

INFERIOR COURTS PROCEDURE BILL.

MEMORANDUM.

THIS Bill repeals section 76 of the Judicature Act, 1908 (*Removal of Technical Defects*), and certain similar provisions in the Justices of the Peace Act, 1908, and substitutes more extensive provisions for the purpose of preventing the proceedings of inferior Courts from being invalidated by technical and formal errors. The repealed provisions have proved to be ineffective. See, for example, *In re White*, 26 N.Z.L.R. 1268. The following are the chief provisions of the Bill:—

(1.) Section 3 provides in effect that in civil proceedings no defect or error can be raised as an objection, even though it goes to the jurisdiction of the Court, unless the objection is made without delay. At present, no error which relates to the jurisdiction of the Court can be waived by the parties, if it appears on the face of the proceedings. Consequently, as the law now stands, a defendant in the Magistrate's Court could defend the case on the merits even to the Court of Appeal, and after being defeated on the merits, fall back on a verbal error in the plaint note by which the proceedings were initiated, nor is there any authority by which such an error could be amended.

(2.) Section 4 provides that the judgments and convictions and other process of inferior Courts need not show on the face of them the jurisdiction or authority on which they are based. Jurisdiction is to be presumed until its absence is proved. The existing rule is a relic of old law for which there is now no sufficient reason.

(3.) Section 5 makes a similar provision with respect to certain other formal requisites of the written process of inferior Courts.

(4.) Section 6 abolishes the old rule that a conviction by an inferior Court must set out in full detail every constituent of the offence. Under the Bill any description is sufficient which identifies the offence.

(5.) Section 7 abolishes the rule that if a conviction is bad in any part it is bad altogether.

(6.) Section 8 re-enacts section 76 of the Judicature Act, 1908 (*Removal of Technical Defects*), with amendments required to make it effective.

(7.) Section 9 provides that a conviction or order shall not be wholly bad because it relates to two offences or two matters instead of one. The Supreme Court may strike out one of the offences or matters and let the other stand.

(8.) Section 10 makes provision for the case of two closely related offences and a mistaken conviction for one of these instead of for the other.

(9.) Section 11 enables the Supreme Court, instead of amending a defective conviction or order, to remit it to the inferior Court to be there amended.

(10.) Section 12 gives power to Magistrates and Justices to amend their own convictions or orders.

(11.) Section 13 allows an information for an offence to be framed in the alternative in those very numerous cases in which the Act itself by which the offence is created describes it in the alternative.

(12.) Section 15 abolishes the existing appeal by way of prohibition under the Justices of the Peace Act. This is an unnecessary duplication of remedies, the original purpose of which (if any) no longer exists. The true scope and meaning of the provisions repealed has proved to be a matter of some uncertainty and difficulty, and all necessary appeals are otherwise sufficiently provided for.

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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,
16th December, 1909.*

Hon. Dr. Findlay.

INFERIOR COURTS PROCEDURE.

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A BILL INTITULED

AN ACT to make Further Provision for the Validity of the Judicial Proceedings of Inferior Courts notwithstanding Technical or Formal Errors. Title.

5 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 Inferior Courts Procedure Act, 1909, and shall come into operation on the first day of January, 10 nineteen hundred and ten. Short Title and commencement.

2. In this Act the term "inferior Court" means—

Interpretation.

(a.) A Magistrate's Court;

(b.) A Warden's Court; and

15 (c.) A Magistrate, Justice of the Peace, Coroner, or Warden in respect of the exercise of any judicial authority conferred upon him by any Act.

3. (1.) In any civil proceedings before an inferior Court any error, irregularity, omission, or defect, whether it relates to the jurisdiction of the Court, or to the procedure therein, or to any other matter, and whether it appears on the face of the record or of the proceedings or not, and whether it is within the knowledge of the Court or not, may be waived or acquiesced in by any party to the proceedings. Waiver of errors in civil proceedings before an inferior Court.

25 (2.) When any such waiver or acquiescence by any party has taken place, the proceedings shall be as valid in all respects as against that party as if no such error, irregularity, omission, or defect had existed.

80 (3.) Nothing in this section shall apply so as to make valid any judgment or order which on the face thereof is of such a nature that the Court giving or making the same could not under any circumstances have jurisdiction to give or make it.

