

Remission of Penalties.

Interpretation of
certain terms.

18. The word "Trustee" shall in this Act mean a trustee on some express trust created by some deed will or instrument in writing, and shall also include the heir and personal representative of any such trustee, and also all executors and administrators, liquidators under "*The Joint Stock Companies Act, 1860,*" and all Assignees in Bankruptcy and Insolvency. The word "Property" shall include every description of real and personal property goods raw or other materials money debts and legacies, and all deeds and instruments relating to or evidencing the title or right to any property or giving a right to recover or receive any money or goods; and such word property shall also denote and include not only such real and personal property as may have been the original subject of a trust, but also any real or personal property into which the same may have been converted or exchanged, and the proceeds thereof respectively, and anything acquired by such proceeds.

No. VI.

REMISSION OF
PENALTIES.

AN ACT to amend the Law concerning the Remission of Penalties. [24th September, 1860.]

Preamble.

WHEREAS penalties which under certain Penal Statutes are made payable to parties other than the Crown cannot be remitted or pardoned by the Crown where no express provision has been made by the Statute for that purpose, and it is expedient that the law as to the remission of such penalties should be amended and made uniform :

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

Short Title.

1. The Short Title of this Act shall be "*The Remission of Penalties Act, 1860.*"

Penalties for offences
may be remitted by
the Governor
although payable to
parties other than
the Crown.

2. It shall be lawful for the Governor to remit in whole or in part any sum of money which, under any Act of the Imperial Parliament, or any Act or Ordinance of the present or any former Legislature of the Colony, or of any Province thereof, for the time being in force, may be imposed as a penalty or forfeiture on a convicted offender, although such money may be in whole or in part payable to some party other than the Crown, and to extend the Royal mercy to any person who may be imprisoned for non-payment of any sum of money so imposed, although the same may be in whole or in part payable to some party other than the Crown.

No. VII.

SUMMARY
PROCEEDINGS
IMPROVEMENT.

AN ACT to improve the Administration of the Law so far as respects Summary Proceedings before Justices of the Peace. [28th September, 1860.]

Preamble.

WHEREAS it is expedient that provision should be made for obtaining the opinion of a Superior Court on questions of law
which

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which arise in the exercise of summary jurisdiction by Justices of the Peace :

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

1. The Short Title of this Act shall be "*The Summary Proceedings Improvement Act, 1860.*" Short Title.

2. In the interpretation and for the purposes of this Act the word "Court" shall mean the Supreme Court of New Zealand, and the words "Justice or Justices" shall include a Resident Magistrate. Interpretation of terms.

3. After the hearing and determination, by a Justice or Justices of the Peace, of any information or complaint which he or they have power to determine in a summary way by any law now in force or hereafter to be made, either party to the proceeding before the said Justice or Justices may, if dissatisfied with the said determination as being erroneous in point of law, apply in writing within three days after the same to the said Justice or Justices to state and sign a case setting forth the facts and the grounds of such determination for the opinion thereon of the Court, and such party, hereinafter called the "Appellant," shall within fourteen days after receiving such case transmit the same to the Court, first giving notice in writing of such appeal, with a copy of the case so stated and signed, to the other party to the proceeding in which the determination was given, hereinafter called the "Respondent" : Provided always that no such determination may be appealed against on the ground of improper admission or rejection of evidence. Justices on application of a party aggrieved to state a case for the opinion of Court.

4. The appellant, at the time of making such application and before the case shall be stated and delivered to him by the Justice or Justices, shall in every instance enter into a recognizance before such Justice or Justices, or any one or more of them, or any other Justice exercising the same jurisdiction, with or without surety or sureties and in such sum as to the Justice or Justices shall seem meet, conditioned to prosecute without delay such appeal, and to submit to the judgment of the Court and pay such costs as may be awarded by the same ; and the appellant shall at the same time and before he shall be entitled to have the case delivered to him, pay the fees for and in respect of the case and recognizances, according to the Schedule to this Act annexed, which fees may from time to time be varied or abolished by the Governor in Council ; and the appellant, if then in custody, shall be liberated upon the recognizance being further conditioned for his appearance before the same Justice or Justices, or if that is impracticable, before some other Justice or Justices exercising the same jurisdiction, who shall be then sitting, within ten days after the judgment of the Court shall have been given, to abide such judgment unless the determination appealed against be reversed. Security and notice to be given by the appellant.

5. If the Justice or Justices be of opinion that the application be merely frivolous, but not otherwise, he or they may refuse to state a case, and shall on request of the appellant sign and deliver to him a certificate of such refusal : Provided that the Justice or Justices shall not refuse to state a case when application for that purpose is made to them by or under the direction of Her Majesty's Attorney-General for the Colony. Justices may refuse a case when they think the application frivolous.

6. When the Justice or Justices shall refuse to state a case as aforesaid, it shall be lawful for the appellant to apply to the Court, upon an affidavit of the facts, for a rule calling upon such Justice or Justices and also upon the respondent to show cause why such case should not be stated, and the Court may make the same absolute or discharge it, with or without payment of costs, as to the Court shall seem meet ; and the Justice or Justices, upon being served with such rule When the Justices refuse, the Court may by rule order a case to be stated.

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rule absolute, shall state a case accordingly, upon the appellant entering into such recognizance as is hereinbefore provided.

Court to determine the questions on the case.

