

No. XX.

AN ORDINANCE for establishing Courts of Sessions of the Peace. [18th November, 1846.]

SESSIONS OF THE
PEACE.

FOR the purpose of providing for the establishment of Courts of Sessions of the Peace: Preamble.

BE IT ENACTED by the Lieutenant-Governor of New Zealand, with the advice and consent of the Legislative Council thereof, as follows:—

I.—CONSTITUTION OF COURTS.

1. For the purposes hereinafter mentioned it shall be lawful for His Excellency the Governor by Proclamation from time to time to constitute and define certain districts, and the limits of such districts from time to time to alter as occasion may require, and also if he shall see fit to revoke the Proclamation by which any such district shall have been constituted. Districts to be defined.

2. Within any such district as aforesaid there shall be holden Courts of Sessions of the Peace at such times and places as the Governor shall by Proclamation from time to time appoint. Within which Courts of Sessions of the Peace shall be holden.

3. The said Courts shall be Courts of Record, and shall be holden before any two or more Justices of the Peace of the territory, whereof the Chairman or Deputy Chairman hereinafter mentioned shall be one: Provided always that every Judge of the Supreme Court of the Colony shall be and be deemed *ex officio* a Justice of the Peace for the territory, and may act as such without taking any other oaths than such as he shall have taken as Judge. Which shall be Courts of Record.

4. It shall be lawful for the Governor from time to time to nominate and appoint during pleasure any Justice of the Peace possessing competent knowledge of the law to be Chairman of any such or of any two or more of such Courts; and in case of the illness temporary incapacity or absence from the Colony of the Chairman of any such Court, to appoint any Justice to be Deputy Chairman of such Court, who during such illness temporary incapacity or absence and no longer shall be deemed and taken to be the Chairman of such Court for the time being to all intents and purposes: Provided always that in case of illness or unavoidable absence it shall be lawful for the Chairman under his hand and seal, with the consent of the Governor, to appoint a Deputy Chairman being a Justice of the Peace to act for him at the Court then next ensuing and no longer or otherwise; and every such Chairman or Deputy Chairman shall have and exercise such and the same power and authority as a Chairman of General and Quarter Sessions in England: Provided always that no Resident Magistrate or Police Magistrate shall in any case be appointed to act as such Chairman of any such Court. Chairman to be appointed.

5. It shall also be lawful for the Governor from time to time to appoint Clerks and such other ministerial officers as may be necessary for executing the business of the said Courts, and such Clerks and other officers from time to time to displace and remove and to appoint others in their place as to him shall seem meet: Provided always that in case of the absence of any such officer from any sitting of such Court it shall be lawful for the Chairman thereof to appoint some other fit person to act at such sitting in the place of the officer so absent. Clerks and other officers.

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II.—JURISDICTION AND POWERS OF THE COURTS.

Powers of Courts to inquire of and to hear &c. felonies &c.

6. The said Courts shall have the same power and authority to inquire of and to hear and determine all felonies and indictable misdemeanours committed within their respective districts which the Courts of General or Quarter Sessions of the Peace for any county in England have, that is to say, they shall have power and authority to inquire of and to hear and determine all felonies and indictable misdemeanours committed within their respective districts, except treason murder or other capital felony or any felony which, when committed by a person not previously convicted of felony, is punishable by transportation beyond the seas for life, or any of the following offences, that is to say,—

- (1.) Misprision of treason.
- (2.) Offences against the Queen's title, prerogative, person, or Government.
- (3.) Offences subject to the penalties of *præmunire*.
- (4.) Blasphemy and offences against religion.
- (5.) Administering or taking unlawful oaths.
- (6.) Perjury and subornation of perjury.
- (7.) Making or suborning any other person to make a false oath affirmation or declaration punishable as perjury or as a misdemeanour.
- (8.) Forgery.
- (9.) Unlawfully and maliciously setting fire to crops of corn grain or pulse, or to any part of a wood coppice or plantation of trees, or to any other heath gorse furze or fern.
- (10.) Bigamy and offences against the laws relating to marriage.
- (11.) Abduction of women and girls.
- (12.) Endeavouring to conceal the birth of a child.
- (13.) Offences against any provision of the laws relating to bankrupts and insolvents.
- (14.) Composing printing or publishing blasphemous seditious or defamatory libels.
- (15.) Bribery.
- (16.) Unlawful combinations and conspiracies except conspiracies or combinations to commit any offence which such Justices have jurisdiction to try when committed by one person.
- (17.) Stealing or fraudulently taking injuring or destroying records or documents belonging to any Court of Law or Equity, or relating to any proceeding therein.
- (18.) Stealing or fraudulently destroying or concealing wills or testamentary papers, or any document or written instrument being or containing evidence of the title to any real estate, or any interest in lands tenements or hereditaments.

Courts may remand certain cases for Supreme Court.

7. Provided always that if it shall appear to any such Court that any felony or indictable misdemeanour of which it may have cognizance ought, from its nature or magnitude or any legal difficulty which it may present, to be tried before the Supreme Court, it shall be lawful for such Court to leave the case for trial before the Supreme Court, and to take recognizances for the appearances of the parties and witnesses thereat, which recognizances shall, as soon as may be, be returned to the Supreme Court.

Powers of Courts &c. not provided for &c.

8. In all other respects not hereinbefore provided for, every such Court shall have and exercise such and the same jurisdiction power and authority as any Court of General or Quarter Sessions of the Peace in any County in England has and exercises.

9. The

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9. The said Courts shall also have power and authority to take cognizance of all such appeals and other matters and things as may have been or which may hereafter be assigned to Courts of Sessions of the Peace by any local Ordinance.

