

# Summary Trials in Disturbed Districts.

## ANALYSIS.

- Title.
- 1. Short Title.
- 2. Interpretation.
- 3. Governor in Council empowered to proclaim districts under this Act.
- 4. All Justices constables and commissioned officers required to suppress rebellion and to arrest and bring to trial persons guilty of treason or other offences in furtherance of the rebellion.

### COURTS OF SPECIAL COMMISSION.

- 5. Governor empowered to constitute Courts of Special Commission to try persons charged with certain offences.
- 6. Governor to fix times and places of sitting.
- 7. Judge to be appointed.
- 8. Juries.
- 9. Case to be brought before Court by information signed by a Crown Prosecutor.
- 10. Prosecutions to be conducted by Crown Prosecutor appointed by the Governor.
- 11. Court to be open.
- 12. Powers of Courts of Special Commission.
- 13. Questions of law &c. to be determined by the Judge and questions of fact by Jury of five men. Concurrence of these sufficient. Jury may be discharged without verdict in certain cases.
- 14. Rules may be made.
- 15. Powers of Judge.
- 16. Right to challenge.
- 17. Declaration to be made by Juror.
- 18. Penalty on Jurors for neglect.
- 19. Ministerial officers may be appointed for Courts of Special Commission. Judge may order Sheriffs &c. to execute or carry into effect sentences. Sentence of death.
- 20. No information to be removed by *certiorari*. Error in like cases as in Supreme Court.

### COURTS-MARTIAL.

- 21. Governor and Officer authorized by him may convene Courts-Martial to try such offences cognizable by such Courts under this Act as the Governor or such person may direct.
- 22. Constitution and powers of Courts-Martial.
- 23. Number of members necessary to concur in decisions of such Courts.
- 24. Person to be appointed to prosecute at trial.
- 25. Oath to be taken by members of the Court and the person appointed to prosecute.
- 26. Governor &c. may order persons charged with offences cognizable by Courts-Martial to be tried by them.
- 27. Sentences not to be executed till report made of proceedings.
- 28. Governor &c. may issue orders for bringing before the Court persons charged with offences cognizable by Courts or for carrying into effect their sentences.
- 29. Courts-Martial may compel the attendance of witnesses And commit in case of refusal to give evidence.

### OFFENCES COGNIZABLE BY COURTS OF SPECIAL COMMISSION AND COURTS-MARTIAL.

- 30. Offences which may be tried by Courts-Martial.

### POWER TO DISARM.

- 31. Orders may be given for disarming persons in proclaimed districts.

### PERSONS SUSPECTED OR CONVICTED MAY BE ORDERED TO RESIDE IN APPOINTED DISTRICT.

- 32. Persons suspected or convicted of offences triable under this Act or who have yielded themselves up may be ordered to reside in a district to be defined by the Governor.

### INDEMNITY.

- 33. Nothing done in pursuance of this Act to be questioned in any Court Officers &c. acting in pursuance of Act shall be responsible only to Courts-Martial.

### DETENTION OF PERSONS ARRESTED.

- 34. Detention of persons arrested under warrant of officer commissioned to convene Courts-Martial.
- 35. What shall be sufficient return to *habeas corpus* sued out by person detained.
- 36. Persons arrested to be brought to trial within six months unless also detained under a Governor's warrant.

### SPECIAL POWER TO ARREST AND DETAIN SUSPECTED PERSONS.

- 37. Persons may be detained under warrant of Governor.
- 38. Persons within prison by warrant of Governor to be detained till end of next Session and not to be bailed or tried.
- 39. Such persons to be deemed in lawful custody and those in whose custody they are to be lawful gaolers. Power to change place of custody.
- 40. What shall be sufficient return in such cases.

### MISCELLANEOUS PROVISIONS.

- 41. Person swearing falsely liable to penalties of perjury.
- 42. Copies of warrants to be filed in Supreme Court.
- 43. Sentences may be commuted.
- 44. Convicts may be put on board ships to serve as seamen &c.
- 45. Persons suspected or convicted of offences triable under this Act may be deported from Colony.
- 46. Gaoler of public gaols to receive persons committed to such gaols.
- 47. Contribution to be paid for maintenance of persons committed to Provincial gaols.
- 48. Persons under detention may be set to labour.
- 49. Special Regulations under "The Secondary Punishment Act 1854."
- 50. Persons may be prosecuted in the Supreme Court unless under detention or prosecution under this Act.
- 51. Prerogative of resorting to Martial Law not to be affected by this Act.
- 52. Revocation of Proclamation on expiration of Act not to affect any sentence.
- 53. Continuance of Act.

A BILL INTITULED

Title. AN ACT to provide prompt and effectual Means for trying Persons charged with certain Offences within Proclaimed Districts and for the Punishment of Persons convicted of such Offences. (Temporary.)

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

Short Title. 1. The Short Title of this Act shall be “The Summary Trials in Disturbed Districts Act 1869.”

