

117

# New Zealand.

ANNO TRICESIMO

## VICTORIÆ REGINÆ.

No. —.

### ANALYSIS.

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| <p>Title.</p> <ol style="list-style-type: none"><li>1. Short Title.</li><li>2. Repeal clause.</li><li>3. Interpretation clause.</li><li>4. Justices on application of a party aggrieved to state a case for the opinion of the Supreme Court.</li><li>5. Security and notice to be given by appellant.</li><li>6. Justices may refuse a case when they think the application frivolous.</li><li>7. When the Justices refuse the Court may by rule order a case to be stated.</li><li>8. Supreme Court to determine the questions on the case. Its decision final.</li><li>9. Case may be sent back for amendment.</li><li>10. Power of the Court may be exercised by a Judge at chambers.</li><li>11. <i>Certiorari</i> not to be required when appeal upon case stated.</li><li>12. General right of appeal to Supreme or District Court when penalty exceeds five pounds or imprisonment exceeds one month.</li><li>13. Notice of appeal and recognizance required.</li><li>14.</li><li>15. Witnesses to be bound over to attend at hearing of appeal.</li><li>16. Recognizances to be transmitted to Registrar or Clerk of Court to which appeal is made.</li><li>17. When appeal is to be heard.</li></ol> | <ol style="list-style-type: none"><li>18. Respondent may by <i>certiorari</i> remove appeal from District Court to Supreme Court.</li><li>19. Justices may be heard in support of their decision.</li><li>20. Mistake in conviction or order may be amended on appeal when the evidence before Justices was sufficient to establish a valid conviction or order. Objections to convictions or orders on the ground of error or mistake must be stated in notice of appeal.</li><li>21. Judges to hear and determine appeal but may direct disputed questions of fact to be tried by a jury.</li><li>22. Witnesses costs to be paid by unsuccessful appellant.</li><li>23. Defects in statement of ground of appeal. Amendment of grounds of appeal.</li><li>24. Frivolous ground of appeal.</li><li>25. Party giving notice of appeal and not prosecuting same may be ordered to pay costs.</li><li>26. Amendment of recognizance.</li><li>27. Registrar or Clerk to certify decision on appeal. Or certify upon and return recognizance if appeal not prosecuted. Justices may enforce the decision on appeal. Costs of appeal how recovered. Party who has been already imprisoned only to be imprisoned for remainder of period.</li><li>28. Estreat of recognizance of appellant.</li></ol> |
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### A BILL INTITLED

## An Act for the regulation of Appeals from Justices of the Peace acting in their Summary Jurisdiction. 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 Appeals from Justices Act 1866.” Short Title.

II. The Ordinances and Act specified in the Schedule (A.) to this Act are to the extent in such Schedule stated hereby repealed but all proceedings under the authority or in execution of the said Ordinances or Act taken before the commencement of this Act shall be as valid to all intents and purposes and may be continued executed and enforced after this Act shall come into operation in the same manner as if this Act had not passed. Repeal clause.

III. In the interpretation of this Act words shall bear the same meaning as in “The Justices of the Peace Act 1866.” Interpretation clause.

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Justices on application of a party aggrieved to state a case for the opinion of the Supreme Court. [S.P. Act 1860 § 3.]

IV. After the hearing and determination by Justices of the Peace of any information or complaint which they have power to determine in a summary way by any law now in force or hereafter to be made either party to the proceeding before the said Justices may if dissatisfied with the said determination as being erroneous in point of law apply in writing within            days after the same to the said Justices to state and sign a case setting forth the facts and the grounds of such determination for the opinion thereon of the Supreme Court and such party hereinafter called the "Appellant" shall within fourteen days after receiving such case transmit the same to the Registrar of the Supreme Court for the district within which the cause of complaint shall have arisen first giving notice in writing of such appeal with a copy of the case so stated and signed to the other party to the proceeding in which the determination was given hereinafter called the "Respondent" and such notice shall state the time when the Appellant proposes to transmit such case to the Court Provided always that no such determination may be appealed against on the ground of improper admission or rejection of evidence.

Security and notice to be given by appellant. [S.P. Act 1860 § 4.]