7. The Court shall hear and determine the question or questions of law arising on any case transmitted to it under this Act, and shall thereupon reverse affirm or amend the determination in respect of which the case has been stated, or remit the matter to the Justice or Justices with the opinion of the Court thereon, or may make such other order in relation to the matter and may make such orders as to costs as to the Court may seem fit; and all such orders shall be final and conclusive on all parties: Provided always that no Justice or Justices of the Peace who shall state and deliver a case in pursuance of this Act shall be liable to any costs in respect or by reason of such appeal against his or their determination.

Its decisions shall be final.

8. The Court shall have power, if they think fit, to cause the case to be sent back for amendment, and thereupon the same shall be amended accordingly, and judgment shall be delivered after it shall have been amended.

Case may be sent back for amendment.

9. The authority and jurisdiction hereby vested in the Court for the opinion of which a case is stated under this Act, shall and may, subject to any rules and orders of such Court in relation thereto, be exercised by a Judge of such Court sitting in Chambers.

Powers of the Court may be exercised by a Judge at Chambers.

10. After the decision of the Court in relation to any case stated for their opinion under this Act, the Justice or Justices in relation to whose determination the case has been stated, or any other Justice or Justices of the Peace exercising the same jurisdiction, shall have the same authority to enforce any conviction or order which may have been affirmed amended or made by such Court as the Justice or Justices who originally decided the case would have had to enforce his or their determination if the same had not been appealed against; and no action or proceeding whatsoever shall be commenced or had against the Justice or Justices for enforcing such conviction or order by reason of any defect in the same respectively.

After the decision of Court Justices may issue warrants.

11. No writ of *certiorari* or other writ shall be required for the removal of a conviction order or other determination in relation to which a case is stated under this Act, or otherwise for obtaining the judgment or determination of the Court on such case under this Act.

Certiorari not to be required for proceedings under this Act.

12. The Court may from time to time, and as often as it shall see occasion, make and alter rules and orders to regulate the practice and proceedings in reference to the cases hereinbefore mentioned.

Court may make rules for proceedings.

13. In all cases where the conditions or any of them in the said recognizance mentioned shall not have been complied with, the Justice or Justices who shall have taken the same, or any other Justice or Justices, shall certify upon the back of the recognizance in what respect the conditions thereof have not been observed, and transmit the same to the Registrar of the Court within the district within which such recognizance shall have been taken, to be proceeded upon in like manner as other forfeited recognizances of the Court.

Recognizances how to be enforced.

14. Any person who shall be entitled to appeal under the provisions of this Act against any determination of a Justice or Justices of the Peace shall not be entitled to appeal under the provisions of an Ordinance of the Governor and Legislative Council of New Zealand, Session II., No. 5, intituled "*An Ordinance to regulate Summary Proceedings before Justices of the Peace,*" nor in any other manner than under the provisions of this Act.

Appellants under this Act not to be allowed to appeal otherwise.

Trade and Commerce.

SCHEDULE.

FEES.

	s.	d.
For drawing case and copy, where the case does not exceed five folios of 90 words each	10	0
Where the case exceeds five folios, then for any additional folio	1	0
For the recognizance to be taken in pursuance of the Act	5	0
For every enlargement or renewal thereof	2	6
For certificate of refusal of case	2	0

No. VIII.

AN ACT to amend the Laws affecting Trade and Commerce. [28th September, 1860.]

TRADE AND
COMMERCE.

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

1. The Short Title of this Act shall be "*The Mercantile Law Amendment Act, 1860.*" Short Title.

2. No writ of *feri facias* or other writ of execution and no writ of attachment against the goods of a debtor shall prejudice the title to such goods acquired by any person *bonâ fide* and for a valuable consideration before the actual seizure or attachment thereof by virtue of such writ: Provided such person had not, at the time when he acquired such title, notice that such writ or any other writ by virtue of which the goods of such owner might be seized or attached had been delivered to and remained unexecuted in the hands of the Sheriff. Persons acquiring title to goods before they have been seized or attached under writ against the seller protected.

3. In all actions and suits in any Court of Record for breach of contract to deliver specific goods for a price in money, on the application of the plaintiff and by leave of the Judge before whom the cause is tried, the jury shall, if they find the plaintiff entitled to recover, find by their verdict what are the goods in respect of the non-delivery of which the plaintiff is entitled to recover and which remain undelivered; what (if any) is the sum the plaintiff would have been liable to pay for the delivery thereof; what damages (if any) the plaintiff would have sustained if the goods should be delivered under execution, as hereinafter mentioned, and what damages if not so delivered; and thereupon, if judgment shall be given for the plaintiff, the Court or any Judge thereof, at their or his discretion, on the application of the plaintiff, shall have power to order execution to issue for the delivery of the said goods on payment of such sum (if any) as shall have been found to be payable by the plaintiff as aforesaid, without giving the defendant the option of retaining the said goods upon paying the damages assessed; and such writ of execution may be for the delivery of such goods; and if such goods so ordered to be delivered or any part thereof cannot be found, and unless the Court or such Judge as aforesaid shall otherwise order, the Sheriff or other officer of such Court of Record shall distrain the defendant by all his lands and chattels in the said Sheriff's bailiwick, or within the jurisdiction of such Court of Record, till the defendant deliver such goods, or, at the option of the plaintiff, cause to be made of the defendant's goods the assessed value or damages or a due proportion thereof: Provided that