

ANNO OCTAVO.

VICTORIÆ REGINÆ.

SESSION IV. No. I.

SUPREME COURT
RULES.

AN ORDINANCE to confirm certain Rules, Forms, and Table of Fees touching the Practice of the Supreme Court. [26th September, 1844.]

Preamble reciting Ordinance Sess. III., No. 1.

WHEREAS by an Ordinance enacted by the Governor of New Zealand, with the advice and consent of the Legislative Council (Session III., No. I.), intituled "*An Ordinance for establishing a Supreme Court,*" it is enacted that it shall be lawful for the Judges of the Court from time to time to make Rules for regulating the time and place of holding the Court, and the practice and pleadings upon all indictments informations suits and other proceedings therein, the proceedings of the Sheriff and other ministerial officers, the admission of barristers and solicitors, the fees and poundage to be paid to any officer, costs of suit and the taxing thereof, and all matters relating to the business of the Court, and such Rules from time to time to alter or revoke: And it is also further enacted that the Rules to be made under the authority aforesaid shall be submitted to the Governor in Council, and upon being approved shall have the same force and effect as if they had been inserted in the said Ordinance until the termination of the sitting of the Legislative Council next following their approval by the Governor in Council: And whereas, in exercise of the powers to them given by the said recited Ordinance, the Judges of the Supreme Court have settled and approved the Rules, Forms, and Tables of Fees hereunto annexed, and the same have been approved by the Governor in Council, and it is expedient that such Rules, Forms, and Tables of Fees should be confirmed:

That the Judges of the Supreme Court have settled Rules.

The said Rules confirmed.

I. BE IT THEREFORE ENACTED by the Governor of New Zealand, with the advice and consent of the Legislative Council, That the said Rules, Forms, and Tables of Fees shall be and the same are hereby confirmed.

RULES, FORMS, AND TABLES OF FEES.

WHEREAS by an Ordinance intituled "*An Ordinance for establishing a Supreme Court*" (Session III., No. 1), it is enacted that it shall be lawful for the Judges of the Court from time to time to make Rules for regulating the time and place of holding the Court, and the practice and pleadings upon all indictments informations suits and other proceedings therein, the proceedings of the Sheriff and other ministerial officers, the admission of barristers and solicitors, the fees and poundage to be paid to any officer, costs of suit and the taxing thereof, and all matters relating to the business of the Court, and such Rules from time to time to alter or revoke; provided that the same shall not be repugnant to any of the provisions in the said recited Ordinance contained: And it is also further enacted that the Rules to be made under the authority aforesaid shall be submitted to the Governor in Council, and upon being approved shall have the same force

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force and effect as if they had been inserted in the said Ordinance until the termination of the sitting of the Legislative Council next following their approval by the Governor in Council: It is therefore ordered as follows:—

SITTINGS OF COURT.

1. The sittings of the Court for the trial of cases civil and criminal will take place at Auckland and Wellington in the months of March and September, and for the trial of criminal cases only in the months of June and December in each year. Criminal cases will be taken on the first day of each month; civil cases on the seventh. For the convenience of witnesses and other persons attending the Court, non-local business, whether civil or criminal, will have the precedence over local.

2. In case any of the days aforesaid shall fall on a Sunday or holiday, the Court shall be holden on the day following.

3. There shall be holden Circuit Courts for the despatch of civil and criminal business of the Court before one of the Judges thereof at such places and at such times as His Excellency the Governor shall, with the advice of the Executive Council, by Proclamation, from time to time appoint. (*Supreme Court Ordinance*, Session III., No. 1.) The like precedence will be given to non-local business as above mentioned.

4. The Court will sit for the hearing of motions, arguments on questions of law, and for the despatch of the general civil business of the Court, on such days as shall be specially appointed for that purpose.

5. Applications for injunctions to prevent irreparable injury to property in the interval before some question of right relating thereto can be in due course of law determined, and applications for writs of arrest against such persons as by the law are liable thereto, may be made either to the Court or a Judge thereof on any day (Sundays, Christmas Day, and Good Friday excepted).

OFFICES OF COURT AND HOLIDAYS.

