

New Zealand.

ANNO TRICESIMO

VICTORIÆ REGINÆ.

No. —.

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A BILL INTITULED

AN ACT to Consolidate and Amend the Laws relating to Resident Magistrates and Justices of the Peace in their Civil jurisdiction.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled and by the authority of the same as follows—

Short Title.

I. The Short Title of this Act shall be "The Resident Magistrates Act 1866."

Repeal clause.

II. The Acts and Ordinances specified in Schedule A. to this Act are hereby repealed and the several Imperial Acts or parts of Imperial Acts specified in Schedule B. to this Act shall no longer be in force in the Colony of New Zealand but all proceedings in execution of the said Acts and Ordinances 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 been passed.

Interpretation clause.

III. In the interpretation of this Act the words "Petty Sessions" shall mean Petty Sessions held under the authority of "The Petty Sessions Act 1865" the word "tenements" shall mean only lands houses

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or other hereditaments of a corporeal nature the word "landlord" shall be understood as signifying the person entitled to the immediate reversion of tenements or if the property be held in joint tenancy coparcenary or tenancy in common shall be understood as signifying any one of the persons entitled to such reversion.

CREATION AND CONSTITUTION OF COURTS.

IV. For the purposes hereinafter mentioned there shall be appointed fit persons being Justices of the Peace who shall be and be called Resident Magistrates. Resident Magistrates to be appointed.

V. Every Resident Magistrate shall be appointed and may be removed by the Governor acting in the name and on behalf of Her Majesty and by no other person Provided that every person lawfully holding the office of a Resident Magistrate immediately before this Act comes into operation shall continue to hold such office and be deemed to have been appointed under this Act. Mode of appointment and tenure of office.

VI. Every Resident Magistrate shall have all such powers unless otherwise specially provided as now are or hereafter may be exercised by any two Justices of the Peace. To have the powers of two Justices of the Peace.

VII. It shall be lawful for the Governor from time to time by proclamation in the *New Zealand Gazette* to constitute throughout the Colony or in any part thereof districts to be called Resident Magistrates' Districts and such Districts from time to time to abolish and the boundaries to define and alter and to appoint Resident Magistrates to exercise their office therein who shall hold Courts to be called Resident Magistrates' Courts in and for such Districts at such times and places as shall be deemed most convenient In case any Resident Magistrate shall by reason of sickness absence suspension from office or other cause be unable to discharge the duties of his office it shall be lawful for the Governor to appoint a fit person being a Justice of the Peace to act in the place of such Resident Magistrate as long as such inability shall continue. Resident Magistrates to hold Courts for certain districts. Substitute may be appointed.

VIII. Wherever immediately before the time fixed for this Act to come into operation a Resident Magistrate shall have been employed in the exercise of his office within a defined district and in receipt of any salary in respect thereof such district shall be deemed to have been constituted and such Resident Magistrate to have been appointed Resident Magistrate thereof and the clerk and bailiff if there be any such officers to have been appointed clerk and bailiff of the Court thereof under the authority of this Act. Districts for which Resident Magistrates now act to be deemed districts proclaimed under Act.

IX. No Resident Magistrate appointed to act for any District who was not exercising the office of Resident Magistrate previous to the fifteenth day of August one thousand eight hundred and fifty-six shall practise or be directly or indirectly concerned as a solicitor attorney or proctor and any Resident Magistrate so appointed who shall offend against this provision shall for every such offence forfeit and pay the sum of fifty pounds to be recovered by action in the Supreme Court by any one who may sue for the same but any Resident Magistrate if otherwise qualified may practise as a barrister in the Supreme Court. Resident Magistrate not to practise as solicitor.

X. In all civil causes hereby made determinable in any Resident Magistrate's Court the Resident Magistrate thereof shall unless otherwise specially provided be the sole Judge but in criminal proceedings it shall be lawful for any Justice of the Peace to sit and act with him and the decision shall be given according to the judgment of a majority of the Justices of the Peace then present Provided that Resident Magistrate to act alone in civil cases.

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the Resident Magistrate shall act as chairman of the bench and shall have an original as well as a casting vote.

Clerk to be appointed. XI. For every Resident Magistrate's Court there shall be a clerk who shall be appointed by and hold office during the pleasure of the Governor provided that it shall be lawful for the Resident Magistrate if he think fit to suspend any clerk until the Governor's pleasure shall be known.

Duties of clerk. XII. The clerk of every Resident Magistrate's Court shall take charge of all Court fees and fines payable or paid into Court and of all moneys paid into and out of Court under executions or otherwise and shall enter an account of all such fees and moneys in books 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.

Bailiffs to be appointed. XIII. There shall be a bailiff or bailiffs for every such Court who shall be appointed by and hold office during the pleasure of the Resident Magistrate and shall be sworn as and have the powers of a constable.

Duties of bailiffs. XIV. The bailiff shall attend the sittings of the Court and shall when required serve all summonses and orders and execute all warrants issued out of the Court and shall in the execution of his duties be under the order and direction of the Resident Magistrate 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 sheriff in New Zealand is responsible for the acts and defaults of himself and his officers.

Bailiff's fees. XV. For service of process from any Resident Magistrate's Court the bailiff or his assistant shall be entitled to receive the fees specified in Schedule to this Act annexed which fees shall be accounted for to the clerk of the said Court who shall pay over the same in like manner as other fees received by such clerk. Provided that it shall be lawful for the Resident Magistrate to refund to the bailiff or his assistants out of the fees which shall be received in respect of Schedule to this Act annexed any money actually expended by him or them in serving such process as aforesaid.

Two Justices may act in the place of Resident Magistrate. XVI. If upon the day appointed for the sitting of a Resident Magistrate's Court the Resident Magistrate thereof cannot attend or if he shall be interested in the matter of any cause it shall be lawful for any other Resident Magistrate or any two or more Justices of the Peace to act in his stead and to hear and determine all civil cases in which the debt or damage claimed does not exceed twenty pounds and to adjourn the hearing of any cases in which the debt or damage claimed shall exceed twenty pounds to such day as they may deem most convenient.

Clerk may adjourn Court. XVII. If from any cause a Resident Magistrate's Court cannot be held upon the day appointed for the same the clerk may adjourn the Court to such day as he may deem most convenient.

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Jurisdiction in civil cases. XVIII. Save as hereinafter excepted the Resident Magistrate's Court of any District shall have jurisdiction in all cases of a civil nature in which the claim or demand shall not exceed twenty pounds whether on balance of account or otherwise. Provided that the cause of action has arisen either wholly or in some material point within the District in which the action is brought or the party sought to be charged is residing or carrying on business or is served with the process of the Court within such District. Provided also that no Resident Magistrate's Court shall take cognizance of any claim or demand in which the validity of any devise bequest or limitation under any will or settle-

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ment or the title to land is in dispute or of any action for false imprisonment or malicious prosecution or libel or slander or criminal conversation or seduction or breach of promise of marriage.

XIX. The Resident Magistrate's Court of any District shall have jurisdiction in any case whatever of a civil nature in which the debt or damage claimed shall not exceed one hundred pounds and in which either party (but not both plaintiff and defendant) shall be of the native race Provided that where the debt or damage claimed shall exceed the amount to which such Resident Magistrate's jurisdiction ordinarily extends one or more Justices of the Peace shall sit and act with him.

Jurisdiction where one party is a Native.

XX. It shall be lawful for the Governor by proclamation in the *New Zealand Gazette* to declare that the limit of jurisdiction of the Resident Magistrate's Court of any District shall be extended to fifty pounds or to one hundred pounds as he may think proper and thereupon such Court shall have power to hear and determine any case in which the debt or damage claimed shall not exceed the limit fixed by such proclamation and which might have been lawfully tried in such Court in case the debt or damage claimed therein had not exceeded twenty pounds.

Power to Governor to extend jurisdiction.