(4.) No such waiver or acquiescence by a party shall so operate as to preclude the Court in which the proceedings are taking place from refusing, in the exercise of its discretion, to give or make any judgment or order, or to do any other act, which, in the absence of such waiver or acquiescence, would be invalid for want of jurisdiction or for any other reason. 5

Grounds of jurisdiction need not be stated.

4. No judgment, order, conviction, warrant, or other document or instrument made or issued by any inferior Court, or in pursuance of any proceedings in any such Court, shall, in any proceedings whatsoever, be quashed, or declared invalid, or held to be invalid because that judgment, order, conviction, warrant, document, or instrument does not state on the face of it the grounds of the jurisdiction by virtue of which it was so made or issued, or because it states those grounds imperfectly or erroneously; and it shall be presumed that sufficient grounds of jurisdiction existed unless it is proved or appears on the face thereof that the judgment, order, conviction, warrant, document, or instrument was made or issued without or in excess of jurisdiction. 10 15

Exemptions need not be negatived.

5. It shall not be necessary in any judgment, order, conviction, or warrant given, made, or issued by an inferior Court to negative (either specially or by general words) any exemption, exception, proviso, or condition expressed in the statutes, regulations, by-laws, or other authorities in pursuance of which the judgment, order, conviction, or warrant is given, made, or issued. 20

Sufficiency of description of offence.

6. No conviction by an inferior Court for any offence shall in any proceedings whatever be quashed, or declared to be invalid, or held to be invalid, because of any error or omission in the description of the offence, provided that the conviction sufficiently describes the offence to enable it to be identified by reasonable intendment. 25

Amendment by striking out part of conviction, &c.

7. If on any appeal, whether by way of case stated or otherwise, or on any application for a writ of *certiorari* or *habeas corpus*, or on the return of any such writ, or on any application for a writ of prohibition, or on any application to quash or discharge any conviction, order, judgment, or warrant made, given, or issued by any inferior Court, it is found that there is any ground of invalidity which affects any such conviction, order, judgment, or warrant in part only, the Court in which that appeal or application is heard or by which that writ has been issued may, on such terms as to costs and otherwise as it thinks fit, amend the conviction, order, judgment, or warrant by striking out that part thereof if it is severable from the residue, and may adjudicate thereon accordingly as if the part so struck out had not been inserted therein. 30 35 40

Amendment by insertion of matter omitted.

8. If on any appeal, whether by way of case stated or otherwise, or on any application for a writ of *certiorari* or *habeas corpus*, or on the return of any such writ, or on any application for a writ of prohibition, or on any application to quash or discharge any conviction, order, judgment, or warrant, made, given, or issued by any inferior Court, any objection is made on account of any omission or mistake in the drawing-up of any such conviction, order, judgment, or warrant, and it is shown to the satisfaction of the Court in which that appeal or application is heard or by which that writ is issued that sufficient grounds were in proof before the inferior Court by which the conviction, order, judgment, or warrant was made, given, or issued, 45 50

tion, order, judgment, or warrant was made, given, or issued, to have authorised the drawing-up thereof free from omission or mistake, the Court in which that appeal is heard or by which that writ is issued may, on such terms as to costs and otherwise as it thinks fit, amend the conviction, order, judgment, or warrant, and adjudicate thereupon as if no such mistake or omission had existed.

9. If on any appeal, whether by way of case stated or otherwise, or on any application for a writ of *certiorari* or *habeas corpus*, or on the return of any such writ, or on any application for a writ of prohibition, or on any application to quash or discharge any conviction, order, judgment, or warrant made, given, or issued by an inferior Court, an objection is made that any such conviction, order, judgment, or warrant wrongly comprises more than one offence or matter, whether alternatively or cumulatively, the Court in which that appeal or application is heard or by which that writ has been issued may, on such terms as to costs and otherwise as it thinks fit, amend the conviction, order, judgment, or warrant in that respect by striking out such part thereof as the Court thinks fit, and may adjudicate thereon as if that part had not been inserted therein.

Amendment of convictions or orders for two offences or matters.

10. 10. If on any appeal, whether by way of case stated or otherwise, from a conviction made by an inferior Court for any offence it appears to the Court in which the appeal is heard that the evidence in the inferior Court was insufficient to support a conviction for that offence, but was sufficient to support a conviction for some offence of a similar character within the jurisdiction of the inferior Court, and that the appellant has not been misled or prejudiced in his defence by the course of trial in the inferior Court, the Court in which the appeal is heard may, on such terms as to costs or otherwise as it thinks fit, amend the conviction by substituting the last-mentioned offence for the offence mentioned in the conviction, and shall thereupon adjudicate upon the appeal in the same manner as if the conviction had originally been made in its amended form on an information duly charging the appellant with the offence so substituted.

