

## No. II.

AN ORDINANCE for establishing County Courts of Civil and Criminal Jurisdiction, and for repealing “*An Ordinance for instituting Courts of Requests*” (Session I., No. 6), and for repealing part of “*An Ordinance for establishing Courts of Quarter Sessions*” (Session I., No. 4). [28th December, 1841.]

COUNTY COURTS.

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

Preamble.

### I.—CREATION OF COURT.

1. There shall be within the Colony of New Zealand County Courts of record possessing civil and criminal jurisdiction in manner hereinafter provided.

Civil and criminal.

2. His Excellency the Governor, with the advice of the Executive Council, shall from time to time appoint a place or places within each county or district as the case may be whereat such Courts shall be holden.

Places whereat the Court shall sit.

3. In every county or district a Court shall be holden monthly, on the third Tuesday in every month.

Time.

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## II.—CONSTITUTION OF COURT.

- Judges.** 4. His Excellency the Governor, with the like advice, shall from time to time appoint for every such county or district a fit person being a barrister or solicitor of the Supreme Court, who shall be and be called the Judge of the County Court, and who shall hold his office during the pleasure of His Excellency the Governor.
- Oath.** 5. Every Judge before entering on his office shall take the following oath before one of the Judges of the Supreme Court, who is hereby authorized to administer the same:—
- I, A.B., do swear that I will truly and faithfully, to the best and utmost of my skill and knowledge, discharge the duties of a Judge of the County or District Court of            without fear favour or malice. So help me God.
- Clerks &c.** 6. For every Court there shall be a Clerk and other ministerial officers.
- How appointed.** 7. The Clerk shall be appointed by His Excellency the Governor, and shall be removable by him on reasonable cause.
- Inferior officers how appointed.** 8. The inferior officers of the Court shall be appointed by the Judge and shall be removable at his discretion.
- Seal.** 9. There shall be made a Seal for every Court, and all writs and other process issuing out of Court shall be sealed therewith: Provided that until such Seal can be procured such writs and process shall be valid if signed by the Clerk of the Court.

## III.—JURISDICTION.

- Civil.** 10. The Court shall have exclusive cognizance of all civil cases where the debt or damages sought to be recovered shall not exceed the sum of twenty pounds sterling, and when the party sought to be charged shall reside within the county or district: Provided that such Court shall not have cognizance of any debt being the disputed balance of an account originally exceeding twenty pounds, nor of any question relating to the title to real property, or to any annual rent, or to any question where rights in future would be bound.
- Criminal.** 11. Every Court shall have cognizance of all crimes and offences except perjury (committed within the county or district), and punishable by fine or imprisonment or both or by transportation for any period not exceeding seven years.
- Ecclesiastical.** 12. The Court shall have exclusive power to grant probates of wills and letters of administration of the estates and effects of deceased persons who shall have been at the time of their decease resident within the county or district, and to take order for the due passing of the accounts of the executors and administrators of such persons.
- Equitable.** 13. The Judge of the Court shall in the absence of any Judge of the Supreme Court have power to grant and dissolve any injunctions to prevent irreparable injury to property within the county or district in the interval before some question of right relating to such property can in due course of law be determined.
- Arrest.** 14. If any person shall have any claim, legal or equitable, to the amount of not less than twenty pounds against any other person, and the Judge of any such Court shall be satisfied of the existence of such claim and of the intention of such other party to leave the Colony, it shall be lawful for such Judge to issue a warrant under his hand for the apprehension of the party so intending to leave the Colony, who shall thereupon give good security to abide the result of legal proceedings to be founded upon such claim, or in default thereof shall be kept in custody until such claim shall be decided.

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## IV.—PRACTICE OF THE COURTS.