6. There shall be offices of the Court at Auckland and at Wellington, which shall be open every day (Sundays and holidays excepted) from ten a.m. to two p.m. The following days shall be holidays in the Court and the offices thereof, that is to say,— Good Friday, Easter Eve, Easter Monday, Easter Tuesday, Whit Monday and Whit Tuesday, the days from Christmas Eve to New Year's Day both included, the birthday (twenty-fourth of May) and the accession day (twentieth of June) of Our Lady the Queen, and the day (twenty-ninth of January) of the Proclamation of the Queen's sovereignty over these Islands.

BARRISTERS AND SOLICITORS.

7. There shall be enrolled in the Court to practice therein as barristers such persons only as shall have been admitted barristers or advocates in Great Britain or Ireland, or such as shall be admitted hereafter within the Colony under the authority of any law that may hereafter be passed for that purpose; and to practice therein as solicitors, such persons only as shall have been admitted as solicitors, attorneys, or writers in one of the Courts of Westminster, Dublin, or Edinburgh, or proctors in any Ecclesiastical Court in England, or shall have served such term of clerkship with a solicitor of the Court as shall be required by the General Rules thereof, or shall have established themselves in the exercise of their profession on or before the twenty-second day of December, one thousand eight hundred and forty-one. All persons so enrolled shall be removable from the rolls of the Court upon reasonable cause whensoever and wheresoever the same may have arisen. (*Supreme Court Ordinance*, Session III., No. 1, s. 16.)

8. Every person who shall apply to be enrolled as a barrister or solicitor of the Supreme Court shall make and sign a declaration in the Form No. 1 or No. 2 as the case may be.

9. No clerk of any solicitor of the Supreme Court shall be admitted or enrolled as a solicitor of the said Court unless he shall have been bound by contract in writing to serve as a clerk to such solicitor during the term of five years subsequent to the date of such contract, and unless he shall during the whole of such term of service have continued to be actually employed within the Colony as such clerk: Provided that where any person shall have passed any period not exceeding two years as a pupil of any barrister or advocate in Great Britain or Ireland, it shall be sufficient for such person to be bound and to serve in manner aforesaid for such time as shall complete the full term of five years.

10. If any solicitor to whom any person shall be so bound as aforesaid shall die or cease to practice before the expiration of such term of five years, or if such contract shall by mutual consent of the parties be cancelled, and such clerk shall in any such case have been again bound by contract in writing to serve and shall accordingly have served to any other solicitor or solicitors during a term equal to the unexpired part of the original term of service, such last-mentioned service shall be deemed to be as good and effectual as if such person had continued to serve as clerk to the solicitor to whom he was originally bound.

11. The barristers of the Court shall be allowed to act as solicitors and the solicitors of the Court to act also as barristers, for the period of five years after the passing of this Ordinance, unless the Court shall in the meantime make order to the contrary;

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contrary; any such order may extend to the whole Colony or may be restricted to any part thereof, as to the Court shall seem fit. (*Supreme Court Ordinance, Session III., No. 1, sec. 17.*)

COMMENCEMENT OF SUIT.

12. Any person having any complaint or demand of a civil nature, whether legal or equitable, whereof the Supreme Court shall have cognizance, against any person (other than His Excellency the Governor or the Officer administering the Government of the Colony for the time being), may apply either in person or by solicitor to one of the Registrars or Deputy Registrars of the Supreme Court for a writ of summons, and state to such Registrar or Deputy Registrar his complaint or demand.

13. No person shall appear or act as solicitor for any party, plaintiff or defendant, until he shall have filed in the office of the Registrar or Deputy Registrar a written warrant of authority in the Form No. 3 or No. 4 in the Schedule hereunto annexed, signed by the party in whose behalf he shall appear.

14. The Registrar or Deputy Registrar shall forthwith deliver to the plaintiff or his solicitor a summons, sealed with the Seal of the Court, in the Form No. 5 or No. 6 in the Schedule hereunto annexed, requiring the appearance of the defendant on a day therein named before a Judge of the Supreme Court, unless satisfaction shall have been previously made to the plaintiff.

