

# New Zealand.

ANNO VICESIMO NONO

## VICTORIÆ REGINÆ.

No.

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### A BILL INTITLED

## AN ACT to establish Courts of Petty Sessions of the Peace, of Civil and Criminal Jurisdiction, in the Colony of New Zealand.

WHEREAS it is expedient that further provisions should be made for the administration of justice in civil and criminal cases.

BE IT THEREFORE 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 Petty Sessions Act 1865."

II. This Act shall come into operation in each of the Provinces of New Zealand respectively on and from a day or days to be fixed in

- respect of each of such Provinces by the Governor in Council where notice shall be published in the *Government Gazette* of the Colony and of the Province to which the same shall relate.
- Courts of Petty Sessions. III. There shall be within the Colony Courts to be called Courts of Petty Sessions which shall be held once in every month in each District.
- Formation of Districts. IV. The Governor from time to time by Order in Council where notice shall be published in the *New Zealand Gazette* may constitute and define Districts within and for which the said Courts respectively shall be held and such districts or any of them may from time to time in manner aforesaid abolish and the boundaries thereof may define or alter.
- Petty Sessions Court to be held before Justices of the Peace. V. The Petty Session Court shall be held by and before Justices of the Peace for the said Colony and a Chairman shall be appointed as hereinafter mentioned.
- Justices of Peace to attend Petty Sessions. VI. It shall be the duty of all Justices of the Peace resident within any Petty Sessions District to attend the Petty Sessions Courts for Districts respectively.
- Governor to call meeting of Justices to elect Chairman of Petty Sessions. VII. As soon as conveniently may be after the establishment of Petty Sessions District and afterwards from time to time as may be deemed expedient the Governor shall by Proclamation in the *New Zealand Gazette* appoint a Meeting of the Justices of the Peace resident in such district to be yearly within such District at some specified time and place for the purpose of choosing a Chairman of Petty Sessions and settling a rota of attendance; and the Justices present at such Meeting shall by a majority of those then and there present elect one of themselves to be chairman of Petty Sessions for the ensuing year and the person so elected shall be and act as Chairman for such period accordingly and it shall be his duty to preside at all Petty Sessions Courts to be held within such District for such period and to act as Chairman thereof.
- When Governor may appoint Chairman. VIII. In case the Justices so assembled or appointed to assemble for the purpose of electing a Chairman shall not agree or for any other reason shall fail to elect or choose such Chairman the Governor shall by warrant under his hand appoint one of the Justices resident within the District to be such Chairman who shall act as such in manner and for the period aforesaid.
- Office of Chairman vacant Governor to appoint. IX. In case the Office of Chairman of a Petty Sessions Court shall become vacant by reason of the death of the Chairman or otherwise the Governor shall by warrant under his hand nominate and appoint some other Justice of the Peace resident within the District to be and act as Chairman thereof for the current year.
- Justices to settle rota of attendance in default Governor may do so. X. The Justices of the Peace shall at such Meeting as aforesaid settle and determine amongst themselves a Rota for their respective attendance at such Petty Sessions Courts for the year then next ensuing for the purpose of and so as to apportion as equally and conveniently as may be amongst themselves the duty of attendance at such Courts provided always that such Rota shall be so far framed as to require the attendance of each Justice four times at least in every year and if the said Justices shall at any time be unable to agree upon or settle such Rota of Attendance amongst themselves the Governor shall from time to time by Warrant under his hand settle the same.
- Clerk of Petty Sessions Court to furnish copy of rota to Justices. XI. It shall be the duty of the Clerk of the Petty Sessions Court to furnish each Justice of the Peace resident within the Petty Session District in which such Court is situated as soon as conveniently may be with a copy of the List or Rota so settled.
- Justices not attending to be removed from Commission of the Peace. XII. Any Justice of the Peace who shall except from some unavoidable cause or accident fail twice in any current year in attending such Court on the days appointed for his attendance according to such Rota or List so settled shall be removed from the Commission of

the Peace by the Governor and shall be disqualified from being replaced in such Commission for the space of One year from the date of such removal.

XIII. The Governor may at all times by Warrant under his hand excuse any Justice or Justices of the Peace from attendance at any Petty Sessions Court for any period to be defined in such Warrant. Governor may excuse Justice from attending.

XIV. If it shall happen that at any Petty Sessions Court within half-an-hour after the time appointed for the commencement of business the Chairman of such Court shall not be in attendance it shall be lawful for the Justices of the Peace then present to choose a Chairman who shall act for that sitting of the Court and be the Chairman thereof. When Chairman absent Justices present may appoint a Chairman.

XV. The duly appointed Chairman of any Petty Sessions Court established under this Act or his Deputy appointed in like manner if not a Resident Magistrate receiving salary respectively shall be entitled as a Fee for each attendance at such Petty Sessions Court to a sum of Two Guineas to be paid to him out of the fees and fines hereinafter mentioned. Fees for Chairman and Deputy-Chairman.

