesty, her heirs and successors, for the public uses of the Colony and the support of the Government thereof. All fines &c. to be recovered in a summary way to be for the use of Her Majesty.

12. It shall be lawful for all Clerks of Petty Sessions or Clerks of Justices of the Peace to demand and take such fees as are set forth in Schedule D hereunto annexed. Fees of Clerks.

13. A table of such fees shall be hung up in some conspicuous place within every Police Office and in every place where any Justice of the Peace shall usually transact the business of his office. Table to be hung up.

14. It shall be lawful for any Justice of the Peace to refuse to do any act for which a fee shall be demandable unless such fee be first paid. Fees to be pre-paid.

15. All fees received by any Clerk of Petty Sessions shall be accounted for monthly to the Colonial Treasurer or Treasurer of the county or district as the case may be, and shall be chargeable with the salary of such Clerk of Petty Sessions. Fee fund.

16. Every information or complaint in respect of any offence cognizable in a summary way shall be preferred within three calendar months next after the commission of the offence. Period of limitation.

17. No information conviction or other proceeding before any Justice of the Peace shall be quashed or set aside or adjudged void or insufficient for want of form, or be removed on behalf either of the complainant or defendant into any superior Court by *certiorari* or otherwise. No conviction &c. to be quashed for want of form.

18. In

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Appeal.

18. In cases of summary conviction where the sum adjudged to be paid shall exceed five pounds or the imprisonment adjudged shall exceed one calendar month, but in no other case, it shall be lawful for the parties convicted to appeal to the next sitting of the County or District Court, which shall be holden not less than twelve days after the date of such conviction, for the county or district in which the cause of complaint shall have arisen.

Notice of appeal.

19. The appellant shall give to the complainant a notice in writing of such appeal and of the matter and grounds thereof within three days after the day of the conviction, and shall enter into a recognizance with two sufficient sureties conditioned personally to appear and try such appeal and abide the judgment of the Court thereon, and to pay such costs as shall be awarded. Upon such notice being given and such recognizance being entered into, the Justice or Justices before whom the same shall be entered into shall liberate the appellant if in custody.

At County Court.

20. The Judge of the County or District Court shall hear and determine the matter and shall make such order therein, with or without costs to either party, as shall be just. The proceedings on such appeal shall not be removable at any stage thereof on behalf either of the appellant or the respondent into any superior Court by *certiorari* or otherwise.

Witnesses to be bound to attend.

21. The convicting Justice or Justices shall bind over the witnesses who shall have been examined in sufficient recognizances to attend at the hearing of the appeal. Every such witness shall, upon producing a certificate under the hand of the Justice or Justices of his being so bound, be allowed compensation for his time trouble and expenses in attending the appeal, which compensation shall be paid by the Treasurer of the county or district upon order made by the Court for that purpose.

And paid by appellant if conviction be affirmed.

22. In case the conviction shall be affirmed, the Court shall order the compensation so allowed to be paid by the appellant.

Recognizance not to bind real property.

23. No recognizance to be entered into before any Justice of the Peace shall bind or affect any real property of the person entering into the same.

Notice of recognizance.

24. Every Justice of the Peace before whom any recognizance shall be entered into shall give to each of the persons entering into the same a notice in the form in Schedule C hereto annexed or to the effect thereof.

Imprisonment may be with or without hard labour.

25. In all cases of summary conviction where the party convicted shall be sentenced to imprisonment, such imprisonment shall be with or without hard labour, at the discretion of the Court.

Commencement.

26. This Ordinance shall come into operation on the first day of March, one thousand eight hundred and forty-two.

SCHEDULES.

SCHEDULE A.

County [or District] } BE it remembered, That A.B., of _____, in the County [or Dis-
of _____ } trict] of _____, cometh on the _____ day of _____, one thousand
eight hundred and _____, before me, J.S., one of the Justices of the Peace of the
sitting at _____, and giveth me to understand that C.D., of _____, hath been guilty of
[Here describe the offence]. [Signature of Justice.]

SCHEDULE B.

FORM OF CONVICTION.

County [or District] } BE it remembered, That on the _____ day of _____, one
of _____ } thousand eight hundred and _____, C.D. is brought before
me,

Municipal Corporations.

me, J.S., one of the Justices of the Peace sitting at _____, and is charged with having [*Here describe the offence*]; and it appearing to me upon the oath of a credible witness [*or upon the confession of the said C.D.*], that the said C.D. is guilty of the said offence, I do therefore adjudge the said C.D. to [*Here insert the adjudication*].

Given under my hand, the day and year first above written.

[*Signature of Justice.*]

SCHEDULE C.

FORM OF NOTICE.

To C.D. (Prisoner), and E.F. and G.H. (Sureties).

TAKE notice, that you C.D. are bound in the sum of _____, and you E.F. and G.H. in the sum of _____ each, by way of recognizance for the personal appearance of the said C.D. at the next assizes, to be holden at _____, in and for the _____, then and there to answer any bill of indictment which may be preferred against him for felony.

Dated this _____ day of _____.

[*Signature of Justice.*]

TABLE OF FEES.

TO BE TAKEN BY CLERKS OF PETTY SESSIONS, AND CLERKS OF POLICE MAGISTRATES AND OTHER JUSTICES ACTING SINGLY IN NEW ZEALAND.

	s.	d.
1. For every information (in cases not felonious), each	1	6
2. Swearing the same	1	0
3. Summons (to include only one name), for each	0	6
4. Copy and service of each, where the service is within two miles ...	2	0
5. Above that distance, for every mile in addition	0	8
6. For every deposition in evidence, and swearing the same	2	6
7. For every other oath administered in cases within the jurisdiction of a Justice of the Peace (except naval and military pension), each ...	1	0
8. Where the proceedings exceed a folio of ninety words, for each additional folio	0	8
9. For any document required in the discharge of the duties of Justice of the Peace not enumerated in this Schedule, for each and every folio of ninety words	0	8
10. Copy of those proceedings, per same folio	0	4
11. Warrant to apprehend (in cases not felonious)	2	6
12. Recognizance with two sureties	5	0
13. Notice to principal and the two sureties	2	0
14. Warrant for distress under penal acts	2	6
15. Order of a Justice or Justices	1	6