XXI. It shall be lawful for the Governor by proclamation in the *New Zealand Gazette* at any time to abolish the extended jurisdiction which he is hereby authorized to confer upon any Resident Magistrate's Court Provided that such abolition shall not be held to prevent the issue of warrants of distress or commitment or otherwise enforcing satisfaction of any judgment obtained in such Resident Magistrate's Court previously to such abolition.

Governor may suspend or abolish extended jurisdiction.

XXII. It shall not be lawful for any plaintiff to divide a cause of action for the purpose of bringing two or more suits in any Resident Magistrate's Court but any person having a cause of action which but for the largeness of the amount claimed might have been lawfully tried in any Resident Magistrate's Court may by abandoning the excess bring it within the jurisdiction of the Court and the judgment of the Court thereupon shall be in full discharge to the defendant of all demands in respect of such cause of action.

Division of cause of action not allowed.

XXIII. It shall be lawful for any person under the age of twenty-one years to prosecute a suit in any Resident Magistrate's Court for wages or piece work or for work as a servant in the same manner as if such person were of full age.

Minors may sue.

XXIV. No privilege shall be allowed to any solicitor or other person to exempt him from the jurisdiction of any Court held under this Act.

No privilege allowed.

XXV. It shall be lawful for any executor or administrator to sue and be sued in any Resident Magistrate's Court in like manner as if he were a party in his own right and if in any such action the Court shall give judgment against such executor or administrator the judgment shall direct that the amount thereof be levied of the assets of the testator or intestate or of the goods of such executor or administrator according as judgment would in the like case be given in the Supreme Court and execution shall issue accordingly.

Executor may sue and be sued.

XXVI. Where any plaintiff shall have any demand recoverable under this Act against two or more persons jointly answerable it shall be sufficient if any of 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 judgment shall have been obtained under

One of several persons jointly liable may be sued.

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this Act and who shall have satisfied such judgment shall have a right of action for contribution against the persons so jointly liable.

Person suing in Supreme or District Court in matter triable in Resident Magistrate's Court allowed no costs.

XXVII. If any plaintiff in an action in the Supreme Court or in any District Court which might have been brought in a Resident Magistrate's Court recover no greater amount than he might have recovered in the Resident Magistrate's Court he shall be entitled to no costs unless the Judge before whom the case is tried shall certify that the case was a proper case to have been so tried.

PROCEDURE AND PRACTICE OF COURTS.

Process to be served by any person the Resident Magistrate may direct.

XXVIII. The process of the Court may be served by the bailiff or his assistants or by any other person the Resident Magistrate may think fit to direct.

Except by leave of Court party to appear personally or by barrister or solicitor.

XXIX. It shall be lawful for the party to any suit or proceeding to be taken under this Act to appear and act personally or by a barrister or solicitor of the Supreme Court and not otherwise. Provided that under special circumstances the Resident Magistrate may permit any party to appear by an agent not being a barrister or solicitor but such agent shall not be entitled to receive any fee or reward for so appearing or acting.

Mode of commencing suit.

XXX. Upon the application of any person desirous of prosecuting a suit in the Resident Magistrate's Court the Clerk of the Court shall take down in such form as the Resident Magistrate may direct a plaint in writing stating the names and the last known places of abode of the parties and the substance of the action intended to be brought and the intending plaintiff shall at the same time deliver to the Clerk of the Court a written statement in such form as the Resident Magistrate shall deem sufficient of the particulars of his claim to be filed for the use of the Court together with so many copies of such statement as there are defendants to the suit and one copy thereof shall be annexed to and served with each summons and be deemed a part thereof.

Summons to be issued.

XXXI. A summons which may be in the form (1) in Schedule C. to this Act and shall be signed by the Resident Magistrate or a Justice of the Peace shall thereupon be issued to each defendant.

When summons to be issued.

XXXII. Such summons shall be issued and served days at least before the day on which the defendant is to appear. Provided that a summons may issue at any time before the holding of the Court if the Resident Magistrate or Justice of the Peace issuing the summons is satisfied that the defendant is about to remove out of the jurisdiction of the Court but in every such case the Resident Magistrate may at his discretion and on such terms as he shall think fit adjourn the hearing.

Upon what condition summons to be issued beyond district.

XXXIII. Such summons may be issued against any defendant residing or being without the district within which the Court has jurisdiction but not out of the Colony upon the application of any plaintiff who will depose on oath that he has good cause of action and that such cause of action arose wholly or in some material point within the jurisdiction of the Court.

Summons to give evidence and penalty for disobedience.

XXXIV. The Resident Magistrate or any Justice of the Peace may at the request of either party to a suit issue a summons to any person to appear and give evidence in such suit and to produce any books deeds papers or writings relating to such suit and in his possession or under his control and any person upon whom any such summons shall have been served and to whom at the same time payment or a tender of his expenses shall have been made on the scale to be fixed by this Act and who shall refuse or neglect without sufficient cause to

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appear or to produce any books deeds papers or writings required by such summons to be produced and also every person present in Court who shall be required to give evidence and who shall refuse to be sworn and give evidence shall be liable to a penalty not exceeding ten pounds or in default of payment to be imprisoned for a term not exceeding fourteen days but the payment of any such fine or the undergoing any such term of imprisonment shall not exempt any person from liability to an action for disobeying such summons.

XXXV. No misnomer or inaccurate description of any person or place in any plaint or summons shall vitiate the same provided that the person or place be therein described so as to be commonly known. Misnomer not to vitiate plaint or summons.

XXXVI. Every summons in cases of a civil nature issued by any Resident Magistrate or Justice of the Peace may be served by delivering the same personally to the person to whom it is directed and where such person cannot conveniently be found then by leaving the same at his last or usual place of abode. Provided that before personal service is dispensed with proof shall first be given to the satisfaction of a Justice of the Peace that reasonable efforts have been made to effect such personal service and in every case where personal service of the summons to a defendant is dispensed with service at the last or usual place of abode shall be effected at least fourteen days before the day fixed for trial of the cause. Mode of service of summons.

XXXVII. The service of any summons issued by any Resident Magistrate or Justice of the Peace whether in civil or criminal cases may be proved by affidavit of the party who shall have served such summons setting forth the fact and mode of such service and duly sworn before a Justice of the Peace. Proof of service of summons.

XXXVIII. Every summons order or notice whether in civil or criminal cases issued by any Resident Magistrate or Justice of the Peace and addressed to any person of the native race shall be in the Maori language or accompanied by a translation thereof into such language and every warrant of distress against the goods and chattels or of arrest or imprisonment of the body of any person of the native race shall have annexed thereto a translation thereof into the Maori language but the execution of any such warrant shall not be illegal by reason only of its not being accompanied by such a translation. Summonses warrants &c. addressed to Natives to be accompanied by a Maori translation.

XXXIX. Every person who shall be summoned and who shall appear as a witness shall be entitled to an allowance or compensation for expenses and loss of time according to the scale contained in Schedule to this Act annexed. Allowances to witnesses.

XL. If a Resident Magistrate shall be satisfied by either party to a cause pending in his Court that such cause can be more conveniently or fairly tried before the Resident Magistrate or Court of Petty Sessions of some other District he shall order that the cause be sent for hearing to such other Resident Magistrate's Court or Petty Sessions Court and the Clerk of the Court in which the plaint was entered shall forthwith transmit to the Clerk of the Court to which the same is to be sent a certified copy of the plaint and the duplicate copy of the summons and particulars served on the defendant and a certified copy of the order for changing the place of hearing and the Resident Magistrate or Chairman of Petty Sessions Court to which the cause is sent shall appoint a day for the hearing notice whereof shall be given to both parties in such manner as such Resident Magistrate or Chairman of Petty Sessions shall direct. Power to Resident Magistrate to change venue.