Interpretation. 2. For the purposes of this Act the term “Colonial Forces” shall be deemed to mean and include the Militia the Volunteers and also the Armed Constabulary enrolled under “The Armed Constabulary Act 1867” and the word “offence” shall include treason felony misdemeanour or other offence. 5

Governor in Council empowered to proclaim districts under this Act. 3. It shall be lawful for the Governor in Council from time to time by Proclamation published in the *New Zealand Gazette* to declare any district of the Colony a proclaimed district for the purposes of this Act and every such Proclamation from time to time to alter amend and revoke and the production of the *New Zealand Gazette* containing the publication of any Order in Council or Proclamation under this Act shall in all proceedings civil and criminal be received and deemed as conclusive evidence of the issuing and contents of the Order or Proclamation so published. 10 15

All Justices constables and commissioned officers required to suppress rebellion and to arrest and bring to trial persons guilty of treason or other offences in furtherance of the rebellion. 4. From and after the publication of any such Proclamation as aforesaid all Justices constables and peace officers and all commissioned officers of or in the Colonial Forces in New Zealand are hereby required to take the most vigorous measures according to law for suppressing rebellion sedition or insurrection and all acts tending thereto within the proclaimed district and to search for arrest and detain for trial under this Act every person who shall at any time after the passing of this Act whether before or after the issue of such Proclamation act aid or encourage or in any manner be concerned in or be suspected of acting aiding encouraging or being concerned in rebellion sedition or insurrection within such proclaimed district or in maliciously attacking or injuring within such proclaimed district the persons or properties of Her Majesty's loyal subjects in furtherance of rebellion or insurrection and also every person who shall be charged with or suspected of any offence whatever which by this Act may be cognizable by or before 20 25 30

any Court hereinafter empowered and authorized to try such offence and also every person who shall at any time before the passing of this Act have committed any of the offences aforesaid within such proclaimed district.

5

COURTS OF SPECIAL COMMISSION.

5. It shall be lawful for the Governor from time to time by warrant under his hand to constitute either within or without any Proclaimed District Courts of Criminal Jurisdiction to be called " Courts of Special Commission " for the trial of all such persons charged with offences triable by a Court of Special Commission under this Act and committed within any Proclaimed District against whom any criminal information shall be exhibited before such Court by any Crown Prosecutor appointed under this Act.
6. Such Courts of Special Commission shall sit at such times and places as the Governor shall from time to time appoint.
7. The Governor may from time to time by warrant under his hand appoint any Judge of the Supreme Court or Resident Magistrate appointed under " The Resident Magistrates Act 1867 " or any Justice of the Peace to be the Judge of any such Court of Special Commission.
8. Juries for the purposes of any Court of Special Commission shall be formed of and from such persons and in such manner as shall be in accordance with regulations to be from time to time made by the Governor.
9. For the purpose of bringing any case under the cognizance of any Court of Special Commission an information shall be signed by a Crown Prosecutor appointed for such Court and shall be exhibited before such Court and such information shall be as valid and effectual in all respects as if the same had been presented by a Grand Jury.
10. All prosecutions before Courts of Special Commission shall be conducted by a Crown Prosecutor And it shall be lawful for the Governor from time to time to appoint such person as he shall think fit to act at every such Court of Special Commission as Crown Prosecutor.
11. Every Court of Special Commission shall be an open Court without prejudice however to the right of the Judge of such Court from time to time to close the hall or room where the same shall be held for the purpose of allowing the Jury to deliberate on their verdict.
12. Every Court of Special Commission shall have every power right jurisdiction and authority by law appertaining to the Supreme Court as a Court for hearing and determining cases of treason crimes and misdemeanours as far as such power right jurisdiction and authority may not be inconsistent with the provisions of this Act or any Rules made hereunder and the Judge of every such Court shall have full power and authority to pass upon any person convicted before such Court of any offence cognizable by such Court such sentence and to award such punishment as in the case of offences created by this Act is specified herein and as in the case of other offences the Supreme Court of New Zealand or a Judge thereof would be authorized and empowered to pass and award if such person had been tried and convicted before the Supreme Court.
13. In every Court of Special Commission the determination of all issues of law joined on every information exhibited therein shall be by the Judge thereof and the trial of every issue of fact joined upon any information exhibited before such Court shall be had by a Jury of five men and the concurrence of at least three of the said jurors shall be required and shall be sufficient to give validity and effect to their verdict and when a Jury shall have remained six or more hours in

Governor empowered to constitute Courts of Special Commission to try persons charged with certain offences.

Governor to fix times and places of sitting.

Judge to be appointed.

Juries.

Case to be brought before Court by information signed by a Crown Prosecutor.

Prosecutions to be conducted by Crown Prosecutor appointed by the Governor.

Court to be open.

Powers of Courts of Special Commission.

Questions of case &c. to be determined by the Judge and questions of fact by Jury of five men.

Concurrence of these sufficient.