V. The Appellant at the time of making such application and before the case shall be stated and delivered to him by the Justices shall in every instance enter into a recognizance before such Justices or one of them or some other Justice exercising the same jurisdiction with or without surety or sureties and in such sum as to the Justice or Justices shall seem meet conditioned to prosecute without delay such appeal and to submit to the judgment of the Supreme Court and pay such costs as may be awarded by the same and the Appellant shall at the same time and before he shall be entitled to have the case delivered to him pay the fees for and in respect of the case and recognizance and thereafter it shall not be lawful for any Justice to issue any warrant in execution of the conviction or order appealed against until such appeal shall have been decided or until the Appellant shall have failed to perform the condition of such recognizance except when an Act shall expressly authorize the levy of any sum to be made notwithstanding the appeal and except when any person ordered to enter into a recognizance of the peace has failed to enter into the required recognizance and if any warrant of distress shall have been issued or executed any Justice upon application made to him in that behalf shall order that such warrant shall not be executed or if executed and the distress not sold that the distress shall be returned to the owner and the Appellant if then in custody shall be liberated upon the recognizance being further conditioned for his appearance within ten days after the judgment of the Court shall have been given before the same Justice or Justices or if that is impracticable before some other Justice or Justices exercising the same jurisdiction who shall be then sitting to abide such judgment unless the determination appealed against be reversed.

Justices may refuse a case when they think the application frivolous. [S.P. Act 1860 § 5.]

VI. If the Justices be of opinion that the application be merely frivolous but not otherwise they may refuse to state a case and shall on request of the Appellant sign and deliver to him a certificate of such refusal Provided that the Justices shall not refuse to state a case when application for that purpose is made to them by or under the direction of Her Majesty's Attorney-General for the Colony.

When the Justice refuse the Court may by rule order a case to be stated. [S.P. Act 1860 § 6.]

VII. When the Justices shall refuse to state a case as aforesaid it shall be lawful for the Appellant to apply to the Supreme Court upon an affidavit of the facts for a rule calling upon such Justices and also upon the Respondent to show cause why such case should not be stated and the Court may make the same absolute or discharge it with or

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without payment of costs as to the Court shall seem meet and the Justices upon being served with such rule absolute shall state a case accordingly upon the Appellant entering into such recognizance as is hereinbefore provided.

VIII. The Supreme Court shall hear and determine the question or questions of law arising on any case transmitted to it under this Act and shall thereupon reverse affirm or amend the determination in respect of which the case has been stated or remit the matter to the Justices with the opinion of the Court thereon or may make such other order in relation to the matter and may make such orders as to costs as to the Court may seem fit and all such orders shall be final and conclusive on all parties. Provided that by leave of the Judge hearing the case such order may be subject to review by the Court of Appeal. Provided always that no Justices of the Peace who shall state and deliver a case in pursuance of this Act shall be liable to any costs in respect or by reason of such appeal against their determination.

Supreme Court to determine the questions on the case. [S.P. Act 1860 § 7.]

Its decision final.

IX. The Supreme Court shall have power if they think fit to cause the case to be sent back for amendment and thereupon the same shall be amended accordingly and judgment shall be delivered after it shall have been amended.

Case may be sent back for amendment. [S.P. Act 1860 § 8.]

X. The authority and jurisdiction hereby vested in the Supreme Court for the determination of any question of law upon a case stated under this Act may subject to any rules and orders of such Court in relation thereto be exercised by a Judge of such Court sitting in chambers.

Power of the Court may be exercised by a Judge at chambers. [S.P. Act 1860 § 9.]

XI. No writ of *certiorari* or other writ shall be required for the removal of a conviction order or other determination in relation to which a case is stated under this Act under the provisions hereinbefore contained.

*Certiorari* not to be required when appeal upon case stated. [S.P. Act 1860 § 11.]

XII. When upon the hearing and determination by Justices of the Peace of any information or complaint which they shall have power to determine in a summary way by any law now in force or hereafter to be made the penalty or sum of money ordered to be paid shall exceed five pounds exclusive of costs or the term of imprisonment adjudged shall exceed one calendar month exclusive of any further period of imprisonment adjudged for non-payment of costs or whenever any order for the estreat of a recognizance shall be made by Justices it shall be lawful for the party convicted or against whom any such order shall be made to appeal to the Supreme Court or to the District Court of the district within which the cause of complaint shall have arisen. Provided that if such appeal shall be only upon the ground that the determination of the Justices was erroneous in point of law the appeal shall be to the Supreme Court alone and upon case stated in manner hereinbefore provided.

