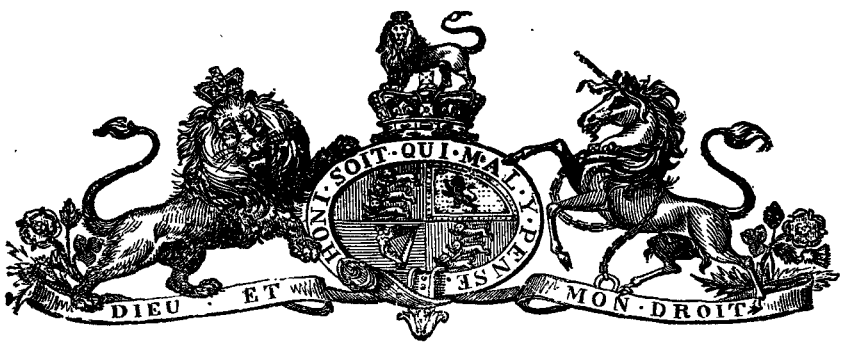
NEW ZEALAND.



ANNO VICESIMO PRIMO ET VICESIMO SECUNDO

VICTORIÆ REGINÆ.

No. 4.

ANALYSIS:

Title.
1. Writs with certain endorsements may be issued against Defendants absent from the Colony.
2. May be served anywhere out of the Colony.
3. Court or Judge may direct that the Plaintiff may proceed to action in certain conditions.
4. Plaintiff to prove his claim.
5. Omission to make endorsements to be an irregularity only.
6. Concurrent writs may be issued.
7. Before whom affidavits under this Act may be sworn.
8. Forgery of signature to affidavits, felony.
9. Persons charged with felony may be tried in New Zealand, also accessories before and after the fact.
10. Persons making false affidavit guilty of perjury and may be tried in New Zealand.
11. Short Title.

AN ACT to provide for the service of the process of the Supreme Court of New Zealand, upon Defendants absent from the Colony. [28th *May*, 1858.]

Title.

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

Writs with certain endorsements may be issued against Defendants absent from the Colony.

I. In case any Defendant in any action in the Supreme Court is not within the Colony, it shall be lawful for the Plaintiff to issue a Writ of Summons in the usual form according to the nature of the action, but which in addition to any other endorsements required by Law, shall before the same is issued be endorsed as follows, namely "This writ is issued out of the Supreme Court of the Colony of New Zealand for service out of the said Colony" and "This writ remains in force six calendar months including the day of the date thereof. It cannot be served after such time unless the Defendant consent to be served therewith ;" and the time for appearing and pleading by the Defendant shall be regulated by the distance from New Zealand of the place where the Defendant is residing.

Absent Defendants.

May be served anywhere out of the Colony.

II. Such Writ may be served on the Defendant anywhere out of the Colony.

Court or Judge may direct that the Plaintiff may proceed in action on certain conditions.

III. Upon being satisfied upon affidavit that there is a cause of action which arose within the Colony, or a cause of action in respect of the breach of a contract made or to be wholly or in part performed within the Colony, and that the Writ with the declaration annexed, was personally served upon the Defendant, or that reasonable efforts had been made to effect personal service thereof, upon the Defendant, and that it came to his knowledge, and that either the Defendant wilfully neglects to appear and plead to such writ and declaration or, that he is living out of the jurisdiction of said Court, in order to defeat or delay his creditors, it shall be lawful for the Court or any Judge of the Court, to direct from time to time that the Plaintiff shall be at liberty to proceed in the action in such manner, and subject to such conditions, as to such Court or Judge may seem fit, having regard to the time allowed for the Defendant to appear and plead, being reasonable, and to the other circumstances of the case.

Plaintiff to prove his claim.

IV. Provided always that the Plaintiff shall, and he is hereby required, before he obtain judgment in such action, to prove his damage or demand in such action in such manner, either before a Jury or otherwise, as the Court or Judge may direct according to the nature of the case, and as near as may be in accordance with the rules of the Supreme Court for the time being in force in that behalf.

Omission to make endorsements to be an irregularity only.

V. If the Plaintiff or his Attorney, shall omit to endorse on any writ or copy thereof any of the matters required by this Act, such writ or copy shall not on that account be held void, but it may be set aside as irregular or amended upon application to be made to the Court or a Judge thereof, and such amendment may be made upon an application to set aside the writ, upon such terms as to the Court or Judge may seem meet.

Concurrent writs may be issued.

VI. A writ for service within the Colony may be issued and marked as a concurrent writ with one for service out of the Colony, and a writ for service out of the Colony may be issued and marked as a concurrent writ with one for service within the Colony, and a writ for service out of the Colony, may be issued and marked as a concurrent writ with another for service out of the Colony.

Before whom affidavits under this Act may be sworn.

VII. Any affidavit under this Act may be sworn in any place in her Majesty's Dominions, before any person authorised by law to administer an oath in the place where the same is taken, and at any Foreign Port or place, before any Consul-General, Consul, Vice-Consul, or Consular Agent, for the time being appointed by Her Majesty at such Port or place; and every affidavit so sworn may be used and shall be admitted as evidence, saving all just exceptions, provided it purport to have the signature thereto of any person so authorised as aforesaid, or of any such Consul-General, Consul, Vice-Consul, or Consular Agent, and be duly certified in the usual way under the Hand and Seal of a Notary Public or upon such other proof as the Court or Judge shall think fit to receive of the official character and signature of the person appearing to have signed the same.

Absent Defendants.

VIII. If any person shall forge any such signature to any such affidavit, or shall use or tender in evidence any such affidavit with a false or counterfeit signature thereto, knowing the same to be false or counterfeit, he shall be guilty of felony, and upon conviction thereof, liable to penal servitude for any term not exceeding six years or less than one year, and every accessory before or after the fact to any such felony shall be liable to the same punishment as the principal. Forgery of signature of affidavit, felony.

IX. Every person who shall be charged with committing any felony under this Act may be dealt with, indicted, tried, and if convicted, sentenced, and his offence may be laid and charged to have been committed in any place within the Colony in which he shall be apprehended or be in custody; and every accessory before or after the fact to any such offence may be dealt with, indicted, tried, and if convicted, sentenced, and his offence may be laid and charged to have been committed in any place in which the principal offender may be tried. Persons charged with felony may be tried in New Zealand, also accessories before and after the fact.

X. If any person shall wilfully and corruptly make a false affidavit before any person authorised by Law to administer an oath as aforesaid, or before such Consul-General, Consul, Vice-Consul, or Consular Agent, every person so offending shall be deemed and taken to be guilty of perjury, in like manner as if such false affidavit had been made in New Zealand, upon competent authority, and shall and may be dealt with, indicted, tried, and if convicted, sentenced, and his offence may be laid and charged to have been committed in any place within the Colony in which he shall be apprehended or be in custody. Persons making false affidavit guilty of perjury, and may be tried in New Zealand.

XI. This Act may for all purposes be cited as the "Absent Defendants' Act, 1858." Short Title.