XLI. Any person against whom a plaint shall be entered in any Resident Magistrate's Court whether he has been summoned upon such plaint or not may if he think fit in the presence of the Confession of debt.

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Resident Magistrate or the Clerk of the Court or in the presence of a solicitor of the Supreme Court sign a statement confessing the debt or demand or a part of the debt or demand and thereupon it shall not be necessary for the plaintiff to prove the debt or demand or the part thereof so confessed but the Resident Magistrate shall upon proof by affidavit of the signature of the party if such statement were not signed in the presence of the Resident Magistrate or the Clerk of the Court proceed to give judgment for the debt or demand or the part thereof so confessed in the same manner and subject to the same conditions as if he had tried the cause.

Agreement between parties.

XLII. If the person against whom a plaint shall be entered in any Resident Magistrate's Court can agree with the plaintiff upon the amount of the debt or demand in respect of which such plaint shall have been entered and upon the terms and conditions upon which the same shall be paid or satisfied they may in the presence of the Resident Magistrate or the Clerk of the Court or in the presence of a solicitor of the Supreme Court sign a statement of the amount of the debt or demand so agreed upon between them and of the terms and conditions upon which the same shall be paid or satisfied and the Resident Magistrate having first received proof by affidavit of the signature of the parties if such statement were not signed in the presence of himself or the Clerk of the Court shall give judgment for the plaintiff for the amount of the debt or demand so agreed on upon the terms and conditions mentioned in such statement.

Payment into Court.

XLIII. The defendant may at any time before the hearing of the cause pay into Court such sum of money as he shall think a full satisfaction for the demand of the plaintiff together with the costs incurred by the plaintiff up to the time of such payment and the said sum of money and costs shall be paid to the plaintiff but if he shall elect to proceed and shall recover no further sum in the action than shall have been so paid into Court the plaintiff shall pay to such defendant the costs incurred by him in the said action after such payment and the Resident Magistrate shall give judgment for the same accordingly. The defendant shall give notice to the plaintiff of any such payment into Court and if he shall have failed to do so in sufficient time the Resident Magistrate may order him to pay such reasonable costs as the plaintiff shall have incurred in preparing for trial before the notice of such payment was received by him or in the attendance of himself or witnesses at the Court.

Delivery of specific chattel and payment into Court of damages for detention allowed.

XLIV. The defendant in an action for the possession of a specific chattel may deliver the same to the plaintiff and pay into Court a sum of money by way of compensation for the detention thereof or damage thereto together with the costs incurred by the plaintiff up to the time of such payment.

Parts of documents not relating to matters in dispute may be sealed up.

XLV. Where it is shown to the satisfaction of the Resident Magistrate by affidavit that certain parts of books or documents to be produced in evidence do not relate to the matters in dispute the party producing the same shall be allowed to seal up such parts.

Proceedings when plaintiff does not appear.

XLVI. If at the time and place of trial or at any continuation or adjournment of the Court or cause the plaintiff shall fail to appear he shall unless the Court shall otherwise order be nonsuited but if the defendant shall appear and admit the cause of action to the full amount claimed and pay the fees payable in the first instance by the plaintiff the Court may proceed to give judgment as if the plaintiff had appeared. Provided that the Resident Magistrate may order any such cause to be reinstated if he shall think fit.

Hearing.

XLVII. Upon the appearance of the defendant at the time appointed

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for the hearing of any case or upon proof of the due service of a summons upon such defendant the Resident Magistrate shall proceed to hear and determine such case. The order and conduct of the hearing shall be determined by the Resident Magistrate.

XLVIII. The Resident Magistrate shall have full power to examine witnesses upon oath and to give such judgment between the parties as he shall find to stand with equity and good conscience and to prescribe such terms and conditions as to the time and mode of satisfying such judgment as he shall deem just and reasonable and in the hearing of every such case he shall be at liberty to receive or require any such evidence as to him shall appear fit whether the same shall be strictly legal evidence or not. Judgment to be according to equity.

XLIX. In cases in which both plaintiff and defendant are of the native race the proceedings shall be conducted in manner hereinafter specially provided. Proceedings in cases between Natives.

L. Save as hereinafter provided the judgment of the Resident Magistrate shall be final on all questions and no proceeding shall be quashed or set aside or adjudged void or insufficient for want of form nor shall any case in which the debt or damage claimed shall not exceed twenty pounds be removed into any Supreme Court by *certiorari* or otherwise at any stage of the proceeding. Judgment to be final and certiorari only allowed in certain cases.

LI. Except by special leave of the Resident Magistrate no defendant shall be allowed to set off any debt or demand recoverable by him from the plaintiff unless notice thereof accompanied by such particulars as would be necessary in case he were suing thereon shall have been given to the Clerk of the Court and a copy thereof served upon the plaintiff or left at his place of abode day at least before the day appointed for the hearing of the cause. The defendant may require such notice to be served by the bailiff of the Court upon payment of such fees as are demandable for the service of a summons. Set-off.

LII. When the defendant claims a set off exceeding in amount the sum claimed by the plaintiff he shall be at liberty to add to his particulars of set off a notice that he claims to recover the excess and he may recover the same accordingly. Defendant may recover excess of set off.

LIII. The Resident Magistrate shall have full power to put off or adjourn the hearing of any case from time to time upon such terms as he shall think proper. Cases may be put off or adjourned.

LIV. All the costs of a suit in any Resident Magistrate's Court shall be paid or apportioned between the parties in such manner as the Resident Magistrate shall think fit but in default of any special direction such costs shall abide the event of the suit. The amount of costs awarded shall be ascertained and stated in the judgment. Costs.

LV. In cases in which the debt or damage claimed shall not exceed twenty pounds the costs of professional assistance shall not be allowed unless the party claiming the same shall reside beyond the district in which the suit is brought and shall not have appeared in person or unless the Resident Magistrate shall be of opinion that the nature of the case rendered professional assistance necessary and one of the parties shall previous to the day of hearing of the case have given notice to the other party of his intention to employ professional assistance. And in no case whatever shall the costs to be allowed for professional assistance exceed guineas in addition to costs actually paid out of pocket. When and to what extent costs of professional assistance may be allowed.

LVI. In case of nonsuit the Resident Magistrate shall have power to award to the defendant such costs as to him shall seem reasonable and the amount so awarded may be recovered in the same manner as if judgment had been given for the said amount. Costs in case of non-suit.

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How judgment is to be enforced.

LVII. In every case of a civil nature heard and determined under the authority of this Act judgment may be enforced by distress and sale of the goods and chattels of the person against whom judgment shall have been given or by imprisonment in the same manner as an order for payment of money by any Justice of the Peace in a summary proceeding and a warrant of distress or commitment in any such case may be signed by any Justice of the Peace although he may not have adjudicated upon the case but it shall not be necessary to serve the defendant with a copy of the minute of the judgment before a warrant of distress or commitment shall be issued.

Money to be paid to Clerk of Court to be paid over to parties entitled thereto.

LVIII. Unless the Resident Magistrate shall otherwise order all money for which judgment shall have been obtained shall be paid to the Clerk of the Court and such Clerk shall give to the party paying the same a receipt in such form as the Resident Magistrate shall determine and shall on demand pay over such money to the person entitled to receive the same and shall keep a true and exact account of all moneys received by him of whom and when received and to whom and when paid.

Clerk to keep an exact account.

Bailiff and gaoler to pay moneys to Clerk.

LIX. Every bailiff gaoler or other person levying or receiving money by virtue of any process issuing out of any Resident Magistrate's Court shall forthwith pay over the same to the Clerk of the Court.

Restitution of goods detained.