15. The party suing out the writ shall cause the same, together with explicit particulars in writing of the plaintiff's demand, to be served personally on the party summoned. Such particulars shall set forth the demand in a simple and compendious manner, specifying items dates and amounts. An affidavit of due service thereof shall be filed by the plaintiff in the office of such Registrar or Deputy Registrar.

16. There shall be allowed to every defendant who shall be resident within twenty miles of the town where such summons as aforesaid shall be issued, an interval of not less than fourteen clear days between the day of the service of such summons and the day on which he shall be bound to appear. To every defendant who shall reside beyond such distance, there shall be allowed an interval of not less than twenty-eight clear days.

APPEARANCE DAYS.

17. The appearance days before the Judge shall be on the tenth, twentieth, and twenty-eighth days of every month other than the months of March, April, September, and October, excepting Sundays, holidays, the twenty-eighth of February, and the twenty-eighth of August.

18. When any appearance day other than the twentieth of February or the twentieth of August shall fall on a Sunday, the business of such day shall be taken on the appearance day next following. If the twentieth of February or twentieth of August shall fall on a Sunday, the business of such day shall be taken on the Monday following.

SERVICE OF PROCESS.

19. Where a party shall have once appeared or acted by solicitor, service of all subsequent notices or other proceedings upon such solicitor shall be sufficient, excepting where personal service shall be specially required by the Court.

20. Where husband and wife are sued, service of process on the husband alone shall be sufficient. Where partners are sued, service of process on any one of them shall be sufficient.

21. Where a summons or summonses shall have been issued against two or more persons as joint defendants, and one or more shall keep out of the way purposely to avoid being served therewith, and an affidavit in the Form No. 7 to that effect shall be made by the person intrusted with the service of such summons and filed in the office of the Registrar or the Deputy Registrar by whom the summons shall have been issued, the Registrar or Deputy Registrar shall (at the request and cost of the plaintiff) insert in the *Government Gazette* or in one or more of the local newspapers a notice of such joint suit, briefly setting forth the names of the parties and the nature of the suit and requiring such of the defendants as cannot be found to appear personally or by solicitor before the Judge on a day certain for the purpose of being examined by him. If on such day such defendant or defendants shall not appear, the Registrar or Deputy Registrar shall enter his or their default in the *Plaint Book*, and the complainant may therefore proceed against the remaining defendant or defendants in the same manner as if the defendant or defendants so making default had been outlawed by due course of law.

22. If a sole defendant against whom a writ of summons shall have issued shall keep out of the way purposely to avoid being served therewith, and an affidavit in the Form No. 78 shall be made by the person intrusted with the service thereof, and an affidavit shall be made by the plaintiff or some other person to the satisfaction of the Judge that such defendant is within the jurisdiction of the Court, the Judge shall direct defendant to be warned of the suit. Whereupon the Sheriff shall cause to be affixed on some conspicuous place, at or as near as may be to the last known residence of such defendant, a notice warning him of the suit, and requiring him to appear personally or by solicitor before such Judge as aforesaid, on a day certain, for the purpose of being examined

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examined by him. The Registrar or Deputy Registrar shall also (at the request and cost of the plaintiff) insert an advertisement to the like effect in the *Government Gazette* or in one or more of the local newspapers. If such defendant shall not appear accordingly, then the Registrar or Deputy Registrar shall enter such default in the Plaintiff Book, and the plaintiff shall be at liberty to proceed in the same manner as if the defendant so making default had been outlawed by due course of law.

23. The limits beyond which the Sheriff shall not be bound to go in person or by his officers for the execution of any process of this Court shall be as follows:—The Towns of Auckland, Wellington, Nelson, New Plymouth and Russell, and a distance of twenty miles from each of the aforesaid towns.

24. Any party requiring the execution of any process beyond any of the said limits, may nominate in writing some proper person or persons, to be approved of by the Sheriff, for the execution thereof; and on such party giving security to the satisfaction of the Sheriff for the due execution of such process, and to save harmless the Sheriff from any loss or damage in respect of the execution of such process, the Sheriff shall grant his special deputation under his hand to the person or persons so nominated for the execution of such process.

