

Hon. Mr. Webb

SUMMARY JURISDICTION

ANALYSIS

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A BILL INTITULED

AN ACT to extend the jurisdiction of Magistrates and Justices of the Peace in relation to the summary trial of indictable offences, and to make better provision with respect thereto. Title.

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

1. (1) This Act may be cited as the Summary Jurisdiction Act 1952. Short Title and commencement.

(2) This Act shall come into force on the *first* day of *January*, nineteen hundred and fifty-three.

Summary jurisdiction of Magistrates in respect of certain indictable offences.

Cf. Justices of the Peace Act 1927, No. 37, ss. 187, 188 (1) (Reprint of Statutes, Vol. II, p. 404) *Cf.* 1927, No. 37, s. 195

See Reprint of Statutes, Vol. II, p. 288

Ibid., p. 289

Summary jurisdiction of Justices of the Peace in respect of certain indictable offences.

Cf. 1927, No. 37, ss. 187, 234, 238, 250

2. (1) Subject to the provisions of this Act, every Magistrate shall have summary jurisdiction in respect of the indictable offences described in the enactments specified in the *First* Schedule to this Act, and proceedings in respect of any such offence may accordingly be taken in a summary way in accordance with this Act. 5

(2) Subject to the provisions of this Act, every Magistrate shall have summary jurisdiction in respect of the following indictable offences, and proceedings in respect of any such offence may accordingly be taken in a summary way in accordance with this Act, namely:— 10

(a) Conspiring to commit any indictable offence to which subsection *one* of this section applies (being a conspiracy to which section three hundred and forty-seven or, as the case may be, section three hundred and forty-eight of the Crimes Act 1908 applies): 15

(b) Attempting to commit any indictable offence to which subsection *one* of this section applies, or inciting or attempting to incite any person to commit any such offence (being an attempt or incitement to which section three hundred and forty-nine or, as the case may be, section three hundred and fifty or section three hundred and fifty-one of the Crimes Act 1908 applies): 20 25

(c) Being accessory after the fact to any indictable offence to which subsection *one* of this section applies (being any case to which section three hundred and fifty-two or, as the case may be, section three hundred and fifty-three of the Crimes Act 1908 applies). 30

3. (1) Subject to the provisions of this Act, and without limiting the jurisdiction of any Magistrate under section *two* thereof, any two or more Justices of the Peace shall have summary jurisdiction in respect of any of the indictable offences specified in subsection *two* of this section, and proceedings in respect of any such offence may accordingly be taken in a summary way in accordance with this Act, if the offence is alleged to have been committed in respect of any thing that is capable of being stolen and if the value of that thing does not exceed *twenty* pounds. 35 40

(2) The indictable offences to which subsection *one* of this section relates are—

- (a) Theft (being a theft to which paragraph (e) or paragraph (f) of section two hundred and forty-seven of the Crimes Act 1908 applies):
- 5 (b) Attempting to commit any such theft as aforesaid (being an attempt to which section three hundred and fifty of the said Act applies):
- (c) Receiving anything stolen (being an offence to which section two hundred and eighty-four of the said Act applies).
- 10
4. Before proceeding to deal summarily under this Act with any indictable offence which, on indictment, would be punishable by imprisonment for a term exceeding three months, the Court shall give to the person charged the right to claim to be tried by a jury, and for that purpose the provisions of section one hundred and twenty-four of the Justices of the Peace Act 1927 shall, with the necessary modifications, apply.
- 15
5. (1) Where any summary prosecution is commenced under this Act, the Court may, at any time during the hearing, decline to deal summarily with the offence, and may endorse on the information a certificate to that effect.
- 20
- (2) Any Court declining under this Act to deal summarily with an offence shall thereupon deal with the case in all respects as if the accused were charged with an indictable offence not punishable on summary conviction under this Act.
- 25
6. (1) The following provisions of the Crimes Act 1908 shall, as far as they are applicable and with all necessary modifications, apply to summary proceedings under this Act, namely—
- 30
- (a) Part I (which relates to preliminary matters):
- (b) Sections twenty-four to twenty-six (which relate to the Court's discretion as to punishment):
- 35
- (c) Part III (which relates to matters of justification or excuse):
- (d) Part IV (which relates to parties to the commission of offences):
- 40
- (e) Such of the provisions of Parts VI to IX as relate to any of the indictable offences to which section *two* or section *three* of this Act applies:

See Reprint of Statutes, Vol. II, p. 255

Ibid., p. 289

Ibid., p. 265

Right of accused to claim trial by jury.