Jury may be discharged without verdict in certain cases.

deliberation and no three of such Jury shall have agreed as to the verdict to be given the jurors of such Jury may be discharged by the Judge from giving any verdict and such proceedings may thereupon be taken anew as if no trial had been commenced before the Jury so discharged and if at the time of such discharge the Judge shall think fit so to order another trial or inquiry may forthwith or at some other time be commenced and proceeded with as if such first-mentioned trial had not been commenced. 5

Rules may be made.

14. It shall be lawful for the Governor from time to time to make rules and the same from time to time to revoke or alter for regulating the sittings practice forms and procedure of Courts of Special Commission for the formation of lists of persons liable to serve as jurors at any such Court and for the summoning of jurors and for selecting from such lists and from the jurors summoned juries for the trial of informations exhibited before such Courts and generally for the formation of Juries for such Courts and except as in this Act or in any rules made hereunder is specially provided the practice and procedure of a Court of Special Commission shall be the same as the Supreme Court in its criminal jurisdiction. 10 15

Powers of Judge.

15. It is hereby expressly provided that every Judge of a Court of Special Commission shall have the same power of summoning and compelling the attendance of witnesses and the production of documents and of punishing persons duly summoned for non-attendance or for refusing to give evidence or produce documents and the same means of enforcing observance of order and of its rules during its sittings and of punishing contempt and of enforcing fines imposed on men summoned to serve on juries as is possessed by the Supreme Court or any Judge thereof. 20 25

Right to challenge.

16. Every person tried for or charged with any offence before any Court of Special Commission shall be entitled to challenge peremptorily three persons selected as jurors. 30

Declaration to be made by Juror.

17. Every juror shall make a declaration before the Judge according to the following form

I A.B. do solemnly declare that I will well and truly try and true deliverance make between our sovereign lady the Queen and all persons whom I shall have in charge and a true verdict give according to the evidence. 35

Penalty on Jurors for neglect.

18. If any man being duly summoned to attend on a Jury under this Act shall not attend in pursuance of such summons or being thrice called shall not answer to his name or if any man after being called shall be present but not appear or after his appearance shall wilfully withdraw himself from the presence of the Court the Judge of the Court shall set such fine upon every such man so making default as he shall think fit not exceeding twenty pounds. 40

Ministerial officers may be appointed for Courts of Special Commission.

19. Every Court of Special Commission shall have such ministerial officers as shall be necessary for conducting the proceedings and executing the processes judgments and orders thereof and the said officers shall from time to time be appointed to and removed from their respective offices by the Governor Provided that it shall be lawful for the Judge of any such Court to issue orders for executing and carrying into effect any sentence of such Court which orders all sheriff's gaolers constables and other peace-officers in New Zealand to whom the same shall be directed and to whom the execution thereof shall properly appertain shall and are hereby required to execute enforce and obey Provided that no sentence of death shall be carried into execution unless the Judge shall have made to the Governor a written report of the case and the Governor's pleasure shall have been expressed with regard to the execution of such sentence. 45 50 55

Sentence of death.

No information to be removed by certiorari.

20. No information judgment order or any proceeding whatsoever in such Court shall be removed by certiorari or otherwise from any 60

5 Court of Special Commission to the Supreme Court but error shall lie to the Court of Appeal under "The Court of Appeal Act 1862" on any judgment of such Court of Special Commission in the like cases in which error would lie from the Supreme Court and in cases of error the said Court of Appeal shall have the same powers and jurisdiction and the practice and procedure shall be the same as in error to the Court of Appeal upon a judgment of the Supreme Court.

Error in like cases as in Supreme Court.

## COURTS-MARTIAL.

10 **21.** It shall be lawful for the Governor from time to time by warrant under his hand to commission any Officer or Officers holding command in the Colonial Forces to convene assemble and hold Courts-Martial under this Act within any proclaimed district or districts and it shall be lawful for the Governor or any Officer so commissioned as aforesaid to convene assemble and hold Courts-Martial within  
15 any proclaimed district for the trial of all such persons charged with offences triable by Court-Martial under this Act and committed within such district as any of such Courts-Martial shall be directed by any warrant or order of the Governor or of any Officer so commissioned as aforesaid to try provided that the Officer so commissioned be not  
20 below the degree of a Field-Officer of Militia or Volunteer Forces or a Commandant in the Armed Constabulary and every officer so authorized to convene Courts-Martial may subject to the provisions of this Act relating to sentences of death confirm the sentence of any Court-Martial convened by him if authorized so to do by his  
25 commission.

Governor and Officer authorized by him may convene Courts-Martial to try such offences cognizable by such Courts under this Act as the Governor or such person may direct.

