Held, That the fact that he submitted to the ruling of the Magistrate did not amount to a waiver on his part of his right to appeal against the Magistrate's decision.

APPEAL from the decision of W. G. K. Kenrick, Esq., S.M., at Tapanui. The appellant laid an information against the respondent in the form set out in the headnote.

The respondent pleaded "Not guilty," and objected to the information on the grounds, 1, that, an assault being an indictable offence, the information was wrong in form; 2, that the information disclosed two offences; 3, that if the information did not disclose two offences it was simply an application for sureties.

Application was then made by counsel for the appellant that the information should be amended by striking out the portion of it in which application was made for sureties. The Magistrate held he had no power to so amend the information, but that the appellant could lay a charge at once for assault if he so desired. The appellant's counsel then informed the Court that he would be satisfied if the respondent were ordered to find sureties. Evidence was then called on behalf of the appellant to prove the assault; but the assault was admitted by the respondent for the purpose of an application for sureties. After hearing the evidence in support of the application for sureties, and without calling on the defence, the Magistrate intimated that the evidence proved an assault, which was not trivial, but did not justify an application for sureties, but went to show that the defendant had no intention of committing another assault, and that the informant had no just cause for fear. Counsel for the appellant then applied to have the information amended to one of assault; but the Magistrate declined that application. Application was then made that the information be dismissed "without prejudice," so that an information for assault could be laid. The Magistrate replied that he was dismissing an application for sureties only, and not for assault.

WILLIAMS, J.:—

I think it is quite clear that the information was an information under section 19 of the Justices of the Peace Act—an information for assault, and a request by the informant that the defendant should be bound over to keep the peace. The wording of the information might perhaps be a little improved, but that that is the meaning of the information seems to me to be perfectly clear. The case of Reg. *v.* Deny (20 L.J. M.C. 189) cited by the respondent, is really very strong authority against him. In that case there was an information for sureties of the peace, and an assault was stated to have been committed contrary to the form of the statute. That is so here. The complainant in that case, however, expressed a wish that the Justices would not convict for the assault, and the Justices convicted in spite of him. It was held that they had no authority to do so; but the judgment clearly shows that if the real wish of the complainant was to proceed for the assault as well as to obtain sureties the Justices would have had full jurisdiction to convict. I think, therefore, that the Magistrate was wrong in the first instance. If wrong in the first instance the complainant really had no alternative but either to drop the case and take fresh proceedings, or to submit to the ruling of the Magistrate for the purposes of the case. Because a complainant submits to a ruling of the Magistrate which is wrong it does not seem to me that he waives his right to appeal from such a wrong decision. The case referred to in Paley on Summary Convictions (8th ed. 113) simply shows that where a person is brought before the Court by any means whatever, and the Court has jurisdiction to hear the charge against him, and he submits to the ruling and takes his trial, he cannot afterwards object. In such a case, however, there was no erroneous ruling on the part of the presiding Magistrate. I think, therefore, that the Magistrate has full jurisdiction to hear the charge for assault.

The appeal will be allowed. Costs, six guineas.

Solicitor for the appellant: W. Sinclair (Tapanui).

Solicitors for the respondent: Inder & Cochrane (Gore).

("N.Z. Law Reports," Vol. xxviii, page 773.)

[S.C. IN BANCO. WELLINGTON (CHAPMAN, J.)—21ST MAY; 16TH JUNE.]

STEVENS *v.* ANDREWS.

Criminal Law—Idle and Disorderly Person—Consorting with Reputed Thieves — Knowledge an Ingredient of Offence—Evidence necessary to prove Knowledge—Reputation among the Police sufficient—"The Police Offences Act, 1908," Section 49, (e).

Although it is a necessary ingredient of the offence (created by section 49, clause (*e*) of "The Police Offences Act, 1908") of habitually consorting with thieves that the accused person should have knowledge of the character of the person with whom he is charged with consorting, where the evidence shows that the consorting was not casual but habitual, such knowledge on the part of the accused will be presumed.

The fact that the persons with whom the accused is charged with habitually consorting have the reputation of being thieves only among the police is sufficient if the evidence shows that the reputation is based upon good grounds, and was known (or, *semble*, must be presumed to have been known) to the accused.

APPEAL from a summary conviction under section 49 of "The Police Offences Act, 1908." The facts of the case are sufficiently stated in the judgment.

Wilford for the appellant.

Myers for the respondent. *Cur. adv. vult.*

CHAPMAN, J.:—

This is a general appeal from a summary conviction by W. G. Riddell, Esq., S.M., for being an idle and disorderly person who habitually consorted with reputed thieves, contrary to "The Police Offences Act, 1908." The Magistrate's notes were handed in, and no fresh evidence was called by either party.

It is argued that the evidence does not prove an habitual consorting with thieves within the statute. The evidence is that of five members of the regular detective force who have watched the accused. Omitting duplications, where two witnesses speak to the same instance, these witnesses, in addition to general evidence of consorting, refer to about seventeen specific instances spread over four months in which appellant has been observed in the company of persons whom they describe either as reputed thieves or convicted thieves. They name in this way about twelve persons so described, in addition to two women whom they describe as prostitutes. This occurs in various parts of the city, and one of the persons referred to lives in Foresters Lane, a resort of thieves. In several instances the people with whom appellant was associating were together in couples, the grouping of which varies, showing that these reputed and convicted thieves are to a considerable extent at least known to each other. A question put by the appellant's counsel suggests that he is or was a partner apparently in an express with one Evans, a reputed thief, and it is shown that he has been seen in the vehicle with that man and a convicted thief.

In referring to some of these people as reputed thieves the witnesses do not refer to the mere fact of a past conviction, but to the character they bear as men who have to be kept under observation as associating together or with known thieves. Those whom they describe as convicted thieves they regard from their associations as reputed thieves and the associates of thieves. Speaking of the defendant and four others with whom he associates, a witness says, "All these persons are reputed thieves. He has been in gaol with some of them." Another says, "When reputed thieves herd together they are noted"—*i.e.*, by the police. "Defendant knows names mentioned by police are reputed thieves." Speaking of two thieves another says, "Think defendant fully aware of their characters." Another witness, speaking of defendant's association with some of these people, says, "Defendant knows some of them, and often in their company," and "Force looks on these men as thieves. Form my opinion on what I see myself and hear outside from others."

This is one of a class of cases in which evidence of reputation is necessary, and is admitted by the very constitution of the offence. It is argued that there must be proof of knowledge on the part of the accused. Presumption, however, may take the place of evidence. Here fairly constant association with persons with the reputation of thieves is proved, and from it one must almost necessarily infer that what is observed in a given space of time is only a small part of what has occurred. The association is with people of a reputation which would ordinarily cause them to be avoided by honest men, yet their company is apparently habitually sought by the accused, who is willing to be referred to as the partner of one of them. It is admitted that the offence involves knowledge on the part of the accused of the character of the persons with whom he associates. In the cases where the contact may be casual, such as the case of the keeper of a lodginghouse—Hall *v.* Quinn (Mac. N.Z. 744)—or a public billiard-room—Peacock *v.* Cameron (25 N.Z. L.R. 527)—that must be affirmatively shown. But in the case of a prosecution for habitually consorting with such persons the prosecution must be supported by sufficient proof that the consorting is not casual but habitual: O'Connor *v.* Hammond (21 N.Z. L.R. 573); and when that is made out there must already be such a considerable body of evidence as to require very little if anything more to lead to the inference of knowledge. Here the instances of consorting with such people and the