XVI. Every Justice of the Peace who shall attend at any Petty Sessions Court which shall be held within the Petty Sessions District wherein he shall be resident shall be entitled to receive after the rate of One shilling and sixpence a mile for every mile that his place of residence shall be distant by the nearest road from the place at which such Petty Sessions Court shall be held to be paid out of the fees and fines hereinafter mentioned. Mileage to Justice.

XVII. The Clerk of every Petty Sessions Court shall keep a list of the Justices attending at such Petty Sessions Court and the Chairman or Deputy-Chairman presiding thereat and shall at the end of each quarter make out prepare and furnish to the Colonial Secretary a return showing such attendances by the Chairman Deputy-Chairman and Justices at such Petty Sessions Courts such return to be verified in such manner as may be directed by the Colonial Secretary. Clerk to keep list of Justices attending Petty Sessions.

XVIII. The Decisions of the Petty Sessions Courts shall be given according to the judgment of a majority of the Justices of the Peace then present and the Chairman shall have an original as well as a casting vote. Decisions of Petty Sessions Courts to be by majority.

XIX. In case there shall be no other Justices of the Peace present at or attending the sitting of any such Courts it shall be lawful for the Chairman for the District in which such Court shall be held and he is thereby empowered to act alone in the absence of such other Justices of the Peace with all such powers as may by Law be exercised by any two Justices of the Peace. Chairman may act alone

XX. It shall be lawful for the Governor in Council to remove any Chairman of Petty Sessions for inability or misbehavior. Power to Governor to remove Chairman.

XXI. There shall be for every Petty Sessions Court a Clerk who shall be appointed by and hold office during the pleasure of the Justices for the district provided always that the same person may be appointed Clerk of any two or more of such Courts respectively and shall be paid out of the fees and fines hereinafter mentioned such remuneration as the said Justices may from time to time appoint. Clerks of Courts to be appointed.

XXII. The Clerk of each Court shall issue all Summonses Warrants Precepts Writs of Execution and other processses whatsoever issuing out of such Court and shall registrar all orders and judgments of the said Courts respectively and keep an account of all proceedings of the Courts and shall receive take charge of and keep an account of all Court fees and fines payable or paid into Court and of all monies paid into and out of Court under Executions or otherwise and shall enter an account of all such fees and moneys in a book belonging to the Court to be kept for that purpose and shall do and perform all other acts and duties properly incident to the office of Clerk or which shall be prescribed by any rules to be made in that behalf. Their duties.

XXIII. There shall be a Bailiff for every such Court and such other Bailiff to be appointed

officers as may be necessary who shall be from time to time appointed by and hold office during the pleasure of the Justices for the District and shall be paid out of the fees and fines hereinafter mentioned such remuneration as the Justices may from time to time appoint.

Jurisdiction of Courts. Petty Sessions' Court to have jurisdiction beyond £20. Power to Governor to extend jurisdiction.

XXIV. Subject to the Provisions hereinafter contained every Court established and held under this Act shall have jurisdiction over all cases of a civil nature whether legal or equitable whether on balance of account unliquidated balance of partnership account or the amount or part of the amount of a distributive share under intestacy or of any legacy under a Will or otherwise when the cause of action arose either wholly or partly within the District in which the action is brought or where the party sought to be charged shall reside or carry on business or be served with the Process of the Court within such District: Provided nevertheless that no Petty Sessions Court shall have jurisdiction in any case of a civil nature in which the claim debt damage or demand shall exceed in amount or value £20. Provided nevertheless that it shall be lawful for the Governor in Council to extend the limits of jurisdiction in civil cases of any Petty Sessions Court to the amount or value of £50.

Courts not to have jurisdiction in questions of title and certain other cases.

XXV. No Court held under this Act shall have cognizance of any action suit or proceeding in which the title to real Estate or the validity of any devise or bequest shall be in question or the limitations under any Will or Settlement shall be disputed, or of any action for a malicious prosecution criminal conversation libel or slander.

Duties of Bailiffs.

XXVI. The Bailiff of every Court shall attend every sitting of the Court for such time as shall be required by the Court unless when his absence shall be allowed for reasonable cause by the Court and shall when required serve all the Summonses and Orders and execute all the Warrants Precepts Writs and Processes issued out of the Court and the said Bailiff shall in the execution of his duties conform to all such Rules and Regulations as shall from time to time be made as hereinafter provided and subject thereunto in the order and direction of the Court and every such Bailiff shall be responsible for all the acts and defaults of himself and those acting under him and by his authority in like manner as any Bailiff in New Zealand is responsible for the acts and defaults of himself and his officers.

Division of cause of action not permitted. Plaintiff may abandon excess and get judgment for amount within jurisdiction.

XXVII. It shall not be lawful for any Plaintiff to divide any cause of action for the purpose of bringing two or more actions or suits in any Court established under this Act but any Plaintiff having a cause of action for more than the maximum limit of jurisdiction of the Court for which an action might be brought under this Act if not beyond such limit may abandon the excess and thereupon the said Plaintiff shall on proving his case recover to an amount not exceeding the maximum limit of jurisdiction and the judgment of the Court shall be in full discharge to the Defendant of all demands in respect of such cause of action and entry of the judgment shall be made accordingly.