**22.** Such Courts-Martial so constituted and appointed shall consist of any number of Officers of the Colonial Forces not less than three nor exceeding five and shall have all powers and authorities incident to any Courts-Martial and also every power right jurisdiction and  
30 authority by law appertaining to the Supreme Court as a Court for hearing and determining cases of treason crimes and misdemeanours as far as such power right jurisdiction and authority may be applicable to the proceedings of such Courts-Martial which proceedings shall be conducted according to the manner of proceeding used  
35 by Courts-Martial holden under the provisions of the Act of the Imperial Legislature at the time of the passing of this Act in force in New Zealand for punishing mutiny and desertion unless in so far as otherwise directed by this Act and every such Court-Martial shall have full power and authority to pass upon any person convicted  
40 before it of any offence cognizable by such Court such sentence and to award such punishment as in the case of offences created by this Act is specified herein and as in the case of other offences the Supreme Court of New Zealand would be authorized and empowered to pass and award if such person had been tried and convicted  
45 before the Supreme Court and every such Court-Martial shall be an open Court without prejudice however to the right of such Court from time to time to clear the hall or room where the same shall be held for the purposes of deliberation and determination Provided always that no finding of acquittal given by any such Court-  
50 Martial shall be liable to revision by the same or any other Court And provided also that no officer shall be appointed to serve on any such Court-Martial to be convened under this Act who shall not have attained the rank of Captain in the Militia or Volunteer Forces or Sub-Inspector in the Armed Constabulary Force And provided also  
55 that no officer below the rank of Major in the Militia or Volunteer Forces or Inspector in the Armed Constabulary Force shall be President of such Court-Martial Provided also that on trials before such Courts-

Constitution and powers of Courts-Martial.

Martial it shall be lawful for the parties or any one on their behalf to examine and cross-examine the witnesses and to take notes of the proceedings for the purposes of such trials as in Courts of Law Provided also that all prosecutions before such Courts-Martial shall be conducted by a person or persons to be thereunto duly authorized by the Governor or by any Officer commissioned by the Governor to convene Courts-Martial and who shall have convened such Court-Martial. 5

Number of members necessary to concur in decisions of such Courts.

23. The concurrence of at least three members of any Court-Martial shall be required and shall be sufficient to give validity and effect to the decisions and acts of such Court. 10

Person to be appointed to prosecute at trial.

24. The Attorney-General for New Zealand shall act as Judge-Advocate-General under this Act and the Governor or the officer so commissioned as aforesaid who shall have convened such Court-Martial shall appoint such person as he shall think fit to act at every such Court-Martial as Officiating Judge-Advocate and such person shall be Officiating Judge-Advocate at and for the purposes of such Court-Martial and the Attorney-General and every such person so appointed as aforesaid shall respectively have all the powers and authorities and perform all the duties and functions which any Judge-Advocate-General or Officiating Judge-Advocate respectively may or ought in case of any Court-Martial to possess execute and discharge. 15 20

Oath to be taken by members of the Court and the person appointed to prosecute.

25. The persons so constituted and appointed members of such Courts-Martial shall instead of any oath or oaths now usually taken by members of Courts-Martial take the oath following that is to say— 25

I A.B. do swear that I will well and truly try and determine the matter before me according to the evidence that I will faithfully impartially and justly exercise all powers and authorities conferred upon me by [*here set forth the Short Title of this Act*] that I will not divulge the sentence of the Court until it shall be approved by the Governor or by some person duly authorized by him and that I will not upon any account at any time whatsoever disclose or discover the vote or opinion of any particular member of the Court-Martial unless required to give evidence thereof as a witness by a Court of Justice or a Court-Martial in a due course of law So help me God 30 35

And so soon as the said oath shall have been administered to the respective members of the said Court by the person by this Act authorized to act as Officiating Judge-Advocate and which oath the said person so authorized is hereby empowered to administer then the President of the said Court is hereby authorized and required to administer to the person so appointed to act as Officiating Judge-Advocate as aforesaid an oath in the following words that is to say— 40

I do swear that I will faithfully impartially and justly exercise all powers and authorities conferred upon me by [*here set forth the Short Title of this Act*] and that I will not upon any account at any time whatsoever disclose or discover the vote or opinion of any particular member of the Court-Martial unless required to give evidence thereof as a witness by a Court of Justice or a Court-Martial in a due course of law So help me God. 45 50

Governor &c. may order persons charged with offences cognizable by Courts-Martial to be tried by them.

26. The Governor or any Officer or Officers duly commissioned by him as aforesaid is and are hereby empowered to order that every person charged with any offence by this Act made cognizable by such Court-Martial may be and such persons shall be summarily tried by and before such Court-Martial and the sentence of such Court-Martial when duly confirmed by the Governor or by any Officer by him authorized to convene such Court-Martial and to confirm the sentence of such Court-Martial shall be carried into execution and shall have 60

the like effect as if the trial of such offences had been had before and the sentences had been passed by the Supreme Court.

27. No sentence of any such Court-Martial shall be put in execution till after a report shall have been made of the whole proceedings to the Governor or to the Officer who shall have convened the Court-Martial and shall have authority to confirm the same and until the directions of the Governor or such Officer as the case may be shall have been signified thereupon and in every case in which a sentence of death shall be passed a report of the whole proceedings shall be made to the Governor and no sentence of death shall be carried into effect unless confirmed by the Governor under his hand.

Sentences not to be executed till report made of proceedings.