LX. When the suit shall have been brought to recover specific goods and the plaintiff shall have claimed a return of such goods or their value and damages for their detention and shall have recovered a judgment in such action it shall be lawful for the Resident Magistrate upon application of the plaintiff to issue his warrant to the bailiff requiring him to demand and seize the specific goods claimed if they can be found by him and to deliver them to the plaintiff and if the bailiff shall not find and seize the said goods it shall be lawful for the Resident Magistrate if he shall see fit on the application of the plaintiff to order the actual return thereof and if such order be not obeyed by warrant under his hand and seal to commit the defendant to some convenient gaol there to be imprisoned for any time not exceeding one calendar month unless he shall in the meantime cause the goods so detained to be returned to the plaintiff and if such application be refused or such order be not obeyed the Resident Magistrate may on application of the plaintiff issue his warrant of execution for the value of the goods without prejudice to the plaintiff's right to obtain execution either before or after or concurrently therewith for his costs of suit and the damages awarded for the detention of the goods.

Execution when money ordered to be paid by instalments.

LXI. If the Resident Magistrate have made any order for payment of any sum of money by instalments execution upon such order shall not issue until after default in payment of some instalment according to such order and execution or successive executions may then be issued for the whole of the said sum of money and costs then remaining unpaid or for such portion thereof as the Resident Magistrate shall think fit.

Persons imprisoned under civil process to be kept in debtors' gaol.

LVII. When any person shall be imprisoned under civil process from any Resident Magistrate's Court or Court of Petty Sessions he shall be kept in that part of the gaol to which he shall be sent in which debtors imprisoned under civil process from the Supreme Court are usually confined and be subject to the regulations made in respect of such debtors.

Party suffering imprisonment not to be imprisoned a second time but goods to remain liable.

LXIII. When any person shall have been imprisoned under judgment obtained in civil proceedings before any Resident Magistrate's Court or Court of Petty Sessions or before any two Justices of the Peace he shall not be liable at any time thereafter to be taken again

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in execution for any debt or sum of money in respect of which he has been so imprisoned provided that as against the effects of such person the judgment shall be of as full force and effect as if the body of such person had never been taken in execution by virtue thereof.

LXIV. If any money goods or chattels be found and proved to be the property of any person imprisoned under process from any Resident Magistrate's Court or under the adjudication of two Justices of the Peace the same may be seized under warrant from the Resident Magistrate or a Justice of the Peace and sold for the benefit of the party at whose suit he shall be so imprisoned and the money realized by such sale shall be paid over to the Clerk of the Court out of which execution issued and such Clerk shall immediately thereupon give notice of the amount thereof to the warden of the gaol in which such person shall be imprisoned and such person shall be entitled to be discharged from custody upon payment of the balance of the amount in the warrant of commitment ordered to be paid.

Goods of person imprisoned may be seized and sold.

LXV. If there shall be cross judgments between the parties execution shall be taken out by that party only who shall have obtained judgment for the larger sum and for so much only as shall remain after deducting the smaller sum and satisfaction for the remainder shall be entered as well as satisfaction on the judgment for the smaller sum and if both sums shall be equal satisfaction shall be entered upon both judgments.

Execution how to issue when there are cross judgments.

LXVI. The several forms in the Schedule to this Act contained or forms to the like effect shall be deemed good valid and sufficient in law.

Forms in Schedule to be deemed valid.

LXVII. Process issued under the authority of any Resident Magistrate or Justices of the Peace in their civil jurisdiction may be executed in any part of the Colony and constables and other peace officers within their several jurisdictions shall aid in the execution of any warrant if called upon so to do.

Warrants to run in any part of the Colony.

LXVIII. No order or judgment or other proceeding concerning any of the matters aforesaid shall be quashed or vacated for want of form.

Judgment not to be void for want of form.

LXIX. The Resident Magistrate may at all times amend all defects and errors in any civil proceeding in his Court whether there is anything in writing to amend by or not and whether the defect or error be that of the party applying to amend or not and all such amendments may be made with or without costs and upon such terms as to the Resident Magistrate may seem fit and all such amendments as may be necessary for the purpose of determining in the existing suit the real question in controversy between the parties shall be so made if duly applied for.

Amendment of errors

LXX. When any summons is required to be served or warrant executed beyond the District of the Court out of which the same is issued the Resident Magistrate shall except under special circumstances cause the same to be transmitted to the Clerk of the Resident Magistrate's Court or Clerk of Petty Sessions Court of the District within which the same is to be served or executed and such clerk shall indorse thereupon the time when the same shall have been received by him and shall forthwith deliver the same to the bailiff of the Court of his District who is hereby authorized and required to serve or execute the same and such bailiff if required as last aforesaid to serve a summons shall return to the Clerk of the Court from whom he received such summons a copy thereof accompanied by an affidavit setting forth the fact and mode of such service or a note that he has been unable to effect such service as the case may be and if he have been required to execute a warrant he shall certify to the clerk from

How process to be served beyond district

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whom he received such warrant what he has done thereunder and if he have received any money or fees by virtue thereof shall pay over the same to such clerk and out of such fees may be repaid any money actually expended by him or his assistants in like manner as if such warrant had issued out of the Court of which he is bailiff and such clerk shall forthwith transmit the copy of the summons or the certificate so received by him together with any moneys which may have been received by him in manner aforesaid after deducting therefrom the fees allowed for execution to the Clerk of the Court from whom he has received the same and the Clerk of the Court transmitting any summons or warrant shall pay or account with the Clerk of the Court to whom the same is transmitted for all fees allowed to be taken for service or execution.

RECOVERY OF POSSESSION OF SMALL TENEMENTS.

Landlord of small tenements may recover possession thereof on determination of lease.

LXXI. When the term and interest of the tenant of any house land or other tenement held by him at will or for any term of years where neither the value of the premises nor the rent payable in respect thereof shall have exceeded fifty pounds by the year and upon which no fine or premium shall have been paid shall have expired or shall have been determined either by the landlord or tenant by a legal notice to quit and such tenant or any person holding or claiming by through or under him shall neglect or refuse to deliver up possession accordingly the landlord may enter a plaint at his option either against such tenant or against the person so neglecting or refusing to deliver up possession in the Resident Magistrate's Court of the district in which the premises lie for the recovery of the same and thereupon a summons shall issue to such tenant or such person so refusing and if the defendant shall not at the time named in the summons show good cause to the contrary then on proof of his still neglecting or refusing to deliver up possession of the premises and of the yearly value and rent of the premises and of the holding and of the expiration or other determination of the tenancy with the time and manner thereof and of the title of the plaintiff if such title has accrued since the letting of the premises and of the service of the summons if the defendant shall not appear thereto the Resident Magistrate may order that possession of the premises mentioned in the plaint be given by the defendant to the plaintiff either forthwith or on or before such day as the Resident Magistrate shall think fit to name and if such order be not obeyed the Resident Magistrate or any other Justice of the Peace may at the instance of the plaintiff issue a warrant to the bailiff of the Court or to any constable to give possession of such premises to the plaintiff.

Landlord suing for possession may add claim for rent or mesne profits.

LXXII. In any such plaint against a tenant as in the last preceding section is specified the plaintiff may add a claim for rent or mesne profits or both down to the day appointed for the hearing or to any preceding day named in the plaint so as the amount of such claim shall not exceed twenty pounds and any misdescription in the nature of the claim may be amended at the trial.

Landlord having power of re-entry for arrears of rent may sue for possession without first making entry.