General right of appeal to Supreme or District Court when penalty exceeds five pounds or imprisonment exceeds one month.

[S.P. Ord. § 18.]  
[S.P. Amdt. Ord. District Court Act 1858.]

XIII. The Appellant under the provisions of the last section shall give to the Justices from whose decision such appeal shall be made notice in writing of such appeal and of the matter and grounds thereof and the Court to which it is to be made within            days after the day of such conviction or order and within any Petty Sessions district or Resident Magistrate's district such notice may be left with the Clerk of Petty Sessions or Clerk of the Resident Magistrate's Court and the Appellant shall enter into the like recognizance and execution shall be suspended in like manner and the Appellant if in custody shall be entitled to be liberated upon the like conditions as are hereinbefore required in the case of appeals upon questions of law only. Provided that it shall not be lawful for the Appellant on the trial of any such appeal to go into or give evidence of any ground of appeal which shall not have been set forth in such notice.

Notice of appeal and recognizance required. [S.P. Ord. § 19.]

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XIV. Whenever the Appellant shall have given such notice and entered into such recognizances there shall be delivered to him the Form of Appeal ( ) containing a certificate of the conviction or order against which he shall appeal (signed by one of the Justices who shall have made the same or any other Justice having jurisdiction in the district) and it shall also be therein certified that the said notice was duly given and that the said recognizance was duly entered into if the fact be so.

Witnesses to be bound over to attend at hearing of appeal.  
[S.P. Ord. § 21.]

XV. If the facts of the case be in question upon the appeal the Justice from whose decision appeal shall be made being required so to do shall bind over the witnesses who shall have been examined in sufficient recognizances to attend at the hearing of the appeal and may issue his summons or warrant to compel the appearance of any such witness before him for the purpose of being so bound over and every witness so bound shall be allowed compensation for his time trouble and expenses of attending the appeal which compensation shall be paid by the Colonial Treasurer upon order made for that purpose by the Court hearing the appeal.

Recognizances to be transmitted to Registrar or Clerk of Court to which appeal is made.  
[12 & 13 Vic. c. 45 § 1.]

XVI. The Justice taking a recognizance for the prosecution of an appeal before the Supreme or any District Court shall cause the same with the recognizances of the witnesses (if any) to be forthwith transmitted to the Registrar or Clerk of the Court to which such appeal is to be made and if such appeal shall be upon a case stated the Justice shall certify upon the recognizance the time at which the case stated was delivered to the Appellant.

When appeal is to be heard.

XVII. The Appellant shall deliver the Form of Appeal to the Registrar or Clerk of the Court to which appeal is to be made and shall enter the same for hearing at the first practicable sitting of the Court and shall give to the opposite party notice of his intention to prosecute his appeal and of the matter and grounds thereof fourteen clear days before the commencement of the sittings but it shall be lawful for a Judge at chambers to appoint that the case shall be heard at any other time provision being made that sufficient notice shall be given to the Respondent and to the Justices of the time so appointed for the hearing.

Respondent may by *certiorari* remove appeal from District Court to Supreme Court.

XVIII. If any such appeal be brought in any District Court it shall be lawful for the Respondent but not for the Appellant at any time before hearing to remove the same by *certiorari* into the Supreme Court but if the said appeal be not so removed the decision of the District Court shall be final in all respects.

Justices may be heard in support of their decision.

XIX. At the hearing of any such appeal the Justices from whose decision such appeal shall be made or any of them shall be entitled to be heard by themselves or counsel in support of such decision.

Mistake in conviction or order may be amended on appeal when the evidence before Justices was sufficient to establish a valid conviction or order.  
[12 & 13 Vic. c. 45 § 7.]

XX. If at the hearing of any such appeal any objection shall be made on account of any omission or mistake in the drawing up of the conviction or order by the Justices and it shall be shown to the satisfaction of the Court that sufficient grounds were in proof before the Justices making such conviction or order to have authorized the drawing up thereof free from such omission or mistake it shall be lawful for the Court upon such terms as to payment of costs as it shall think fit to amend such conviction or order and to adjudicate thereupon as if no such omission or mistake had existed. Provided that no objection on account of any omission or mistake in any such conviction or order shall be allowed unless such conviction or mistake shall have been specified in the notices of appeal.