28. It shall be lawful for the Governor or such person or persons as shall be duly commissioned by him for that purpose from time to time to issue such orders as to him or them respectively shall seem fit for bringing before such Court-Martial any person charged with any treason or offence by this Act made cognizable by such Court or for executing and carrying into effect any sentence so confirmed as aforesaid of any such Court-Martial which orders all Sheriffs Justices of Peace Gaolers Constables Officers and Ministers of Justice and other persons to whom the same shall be directed and to whom the execution thereof shall rightly and properly appertain shall and are hereby required to execute enforce and obey.

Governor &c. may issue orders for bringing before the Court persons charged with offences cognizable by Courts or for carrying into effect their sentences.

29. It shall be lawful for any such Court-Martial or any member thereof and they or he are hereby required to summon as well on the part of the defence as the prosecution any person whose evidence may be required to appear before such Court to give evidence upon any trial touching any offence matter or thing cognizable by such Court and if the person so summoned shall refuse or neglect to attend in obedience to such summons it shall be lawful for such Court after proof upon oath of the due service of such summons to issue a warrant to apprehend and bring before such Court the party so refusing or neglecting and in case of the refusal of any party to be examined or to give evidence touching any matter to which he shall be interrogated by such Court (there being no lawful objection thereto) then it shall be lawful for such Court to commit the person so refusing to custody for any period not exceeding three months or until such person shall sooner submit to be examined and answer touching the matters before the said Court.

Courts-Martial may compel the attendance of witnesses.

And commit in case of refusal to give evidence.

#### OFFENCES COGNIZABLE BY COURTS OF SPECIAL COMMISSION AND COURTS-MARTIAL.

30. Any person who within any district proclaimed under this Act has levied or shall levy war against the Queen or shall be guilty of misprision of treason or has committed or shall commit any murder manslaughter rape burglary larceny or riot or shall at any time hereafter compose or publish any seditious libel or shall conspire with any other person or persons to commit any offence mentioned in this section of this Act or has committed or shall commit any offence whatsoever contrary to any of the provisions specified in the third column of the Schedule hereto of the several Acts mentioned in the said Schedule and who shall be liable to be prosecuted for such treason or offence and also every person charged with any offence contrary to the provisions of this Act except any offence created by this Act and required by this Act to be tried according to the course of the ordinary law may be tried by and before a Court of Special Commission under this Act whether sitting within or without the Proclaimed District in which such offence shall have been committed or by a Court-Martial to be appointed as aforesaid and whether the offence so charged shall or shall not have been committed before the issuing of any Proclamation under this Act proclaiming such district

Offences which may be tried by Courts-Martial.

or shall have been committed after or before the passing of this Act Provided that no person shall be liable to be tried by any Court-Martial under this Act unless the trial of such person shall have been ordered by the Governor or an Officer duly commissioned by him as aforesaid.

## POWER TO DISARM.

5

Orders may be given for disarming persons in proclaimed districts.

**31.** If in any such proclaimed district any person or persons shall have in his or their possession any gun pistol bayonets axes or other offensive arms or weapon or any ammunition and if it shall appear to the Governor or any Officer commissioned to convene Courts-Martial under this Act that such person or persons ought to be disarmed it shall be lawful for the Governor or any such Officer as aforesaid to order and direct that such person or persons shall be disarmed and thereupon it shall be lawful for the Governor or such Officer as aforesaid to order all guns pistols bayonets axes and other offensive weapons and all ammunition in the possession of such person or persons to be seized and carried away and dealt with in such way as the Governor or such Officer as aforesaid shall direct and it shall be lawful for the Governor or any such Officer as aforesaid by warrant under his hand to authorize any officer to call upon any such person or persons as aforesaid to give up all fire and other arms and offensive weapons whatsoever and ammunition in their possession and if any such person or persons after they shall have been so called upon shall be found within any such proclaimed district in possession of any gun pistol or firearms or any offensive weapon of any kind or any ammunition without the authority in writing of the Governor or of an Officer so commissioned to hold Courts-Martial every such person or persons shall be guilty of a misdemeanour and be liable to be imprisoned with or without hard labour for any term not exceeding two years and may be tried convicted and punished accordingly by a Court of Special Commission or by a Court-Martial under this Act.

## PERSONS SUSPECTED OR CONVICTED MAY BE ORDERED TO RESIDE IN APPOINTED DISTRICT.

Persons suspected or convicted of offences triable under this Act or who have yielded themselves up may be ordered to reside in a district to be defined by the Governor.