LXXIII. When the rent of any tenement where neither the value of the tenement nor the rent payable in respect thereof exceeds twenty pounds by the year shall be in arrear for three months and the landlord shall have a right by law to enter for the non-payment thereof he may without any formal demand or re-entry enter a plaint in the Resident Magistrate's Court of the district in which the premises lie for the recovery thereof and thereupon a summons shall issue to the tenant the service whereof shall stand in lieu of a demand or re-entry and if the tenant shall at any time before the day appointed for the

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hearing of the case pay into Court all the rent in arrear and the costs the said action shall cease but if he shall not make such payment and shall not at the time named in the summons show good cause why the premises should not be recovered then on proof of the yearly value and rent of the premises and of the fact that three months rent was in arrear before the plaint was entered and that no sufficient distress was then to be found on the premises to countervail such arrear and of the landlord's power to re-enter and of rent being still in arrear and of the title of the plaintiff if such title has accrued since the letting of the premises and of the service of the summons if the defendant shall not appear thereto the Resident Magistrate may order that possession of the premises mentioned in the plaint may be given by the defendant to the plaintiff on or before such day not being less than four weeks from the day of hearing as the Resident Magistrate shall think fit to name unless within that period all the rent in arrear and the costs be paid into Court and if such order be not obeyed and such rent and costs be not so paid the Resident Magistrate or a Justice of the Peace shall at the instance of the plaintiff whether such order can be proved to have been served or not issue a warrant authorizing and requiring the bailiff of the Court or some constable to give possession of such premises to the plaintiff and the plaintiff shall from the time of the execution of the warrant hold the premises discharged of the tenancy and the defendant and all persons claiming by through or under him shall so long as the order of the Court remains unreversed be barred from all relief in equity or otherwise.

Upon payment of rent and arrears action to cease.

Upon non-payment of arrears possession may be given discharged of tenancy.

LXXIV. A summons for the recovery of a tenement may be served like other summonses to appear to plaints in Resident Magistrates' Courts and if the defendant cannot be found and his place of dwelling shall either not be known or admission thereto cannot be obtained for serving any such summons a copy of the summons may be posted on some conspicuous part of the premises sought to be recovered and such posting shall be deemed good service on the defendant.

Summons in action for possession of land how to be served.

LXXV. When any such summons for the recovery of a tenement as is hereinbefore specified shall be served on or come to the knowledge of any sub-tenant of the plaintiff's immediate tenant such sub-tenant being an occupier of the whole or of a part of the premises sought to be recovered shall forthwith give notice thereof to his immediate landlord under penalty of forfeiting not exceeding three years rack rent of the premises held by such sub-tenant to such landlord to be recovered by the landlord by action in the Court from which such summons shall be issued and such landlord on the receipt of such notice if not originally a defendant may be added or substituted as a defendant to defend possession of the premises in question.

Sub-tenant to give notice of action to his immediate landlord and the latter may be let in to defend possession.

LXXVI. If any tenant holding any lands or tenements under any demise or agreement written or verbal at a rack rent or where the rent reserved shall be full three-fourths of the yearly value of the demised premises who shall be in arrear for one half-year's rent shall desert the demised premises leaving the same uncultivated or unoccupied so as no sufficient distress can be had to countervail the arrears of rent it shall be lawful for the Resident Magistrate of the district in which the premises lie although no right of entry be reserved or given to the landlord in case of non-payment of rent at the request of the landlord or his attorney solicitor or agent made in open Court and upon proof given to the satisfaction of such Magistrate of the arrears of rent and desertion of the premises by the tenant as aforesaid to issue his warrant to the bailiff of the Court or some constable to go upon and view the premises and to affix upon the most notorious part of the

When rent is in arrear and land lies deserted and without distress landlord may recover possession.

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premises notice in writing what day (at the distance of fourteen days at least) he will return to take a second view thereof and if upon such second view the tenant or some person on his behalf shall not appear and pay the rent in arrear or there shall not be sufficient distress upon the premises and upon the return of the warrant and upon proof being given to the satisfaction of the Resident Magistrate before whom the warrant shall be returned that it has been duly executed and that neither the tenant nor any person on his behalf has appeared and paid the rent in arrear and that there is no sufficient distress upon the premises it shall be lawful for such Resident Magistrate to issue his warrant to the bailiff of the Court or some constable requiring him to put the landlord or lessor into possession of the premises and the lease thereof to such tenant as to any demise contained therein only shall upon the execution of such lastly mentioned warrant thenceforth become void.

When land is occupied by any one without right title or license true owner on proof of title may bring action to recover same.

LXXVII. If any person shall without right title or license be in possession of any tenement the annual value of which shall not exceed twenty pounds it shall be lawful for the owner upon proof to the satisfaction of the Resident Magistrate of such ownership and leave obtained from him to enter a plaint in the Resident Magistrate's Court of the district in which the premises lie to recover possession thereof and if he shall have given to the person in occupation notice in writing to quit the land it shall be lawful for him in the same plaint to insert a claim to an amount not exceeding twenty pounds for damages for the occupation of the land subsequently to the service of such notice.

If defendant give proof of title or give security for payment of costs in case action of ejectment be brought against him Magistrate is to dismiss the case.

LXXVIII. If upon the hearing of such plaint as last aforesaid the defendant shall appear and dispute the plaintiff's right to possession and shall show to the Resident Magistrate a *prima facie* right or title in himself to the possession of the land in question or if he will become bound with two surties to be approved of by the Resident Magistrate in such sum as to the Resident Magistrate shall seem reasonable regard being had to the nature of the property and the probable costs of an action to abide the result of any action for possession of such tenement which the plaintiff may commence against him in any Court of competent jurisdiction within three months of the date of such bond and in case the plaintiff shall recover judgment in such action to pay to the plaintiff the costs which the plaintiff shall be therein adjudged to recover and also the cost of the proceedings in the Resident Magistrate's Court and damages for the illegal occupation of the land up to the time of such judgment then the Resident Magistrate shall dismiss the case. Such bond shall be made to and be at the cost and charges of the plaintiff and shall be approved and signed by the Resident Magistrate.

Resident Magistrate may order delivery of possession of premises and award damages but unless defendant has admitted plaintiff's right to possession plaintiff must before issue of warrant give security to meet any action of damages which may be brought against him.

LXXIX. If at the time appointed for the hearing of any such plaint as last aforesaid the defendant having been duly summoned shall not appear or shall appear but shall neither give any such proof of his own right to possession nor enter into such bond as aforesaid the Resident Magistrate may proceed to hear and determine the case and may order that possession of the premises mentioned in the plaint be given by the defendant to the plaintiff either forthwith or on or before such day as the Resident Magistrate shall think fit to name and that the defendant do pay costs and such part of the sum if any claimed for damages as to the Resident Magistrate shall seem reasonable. And if delivery of the premises be not made in pursuance of such order the Resident Magistrate or any Justice of the Peace may issue his warrant authorizing and requiring the bailiff of the Court or any constable to give posses-

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sion of such premises to the plaintiff Provided that if the defendant shall not at the hearing have admitted the plaintiff's right to possession of the land it shall not be lawful for the plaintiff to sue out or obtain any warrant for delivery of possession of the land or to enforce payment of damages or costs unless he shall first have become bound to the defendant in a bond with two sureties to be approved by the Resident Magistrate and in such sum as to the Resident Magistrate shall seem reasonable to pay to the defendant any damages and costs which the defendant may recover against him in a Court of competent jurisdiction in respect of the obtaining of any such judgment or the grant or execution of any such warrant when the plaintiff had not at the time when such judgment was obtained lawful right to the possession of the premises Such bond shall be made at the costs of the plaintiff and shall be approved of and signed by the Resident Magistrate and delivered to the Clerk of the Court to be by him handed over upon demand to the defendant.

LXXX. Any warrant under the hand of a Resident Magistrate or Justice of the Peace to a bailiff or constable to give possession of a tenement shall justify him in entering upon the premises named therein with such assistants as he shall deem necessary and in giving possession accordingly but no entry under any such warrant shall be made except between the hours of nine in the morning and four in the afternoon.

Warrant sufficient authority to bailiff for entering premises within certain hours.

LXXXI. Every such warrant shall on whatever day it may be issued bear date on the day next after the last day named by the Resident Magistrate for delivery of possession of the premises in question and shall continue in force for three months from such date and no longer but no order for delivery of possession need be drawn up and served.

Warrant to be in force for three months.