25. Whenever any process shall issue which the Sheriff ought not by law to execute, the Court shall appoint some other fit person to execute the same, and in every such case the cause of such special proceeding shall be entered upon the records of the Court. (*Supreme Court Ordinance, Session III., No. 1, sec. 21.*)

ARREST.

26. Civil process (in the Form No. 8), whereby any defendant may be arrested or holden to bail in order to compel his appearance to answer any claim or demand, legal or equitable, and to abide the judgment of the Court thereon, may be sued out in the manner and under the circumstances hereinafter mentioned, but not otherwise, that is to say,—Where the cause of action shall have originally amounted to twenty pounds sterling or upwards exclusively of any costs or charges which may have been incurred for the recovery thereof; and where the plaintiff or some other person shall make a direct and positive affidavit to the satisfaction of the Judge before whom the application is made, which affidavit shall contain a true description of the person and place of abode of the party making the same, and of the sum due to the plaintiff, and of the cause or matter in respect of which such sum is due; or, in case of the unlawful detention of any chattel, a true description of the same, and value thereof; and that the plaintiff hath not any mortgage pledge or security for his demand, or none adequate thereto; and in the last case specifying the nature and extent of the mortgage pledge or security, and showing that the sum or value of twenty pounds or upwards remains wholly unsecured to the plaintiff; and in all cases averring that the deponent believes defendant is about to remove from the Colony, and showing that there is probable cause for such belief: Provided that if plaintiff sues as executor or administrator of any deceased person, or as assignee of any insolvent estate, it shall be sufficient in such affidavit to swear that the defendant is indebted, &c., as appears by the books of such deceased or insolvent person, and as the deponent verily believes.

27. It shall be lawful for any person arrested upon any such writ to apply at any time after such arrest to the Judge by whose order the writ was issued for an order on the plaintiff to show cause why the person arrested should not be discharged out of custody; and it shall be lawful for such Judge to make absolute or discharge such order and to direct the costs of the application to be paid by either party, or to make such other order therein as to such Judge shall seem fit. (1 and 2 Vict. c. 110, s. 6.)

ISSUE.

28. All parties being present, either personally or by solicitor, at the time and place mentioned in the summons, the Judge shall proceed to elicit the point in issue by examination of the parties or their solicitors, at which examination no other persons than those above mentioned shall be present. He shall then reduce into writing the material statements of the respective parties, taking notice of any defence that would be available by the law of England as administered by Courts either of law or of equity, which writing shall be signed by the parties. A fair copy thereof shall be made in a book to be called the Record Book, and shall be signed by the Judge.

29. In every record the defence shall be set forth specially and distinctly, and consistently with itself. Every document forming any part of the case (as distinguished from the evidence of either plaintiff or defendant,) shall be specified on the face of the record, and identified by description date and parties, so far as it may be possible for the party alleging such document to identify the same.

30. In all cases where the defendant shall plead a set-off consisting of the sum total of a series of items, explicit particulars in writing of the set-off shall be delivered at the time of pleading the same to the Registrar. Such particulars shall set forth the set-off in a simple and compendious manner specifying items dates and amounts. The particulars so delivered to the Registrar shall be annexed to the record.

31. Where a person shall be sued as a trustee executor or administrator, the plaintiff or his counsel shall be at liberty to examine the defendant on oath before the Judge with reference to the matters in issue between them. The defendant may also be required

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required to set forth on oath a list of all books papers and writings which are or ever have been in his possession or power relating to such matters.

TENDER.

32. The defendant shall be at liberty to tender to the plaintiff in the presence of the Judge, at any time before the issue shall be made up, compensation or satisfaction for plaintiff's claim or demand; or, in cases where the specific recovery of a chattel is sought, to tender the same together with compensation for the detention thereof or damage thereto. If the plaintiff shall refuse to accept such tender, and at the trial shall fail to recover more than the amount tendered, the defendant's cost of suit subsequent to the tender shall be borne by the plaintiff. If a tender be made, the Judge shall make an entry of the particulars thereof on the record. No tender shall be allowed in suits for the recovery of damages for assault, false imprisonment, slander, libel, malicious arrest or prosecution, criminal conversation or seduction.