Cf. 1927, No. 37, ss. 188 (2), 238 (2)

1948, No. 20, s. 2 (2) (c), (3) (c)

See Reprint of Statutes, Vol. II, p. 385

Power of Court to decline summary jurisdiction.

Cf. 1927, No. 37, ss. 188 (1), 238 (1)

1948, No. 20, s. 2 (2) (b), 3 (b)

Application of certain provisions of Crimes Act 1908.

See Reprint of Statutes, Vol. II, p. 182

- (f) Section three hundred and fifty-five (which relates to the preservation of civil remedies):
- (g) Sections three hundred and fifty-eight to three hundred and sixty (which relate to powers of arrest): 5
- (h) Sections three hundred and sixty-two and three hundred and sixty-three (which require the leave of the Attorney-General for prosecutions in certain cases):
- (i) Section three hundred and sixty-five (which relates to search warrants): 10
- (j) Section three hundred and sixty-eight (which relates to bail):
- (k) Sections four hundred and two to four hundred and five (which relate to special pleas): 15
- (l) Section four hundred and forty-nine (which relates to the power of the Court to order payment of costs and compensation):
- (m) Section four hundred and fifty-one (which relates to the restitution of property). 20
- (2) For the purposes of this Act the question whether or not any person may be arrested without warrant under the said sections three hundred and fifty-eight to three hundred and sixty, or whether any person is bailable as of right or at discretion under the said section three hundred and sixty-eight, shall be determined in accordance with those sections as if the offence were not punishable on summary conviction under this Act. 25
- (3) In the application of any of the aforesaid provisions of the Crimes Act 1908, all references to the jury shall, for the purposes of this Act, be deemed to be references to the Court exercising jurisdiction under this Act. 30
- 7. (1) Subject to the provisions of this Act, where any person is summarily convicted by a Magistrate under this Act, the Magistrate may sentence him— 35**
- (a) To imprisonment for a term not exceeding *three* years; or
- (b) To pay a fine not exceeding *two hundred* pounds.
- (2) Subject to the provisions of this section, where any person is summarily convicted by Justices under this Act, the Justices may sentence him— 40
- (a) To imprisonment for a term not exceeding *six* months; or
- (b) To pay a fine not exceeding *fifty* pounds. 45

Maximum penalty on summary conviction under this Act.

Cf. 1927, No. 37, s. 188 (1)
Cf. ibid., s. 238 (1)

(3) Notwithstanding anything in subsection *one* or subsection *two* of this section, no person shall be sentenced under this Act—

5 (a) To a term of imprisonment exceeding the maximum term of imprisonment that could have been imposed if he had been convicted of the same offence on indictment:

10 (b) To pay a fine exceeding in amount the maximum fine that could have been imposed if he had been convicted of the same offence on indictment:

(c) To a term of imprisonment if, on conviction of the same offence on indictment, he could not have been sentenced to imprisonment.

15 **8.** Where any person—

(a) Is summarily convicted under this Act of the theft of any property, or of receiving any property dishonestly obtained or of having obtained or procured any property by means of any false pretence; or

Order for
restitution
of stolen
property or
payment of
its value.
Cf. 1927,
No. 37, s. 243

20 (b) Is charged under this Act with any such offence as aforesaid and the case is dismissed by the Court hearing it as being of so trivial a nature as to be unfit for prosecution, but in the opinion of the Court that person has been proved guilty of the offence,—

25 the Court may order that person to restore the property forthwith to the owner thereof or his representatives, and in default of such restitution as aforesaid to pay to the owner or his representatives such sum as in the opinion of the Court is equivalent to the value of the property, or may in any case order that person to pay to the owner or his representatives such sum as aforesaid.

35 **9.** Proceedings for the summary trial of indictable offences under this Act shall be commenced by way of information as for a matter determinable summarily, in accordance with Part II of the Justices of the Peace Act 1927, and the provisions of that Act, except section
40 fifty thereof, and except where inconsistent with the provisions of this Act or of any provisions of the Crimes Act 1908 applied by this Act, shall apply to all such proceedings.