LXXXII. It shall not be lawful to bring any action or prosecution against the Resident Magistrate or Justice of the Peace by whom any such warrant as aforesaid shall have been issued for issuing the same or against any bailiff or constable or other person by whom such warrant may be executed or summons affixed for executing the same or affixing such summons by reason that the person by whom the same shall have been sued out had not lawful right to the possession of the premises.

Protection to Magistrate issuing warrant and bailiff executing same.

LXXXIII. If any person by whom a warrant for the recovery of possession of any tenement shall be sued out in a Resident Magistrate's Court had not at the time of suing out the same lawful right to the possession of the premises the suing out of such warrant shall be deemed a trespass by him against the tenant or occupier of the premises although no entry shall be made by virtue of the warrant.

Suing out warrant without right deemed a trespass.

LXXXIV. Where a person by whom a warrant for the recovery of possession of any tenement shall be sued out had at the time of suing out the same lawful right to the possession of the premises neither he nor his agent nor any other person acting in his behalf shall be deemed to be a trespasser by reason merely of any irregularity or informality in the mode of proceeding for obtaining possession under the authority of this Act but the party aggrieved may if he think fit bring an action and recover for special damage Provided always if the special damage be not proved the defendant shall be entitled to a verdict and if proved but assessed by the jury at any sum not exceeding five shillings the plaintiff shall recover no more costs and damages unless the Judge before whom the trial shall have been holden shall certify that in his opinion full costs ought to be allowed.

Owner of property not a trespasser on account of irregularity in execution of warrant but may be sued for special damage.

RE-HEARING AND APPEALS.

LXXXV. In every case in which a Resident Magistrate shall

Appeal in all cases of

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action for recovery of possession of tenements. have made an order for the delivery of possession of any tenement it shall be lawful for the person against whom any such order shall have been made to appeal to the Supreme Court whether upon matter of fact or law and such Court is hereby empowered if it shall see cause so to do to order restitution to be made and that the expenses and costs of the appellent be paid by the person upon whose application such order was obtained.

Supreme Court may order restitution.

Re-hearing.

LXXXVI. It shall be lawful for any Resident Magistrate or any two or more Justices of the Peace before whom a civil case shall have been heard in his or their discretion to grant a re-hearing of such case upon such terms as to him or them shall seem fit and in the meantime to stay execution and such re-hearing shall not necessarily take place before the same persons by whom the case was originally heard.

Appeals.

LXXXVII. Whenever the sum claimed exceeds twenty pounds (or by leave of the Resident Magistrate or Justices of the Peace hearing the case when the sum exceeds five pounds but does not exceed twenty pounds) either party deeming himself aggrieved by the decision of the Resident Magistrate or Justices of the Peace in point of law may on giving security to the satisfaction of the Resident Magistrate or Justices of the Peace hearing the case within seven days from the date of such decision for the execution of the final order appeal to the Supreme Court and such appeal shall be by way of special case and shall be subject to the rules of practice of the Supreme Court touching special cases stated in the course of proceedings of that Court. And if the parties do not agree in the statement of the case in writing the Resident Magistrate shall upon the request of either party settle the case. The party appealing shall transmit the case to the Registrar of the Supreme Court and the same shall be set down for hearing at the next practicable sitting of the Court in banco. If the applicant do not appear in person or by counsel the case shall be dismissed. The Registrar of the Supreme Court shall transmit to the Resident Magistrate or to the Justices of the Peace from whom such an appeal shall have been brought a memorandum of the decision of the Supreme Court and such proceedings shall be had thereupon as if such decision had been given by such Resident Magistrate or Justices of the Peace. The costs of the appeal shall abide the decision of the case.

Parties may agree not to appeal.

LXXXVIII. No appeal shall lie from the decision of a Resident Magistrate or two or more Justices of the Peace in civil cases if before such decision is pronounced both parties shall agree in writing signed by themselves or their solicitors or agents that the judgment of such Resident Magistrate or Justices of the Peace shall be final.

WRIT OF ARREST.

In the absence of a Judge of the Supreme Court a debtor intending to leave the Colony may be arrested upon the warrant of Registrar of the Supreme Court or Resident Magistrate.

LXXXIX. It shall be lawful in any place where there is a Registrar of the Supreme Court in the absence from the place of a Judge of the Supreme Court for such Registrar of the Supreme Court and in every Resident Magistrate's district lying adjacent to the sea coast where there is no Registrar of the Supreme Court for the Resident Magistrate thereof to issue a warrant under his hand for the apprehension of any debtor intending to leave the islands of New Zealand who shall thereupon give security to the satisfaction of the said Registrar of the Supreme Court or Resident Magistrate as the case may be to abide the result of an application to be made to a Judge of the Supreme Court for a writ of arrest or in default thereof shall be kept in custody until the result of such application shall be known. Provided that no such warrant as aforesaid shall be issued except upon such affidavit as

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may be required in like cases by the rules of the Supreme Court for the time being.

XC. No person apprehended as last aforesaid shall be detained in custody by virtue of any such warrant for any period exceeding three calendar months and it shall be lawful for the Registrar of the Supreme Court or for the Resident Magistrate as the case may be at any time within such period to require proof to be made on affidavit that due diligence has been used to obtain such writ of arrest as aforesaid and in default of proof the Registrar of the Supreme Court or the Resident Magistrate as the case may be shall discharge the person so detained as aforesaid or cancel his securities as the case may be.

Debtor not to be detained under such warrant for more than three months or after time has been afforded to obtain writ of arrest from Supreme Court.

PROTECTION OF PERSONS ACTING IN PURSUANCE OF ACT.

CXI. All actions and prosecutions to be commenced against any person for anything done in pursuance of this Act shall be commenced within three months after the fact committed and not afterwards and notice in writing of any such action and of the cause thereof shall be given to the defendant one month at least before the commencement of the action and no plaintiff shall recover in any such action if tender of sufficient amends shall have been made before such action be brought or if after action brought a sufficient sum of money with costs shall have been paid into Court by or on behalf of the defendant and if any such action or proceeding shall be brought against any person for anything done in pursuance of this Act in obedience to any warrant of a Justice of the Peace or Resident Magistrate issued in any civil proceeding under the authority of this Act the warrant under the hand or seal of such Justice of the Peace being produced shall for the purposes of such action or proceeding be deemed sufficient proof of the authority for everything purporting to have been done in pursuance of this Act previous to the issuing of such warrant and in case the plaintiff in any such action shall have a verdict pass against him be nonsuit or discontinue the action the defendant shall in any of the said cases be allowed full costs as between solicitor and client.

Protection of persons acting under this Act against vexatious actions.

XCII. No bailiff of a Resident Magistrate's Court or other person duly authorized to execute a warrant under the hand or seal of a Resident Magistrate or Justice of the Peace in the execution of such warrant and no person at whose instance any such warrant shall be executed shall be deemed a trespasser by reason of any irregularity or informality in any proceeding on the validity of which such warrant depends or in the form of such warrant or in the mode of executing it but the party aggrieved may bring an action for any special damage which he may have sustained by reason of such irregularity or informality against the party guilty thereof and in such action he shall recover no costs unless the damages awarded shall exceed forty shillings.

No bailiff or party deemed a trespasser for irregularity or informality merely.

JURISDICTION AS TO NATIVES.

XCIII. Except within the chief towns of Provinces no person of the native race shall be apprehended under any warrant or be committed to prison except upon a warrant or committal signed by the Resident Magistrate or Chairman of Petty Sessions of the District within which he shall be so apprehended or committed or having thereupon indorsed a certificate by such Resident Magistrate or Chairman of Petty Sessions that he allows the execution thereof within his District Provided that no person of the native race actually apprehended or imprisoned shall have any right of action against any person by reason merely that the warrant or committal was not signed

Natives not to be apprehended or imprisoned except by authority of Resident Magistrate or Chairman of Petty Sessions.