DOCUMENTARY EVIDENCE.

33. At the examination before the Judge each party shall be at liberty to exhibit any documentary evidence on which he may purpose to rely at the trial. The Judge may, if he think it reasonable so to do, require the opposite party to admit or refuse to admit the execution or genuineness of documents so exhibited. Every document which shall be so admitted shall be indorsed by the Judge accordingly, and shall be received at the trial as duly proved. In case the opposite party shall refuse to make such admission with regard to any document which shall be afterwards proved at the trial, the costs of proof shall be borne by the party refusing to admit the same, whatever may be the result of the trial. All documentary evidence in the possession or power of either party not exhibited before the Judge, but which shall be afterwards proved at the trial, shall be proved at the expense of the party adducing the same.

34. Either party may at the examination before the Judge give notice to his adversary to produce at the trial any documents in his possession or power. If they shall not be produced accordingly, the party calling for them shall be at liberty to give secondary evidence of their contents. The costs of such secondary evidence shall be costs in the cause.

35. The Judge shall insert in the Record Book schedules of all documents exhibited by either party (distinguishing such as are admitted by the opposite party), as well as schedules of all documents called for by either party.

ADJOURNMENT.

36. The Judge may, where sufficient cause shall be shown by affidavit, adjourn the settling of the issue to a day named, on which day the defendant shall be required finally to state his defence. Not more than one adjournment shall be allowed without the consent of the plaintiff. Every adjournment shall be entered on the record. The costs of the affidavit shall be borne by the party filing the same.

TRIALS AND ARGUMENTS.

37. All issues of fact shall be tried in such district and at such sitting of the Court as the parties shall agree upon. In case of disagreement, the Judge shall decide. The Judge shall make on the record an entry of the district and the time fixed for the trial.

SPECIAL CASE.

38. When any doubt shall arise upon the construction of a will or of any instrument creating a trust, the executor or administrator, with the will annexed, or trustee may apply to the Court for its decision upon a special case, which shall be settled and approved by the Registrar or Deputy Registrar of the district where such executor, administrator, or trustee shall reside, and shall be signed by the parties interested.

REPLEVIN.

39. All proceedings in the nature of an action of replevin for the purpose of trying the legality of a distress shall be commenced in the Supreme Court and conducted in manner hereinbefore provided. The bond to the Sheriff shall be for the full value of the goods distrained and a further sum of fifty pounds.

CAUSE LIST.

40. Every cause that shall be tried at any sitting of the Supreme Court shall be entered by the plaintiff or his solicitor in a list to be kept for that purpose by the Registrar or Deputy Registrar of the district. Such entry shall be made at least three clear days before the day appointed for the sitting of the Court. If the plaintiff shall fail to make such entry, such default shall be deemed equivalent to a countermand of notice of trial.

ADDRESS OF COUNSEL.

41. Upon every trial of an issue of fact the plaintiff or his counsel shall briefly state the facts which he means to prove, without comment thereon, and shall then proceed to the proof thereof. Likewise the defendant or his counsel shall, if he mean to call any witnesses, state briefly the facts which he means to prove, without comment thereon, and shall then proceed to the proof thereof. When the whole of the defence is closed,

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closed, the plaintiff or his counsel shall observe generally upon the case, and after him in like manner the defendant or his counsel. The Judge shall then sum up the evidence to the Jury. The like rule shall be followed in criminal cases. By the term "Plaintiff" in the foregoing rule, shall be understood the party on whom the proof the affirmative side of the issue shall lie. By the term "Defendant" shall be understood the party on whom the proof of the negative side shall lie.

INDICTMENTS.

42. When any objection shall be taken to any indictment either for felony or misdemeanour on the ground of any error omission or variance therein, and the Court shall deem such objection good, the Court may in its discretion permit the indictment to be amended by the counsel for the prosecution. No judgment on any indictment shall be arrested on the ground of any error omission or variance which might have been so amended.

UNDEFENDED CAUSES.