**32.** Whenever any person who shall have committed any offence triable by Court-Martial under this Act or by Court of Special Commission under this Act shall have yielded himself up to the Governor or to any officer of the Colonial Forces and shall admit his guilt and whenever any person shall be suspected of having committed any offence triable by Court-Martial under this Act or by a Court of Special Commission under this Act and whenever any person shall be convicted by any Court-Martial under this Act or by a Court of Special Commission under this Act of any offence triable by such Court it shall be lawful for the Governor to order any such person to reside at some place or within the boundaries of some district to be appointed by the Governor within any part of New Zealand whether within or without a proclaimed district and during a period to be defined by the Governor and shall and may in and by such order suspend during his pleasure the carrying into execution of any sentence which may have been awarded to or against such person and if any such person or persons shall at any time within such period be found anywhere in New Zealand out of such place or beyond such district every such person shall be guilty of a misdemeanour and shall be liable to be imprisoned for any term not exceeding years and with or without hard labour and may be tried convicted and punished accordingly by a Court-Martial under this Act or a Court of Special Commission under this Act.



## INDEMNITY.

**33.** No act matter or thing done in any such proclaimed district as aforesaid in pursuance or execution of any power or authority hereby conferred shall be questioned in any Court having jurisdiction civil or criminal except as herein mentioned Provided however that all officers non-commissioned officers privates and constables who shall act under any such power or authority shall for and in respect of anything done under such power or authority in any such proclaimed district as aforesaid be responsible to Courts-Martial to be holden under any statute in force for holding Courts-Martial by which Courts-Martial respectively they shall be liable to be tried and punished for any offence against the Articles of War under any law then in force for such purposes and such Courts-Martial respectively shall have full and exclusive cognizance of all such matters and things which shall be objected against such officers non-commissioned officers privates and constables respectively and proceedings shall be had thereon in the same manner as for offences against the Articles of War and not otherwise and no other Court whether civil or criminal shall have cognizance or jurisdiction with respect to any act matter or thing which shall be done by any such officer non-commissioned officer private or constable in pursuance of this Act in any such proclaimed district as aforesaid and any proceeding instituted had or commenced in any such Court as last mentioned against any officer non-commissioned officer private or constable for or by reason of any such act matter or thing whether by indictment action or otherwise shall be stayed by summary application to the Court in which the same shall have been instituted had or commenced and all Justices of the Peace policemen and all other persons besides officers non-commissioned officers privates or constables of the Colonial Forces who shall act under any such power or authority for and in respect of anything done under such power or authority in any such proclaimed district as aforesaid shall be liable to be prosecuted in any Court of criminal jurisdiction under the warrant of the Attorney-General and not otherwise and being so prosecuted shall be proceeded against and punished for such offence according to the course of the common law.

Nothing done in pursuance of this Act to be questioned in any Court.

Officers &c. acting in pursuance of Act shall be responsible only to Courts-Martial.

## DETENTION OF PERSONS ARRESTED.

**34.** In cases where any person shall during the continuance of this Act be arrested committed or detained in custody by force of any warrant signed by any Officer duly commissioned as aforesaid to convene Courts-Martial it shall and may be lawful for any person to whom such warrant may be directed to detain such person so arrested or committed in his or their custody in any place whatever within New Zealand and every gaoler of a public gaol in the Colony shall obey every such warrant so directed to him.

Detention of persons arrested under warrant of officer commissioned to convene Courts-Martial.

**35.** If any person who shall be detained in custody under the powers created by this Act and hereinbefore contained charged with any offence committed in any proclaimed district as aforesaid shall sue forth a writ of *habeas corpus* within six months from the time of his first arrest it shall be a good and sufficient return to such writ that the party suing forth the same is detained by virtue of the powers in that behalf hereby conferred and when such return shall be made it shall not be necessary to bring up the body of the person so detained.

What shall be sufficient return to *habeas corpus* sued out by person detained.

**36.** No person shall be detained in custody by virtue of the powers hereinbefore contained for a longer time than six months from the time of his first arrest without being brought to trial for the offence for which he is so detained in custody unless such person

Persons arrested to be brought to trial within six months unless also detained under a Governor's warrant.

be also detained under a warrant signed by the Governor or the Colonial Secretary or two Members of the Executive Council of the Colony as hereinafter provided and in which warrant it shall be stated that the same is issued under the sanction of this Act.

SPECIAL POWER TO ARREST AND DETAIN SUSPECTED PERSONS. 5

Persons may be detained under warrant of Governor. ;

**37.** And whereas it is expedient that a power should be given to arrest commit and detain in custody during the continuance in operation of this Act any person or persons suspected of high treason or treason-felony or treasonable practices or of having committed within any proclaimed district any offence whatever triable by Court-Martial or Court of Special Commission under this Act Be it therefore enacted it shall be lawful for the Governor or the Colonial Secretary for the time being or any two Members of the Executive Council of the Colony to make and issue his or their warrant or warrants under his or their hand or hands for the arrest committal or detention in custody of any person or persons charged with or suspected of high treason treason-felony or treasonable practices. 10 15

Persons within prison by warrant of Governor to be detained till end of next Session and not to be bailed or tried.