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or indorsed in manner hereby required nor shall he be entitled to be released from custody for such cause only unless the Resident Magistrate or Chairman of Petty Sessions of the district shall deem it expedient to direct such release. Provided that in places beyond the limit of any Resident Magistrate's district or district of a Court of Petty Sessions such warrant of committal may be signed or indorsed by any Resident Magistrate being or residing at or near such place.

Native charged with larceny and confessing may be summarily convicted.

XCIV. When any person of the native race shall be charged with larceny or with receiving stolen goods and shall after hearing the information and evidence against him voluntarily confess the same it shall be lawful for any Resident Magistrate at his discretion to take such confession and to sentence the offender to be imprisoned for any period not exceeding two years.

Native convicted of theft may be discharged upon paying four times the value of property stolen.

XCIV. In case any person of the native race shall be convicted in a summary way before the Resident Magistrate as aforesaid upon any charge of theft or of receiving stolen goods every such person may after such conviction by permission of the Court and at any time before sentence passed pay into the Court four times the value of the goods so stolen or received as aforesaid. Provided that if the goods so stolen or received as aforesaid shall have been restored by the person so convicted such person may by permission of the Court and at any time before sentence passed pay into the Court either four times the value of the goods so stolen or received as aforesaid or such less sum as to the Court shall seem fit. If such payment shall be so made as aforesaid or if security for such payment shall be given to the satisfaction of the Court no sentence shall be passed but the person so convicted and making such payment or giving such security as aforesaid shall be discharged from custody and shall be in the same condition in all respects as if he had received sentence and undergone his punishment in the ordinary course of law. Provided always that for the purposes of this present provision such Court shall have power to delay passing sentence in any such case for any period not exceeding eight days.

Value in certain cases to be awarded to owner of stolen property.

XCVI. Where any such payment as last mentioned shall have been made and it shall appear that restitution of the goods charged to have been stolen or received as aforesaid has not been or cannot be made the Court shall have power upon application then made by the owner of such goods or his representatives to award to such owner or representatives such part of the sum so paid into Court as aforesaid as shall be equal to the sworn value of such goods together with such costs as to the Court shall seem reasonable.

Courts of Arbitration for Native cases.

XCVII. For the settling of any dispute or difference of a civil nature between persons of the native race it shall be lawful for any Resident Magistrate or any person appointed by His Excellency the Governor to act in that behalf assisted by two native assessors one to be chosen by each of the parties and to be appointed as hereinafter mentioned to act as a Court of Arbitration with power to hear and determine summarily all claims and demands whatsoever of a civil nature arising between persons of the native race.

Appointment of Assessors.

XCVIII. For the purpose of providing a sufficient number of persons fit to act as assessors it shall be lawful for His Excellency the Governor to select and appoint as such assessors so many persons in each tribe or division of a tribe as he shall think fit. The persons so selected shall be men of the greatest authority and best repute in their respective tribes and who shall be willing to act as such assessors. Provided that every person lawfully holding the office of Native Assessor immediately

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before this Act comes into operation shall continue to hold such office and be deemed to have been appointed under this Act.

XCI. Such Resident Magistrate or other person as aforesaid and assessors shall possess the same powers as to the hearing and determining of the cases last mentioned the admission of evidence and the enforcing of their judgment therein as are hereinbefore given to Resident Magistrates in other cases of a civil nature over which they have jurisdiction under this Act.

Powers of Arbitration Court and mode of proceeding.

C. Every such case shall be determined by the two assessors where agreed in their judgment therein but in case of a difference of opinion then by the judgment of the Resident Magistrate or other person as aforesaid and of one of the assessors Provided always that so long as such difference of opinion shall continue such judgment shall be recorded only but that no act shall be done or proceeding taken to carry such judgment into execution until both the assessors and the Resident Magistrate or other person as aforesaid shall concur therein.

Cases how to be determined.

CI. In order to secure obedience to the award of such Court it shall be lawful for the Resident Magistrate or other person as aforesaid before entering upon the hearing of any complaint or demand to require such security either by deposit or otherwise from the parties or either of them as he shall deem fit.

Security may be required for obedience to award.

CII. In every case in which the judgment of the Court shall have been carried into execution to the satisfaction of the Resident Magistrate or other person aforesaid it shall be lawful for His Excellency the Governor to pay to each of the assessors any sum not exceeding five pounds.

Payment of Assessors.

CIII. It shall be lawful for any Resident Magistrate to delay so long as he shall deem it expedient to do so the enforcing of any judgment obtained in such Resident Magistrate's Court against an aboriginal native.

Resident Magistrate may delay execution against Native.

CIV. Provided that it shall be lawful for the Governor from time to time by proclamation in the *New Zealand Gazette* to declare that from a day to be in such proclamation fixed sections nineteen ninety-three ninety-four ninety-five ninety-six ninety-seven ninety-eight ninety-nine one hundred one hundred and one one hundred and two one hundred and three having special reference to persons of the native race or such of those sections as shall be in such proclamation specified shall be no longer in operation in such districts of the Colony as shall be in such proclamation mentioned and thereupon from the day so fixed and thenceforward all persons of the native race residing or being within such districts shall as to all matters in which such clauses shall have been declared no longer operative be deemed to be and be dealt with as natural born subjects of Her Majesty.

Governor may declare clauses specially relating to Natives to be inoperative in certain districts.

MISCELLANEOUS PROVISIONS.

CV. And whereas by various Acts and Ordinances now in force within the Colony or certain parts thereof certain acts are required to be done by and certain powers are given to Police Magistrates or Resident Magistrates All such acts and powers may hereafter within any Resident Magistrate's district be done and exercised by the Resident Magistrate thereof.

Resident Magistrates of district to have powers of Police Magistrates.

CVI. And whereas certain judgments have been obtained and may be obtained in District Courts established under "The District Courts Act 1858" which cannot be enforced by reason of such Courts or the operation thereof having been suspended or abolished it shall be lawful for any Resident Magistrate having jurisdiction within any part of the district comprised within the boundaries of the District

Resident Magistrate may issue execution upon judgments obtained in abolished District Courts.

Resident Magistrates.

Court which or the operation of which may have been so abolished or suspended on receiving a copy of such judgment certified under the hand of the late Judge or Clerk of the District Court in which such judgment shall have been given and an affidavit that the same has not been satisfied to issue a distress or execution and order such proceedings therein to enforce satisfaction of such judgment as if such judgment had been originally obtained in his own Court.

Courts of Petty Sessions to have powers of Resident Magistrates.

CVII. The twenty-sixth clause of "The Petty Sessions Act 1865" is hereby repealed and every Court of Petty Sessions established under that Act shall have and exercise the same powers and the same jurisdiction in all cases both civil and criminal as may be exercised by a Resident Magistrate of a district appointed under the authority of this Act saving always the extended jurisdiction in civil cases which the Governor is hereby authorized to confer by proclamation upon the Resident Magistrates of districts. Provided that in Arbitration Courts for native cases the Chairman of Petty Sessions only shall sit and act with the native assessors.

In outlying districts any Resident Magistrate or two Justices may act.

CVIII. In parts of the Colony not comprised within any Resident Magistrate's district or district of a Court of Petty Sessions any Resident Magistrate and in cases of a civil nature in which neither party is of the native races any two or more Justices of the Peace shall have and exercise the powers hereby conferred upon Resident Magistrates of districts.

Contempt of Court.

CLIX. If any person shall wilfully insult any Resident Magistrate or Justice of the Peace acting in either civil or criminal proceedings or any bailiff or clerk of any Resident Magistrate's Court or Court of Petty Sessions during his sitting or attendance in Court or shall wilfully interrupt the proceedings of the Court or be guilty in any other manner of any wilful contempt in the face of the Court it shall be lawful for any bailiff or other officer of the Court with or without the assistance of any other person by order of the Resident Magistrate or Justice of the Peace to take such offender into custody and detain him until the rising of the Court and the Resident Magistrate or Justice shall be empowered if he shall think fit by a warrant under his hand and seal to commit every such offender to prison for any time not exceeding seven days or to impose upon any such offender a fine not exceeding ten pounds for such offence and in default of payment thereof to commit the offender to prison for any time not exceeding seven days unless the fine shall be sooner paid.