43. When any action shall have been brought against the acceptor of any bill of exchange or maker of a promissory note, or for the recovery of the price of any goods sold and delivered, or of the amount of any money lent, and the defendant shall have failed to appear at the time of the making up of the record, it shall be lawful for the defendant to appear on the next appearance day, and to show that having a good defence on the merits he was prevented by inevitable accident from bringing forward the same on the preceding appearance day. In default whereof the plaintiff shall be at liberty, upon filing in the office of the Registrar an affidavit as hereinafter prescribed, to enter up judgment. Execution may issue thereon at any time after the expiration of fourteen clear days. The affidavit shall be made by the plaintiff himself, and shall verify all the statements set forth on the record, and shall expressly aver that the sum for which judgment is sought to be recovered is still due and owing.

MINUTE BOOK.

44. Each Registrar or Deputy Registrar shall keep a book to be called the Minute Book, and shall enter therein all the proceedings of the Court within his district. The Judge shall as soon as conveniently may be after every Court day examine and sign the entries in such book relating to the business transacted on that day.

INTEREST.

45. Where interest upon any sum shall be recovered or allowed in any suit, but the rate of such interest shall not have been previously agreed upon by the parties thereto, the party entitled to such interest shall not recover or be allowed the same at any rate exceeding the rate of eight pounds per cent. per annum.

MESNE PROFITS.

46. In all actions for the recovery of the possession of land, mesne profits up to the day of trial shall be recoverable by way of damages, which damages may be assessed against the defendants jointly or against each or any of them severally, or jointly for part and severally for the residue.

ABATEMENT.

47. If a plaintiff or defendant shall die before final judgment, and the claim of the plaintiff shall be such as to survive in law by or against the executors and administrators of the party deceased, the executors or administrators of the plaintiff may within twelve months after his death, or the plaintiff his executors or administrators may within twelve months from the proving of the will of the defendant or grant of administration of his estate, sue out a writ of summons (No. 9 or No. 10 in the Schedule) against the defendant his executors or administrators, to show cause why the suit should not proceed in the names of the parties between whom such writ of summons shall be sued out; and upon the failure of the party summoned to appear or to show sufficient cause, the suit shall proceed accordingly. If no such writ of summons shall be sued out within the periods above limited, the suit shall be considered as absolutely terminated.

48. If a plaintiff or defendant being an unmarried woman shall marry at any time before final judgment, the defendant or plaintiff may in like manner sue out a writ of summons (in the Form No. 11 or No. 12 in the Schedule) against the husband of such woman, to show cause why he should not be made a party to the suit.

ACCOUNT.

49. Whenever any trustee executor administrator partner or agent shall refuse to render an account to any person to whom he is by law bound to render the same, such person may compel the delivery of an account by proceeding in the following manner:— He shall file in the office of the Registrar an affidavit which shall set forth the facts out of which the right to demand an account may arise, and the refusal to render such account and the circumstance under which such refusal was made.

50. The plaintiff shall thereupon apply by motion before a Judge for an order directing the defendant to appear and show cause why he should not render an account as required. If sufficient cause be not shown, the Judge shall thereupon order the defendant

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defendant to deliver to the plaintiff and also to the Registrar, within such time as to the Judge shall seem fit, a full true and particular account (verified by oath) of all the moneys received retained or expended by him in respect of any of the matters in regard whereof such account is required, and also to deliver a full true and particular list (verified in like manner) of all books papers and documents of any kind which are or ever have been in the possession or power of the defendant relating to any of the matters contained in the account, and to show what has become of such last-mentioned books papers and documents as are no longer in his possession or power.

51. If the account be not delivered within the time fixed, and the defendant shall not have obtained upon application to the Judge an extension of the time for rendering his account, the plaintiff may move the Court that the defendant may stand committed until he shall have rendered such account.

52. If such account and list as aforesaid be delivered within the time fixed, but the plaintiff shall not be satisfied therewith, the plaintiff may move that a further account and list be put in. Whereupon the Judge, if he shall consider the account and list so put in not to be such a full true and particular account or list as hereinbefore required, may fix a time for rendering a further account or list. At the expiration of the time so fixed, if a satisfactory account or list be not put in accordingly, the plaintiff may move the Court for an order that defendant may stand committed as aforesaid.

