

INDECENT PUBLICATIONS BILL.

MEMORANDUM.

THE present law as to indecent publications is contained in the Crimes Act, 1908, section 157, and in the Police Offences Act, 1908, section 40 and sections 43 to 48. The Crimes Act, dealing with indictable offences only, is unaffected by this Bill. The foregoing sections of the Police Offences Act, however, are proposed to be repealed and superseded by more comprehensive provisions.

At present a person charged with the sale or publication of indecent literature cannot be convicted summarily, except with his own consent. In accordance with the recommendation made in the year 1908 by a Joint Select Committee of the Imperial Parliament (Lotteries and Indecent Advertisements), it is provided by this Bill that all such offences can be dealt with on summary conviction, but by a Stipendiary Magistrate only.

For the purpose of avoiding the risk of vexatious and unreasonable prosecutions, it is provided that informations are to be laid by police officers only. A private prosecutor must obtain the leave of the Attorney-General.

Clause 4 is intended to obviate the existing difficulties in the way of prosecutions for indecent matter published in newspapers. The clause determines what persons are to be held responsible for the conduct of a newspaper in this respect.

This PUBLIC BILL originated in the LEGISLATIVE COUNCIL, and, having this day passed as now printed, is transmitted to the HOUSE OF REPRESENTATIVES for its concurrence.

*Legislative Council,
6th September, 1910.*

Hon. Dr. Findlay.

INDECENT PUBLICATIONS.

ANALYSIS.

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| <p>Title.</p> <p>1. Short Title and commencement.</p> <p>2. Interpretation.</p> <p>3. Offences.</p> <p>4. Persons deemed guilty of offence in connection with newspaper being an indecent document.</p> <p>5. Considerations determining whether or not document is indecent.</p> <p>6. Documents relating to certain subjects deemed indecent.</p> <p>7. Servant and employer, and agent and principal, each guilty of offence committed by one of them.</p> | <p>8. Absence of guilty knowledge no defence.</p> <p>9. Evidence of printing, publishing, or sale of document by defendant.</p> <p>10. On complaint on oath, Magistrate may issue search-warrant for indecent documents.</p> <p>11. Persons committing certain offences may be arrested without warrant.</p> <p>12. Magistrate alone to have jurisdiction.</p> <p>13. No prosecution to be commenced without leave of Attorney-General.</p> <p>14. Law as to indictable offences not affected hereby.</p> <p>15. Repeal. Schedule.</p> |
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A BILL INTITULED

AN ACT to prohibit the Publication or Sale of Indecent Literature. Title.

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 Indecent Publications Act, 1910, and it shall come into operation on the first day of January, nineteen hundred and *eleven*. Short Title and commencement.

2. In this Act, unless a different intention appears,—

10 “Indecent document” means any book, newspaper, picture, photograph, print, or writing, and any paper or other thing of any description whatsoever, which has printed or impressed upon it or otherwise attached thereto, or appearing, shown, or exhibited in any manner whatsoever thereon, any indecent word, statement, or significant sign, or any indecent picture, illustration, or representation : Interpretation.

15 “Newspaper” means any newspaper registered under the Printers and Newspapers Registration Act, 1908, or any periodical publication which is published for the time being (whether in New Zealand or elsewhere) at intervals not exceeding three months, or any copy of or part of any copy of any newspaper as so defined ; and every document which at any time accompanies and is distributed along with any newspaper shall be deemed to form part of the newspaper :

20 “Public place” has the same meaning as in section twenty-eight of the Police Offences Act, 1908.

Offences.

3. Every person commits an offence, and is liable on summary conviction to a fine of *fifty* pounds, or, when the offence is wilfully committed, to a fine of *one* hundred pounds or to imprisonment for *three* months, who—

- (a.) Sells, or delivers by way of hire, or offers for sale or hire, or has in his possession for sale or hire an indecent document; or **5**
- (b.) Prints or causes to be printed an indecent document; or
- (c.) Causes to be inserted in a newspaper any matter or thing whereby that newspaper becomes an indecent document; **10**
or
- (d.) Sends or causes to be sent, or attempts to send, through the post an indecent document; or
- (e.) Exhibits or causes to be exhibited an indecent document to any person in consideration or expectation of any payment, or otherwise for gain, and whether such payment is made by way of gratuity or otherwise howsoever; or **15**
- (f.) Publicly exhibits or causes to be publicly exhibited an indecent document in a public place, or so that the same is in view of persons in a public place; or **20**
- (g.) Delivers or offers, or causes to be delivered or offered, an indecent document to any person in a public place; or
- (h.) Delivers or leaves, or causes to be delivered or left, on premises in the occupation of any other person an indecent document; or **25**
- (i.) Writes, draws, affixes, impresses, or exhibits, or causes to be written, drawn, affixed, impressed, or exhibited, any indecent statement, word, picture, drawing, or sign in or upon a public place, or so that the same is in view of persons in a public place; or **30**
- (j.) Delivers to any person an indecent document with intent that it should be so dealt with by that or any other person in such a manner as to constitute an offence against this section. **35**

Persons deemed guilty of offence in connection with newspaper being an indecent document.

4. If any newspaper printed, or published, or sold, or offered for sale, or kept for the purpose of sale in New Zealand, contains any matter or thing whereby it becomes an indecent document, every person who at the date of the publication of that newspaper is or acts as a printer, publisher, proprietor, manager, editor, or sub-editor thereof, and every person who consented to the insertion therein of that matter or thing, shall, without excluding the liability of any other person, be conclusively deemed to have caused that matter or thing to be inserted in the newspaper, and shall be severally guilty of an offence against this Act accordingly. **40**

Considerations determining whether or not document is indecent.