Procedure.
Cf. *ibid.*,
s. 187 (1A)
1948, No. 20,
s. 2 (1)

Time for commencement of summary prosecution.
Cf. 1927, No. 37, s. 190

Proceedings not to be questioned for want of form.
Cf. *ibid.*, s. 260

Other jurisdictions and powers not affected.
Cf. *ibid.*, ss. 186 (2), 261

See Reprint of Statutes, Vol. III, p. 1091

10. Any summary prosecution under this Act may be commenced at any time after the commission of the offence to which it relates, except in any case where a period of limitation is prescribed by any enactment applying to that offence.

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11. No summary conviction under this Act, or adjudication made on any appeal therefrom, shall be quashed for want of form or removed by certiorari into the Supreme Court; and no warrant of commitment shall be held void by reason of any defect therein, if it is alleged in the warrant that the party has been convicted and there is a valid conviction to sustain the allegation.

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12. (1) Nothing in this Act shall limit in any way—

(a) The right to proceed against any person, otherwise than under this Act, by way of indictment or information in the nature of an indictment:

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(b) The jurisdiction and powers of any Magistrate or Justices of the Peace under Part IV of the Justices of the Peace Act 1927 (which relates to charges in respect of indictable offences) where any charge is made against any person under that Part instead of under this Act:

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(c) The jurisdiction and powers of the Supreme Court in relation to any indictable offence, or in relation to any offence in respect of which the accused elects to be tried by jury, or in relation to any offence that a Magistrate's Court declines to deal with summarily under this Act:

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(d) The jurisdiction and powers of any Magistrate or Justices in respect of any offence for which the offender may be tried in a summary way independently of this Act:

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(e) The jurisdiction and powers of any Children's Court under the Child Welfare Act 1925:

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(f) The jurisdiction and powers of any Court or Magistrate or Justices, under any enactment other than this Act, to deal in any manner with any person who is charged with any offence:

Provided that no person shall be punished twice for the same offence.

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- (2) Where any person—
- (a) Is acquitted or convicted on a prosecution under this Act, and is subsequently prosecuted under any other enactment in respect of the same matter; or
- 5 (b) Is acquitted or convicted on a prosecution under any other enactment and is subsequently prosecuted under this Act in respect of the same matter,—
- 10 the plea of previous acquittal or, as the case may be, previous conviction, shall be available to that person to the same extent and in the same manner as if both prosecutions were under the Crimes Act 1908, and the provisions of sections four hundred and two to four
- 15 hundred and four of that Act shall, with the necessary modifications, apply accordingly. See Reprint of Statutes, Vol. II, p. 310
13. This Act shall be read subject to the Child Welfare Act 1925. Act to be read subject to Child Welfare Act 1925. Ibid., Vol. III, p. 1091
14. The enactments specified in the *Second* Schedule to this Act are hereby amended in the manner indicated in that Schedule. Consequential amendments.
15. (1) Part V of the Justices of the Peace Act 1927 is hereby repealed. Repeals and savings.
- (2) The following enactments are hereby conse-
- 25 quentially repealed, namely:—
- (a) Section nineteen of the Statutes Amendment Act 1942, No. 18
- 1942:
- (b) Subsections one to four of section two of the Justices of the Peace Amendment Act 1948. 1948, No. 20
- 30 (3) All references in any enactment to Part V of the Justices of the Peace Act 1927 shall hereafter be read as references to this Act.
- (4) Without limiting the provisions of the Acts Interpretation Act 1924, it is hereby declared that all
- 35 matters and proceedings commenced under the said Part V and pending or in progress at the commencement of this Act may be continued and completed under the said Part V in all respects as if this Act had not been passed. See Reprint of Statutes, Vol. VIII, p. 568

Schedules.

