

1880, No. 23.

AN ACT to facilitate the Remedies on Bills of Exchange, Promissory Notes, Cheques, and other Contracts in Writing. BILLS OF EXCHANGE
PROCEDURE.

[17th August, 1880.]

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 is “The Bills of Exchange Procedure Act, Short Title. 1880.”

2. In this Act, if not inconsistent with the context,—

“Bill of exchange” includes a promissory note, a cheque on a banker, and any written contract, signed by the party sought to be charged, by virtue of which a sum certain became due on a day certain or within a certain time which has elapsed :

Interpretation.

“ Court ” means the Supreme Court of New Zealand :

“ Judge ” means a Judge of the said Court :

“ Registrar ” means a Registrar of the said Court, and includes a Deputy-Registrar in the absence of the Registrar.

Procedure in actions upon bills of exchange.
Limitation of time.

3. Actions upon bills of exchange may be commenced by writ of summons in the form contained in Schedule A to this Act, and indorsed as therein mentioned.

Every such action shall be commenced within six months after such bill shall have become due and payable.

Plaintiff may sign final judgment.

4. On filing an affidavit of personal service of such writ within the jurisdiction of the Court, or an order for leave to proceed as provided by the rules of the Court, and a copy of the writ of summons and the indorsements thereon, in case the defendant shall not have obtained leave to appear and have appeared to such writ according to the exigency thereof, the plaintiff may at once sign final judgment, in the form contained in Schedule B to this Act, for any sum not exceeding the sum indorsed on the writ as principal, together with interest to the date of the judgment at the rate specified, and, if no rate be specified, then interest at the rate of eight pounds per centum per annum, together with a sum for costs to be fixed by the Judges of the Supreme Court.

No proceeding in error shall lie upon any such judgment, and the plaintiff may upon such judgment issue execution forthwith.

Rate of interest and costs.

Leave may be given to defend action.

5. Any Judge or Registrar shall, upon application within a period from the service of the writ to be determined as hereinafter provided, give leave to appear to such writ and to defend the action on the defendant paying into Court the sum indorsed on the writ, or giving security for such sum and costs of action to the satisfaction of the Judge or Registrar.

Any Judge may, upon such application, give such leave upon affidavits which disclose to his satisfaction a legal or equitable defence, or such facts as would make it incumbent on the plaintiff to prove consideration, or such other facts as the Judge may deem sufficient to support the application, and on such terms as to security or otherwise as to the Judge may seem fit.

Period after service within which application for leave to appear and defend may be made.

6. Where the defendant resides at the time of the service of any such writ within fifty miles of the Supreme Courthouse in the town or city at which, according to the rules of the Supreme Court, the defendant would have to deliver his pleadings in the action if the writ were in the ordinary form, the period within which application may be made under the fifth section of this Act for leave to appear to any such writ and to defend the action shall be twelve days from the service thereof, inclusive of the day of such service :

And where the defendant resides at the time of such service beyond the distance of fifty miles from such Courthouse, the period within which such application may be made shall be eighteen days from such service, inclusive of the day of such service.

Declaration to be delivered after appearance.

7. It shall not be necessary to annex to any such writ a copy of a declaration ; but if leave be given to the defendant to appear to any such writ and defend the action, the plaintiff must, if appearance be entered and he wish to proceed with the action, deliver at the defendant's address for service, which shall be stated in his appearance if he appear in person, or at the office of his solicitor if he appear by solicitor, a copy of a declaration in the ordinary form.

The Judge or Registrar who shall give leave to appear shall allow to the defendant such number of days to plead after delivery of the declaration as he shall think fit.

Judgment may in certain cases be set aside.

8. After judgment the Court or a Judge may, under special circumstances, set aside the judgment, and, if necessary, stay or set aside execution, and may

give leave to appear to the writ and to defend the action if it shall appear to be reasonable to the Court or Judge so to do, and on such terms as to the Court or Judge may seem just.

9. In any proceedings under this Act it shall be competent to the Court or a Judge to order any bill of exchange, promissory note, or cheque sought to be proceeded upon to be forthwith deposited with the Registrar, and further to order that all proceedings shall be stayed until the plaintiff shall have given security for the costs thereof.

Court may order bill, &c., to be deposited.