Power to hear appeals.

10. A writ of error may be sued out for the purpose of having any judgment of any such Court upon any indictment brought before it reversed by the Supreme Court, in every case and under the same circumstances in which such writ may be sued out in England for the purpose of reversing any judgment of any Court of General or Quarter Sessions of the Peace in any county in England upon any indictment brought before it.

Writ of error may be sued out.

11. All indictments orders and judicial proceedings whatever may be removed by *certiorari* from any such Court to the Supreme Court in every case and under the same circumstances in which indictments orders and judicial proceedings in any Court of General or Quarter Sessions of the Peace in any county in England may be removed by *certiorari* to the Court of Queen's Bench.

Indictments &c. may be removed by *certiorari*.

12. In any case in which the Justices at Sessions are Judges of fact as well as of law, if they shall feel a difficulty in the application of the law to facts, it shall be lawful for them at their discretion to put those facts into a special case for the opinion of the Supreme Court or any Judge thereof, and to confirm or quash the order or conviction before them subject to such opinion.

Justices may refer special cases to Judges of Supreme Court.

13. The said Courts shall also have power to administer to any of Her Majesty's Justices of the Peace the usual oaths and affirmations required by law to be taken by Magistrates on their appointment, and every person now or hereafter to be appointed a Justice of the Peace for the territory and who shall not have taken the oath of allegiance and the oath of office as heretofore taken before a Judge of the Supreme Court shall, before acting as a Justice of the Peace, take such oaths, or, if a Quaker or other person authorized by law to make an affirmation instead of an oath, shall affirm to the effect of such oaths before any such Court of Sessions of the Peace or before any Judge of the Supreme Court, and no person shall be deemed qualified to act as such Justice until he shall have taken such oaths or made such affirmation as aforesaid.

Courts to administer oaths of office to Justices.

14. It shall be lawful for the Chairman of each of such Courts, and he is hereby required fourteen days at least before the sitting of any such Court, to issue a precept to the Sheriff of the district, requiring him to summon jurors to attend at the next following Court at such time and place as shall be therein mentioned. Such precept shall not require more than twenty-four nor less than fifteen persons fit to serve as grand jurors, nor more than thirty-six nor less than twenty-four persons duly qualified to serve as petit jurors, to attend the said Court at any one Session thereof.

Chairman to issue precept to Sheriff to summon jurors.

15. Every such precept and every subpoena commanding the attendance of witnesses at any Sessions of the Peace shall be issued in the name of Her Majesty, tested in the name of the Chairman, and signed by the Clerk of the Court or other officer appointed for that purpose.

Form of precept.

16. The Sheriff in the district in which any Court of Sessions shall be holden shall be attendant upon and execute the same duties in respect of such Court as Sheriffs in England are required to do in respect of Courts of Quarter Sessions, or as near thereto as circumstances may admit and require.

Sheriffs to attend Courts.

17. Every such Court shall have power to adjourn its sittings from time to time, and if the required number of Justices shall not be present at the time and place appointed for the holding of any Court of

Power of adjournment.

Lunatics.

of Sessions, a single Justice of the Peace (whether he be a Chairman or not) shall be a lawfully constituted Court for the purpose of opening such Court and of adjourning the same and respiting all recognizances until such further day as such Justice then and there shall cause to be proclaimed.

Process.

18. For the purpose of enforcing the attendance of jurors, witnesses, and others, the production of books and writings, and for the summary punishment of contempts of Court, every such Court shall have the like powers as the Supreme Court may exercise by any law in force for the time being: Provided that the process for the recovery of the amount of any fine or recognizance forfeited at any Sessions shall be signed by the Chairman or by two Justices attendant thereat.

Court may make rules.

19. It shall be lawful for the said Courts from time to time to make rules for regulating the practice forms of proceedings and the fees to be taken therein, and touching all other matters relating to the business of such Court, and such rules from time to time to alter or revoke: Provided that the same shall not be repugnant to any of the provisions hereinbefore contained: And provided also that all rules to be made under the authority hereof shall, as soon as may be after the making thereof, be submitted to the Governor for his confirmation or disallowance, and upon the disallowance of such rules or any of them the same shall thereupon cease to be in force.

Interpretation.

20. For the purposes of this Ordinance the word "Governor" shall be taken to include the Lieutenant-Governor or the Officer Administering the Government of the Colony for the time being.

No. XXI.

LUNATICS.

AN ORDINANCE to make provision for the Safe Custody of and Prevention of Offences by Persons dangerously Insane, and for the Care and Maintenance of Persons of Unsound Mind.

[18th November, 1846.]

Preamble.

WHEREAS it is expedient to make provision for the safe custody of and prevention of crime being committed by persons insane: BE IT THEREFORE ENACTED by the Lieutenant-Governor of New Zealand, with the advice and consent of the Legislative Council thereof, as follows:—

Dangerous lunatics may be apprehended and kept in custody.

1. If any person shall be discovered and apprehended under circumstances denoting a derangement of the mind and a purpose of committing suicide or any crime for which if committed such person would be liable to be indicted, it shall be lawful for any two Justices of the Peace before whom such person may be brought to call to their assistance any two legally qualified medical practitioners, and if upon view and examination of such person and upon proof on oath by the said medical practitioners to the effect that in their opinion such person is a dangerous lunatic or a dangerous idiot, and on any further proof the said Justices shall be satisfied that such person is a dangerous lunatic or a dangerous idiot, then it shall be lawful for the said Justices by warrant under their hands and seals to commit such person to some gaol house of correction or public hospital, there to be kept in strict custody until such person shall be discharged by an order of two Justices