Section 2

SCHEDULES

FIRST SCHEDULE

INDICTABLE OFFENCES TRIABLE SUMMARILY BY MAGISTRATES

PART I—INDICTABLE OFFENCES UNDER THE CRIMES ACT 1908

Section of Act.	Offence.
<i>Part V—Crimes Against Public Order</i>	
101, 102	Unlawful assembly or riot.
111	Forcible entry and detainer.
112	Taking part in affray.
<i>Part VI—Crimes Affecting the Administration of Law and Justice</i>	
129	Disobedience to statute.
132, 133	Making false statement or declaration.
140	Assisting escape of prisoners of war.
141	Breaking prison.
142, 143	Escape from prison or lawful custody.
144, 145, 146, 147, 148, 149	Assisting or permitting escape.
<i>Part VII—Crimes Against Religion, Morals, and Public Convenience</i>	
151	Assaulting minister of religion.
152	Disturbing public worship.
154 (1) (c)	Indecent assault by a male on any other male.
156	Doing indecent act.
157	Publishing obscene matter.
159	Committing common nuisance.
161	Keeping disorderly house.
165	Misconduct in respect of human remains.
<i>Part VIII—Crimes Against the Person and Reputation</i>	
166, 167, 168	Neglecting to provide necessaries of life.
169	Abandoning child under two.
193	Attempted suicide.
194	Concealing dead body of child.
200	Wantonly endangering persons on railways or tramways or in aircraft.
200A (2)	Wantonly endangering persons in vehicles.
202	Striking person protecting wreck.
204	Assault causing bodily harm.
205	Setting man-traps.
206	Negligent act causing bodily harm.
208	Indecent assault.
209	Aggravated assault.
214, 215	Defiling or attempting to defile girl under twelve.

FIRST SCHEDULE—continued
 INDICTABLE OFFENCES TRIABLE SUMMARILY BY
 MAGISTRATES—*continued*
 PART I—INDICTABLE OFFENCES UNDER THE CRIMES ACT
 1908—*continued*

Section of Act.	Offence.
<i>Part VIII—Crimes Against the Person and Reputation—contd.</i>	
216	Defiling or attempting to defile girl between twelve and sixteen.
217	Defiling or attempting to defile idiot or imbecile woman or girl.
218	Procuring defilement of woman or girl under twenty-one.
219	Conspiring to defile woman or girl.
222	Procuring own miscarriage.
223	Supplying means of procuring abortion.
225	Bigamy.
226, 227, 229	Abduction of woman or girl.
230	Unlawfully taking away child under fourteen.
 <i>Part IX—Crimes Against Rights of Property</i>	
247	Theft.
248	Fraudulently destroying document.
249	Fraudulently concealing goods.
250	Bringing stolen property into New Zealand.
252	Obtaining anything by false pretence.
253	Obtaining credit fraudulently.
254	Criminal breach of trust.
256, 257, 258	False accounting or statement by official or officer.
259	Conspiring to defraud.
260	Cheating at play.
261	Pretending to practise witchcraft or undertaking to tell fortunes.
262	Concealing deeds and encumbrances.
265	Compelling execution of documents by force.
266	Robbery.
267	Assault with intent to rob.
268	Demanding anything with intent to steal.
269, 270	Extortion by threats.
273, 274	Breaking place of worship.
275	Burglary.
276, 277	Housebreaking.
278, 279	Breaking shop.

FIRST SCHEDULE—*continued*INDICTABLE OFFENCES TRIABLE SUMMARILY BY
MAGISTRATES—*continued*PART I—INDICTABLE OFFENCES UNDER THE CRIMES ACT
1908—*continued*

Section of Act.	Offence.
<i>Part IX—Crimes Against Rights of Property—continued</i>	
280	Being found in dwellinghouse by night.
281	Being armed with intent to break or enter.
282	Being disguised or in possession of housebreaking instruments.
284	Receiving property dishonestly obtained.
287	Taking reward for recovery of stolen goods.
291	Forgery.
292	Uttering forged document.
293	Counterfeiting public or corporate seal.
294	Sending false telegram.
295	Procuring execution of document by false pretence.
296	Possessing forged bank notes.
297	Drawing document without authority.
298	Using probate, &c., obtained by forgery or perjury.
300	Making, use, or possession of instruments for forgery.
301	Counterfeiting stamps.
302, 303	Falsifying register or extract therefrom.
304	Uttering false certificate.
305	Forging certificate.
306	Making false entry in book relating to public funds.
307	Issuing false dividend warrant.
308, 309	Imitating authorized or customary mark.
310, 311, 312	Personation.
314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 326A	Counterfeiting coin, preparation for coining, clipping or possessing clippings of current coin, or possessing, uttering, or exporting counterfeit coin, or melting down or using current coin except as currency.
329, 330, 331, 332	Arson or attempted arson.
333, 334, 335, 336, 337, 338, 339	Mischief.
340	Providing explosives to commit crime.
342, 343	Sending in writing threats to kill or do bodily harm, or to burn property.
344, 345	Threatening by night, or threatening acts.
346	Conspiring to prevent collection of rates or taxes.