Amendment of conviction by substituting one offence for another.

11. In any of the cases mentioned in any of the *four* last preceding sections, the Court in which the appeal or application is heard or by which the writ is issued may, on such terms as to costs and otherwise as it thinks fit, instead of amending the conviction, order, judgment, or warrant, remit the same for amendment to the inferior Court by which the same was made, given, or issued, and may thereafter, if the same is duly amended accordingly, adjudicate thereupon as if no such mistake or omission had existed.

Convictions, &c., may be remitted to inferior Court for amendment.

12. (1.) If any omission or mistake is made in any conviction or order drawn up by any Justice of the Peace or Magistrate, and sufficient grounds were in proof before him to have authorised the drawing-up of that conviction or order free from that omission or mistake, the Justice or Magistrate may at any time thereafter, before the conviction or order has been quashed by the Supreme Court or by any other Court having jurisdiction in that behalf, draw up an amended conviction or order in lieu of that in which the omission or mistake exists, and lodge the amended conviction or order with the Registrar of the Supreme Court, to be filed by him in accordance with the Justices of the Peace Act, 1908.

Power of Justices and Magistrates to amend convictions or orders.

(2.) The powers hereby conferred upon a Justice of the Peace or Magistrate may be exercised notwithstanding the fact that the defective conviction or order has been theretofore already lodged and filed in the Supreme Court, or removed into the Supreme Court or any other Court of competent jurisdiction in that behalf by *certiorari* or otherwise, and notwithstanding the fact that proceedings by way of *certiorari* or otherwise have been theretofore already commenced in respect of that conviction or order. 5

(3.) The powers hereby conferred upon a Justice of the Peace or Magistrate may be exercised by him from time to time in respect of the same conviction or order. 10

(4.) When any proceedings are already pending in the Supreme Court or any other Court in respect of the validity of any conviction or order at the time when any such amended conviction or order is substituted therefor under the provisions hereinbefore contained in that behalf, the said Court may adjudicate in the matter as if the amended conviction or order had been substituted for the defective conviction or order before the commencement of those proceedings, and as if those proceedings related to the amended conviction or order accordingly. 15 20

Informations and complaints may be in the alternative.

13. (1.) An information or complaint laid before a Magistrate or Justice of the Peace shall not be deemed objectionable on the ground that it charges or alleges in the alternative several different matters, acts, or omissions, which are stated in the alternative in the enactment describing any offence or any matter of complaint. 25

(2.) The defendant may at any time during the hearing of any information or complaint which is so framed in the alternative apply to the Court to amend the same on the ground that it is so framed as to embarrass him in his defence.

(3.) The Court may, if satisfied that the defendant will be so embarrassed in his defence, order the informant or complainant to elect between the alternatives charged or alleged in the information or complaint, and the same shall thereupon be amended accordingly, and the trial shall proceed as if the information or complaint had been originally framed in the amended form. 30 35

(4.) The conviction or order made on any such alternative information or complaint shall be limited to one of the alternatives so charged or alleged.

This Act not to restrict other statutory provisions.

14. Nothing in this Act shall be so construed as to restrict or exclude the operation of any other statutory provisions for the amendment or validity of the proceedings of an inferior Court. 40

Repeals.

15. (1.) The Acts mentioned in the Schedule hereto are hereby repealed to the extent indicated in that Schedule.

Saving.

(2.) The repeal of sections three hundred and eighteen to three hundred and twenty-two of the Justices of the Peace Act, 1908, shall not be so construed as to take away or affect the powers of the Supreme Court to issue a writ of prohibition in respect of any proceedings of Justices of the Peace or Magistrates without or in excess of their jurisdiction in the same manner in which that Court might have heretofore issued such a writ independently of the sections so repealed. 45 50

SCHEDULE.

Schedule.

ENACTMENTS REPEALED.

1908, No. 89.—The Judicature Act, 1908: Section 76.

1908, No. 91.—The Justices of the Peace Act, 1908: Section 324, and sections
318 to 322.

1908, No. 120.—The Mining Act, 1908: Section 354.

By Authority: JOHN MACKAY, Government Printer, Wellington.—1909.