Minors may sue for wages &c.

XXVIII. It shall be lawful for any person under the age of Twenty-one years to prosecute a suit for wages or piece work or for work as a servant in any Court established under this Act in the same manner as if such person was of full age.

Executors or Administrators may sue and be sued.

XXIX. It shall be lawful for any Executor or Administrator to sue and be sued in any Court established under this Act in like manner as if he were a party in his own right and judgment and execution shall be such as in the like case would be given or issued in the Supreme Court.

No exemption to Solicitors or others.

XXX. No privilege shall be allowed to any Solicitor or other person to exempt him from the jurisdiction of any Court established under this Act.

One of several persons jointly liable may be sued.

XXXI. When any person shall have any demand recoverable in any Court established under this Act against two or more persons jointly

answerable it shall be sufficient if any such persons be served with process and judgment may be obtained and enforced against the person or persons so served notwithstanding that others jointly liable may not have been served or sued or may not be within the district or within the Colony and every such person against whom such judgment shall have been obtained as aforesaid shall have a right of action for contribution against the person or persons so jointly liable or any one or more of them.

XXXII. Every Petty Sessions Court shall have cognisance of such cases arising within the limits of its jurisdiction as by law can or may be dealt with summarily or by way of summary proceeding and such other cases arising within the limits of its jurisdiction as by law are or may be cognisable by or before Justices of the Peace.

Other jurisdiction of Courts.

XXXIII. When any person shall be charged before a Petty Sessions Court with larceny if the value of the property stolen shall not exceed twenty shillings and the circumstances of the case shall appear to be of so trivial a nature as to be unfit for prosecution it shall be lawful for the Court to dismiss the case without prosecution although a felony may have been proved and such dismissal may be pleaded in any Court in like manner as an acquittal upon any subsequent indictment or information for the same offence.

Trivial cases may be dismissed.

XXXIV. When any person shall be charged with larceny if the value of the property stolen shall not exceed Five Pounds it shall be lawful for any Petty Sessions Court upon being satisfied of the value of such property in its 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 the said property exceeded the aforesaid limits.

Certain charges of larceny may be dealt with summarily.

XXXV. And whereas by various Ordinances and Acts now in force within the Colony certain acts are required and authorised to be done and certain powers are given to Resident Magistrates be it enacted that all such acts and powers may hereafter be done and exercised except as hereinafter enacted by any Chairman of Petty Sessions.

Duties required to be done by Police Magistrate may be done by Resident Magistrate.

XXXVI. When any person shall be convicted before any Petty Sessions Court of an assault and it shall appear upon evidence that such assault was wanton and unprovoked and attended with bodily injury to the person assaulted the Court may sentence the offender to imprisonment with or without hard labour and with or without a pecuniary fine Provided that no Court shall have power to sentence any such offender to a longer term of imprisonment than six months and where in any such case a fine shall have been imposed upon the offender if it shall appear proper that compensation should be made for the injury inflicted such Court may award to the party injured such portion of the fine so levied as to such Court shall appear meet Provided always that the sum so awarded shall not in any case exceed one-half of the fine levied.

Power to Courts to award a portion of fines to the injured party.

XXXVII. For the purpose of enforcing the attendance of witnesses and others as well in civil as in criminal cases the production of books papers and writings and for the summary punishment of contempt any Petty Sessions Court while sitting as a Court of Criminal jurisdiction shall have and may exercise such powers for the purposes aforesaid as the Supreme Court may exercise by any law for the time being in force Provided always that the process for the recovery of any amount of any fine imposed or recognizance forfeited at any sitting of the Court for the despatch of criminal business shall be signed by the Chairman of the Court.

Power to Court to enforce attendance of witnesses.

XXXVIII. In any case either civil or criminal where a Petty Sessions Court may lawfully make an order such order may be enforced by attachment without prejudice to any other mode which may be appointed by law for enforcing the same.

Attachment.

Native cases not cognisable.

XXXIX. No case of a civil or criminal nature in which an aboriginal Native shall be a defendant (unless such defendant shall voluntarily agree to submit to the jurisdiction of the Court) shall be cognisable before any Court established under this Act.

Fines and Fees.

XL. All fines and fees received by any Court under this Act shall be paid to the Chairman of the Court and he shall pay thereout all expenses incidental to the Court and make all payments authorised under this Act and shall once a year pay over the free balance if any in his hands to the Colonial Treasurer.

Accounts.

XLI. Proper accounts of such fees and payments as aforesaid shall be rendered by the Chairman half-yearly to the Colonial Treasury.

Interpretation

XLII. The term "Aboriginal Native" in this Act shall include all persons of the Aboriginal New Zealand race all Aboriginal Polynesian Melanesian and Australasian Natives and all persons one of whose parents was a native of such races and which persons are hereafter designated half-caste: Provided that no half-caste shall be deemed to be an Aboriginal Native for the purposes of this Act unless he shall be living as a member of some native tribe or community.