5. In determining whether any document or other matter is indecent within the meaning of this Act the Magistrate shall take into consideration not merely the nature of that document or matter itself, but also the nature and circumstances of the act done by the defendant with respect thereto, and the purpose with which the act was done, and the literary, scientific, or artistic merit or importance of the document or matter, and no document or matter shall be held to be indecent unless, having regard to these and all other relevant considerations, the Magistrate is of opinion that the act of the defendant was of an immoral or mischievous tendency. **50**

6. Subject to the provisions of the *last preceding* section, any document or matter which relates or refers, or may be reasonably supposed to relate or refer, to any disease affecting the generative organs of either sex, or to any complaint or infirmity arising from or relating to sexual intercourse, or to the prevention or removal of irregularities in menstruation, or to drugs, medicines, appliances, treatment, or methods for procuring abortion or miscarriage or preventing conception, shall be deemed to be indecent within the meaning of this Act.
7. When an indecent document is sold, or delivered by way of hire, or offered for sale or hire, by a servant or agent in the course of his employment or agency, whether with or without the authority of his employer or principal, the document shall, for the purposes of this Act, be conclusively deemed to have been so sold, delivered, or offered, as the case may be, both by the servant or agent and by his employer or principal, and each of those persons shall be severally guilty of an offence against this Act accordingly.
8. It shall be no defence in a prosecution for any offence against this Act that the defendant had no knowledge that the document, matter, or thing to which the prosecution relates was of an indecent nature.
9. When, in the case of any prosecution for an offence against this Act, the indecent document which is the subject of the prosecution contains a statement that the document was printed, published, or sold by the defendant, the statement may be received as sufficient evidence of the fact so stated unless the contrary is proved.
10. (1.) On the complaint on oath of any constable that he has reason to believe and does believe that any indecent documents are kept in any place for the purpose of being so dealt with as to constitute an offence against this Act, a Magistrate may, if satisfied that any indecent documents are so kept, give authority, by warrant in the form set forth in the Schedule hereto or to the like effect, to any constable to enter into or upon that place with such assistance as may be necessary, whether by day or night, and if necessary to use force by breaking open doors or otherwise, and to search for and seize all such indecent documents as aforesaid.
- (2.) All the articles so seized shall be brought before the same or any other Magistrate, who shall thereupon issue a summons calling upon the occupier of the place so entered to appear before him to show cause why the articles seized should not be destroyed.
- (3.) If, on the hearing of the summons, the Magistrate is satisfied that any of the articles so seized are of the character stated in the warrant, and have been kept for the purpose aforesaid, he may order that those articles (except such of them as he considers necessary to be preserved as evidence in any further proceedings) be destroyed at the expiration of fourteen days from the making of the order, and the articles shall in the meantime be impounded.
- (4.) If the Magistrate is satisfied that any articles so seized are not of the character stated in the warrant, or have not been kept for the purpose aforesaid, he shall forthwith direct them to be restored to the occupier of the place in which they were seized.

Documents relating to certain subjects deemed indecent.

Servant and employer, and agent and principal, each guilty of offence committed by one of them.

Absence of guilty knowledge no defence.

Evidence of printing, publishing, or sale of document by defendant.

On complaint on oath, Magistrate may issue search-warrant for indecent documents.

(5.) Any person aggrieved by an order made under this section for the destruction of any articles may (whatever the amount involved) appeal therefrom in manner provided by the Justices of the Peace Act, 1908, and until such appeal is determined or abandoned the order shall be suspended and shall not be carried into effect. 5

(6.) No action shall lie against any person for any act done in good faith in pursuance or intended pursuance of this section or of any warrant or order issued or made in pursuance or intended pursuance thereof. 10

(7.) Subject to the provisions of this section, all proceedings under this section shall be in accordance with the Justices of the Peace Act, 1908, and that Act shall apply thereto accordingly.

Persons committing certain offences may be arrested without warrant.

11. A constable may arrest without warrant any person found committing any offence mentioned in paragraphs (f), (g), (h), or (i) of section *three* of this Act. 15

Magistrate alone to have jurisdiction.

12. Every information and prosecution for an offence against this Act shall be taken, heard, and determined by a Magistrate only.

No prosecution to be commenced without leave of Attorney-General.

13. No prosecution for an offence against this Act shall be commenced except with the leave of the Attorney-General. 20

Law as to indictable offences not affected hereby.

14. Nothing in this Act shall affect the law relating to any indictable offence, but no person shall in respect of the same act be convicted both summarily under this Act and also on indictment under the Crimes Act, 1908.

Repeal.

15. Section forty and sections forty-three to forty-eight of the Police Offences Act, 1908, are hereby repealed. 25

Schedule.

SCHEDULE.

NEW ZEALAND.]

To W. T., Constable, and to all other Constables of

WHEREAS it appears to me, J. S., Esquire, a Stipendiary Magistrate, by the complaint on oath of C. D., an officer of police, that certain indecent documents (to wit) are kept in the shop [or dwellinghouse, or as the case may be] in the occupation of A. B., [Occupation and address], situated at , for the purpose of being so dealt with as to constitute an offence against the Indecent Publications Act, 1910:

This is therefore to authorise and require you forthwith, with necessary and proper assistance, to enter, whether by day or night, into the said shop [or other premises, as the case may be], and there diligently to search for the said documents, and if on such search the same or any of them are found, that you bring the documents so found before me to be disposed of according to law.

Given under my hand, at , this day of , 19 . J. S.