**38.** All and every person and persons who shall be within prison within New Zealand after the day on which this Act shall receive the Governor's assent by warrant signed by the Governor or the Colonial Secretary for the time being or any two Members of the Executive Council of the Colony for high treason or treason-felony or treasonable practices or suspicion of high treason or treason-felony or treasonable practices may be detained in safe custody without bail until the end of the Session of the General Assembly immediately succeeding the present Session and no Judge or Justice of the Peace shall bail or try any such person or persons so committed without order from the Governor until the end of the Session of the General Assembly immediately succeeding the present Session any law or statute to the contrary notwithstanding. 20 25 30

Such persons to be deemed in lawful custody and those in whose custody they are to be lawful gaolers.

**39.** In case where any person or persons shall be during the time this Act shall continue in force arrested committed or detained in custody by force of a warrant or warrants signed by the Governor or the Colonial Secretary for the time being or any two Members of the Executive Council of the Colony for high treason or treason-felony or treasonable practices or suspicion of high treason or treason-felony or treasonable practices it shall and may be lawful for any person or persons to whom such warrant or warrants have been or shall be directed to detain such person or persons so arrested or committed in his or their custody in any place whatever within New Zealand and such person or persons to whom such warrant or warrants have been or shall be directed shall be deemed and taken to be to all intents and purposes lawfully authorized to detain in safe custody and to be the lawful gaolers and keepers of such persons so arrested committed or detained and such place or places where such persons so arrested committed or detained are or shall be detained in custody shall be deemed and taken to all intents and purposes to be lawful prisons and gaols for the detention and safe custody of such person and persons respectively and it shall and may be lawful to and for the Governor by warrant signed by him or for the Colonial Secretary for the time being by warrant signed by such Colonial Secretary from time to time as occasion shall be to change the person or persons by whom and the place in which such person or persons so arrested committed or detained shall be detained in safe custody and all gaolers constables and other peace persons to whom any such warrants as in the preceding and this section respectively mentioned shall be directed shall and are hereby required to execute enforce and obey the same. 35 40 45 50 55

Power to change place of custody.

What shall be sufficient return in such cases.

**40.** If any person who shall be detained in custody under the powers created by the two preceding sections of this Act shall during

the continuance in operation of this Act sue forth a writ of *habeas corpus* it shall be a good and sufficient return to such writ that the party suing forth the same is detained by virtue of the powers in that behalf conferred by the said two sections of this Act and when  
 5 such return shall be made it shall not be necessary to bring up the body of the person so detained.

## MISCELLANEOUS PROVISIONS.

41. Every person who shall knowingly and corruptly swear falsely in any evidence given by such person before any Court of Special  
 10 Commission or Court-Martial constituted or acting under the authority of this Act shall be deemed and adjudged to be guilty of the crime of wilful and corrupt perjury and shall upon conviction thereof be liable to all the penalties and punishments now by law incident to the  
 15 crime of wilful and corrupt perjury.
42. Copies of such warrants as in the thirty-fourth thirty-seventh  
 20 thirty-eighth and thirty-ninth sections mentioned shall be transmitted to the Registrar or Deputy Registrar of the Supreme Court in the Province or District in which the person shall be detained and shall be filed by him in the Supreme Court there.
43. In all cases where the punishment of death or penal  
 25 servitude shall have been awarded by any such Court-Martial or Court of Special Commission it shall be lawful for the Governor to order the offender to be kept in penal servitude for any term not less than three years or in cases of sentence  
 30 of penal servitude for any term not less than three years and not exceeding the term of the original sentence or to suffer such term of imprisonment with or without hard labour and with or without solitary confinement as shall seem meet to the Governor not exceeding in cases of penal servitude the term of the original sentence and in all cases  
 35 where a sentence of imprisonment either with or without hard labour shall have been awarded by any such Court it shall be lawful for the Governor to order the offender to suffer such term of imprisonment not exceeding the term of the original sentence and with or without hard labour and with or without solitary confinement as shall seem meet to the Governor.
44. Whenever any person shall have been convicted by a Court  
 40 Martial or Court of Special Commission of any offence triable by Court-Martial or by a Court of Special Commission under this Act it shall be lawful for the Governor or the Colonial Secretary to order that any such person shall instead of undergoing the sentence or the  
 45 remainder of the sentence as the case may be passed upon him by such Court be taken and put on board any ship in the Colony the master of which shall be willing to receive such person as an apprentice or seaman or servant and such person shall be bound under articles or agreement in the manner and form now customary or in  
 50 such manner and form as the Governor shall from time to time order.
45. Whenever any person shall have been convicted by any such  
 55 Court of any offence triable by Court-Martial or Court of Special Commission it shall be lawful for the Governor to order that such person shall be taken and conveyed to any place without the Colony to which the Governor shall by agreement or otherwise with the Government of such place have obtained permission to send persons convicted of offences and such person shall there undergo the sentence or the remainder of the sentence passed upon him. Provided such  
 60 agreement shall have been approved of by the Queen or other authority under any Act passed or intended to be passed by the Imperial Parliament.
46. Whenever any person shall be sentenced by any Judge of a  
 65 Court of Special Commission or by any Court-Martial to penal servitude

Persons swearing falsely liable to penalties of perjury.

Copies of warrants to be filed in Supreme Court.

Sentences may be commuted.