Assaulting bailiff in execution of his duty.

CX. If any person shall assault any officer or bailiff of any Resident Magistrate's Court or Court of Petty Sessions while in the execution of his duty or rescue or attempt to rescue any goods levied under process of any such Court the person so offending shall be liable to a fine not exceeding twenty pounds to be recovered before any Justice of the Peace and it shall be lawful for such officer or bailiff of the Court or for any peace officer in any such case to take the offender into custody with or without warrant and bring him before any Justice of the Peace accordingly.

Governor to fix fees.

CXI. The fees to be taken in respect of this Act shall be fixed varied and abolished as the Governor in Council shall from time to time direct and appoint. Provided that the fees now fixed in respect of proceedings before Resident Magistrates shall be deemed to have been fixed under this Act.

All fees to be pre-paid.

CXII. It shall be lawful for any Resident Magistrate Justice of the Peace clerk of any Resident Magistrate's Court or bailiff thereof to refuse to do any act for which a fee shall be demandable until such fee shall be first paid.

Resident Magistrates.

CXIII. A table of the fees authorized to be taken in respect of this Act shall be hung up in some conspicuous position in all Resident Magistrates' Courts and places where Courts of Petty Sessions are usually held and in the offices of the Clerks of Resident Magistrates or Clerks of Petty Sessions.

Table of fees to be suspended in Court and clerk's office.

CXIV. If any bailiff of a Resident Magistrate's Court who shall be employed to levy any execution against goods and chattels shall by neglect or connivance or omission lose the opportunity of levying any such execution then upon complaint of the party aggrieved by reason of such neglect connivance or omission (and the fact alleged being proved to the satisfaction of the Court on the oath of any credible witness) the Resident Magistrate shall order such bailiff to pay such damages as it shall appear that the complainant has sustained thereby not exceeding in any case the sum of money for which the said execution issued and the bailiff shall be liable thereto and upon demand made thereof and upon his refusal so to pay and satisfy the same payment thereof shall be enforced by such ways and means as are herein provided for enforcing a judgment recovered in the said Court.

Bailiffs answerable for neglect to levy execution.

CXV. If any clerk bailiff or other person employed by a Resident Magistrate's Court acting under colour or pretence of the process of the said Court shall be charged with extortion or misconduct or with not duly paying or accounting for any money received or levied by him under the authority of this Act it shall be lawful for the Resident Magistrate to inquire into such matter in a summary way and for that purpose to summons and enforce the attendance of all necessary parties in like manner as the attendance of witnesses in any case may be enforced and to make such order thereupon for the payment of any money extorted or for the due payment of any money so received or levied as aforesaid and for the payment of such damages and costs as he shall think just and also if he shall think fit to impose such fine upon the clerk bailiff or other person employed as aforesaid not exceeding ten pounds for each offence as he shall deem adequate and the payment of any money so ordered to be paid may be enforced by such means as are herein provided for enforcing a judgment recovered in the said Court.

Penalties on officers for extortion.

CXVI. Every Justice of the Peace or Clerk to a Justice of the Peace who shall receive any fees fines or other moneys by virtue of his office shall once at least in every month deliver a true and exact account thereof and pay over the same to the Clerk of the Resident Magistrate's Court or Clerk of the Court of Petty Sessions of the district within which such Justice shall reside and such Clerk shall receive pay over and account for such fees fines and moneys in like manner as for other moneys received by him by virtue of his office as such Clerk.

Justices to pay over fees and fines to clerk of district where they reside.

CXVII. All fees fines and other moneys shall be accounted for at such periods and in such manner as the Colonial Treasurer for the time being shall direct and the balance of such fees and fines after deducting the duly authorized expenditure shall be paid over to the Colonial Treasurer at such time as he shall direct and it shall be lawful for the Colonial Treasurer to make amend and abolish regulations prescribing the manner in which the clerks of Resident Magistrates' Courts shall keep their accounts and pay over balances and in what bank or other place of deposit the fees fines and other moneys received by such clerks shall be kept until paid over to the Colonial Treasurer and the manner in which such moneys shall be paid in and drawn out of such bank or place of deposit.

Fees and fines to be paid to Colonial Treasurer and accounts kept as he shall direct.

CXVIII. The clerk of every Resident Magistrate's Court and the

Clerk and bailiff to give security.

Resident Magistrates.

bailiff thereof shall give security for properly accounting for all fees fines and sums of money received by them respectively and such security shall be in such form and to such amounts as the Colonial Treasurer shall in each case direct.

Resident Magistrate to audit clerk's accounts monthly.

"Justices Protection Act 1848" declared to extend to Justices and Native Assessors in their civil jurisdiction.

Commencement of Act.

CXIX. The Resident Magistrate of any district shall once in every month audit the accounts of the Clerk of his Court.

CXX. It is hereby declared that "The Justices Protection Act 1848" so far as not repugnant to this Act and as the nature of the case will allow does and shall extend to Resident Magistrates Justices of the Peace and Native Assessors acting in their civil jurisdiction.

CXXI. This Act shall come into operation on the _____ day of 186

SCHEDULE A.

CONTAINING DESCRIPTION OF THE ORDINANCES AND ACTS REPEALED IN WHOLE OR IN PART BY THIS ACT.

Session and Number.	By what Legislature past.	Title.
Session 2, No. 5	Governor and Legislative Council	"An Ordinance to regulate Summary Proceedings before Justices of the Peace" so far as relates to cases of a civil nature.
Session 3, No. 8	Governor and Legislative Council	"An Ordinance to establish Courts of Request for the more easy and speedy recovery of small debts."
Session 7, No. 16	Lieutenant Governor and Legislative Council	"An Ordinance to provide for the establishment of Resident Magistrate's Courts and to make special provision for the administration of Justice in certain cases" Except sections 4, 5 and 6.
Session 11, No. 1	Governor and Legislative Council	"An Ordinance to provide for the Arrest of Debtors escaping from the Islands of New Zealand."
Session 1, No. 6	Lieutenant Governor and Legislative Council of New Munster	"An Ordinance to provide a Cheap and Expeditious Mode of Procedure against Persons occupying Land or Premises within the Province of New Munster without right title or license."
1856, No. 20.	General Assembly	"Resident Magistrates' Courts Ordinance Amendment Act 1856" Except section 2.
1858, No. 35.	Ditto	"The Resident Magistrates' Court Act, 1858."
1861, No. 5.	Ditto	"The Resident Magistrates' Ordinance Amendment Act 1861."
1862, No. 36.	Ditto	"The Resident Magistrates' Jurisdiction Extension Act 1862" Except section 7 and section 6 in so far as it relates to criminal cases.
1865, No. 73.	Ditto	"The Resident Magistrates' Criminal Jurisdiction Extension and Amendment Act 1865" sections 5 and 6.

Resident Magistrates.

SCHEDULE B.

IMPERIAL ACTS OR PARTS OF IMPERIAL ACTS DECLARED NO LONGER OPERATIVE
WITHIN THE COLONY OF NEW ZEALAND.

References to Act.	Title of Act.	How much declared inoperative.
11 Geo. II., c. 19	An Act for the more effectual securing the payment of Rents and preventing Frauds by Tenants	Sections 16 and 17.
57 Geo. III., c. 52	An Act to alter an Act passed in the eleventh year of the Reign of King George the Second for the more effectual securing the payment of Rents and preventing Frauds by Tenants	The whole.
1 and 2 Vic. c. 74	An Act to facilitate the recovery of possession of Tenements after due determination of the Tenancy	The whole.