FIRST SCHEDULE—continued
PART II—INDICTABLE OFFENCES UNDER OTHER ENACTMENTS

Title of Act.	Section of Act.	Offence.
1945, No. 41— The Atomic Energy Act 1945	18	..... Contravention of Act.
1928, No. 29— The Auctioneers Act 1928 (Reprint of Statutes, Vol. I, p. 419)	38	..... Misappropriation, or falsifying accounts.
1951, No. 22— The Births and Deaths Registration Act 1951	48	..... Making false statement.
1924, No. 49— The Chattels Transfer Act 1924 (Reprint of Statutes, Vol. I, p. 657)	58	..... Defrauding or attempting to de- fraud grantee of instrument by way of security.
1920, No. 47— The Counties Act 1920	176	..... Wilful damage to drainage works.
(Reprint of Statutes, Vol. V, p. 246)		
1913, No. 63— The Customs Act 1913	212	..... Making false declaration.
(Reprint of Statutes, Vol. VII, pp. 158, 159, 171)	217	..... Bribing or resisting officer of Customs.
	269	..... Rescue of ship seized.
1908, No. 46— The Distillation Act 1908	126	..... Stealing spirits from distillery, &c.
(Reprint of Statutes, Vol. IV, p. 226)	127	..... Obstructing officer.
	128	..... Assaulting or resisting officer.
1927, No. 44— The Electoral Act 1927	164	..... Offences in respect of ballot papers and ballot boxes.
(Reprint of Statutes, Vol. VI, pp. 537, 539)	167	..... Personation.
1915, No. 39— The Finance Act 1915	65	..... Bribing officer of Customs. Officer accepting bribe or conniving at offence.
(Reprint of Statutes, Vol. VII, p. 255)		
1949, No. 18— The Fire Services Act 1949	79	..... Giving false information as to insurance on premises where fire occurs.
1908, No. 65— The Fisheries Act 1908	63	..... Removing boundary marks of oyster bed.
(Reprint of Statutes, Vol. III, p. 366)		

FIRST SCHEDULE—*continued*PART II—INDICTABLE OFFENCES UNDER OTHER ENACTMENTS—*continued*

Title of Act.	Section of Act.	Offence.
1909, No. 12— The Friendly Societies Act 1909 (Reprint of Statutes, Vol. III, p. 495)	75	Wrongful supply of rules of society or branch.
1950, No. 34— The Harbours Act 1950	247	Wilful damage to works.
1926, No. 39— The Hauraki Plains Act 1926 (Reprint of Statutes, Vol. IV, p. 606)	18 (1)	Wilful damage to works.
1927, No. 37— The Justices of the Peace Act 1927 (Reprint of Statutes, Vol. II, p. 442)	302	Making false declaration.
1921–22, No. 56— The Land Agents Act 1921–22 (Reprint of Statutes, Vol. I, p. 29)	25	Fraudulent conversion of moneys or false accounting.
1908, No. 96— The Land Drainage Act 1908 (Reprint of Statutes, Vol. IV, p. 497)	82	Wilful damage to works.
1908, No. 104— The Licensing Act 1908 (Reprint of Statutes, Vol. IV, p. 311)	208	Forging or counterfeiting licence.
1925, No. 35— The Local Elections and Polls Act 1925 (Reprint of Statutes, Vol. V, p. 461)	47 (1) and (2)	Offences in respect of voting, voting papers, and ballot boxes.
1908, No. 113— The Marriage Act 1908 (Reprint of Statutes, Vol. III, p. 841)	53	Offences in respect of Registrar's certificate or entries in register.
1950, No. 50— The Medical Practitioners Act 1950	27	Fraudulently procuring registration.