53. If an account be duly rendered, the plaintiff may object to any item or items therein, and may proceed to take issue on such item or items according to the course of proceeding in an ordinary action.

REFERENCE.

54. Whenever it shall be referred to one of the Registrars or Deputy Registrars (acting as a Master of the Court) to take an account between the parties to a cause, the solicitor for the plaintiff shall serve upon the opposite party a notice of the time fixed by such Registrar or Deputy Registrar for proceeding with such accounts, which notice shall be served two clear days before the time so fixed.

55. Every attendance shall last for such time not being less than two hours as the Registrar or Deputy Registrar shall deem convenient.

56. If either of the parties be absent at the time fixed, having due notice thereof, the Registrar or Deputy Registrar shall be at liberty to proceed in the presence of the other party if he shall think fit. If he shall not think fit so to proceed, the party attending shall be entitled to his costs.

DISCOVERY.

57. Where any defendant would be entitled, according to the practice of the Superior Courts at Westminster, to file a bill in equity against the plaintiff for discovery in aid of the defence, such defendant shall be at liberty to move upon notice and affidavit for an examination of the plaintiff personally upon oath as to all matters in respect whereof such discovery might in England be enforced by bill. Every order which shall be made upon such motion shall require the plaintiff to appear personally on a day certain before a Judge of the Supreme Court or some person specially appointed by such Judge (as circumstances may render fit), and then and there to make such discovery as aforesaid. At such examination of the plaintiff, no person shall be present other than the Judge and the parties, their counsel and solicitors. The notes of such examination made by the Judge or person presiding thereat shall be signed by the plaintiff, and shall be received as evidence on the trial of the cause, as if the same were an answer to a bill of discovery.

COSTS.

58. Costs in the cause shall be paid by the party against whom judgment shall be given: Provided that if the plaintiff in any action for the recovery of damages shall recover by the verdict of the jury less damages than forty shillings, such plaintiff shall not be entitled to any costs whatever unless the Judge shall immediately afterwards certify upon the record that the action was brought to try a right other than the mere right to recover damages in the action, or that the trespass or grievance in respect of which the action was brought was wilful and malicious. (3 and 4 Vict. c. 24, s. 2.)

59. The foregoing rule shall not operate to deprive any plaintiff of costs in any action brought for a trespass over any lands or for entering into any dwellings or premises in respect of which any notice not to trespass thereon or therein shall have been previously served by or on behalf of the owner or occupier thereof upon the defendant, or left at his last reputed or known place of abode. (3 and 4 Vict. c. 24, s. 3.)

60. Any party to a cause entitled to costs, whether such cause shall have been carried on to trial or settled out of Court, may obtain from the Registrar an appointment of a certain time for taxation of such costs. A copy of the appointment shall be served on the opposite party or his solicitor two clear days before the day appointed for such taxation.

61. The bill of costs of any solicitor for business done in Court may be taxed without previous order of Court for that purpose, before or after action commenced thereon, upon obtaining from the Registrar an appointment to tax, and causing a copy thereof

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thereof to be served on such solicitor two clear days before the day appointed for such taxation.

62. When any statement or any denial shall be put upon the record by either party and it shall be proved at the trial that such statement or denial is untrue, and the Court shall be satisfied that the untruth thereof was within the knowledge of the party making the same, the Court shall upon motion made for that purpose award to the party by whom such statement or denial was proved to be untrue twice the amount of the taxed costs of disproving the same.

INTEREST ON JUDGMENT DEBT.

63. Every judgment debt shall carry interest at the rate of eight per cent. per annum from the time of entering up judgment until the same shall be satisfied, and such interest may be levied under a writ of execution on such judgment.

EXECUTION.

64. If any party against whom a verdict shall have been found shall desire to obtain a new trial, he shall move accordingly at the next sitting of the Court for hearing of motions, giving to the opposite party notice of such motion not less than two clear days before the first day of such sitting. If no such notice be given, execution may issue forthwith. Writs of execution shall be in one or other of the Forms Nos. 13 and No. 14 in the Schedule.