Objections to convictions or orders on the ground of error or mistake must be stated in notice of appeal.

Judges to hear and determine appeal but may direct disputed

XXI. The Judge of the Supreme Court or of the District Court (as the case may be) shall hear and determine the matter and make such

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order in relation thereto and such orders as to payment of costs to either party and to the Justices if appearing in support of their decision as to the Court shall seem fit. Provided that it shall be lawful for such Judge if he shall think proper so to do to direct that any disputed question of fact shall be tried by a jury.

questions of fact to be tried by a jury. [S.P. Ord. § 20.]

XXII. In case the conviction or order shall be affirmed the Court shall order the compensation to witnesses so allowed to be paid by the Appellant.

Witnesses costs to be paid by unsuccessful appellant. [S.P. Ord. § 22.]

XXIII. Upon the hearing of any appeal to the Supreme or any District Court no objection on account of any defect in the form of setting forth any ground of appeal in the notice of appeal shall be allowed and no objection to the reception of legal evidence offered in support of any ground of appeal shall prevail unless the Court shall be of opinion that such ground of appeal is so imperfectly or incorrectly set forth as to be insufficient to enable the party receiving the same to inquire into the subject of such statement and to prepare for trial. Provided always that in all cases where the Court shall be of opinion that any objection to any ground of appeal ought to prevail it shall be lawful for such Court if it shall so think fit to cause any such ground of appeal to be forthwith amended by some officer of the Court or otherwise on such terms as to payment of costs to the other party on postponing the trial or both payment of costs and postponement as to such Court shall appear just and reasonable.

Defects in statement of ground of appeal. [12 & 13 Vic. c. 45 § 3.]

XXIV. That if in any notice of appeal the Appellant shall have included any ground of appeal which shall in the opinion of the Court determining the appeal be frivolous or vexatious such Appellant shall be liable if the Court so think fit to pay the whole or any part of the costs of the Respondent in disputing such ground of appeal.

Amendment of grounds of appeal.

Frivolous ground of appeal. [12 & 13 Vic. c. 45 § 4.]

XXV. The Supreme or any District Court upon proof of notice of any appeal to the same Court having been given to the party entitled to receive the same though such appeal was not afterwards prosecuted or entered may if it so think fit order to the party or parties receiving the same such costs and charges as by the said Court shall be thought reasonable and just to be paid by the party giving such notice such costs to be recoverable in the manner in which costs of an appeal are made recoverable.

Party giving notice of appeal and not prosecuting same may be ordered to pay costs. [12 & 13 Vic. c. 45 § 6.]

XXVI. When any recognizance which shall have been entered into before any Justice within the time by law required for the purpose of complying with any such condition of appeal shall appear to the Court before which such appeal is brought to have been insufficiently entered into or to be otherwise defective or invalid it shall be lawful for such Court if it shall so think fit to permit the substitution of a new and sufficient recognizance to be entered into before such Court in the place of such insufficient defective or invalid recognizance and for that purpose to allow such time and make such examination and impose such terms as to payment of costs to the respondent as the said Court shall deem just and reasonable and such substituted recognizance shall be as valid and effectual to all intents and purposes as if the same had been duly entered into at an earlier time or times as required by any Act for that purpose.

Amendment of recognizance. [12 & 13 Vic. c. 45 § 8.]

XXVII. Within seven days after the decision of the Supreme or District Court upon any appeal brought under the provisions of this Act has been given the Registrar or if the appeal were to the District Court the Clerk of such Court shall certify such decision at foot of the form of appeal and return the same to the Justices from whose decision the appeal was made and whenever any such appeal shall not have been duly prosecuted the Registrar or Clerk (as the case may be) shall so certify

Registrar or Clerk to certify decision on appeal.

Or certify upon and return recognizance if appeal not prosecuted.