10. The holder of every dishonored bill of exchange drawn out of the colony shall have the same remedies for the recovery of the expenses incurred in noting the same for non-acceptance or non-payment or otherwise, by reason of such dishonor, as he has under this Act for the recovery of the amount of such bill or note.

Expenses of noting may be recovered.

11. The holder of any bill of exchange, promissory note, or cheque may, if he thinks fit, issue one writ of summons according to this Act against all or any number of the parties in such bill resident within the judicial district in which such writ is issued, and such writ of summons shall be the commencement of an action or actions against the parties therein named respectively, and all subsequent proceedings against such respective parties shall be in like manner so far as may be as if separate writs of summons had been issued.

One summons may issue against several parties to a bill, &c.

12. The provisions of the General Rules of Procedure of the Supreme Court of New Zealand now or hereafter made shall, so far as the same are or may be made applicable, extend and apply to all proceedings to be had or taken under this Act.

General Rules of Procedure may apply.

Any scale of costs fixed under the Acts hereby repealed shall be deemed to be the costs fixed under this Act, until other provision is made for that purpose.

Costs fixed under repealed Acts to be deemed fixed under this Act.

13. "The Summary Procedure on Bills Act, 1862," and "The Summary Procedure on Bills Act Amendment Act, 1866," are hereby repealed.

Repeal of Acts.

SCHEDULES.

Schedules.

SCHEDULE A.

WRIT OF SUMMONS.

Form of writ of summons. Sec. 3.

VICTORIA, by the grace of God, of the United Kingdom of Great Britain and Ireland, Queen :

To C.D., of _____, in the Colony of New Zealand [*or as case may be*].

WE warn you that, unless within twelve [*or eighteen*] days after the service of this writ on you, inclusive of the day of such service, you obtain leave from a Judge or Registrar of the Supreme Court of New Zealand to appear, and do within that time appear and plead in our said Court in an action at the suit of A.B., of [*description*], the said A.B. may proceed to judgment and execution.

Witness : _____, Judge of our Supreme Court of New Zealand at _____, this _____ day of _____, 18 _____.

[*Memorandum to be subscribed on the Writ :*]

This writ is to be served within six calendar months from the date hereof, and not afterwards.

[*Indorsement to be made on the Writ before service thereof :*]

This writ was issued by _____, of _____, solicitor for the plaintiff; [*where necessary add*] whose agent is _____, of _____ [*mentioning the name and address*]

of some solicitor carrying on business at the place where the pleading would have to be delivered if leave should be given to defend]. [Or This writ was issued in person by A.B., who resides at (Mention the district, town, or city and street where the plaintiff resides. If this be more than one mile from the Supreme Courthouse in the town at which, according to the rules of the Supreme Court for the time being in force, the defendant would, if the writ of summons were in the ordinary form, have to deliver his pleadings, add), whose address for service of pleadings is at (mentioning some house or office within one mile of such Supreme Courthouse).]

The plaintiff claims £ , principal and interest [or £ , balance of principal and interest and noting charges], due to him as the payee [indorsee or holder] of a bill of exchange [promissory note or cheque] of which the following is a copy [or, if the action be on a contract signed by the defendant, The plaintiff claims £ due to him on a written contract signed by the defendant, of which the following is a copy (or of which the following is the material part)] :

[Here copy the bill, note, or cheque verbatim, with all indorsements; or the contract or material part thereof.]

If the amount claimed, with £ costs, be paid to the plaintiff or his solicitor within twelve [or eighteen] days from the service hereof, further proceedings will be stayed.

Leave to appear and plead may be obtained on application at the Supreme Court Office, , upon payment of the above-claimed amount into Court, or upon sufficient affidavits.

[Indorsement to be made on the Writ after service:]

This writ was served on [the defendant or defendants] personally on , the day of , 18 ,

By X.Y., of .

SCHEDULE B.

FINAL JUDGMENT.

In the Supreme Court of New Zealand, District.

Between , plaintiff, and , defendant.

ON the day of , 18 [day of signing judgment], Judgment signed for £ on a writ indorsed as follows [Here copy indorsement from "The plaintiff claims," etc., to "stayed"]; which writ was served on the day of , 18 , and to which the defendant has not appeared and pleaded.

R.S., Plaintiff's Solicitor.

Seal of Registrar :