- 15.** The course of procedure in every suit shall be in conformity with the rules which shall be prescribed regulating the conduct of suits in the Supreme Court, so far as the same shall not be inconsistent with the provisions of this Ordinance. Procedure.
- 16.** All cases of a civil nature shall be heard and determined in a summary way. Summary.
- 17.** The judgment of the Court shall be enforced in the first instance by sale of the goods and effects of the defendant; when the goods and effects of the defendant shall not suffice for payment of the sum recovered, including costs, the defendant may be imprisoned for a period of one calendar month for every five pounds or fractional part of five pounds remaining unpaid: Provided that the time of imprisonment shall in no case exceed four calendar months and shall cease so soon as the judgment of the Court shall have been satisfied. Execution.
- 18.** It shall be lawful for any person under the age of twenty-one years to prosecute a suit for wages in the same manner as if he were of full age. Infants may sue for wages.
- 19.** Where two or more persons are jointly answerable it shall be sufficient if one of such persons be served with the process of the Court, and judgment may be obtained and execution issued against such person alone, reserving always any right which he may have to demand contribution from any other person jointly liable. Joint liability.
- 20.** It shall not be lawful for any plaintiff to divide any cause of action into two or more suits for the purpose of bringing the same within the jurisdiction of the Court, but any plaintiff having cause of action above the value of twenty pounds may abandon the excess, and the judgment of the Court if given in favour of such plaintiff shall operate as a full discharge of the defendant from all demand in respect of such cause of action. Cause of action not to be divided.
- 21.** No person shall appear as an advocate or solicitor in the Court unless he be duly authorized to practice as such in the Supreme Court. Advocates.
- 22.** In all civil cases the decision of the Judge shall be final on all questions both of fact and of law, nor shall any case be removed on behalf of either party into any superior Court, by *certiorari* or otherwise, in any stage of the proceedings. Nevertheless it shall be lawful for the Judge, upon the application of any of the parties to the suit made immediately upon the delivery of the judgment, to reserve for the opinion of the Supreme Court any point of law upon which such judgment may directly depend, in which case execution shall not issue until the opinion of the Supreme Court shall have been pronounced. Judgment to be final.
- 23.** For the purpose of bringing a criminal case under the cognizance of the Court, an indictment duly signed by the Attorney-General or Crown Prosecutor of the county or district shall be as valid and effectual in all respects as if the same had been presented by a grand jury; in other respects the procedure of the Courts of Quarter Sessions of the Peace in England shall be adopted as nearly as the laws and circumstances of the Colony shall admit. Indictments how originated.
- 24.** It shall be lawful for the Judge to reserve any point of law arising in any criminal case for the opinion of the Supreme Court. Points of law.
- 25.** It shall be lawful for the Judges of the Supreme Court from time to time to make rules for regulating the practice of the Court, the scale of fees, the costs of suits and the taxing thereof, and all other matters relating to the business of the Court. Rules of practice.
- 26.** All fees received by the Clerk as well as those received by the inferior officers of the Courts shall be accounted for quarterly to the Fee fund.  
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*Juries.*


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the Colonial Treasurer or Treasurer of the county or district, and shall form a fund to be called the "Fee Fund," and shall be chargeable with the salaries of all the officers of the Court.

**Ordinance, repeal of.** 27. And whereas an Ordinance (Session I., No. 6,) was passed, intituled "*An Ordinance for instituting Courts of Civil Jurisdiction, to be called 'Courts of Requests,' in different parts of the Colony of New Zealand and its Dependencies :*" Be it enacted, that from and after the last day of February, one thousand eight hundred and forty-two, the said recited Ordinance shall be repealed.

**Part of Ordinance No. 4 repealed.** 28. And whereas an Ordinance (Session I., No. 4,) was passed, intituled "*An Ordinance for instituting and regulating Courts of General and Quarter Sessions in the Colony of New Zealand, and to authorize the holding of Petty Sessions within the same, and for defining their respective powers and determining the places at which the same shall be holden, and for repealing within the Colony of New Zealand certain Acts of the Governor and Council of New South Wales, adopted and now in force within the said Colony of New Zealand :*" Now be it enacted, That from and after the last day of February, one thousand eight hundred and forty-two, so much of the said recited Ordinance as relates to the instituting and regulating of Courts of General and Quarter Sessions in the Colony, and to the defining of the powers thereof, and the determining of the places at which the same shall be holden, except so much thereof as relates to the constitution of juries and the formation of the Jury List, shall be repealed.

**Commencement of Ordinance.** 29. And be it lastly enacted, That this Ordinance shall come into operation on the first day of March, one thousand eight hundred and forty-two.

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