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upon such recognizance and return such recognizance to the Justices by whom the same was transmitted within seven days after the termination of the sittings at which such appeal ought to have been prosecuted and which certificate shall be free from any charge and whenever it shall appear from such certificate that such appeal has not been duly prosecuted or that the original conviction or order has been confirmed upon appeal the Justices who shall have made such conviction or order or any other Justice exercising the same jurisdiction shall issue the proper warrant for the execution of the same as if no such appeal had been brought and in every case in which it shall appear from such certificate that the Court of Appeal has varied the original conviction or order the said Justices shall forthwith issue the proper warrant for the execution of the order so made by the Court of Appeal in like manner as they might have issued a warrant for the execution of the original conviction or order in case no appeal had been prosecuted and if upon any such appeal either party shall be ordered to pay costs it shall be lawful for such Justices upon the amount thereof being certified by the Registrar or Clerk of the Court making such order to enforce payment thereof in like manner as if such costs had been costs awarded by such Justices upon the original adjudication of the case and in any case where a conviction or order by which any person shall be adjudged to be imprisoned shall be confirmed upon appeal such person shall be liable to be imprisoned for the period adjudged by such conviction or order where he shall not have been apprehended under such conviction or order or where he shall have been so apprehended and discharged then for such period as together with the time during which he shall so have been in custody shall be equal to the period adjudged by such conviction or order and no action or proceeding whatsoever shall be commenced or had against any Justice for enforcing such conviction or order by reason of any defect in the same.

XXVIII. Whenever the party bound by recognizance to prosecute an appeal against a conviction or order by which imprisonment was adjudged shall have absconded or being bound to appear before Justices to abide the judgment of the Court to which appeal was made shall have failed so to appear or when a party bound to prosecute an appeal and liable under the original conviction or order or under the order of the Court to which appeal was to be made to pay any sum of money whether by way of penalty or otherwise shall have no goods whereon to levy such sum by distress it shall be lawful for two or more Justices of the Peace having jurisdiction at the place where the original conviction or order was made and sitting in open Court and after like proof of notice to the parties as in estreating recognizances under the provisions of "The Justices of the Peace Act 1866" to make an order estreating the recognizance in any such case to such amount as they shall see fit and for paying out of such amount such sum as shall have been directed to be paid to any party by the original conviction or order or by the order of the superior Court and thereupon to issue a warrant for the levy of the same upon the goods of the several persons bound by such recognizance.

XXIX. The Supreme Court may from time to time and as often as it shall see occasion make and alter rules and orders to regulate the practice and proceedings upon appeals made to it under the provisions of this Act and the practice and proceedings upon appeals to the District Court shall so far as may be be the same as upon appeals to the Supreme Court.

XXX. This Act shall come into operation on the \_\_\_\_\_ day of

Justices may enforce the decision on appeal.

Costs of appeal how recovered.

Party who has been already imprisoned only to be imprisoned for remainder of period.

Estreat of recognizance of appellant.

Supreme Court may make rules for proceedings on appeal.

When Act to come into operation.

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## SCHEDULE A.

ORDINANCES AND ACT REPEALED IN WHOLE OR IN PART BY THIS ACT.

Session and Number.	By what Legislature passed.	Title.	Extent of Repeal.
Sess. 2, No. 5	Governor and Legislative Council	"An Ordinance to regulate Summary Proceedings before Justices of the Peace."	Secs. 18, 19, 20, 21, and 22.
Sess. 3, No. 15	Ditto	"An Ordinance to amend an Ordinance to regulate Summary Proceedings before Justices of the Peace."	The whole.
1860, No. 7	General Assembly	"Summary Proceedings Improvement Act 1860."	The whole.

## SCHEDULE B.

FORM OF APPEAL.

Petty Sessions District  
of  
Province of  
To wit. } Between C. D. plaintiff and A. B. defendant.

I CERTIFY that on the            day of            at            upon the hearing of an information [or complaint] that [set forth the matter of the information and complaint] J. S. and J. B. Justices of the Peace acting in and for the district aforesaid did adjudge and order that [set forth the adjudication or order.]

(Signed) T. J.

Justice of the Peace acting for the said district.

The person against whom the said order was made hereby appeals against the same to the next sittings of the Court to be held at

(Signed)

Appellant.

This            day of            186 .  
I certify that notice of said appeal was duly given And that the said appellant has duly entered into a recognizance to prosecute such appeal.

(Signed)

Justice of the Peace.

This            day of            186 .  
I certify that upon the hearing of the said appeal on the            day of            the Court ordered that [state order.]

(Signed)

Registrar of the Supreme Court  
or Clerk of the District Court of

This            day of            186 .