FIRST SCHEDULE—continued

PART II—INDICTABLE OFFENCES UNDER OTHER ENACTMENTS—continued

Title of Act.	Section of Act.	Offence.
1933, No. 30— The Municipal Corporations Act 1933	351	Wilful damage to drainage works or waterworks.
1908, No. 127— The Naval and Victualling Stores Act 1908 (Reprint of Statutes, Vol. II, p. 642)	4 5 (1)	Destroying marks with intent to steal stores. Knowingly receiving or selling marked stores.
1921-22, No. 18— The Patents, Designs, and Trade Marks Act 1921-22 (Reprint of Statutes, Vol. VI, p. 732)	143 (1)	False entries in Register.
1932-33, No. 33— The Sales Tax Act 1932-33	46	Making false declaration.
1941, No. 12— The Soil Conservation and Rivers Control Act 1941	154	Wilful damage to watercourse or works.
1908, No. 205— The Water Supply Act 1908 (Reprint of Statutes, Vol. VIII, p. 1120)	57	Wilful damage to waterworks.

Section 14

SECOND SCHEDULE
CONSEQUENTIAL AMENDMENTS

Title of Act.	Nature of Amendment.
1924, No. 11— The Acts Interpretation Act 1924 (Reprint of Statutes, Vol. VIII, p. 583) (Cf. 1927, No. 37, s. 193)	By adding to subsection (1) of section 27 the words "or to pay a fine not exceeding <i>fifty</i> pounds if imprisonment is the only penalty provided by that Act".
1925, No. 22— The Child Welfare Act 1925 (Reprint of Statutes, Vol. III, p. 1107)	By omitting from subsection (2) of section 34 the words "Part III of the Justices of the Peace Act 1908 and of sections two hundred and twenty-nine and two hundred and thirty of that Act", and substituting the words "Part III of the Justices of the Peace Act 1927".
1927, No. 37— The Justices of the Peace Act 1927 (Reprint of Statutes, Vol. II, pp. 376, 385, 386, 387)	(a) By repealing subsection (2) of section 92: (b) By omitting from subsection (1) of section 124 the words "and which is not an assault": (c) By omitting from subsection (2) of section 126 the words "sixteen years", and substituting the words "seventeen years": (d) By repealing subsection (2) of section 130.
1950, No. 39— The New Zealand Army Act 1950	By omitting from subsection (3) of section 98 the words "section two hundred and forty-three of the Justices of the Peace Act 1927", and substituting the words "section <i>eight</i> of the Summary Jurisdiction Act 1952".
1933, No. 40— The Poor Prisoners' Defence Act 1933	By omitting from section 3 the words "Part V of the Justices of the Peace Act 1927", and substituting the words "the Summary Jurisdiction Act 1952".
1950, No. 40— The Royal New Zealand Air Force Act 1950	By omitting from subsection (3) of section 98 the words "section two hundred and forty-three of the Justices of the Peace Act 1927", and substituting the words "section <i>eight</i> of the Summary Jurisdiction Act 1952".
1936, No. 58— The Statutes Amendment Act 1936	(a) By repealing paragraph (a) of the proviso to subsection (1) of section 42, and substituting the following paragraph:— " (a) Where the offence is one that may be dealt with summarily under the Summary Jurisdiction Act 1952, the Justices may, subject to the provisions of that Act, deal with the offence summarily; and "

SECOND SCHEDULE—continued
CONSEQUENTIAL AMENDMENTS—continued

Title of Act.	Nature of Amendment.
1936, No. 58— <i>ctd.</i> The Statutes Amendment Act 1936— <i>continued</i>	(b) By repealing subsection (2) of section 42, and substituting the following subsections:— “(2) Where any person is charged jointly with a corporation with an indictable offence that may be dealt with summarily under the Summary Jurisdiction Act 1952, and the Justices decline under that Act to deal summarily with the offence in respect of either that person or the corporation, or either that person or the corporation claims under that Act to be tried by a jury, the Justices shall not have power to deal summarily with the offence in the case of the other offender. “(2A) Where any person is charged jointly with a corporation with any summary offence, and either that person or the corporation claims to be tried by a jury, the Justices shall not have power to deal summarily with the offence in the case of the other offender.”