Convicts may be put on board ships to serve as seamen &c.

Persons suspected or convicted of offences triable under this Act may be deported from Colony.

Gaoler of public gaols to receive persons

committed to such  
gaols.

or imprisonment such Judge or Court shall have power to order that such person shall undergo such sentence in such one of the Public Gaols in the Colony as such Judge or Court may think fit and the gaoler of such gaol shall obey any order that may be directed to him for carrying into effect such sentence. Provided that the Governor or Colonial Secretary respectively may from time to time as occasion may require by warrant under his hand order the removal of such person to any other Public Gaol in the Colony. 5

Contribution to be  
paid for maintenance  
of persons committed  
to Provincial gaols.

47. Whenever any person shall be detained under any of the provisions of this Act whether under sentence or not in any Public Gaol of the Colony maintained at the expense of any Provincial Government or at the expense of the County of Westland there shall be paid by the Colonial Treasurer to the Superintendent of the Province or the Chairman of the County Council as the case may be the actual expenses incurred in the maintenance safe custody care and punishment of such prisoner according to the time for which he shall have been in custody there at the average daily cost of each prisoner according to the whole number of prisoners confined in the said Gaol such average to be taken yearly half-yearly or quarterly or at such other intervals as the Governor shall from time to time determine including in such expenses all salaries of officers all expenses of repairs alterations additions and improvements in or to such gaol and any other charge whatever on account of prisoners confined in such gaol subject nevertheless to a proportionate share of all deductions on account of the earnings of the prisoners in the said gaol. 10  
15  
20  
25

Persons under deten-  
tion may be set to  
labour.

48. The gaoler or other person having the custody of any person detained under the thirty-fourth thirty-seventh thirty-eighth or thirty-ninth sections of this Act may order such person be set to such work or labour as the Governor or Colonial Secretary may from time to time approve. 30

Special Regulations  
under "The Second-  
ary Punishment  
Act 1854."

49. The Governor may from time to time make Regulations under the tenth section of "The Secondary Punishment Act 1854" specially applicable to persons sentenced under this Act to penal servitude.

Persons may be pro-  
secuted in the Su-  
preme Court unless  
under detention or  
prosecution under  
this Act.

50. Nothing in this Act contained shall be deemed to prohibit or prevent the prosecution in the ordinary Courts of Law of any person who shall have committed or shall commit any offence cognizable by a Court of Special Commission or by a Court-Martial under this Act unless such person shall be detained under a warrant issued under this Act or be under prosecution for such offence before a Court-Martial or unless an information shall have been exhibited against such person before a Court of Special Commission under this Act. Provided that it shall be lawful for the Governor or the Colonial Secretary to order that any person under detention under this Act may be tried in the Supreme Court or other Court of competent jurisdiction if he shall think fit so to do. 35  
40  
45

Prerogative of re-  
sorting to Martial  
Law not to be  
affected by this Act.

51. Nothing in this Act contained shall be construed to take away abridge or diminish the acknowledged prerogative of Her Majesty in respect of appointing and convening Courts-Martial according to the provisions of the Act for punishing mutiny and desertion or the undoubted prerogative of Her Majesty for the public safety to resort to the exercise of martial law against open enemies or traitors or any powers by law vested in the Governor of the Colony with or without the advice of the Executive Council of the Colony or in any other person or persons whomsoever to suppress insurrection and disturbances or treason and rebellion and to do any act warranted by law for that purpose in the same manner as if this Act had never been made or in any manner to call in question any acts heretofore done for the like purposes. 50  
55

Revocation of  
Proclamation on  
expiration of Act

52. Neither the revocation of any Proclamation by the Governor nor the expiration of this Act shall annul or suspend any sentence 60

passed against any person or persons for offences of which such persons shall have been or shall be convicted by any Court-Martial or other Court under this Act. not to affect any sentence.

**53.** This Act shall continue and be in force until the end of the Session of the General Assembly next ensuing this present Session and no longer. Continuance of Act.

#### SCHEDULE.

References to Act.	Title of Act.	Sections of Act relating to Offence.
<b>32</b> Vict. No. 5	"The Treason Felony Act 1868 "	Third section.
<b>31</b> Vict. No. 3	"The Larceny Act 1867"	Sections four ten eleven forty forty-two forty-three forty-five fifty-one sections numbered from fifty-four to sixty-one both inclusive.
<b>31</b> Vict. No. 5	"The Offences against the Person Act 1867 "	Sections one and three sections eight to twelve both inclusive sections fifteen to eighteen both inclusive sections twenty-five to twenty-seven both inclusive section thirty-five sections forty-five to forty-eight both inclusive.
<b>31</b> Vict. No. 6	"The Malicious Injuries to Property Act" <sup>13</sup>	Sections two and three sections six to twelve both inclusive sections sixteen to eighteen both inclusive.
<b>31</b> Vict. No. 7	"The Accessories Act 1867 "	The whole.
<b>32</b> Vict. No. 20	"The Offences against the Person Act Amendment Act 1868 "	Section two.