65. A judgment creditor may proceed to a sale of the real property of his debtor upon an order from the Supreme Court, to be obtained on petition. A copy of the petition shall be served on the defendant not less than two clear days before the day appointed for hearing the same. The Court will not make such order unless notice of the intention to apply for the same shall have been given for three consecutive weeks in one or more of the newspapers of the place or district where the land shall be situated; or if the land be in the district of Auckland, in three consecutive numbers of the *Government Gazette* or of one or more of the local newspapers. The notice shall briefly set forth the names and description of the parties and the nature of the suit, and shall accurately describe the situation boundaries and measurement of the parcel or parcels of land sought to be sold.

66. Execution shall not be stayed by notice of appeal to Her Majesty in Council if the successful party shall give security by himself and two sureties (to be approved of by the Registrar) to make restitution in case of reversal. Such security shall be at the cost of the appellant.

67. When final judgment shall have been obtained in any suit but execution shall not have been issued thereon, and when any person who was not a party to such suit shall in the meantime, by reason of the death or marriage of any party or otherwise, have become entitled to the benefit of such judgment or chargeable on the execution thereof, or where in any case execution shall not have been issued upon such judgment within the space of twelve calendar months after the date thereof, it shall be necessary before execution shall be issued thereon to sue out a writ of summons in the Form No. 15, or as near thereto as the case may admit.

MOTIONS AND AFFIDAVITS.

68. No motion other than a motion for an injunction or for a writ of arrest shall be heard in Court unless notice thereof shall have been given to the opposite party two clear days before the day appointed for the hearing thereof, nor shall any affidavit be read in support thereof unless the same shall have been filed in the office of the Registrar at least two clear days before the day so appointed.

69. Affidavits may be sworn before any solicitor not employed in the suit. No affidavit shall be read unless it be sworn before a solicitor or some other person authorized by a Judge of the Supreme Court to take affidavits.

70. Where an affidavit filed in support of or in opposition to any motion shall contain irrelevant matter or matter not being legal evidence, it shall be competent for the Judge before whom the motion shall be heard, upon application made at the close of the argument upon such motion, to direct the costs of such affidavit to be paid by the party filing the same, whatever may be the result of the motion.

INTERPLEADER.

71. The provisions of the Statute 1 and 2 Will. IV. c. 53 (the Interpleader Act) will be adopted in all cases whether the claims on which the Court shall be required to adjudicate shall be legal or equitable.

FINES AND RECOGNIZANCES.

72. When a fine shall be imposed upon any person for making default in the discharge of his duty as a juror at any sitting of the Court, or when any recognizance shall become forfeited, the Registrar or Deputy Registrar (as the case may be) shall, on the direction of the Judge by whom the fine shall have been imposed or before whom such recognizance shall have become forfeited, issue a writ of summons in the Form No. 16, requiring the person on whom the fine shall be imposed or whose recognizance shall become

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become forfeited, to show cause why the same should not be levied. The summons shall be personally served five days before the day fixed for showing cause.

73. Cause must be shown on affidavit filed one clear day at least before the day fixed for showing cause. If cause be not shown accordingly, the Judge shall direct the Registrar or Deputy Registrar forthwith to issue a writ in the Form No. 17, to enforce payment of such fine.

SPECIAL JURIES.

74. The Sheriff of every district shall, immediately after the delivery to him of the Jury List for the current year, select thereout the names of all such persons as shall be described therein as esquires or persons of higher degree, bankers or merchants, and cause the names of all such persons to be fairly copied out in alphabetical order, together with their respective places of abode and additions, in a separate list to be subjoined to the Jury List, and which separate list shall be called the "Special Jury List:" Provided that if such list shall contain less than thirty-six names, the Sheriff shall complete that number out of the persons of the greatest repute and substance in the Jury List.

75. Whenever a special jury shall be allowed by a Judge of the Supreme Court, the Registrar or Deputy Registrar shall appoint a time for the purpose of striking such jury, of which time due notice shall be given to the parties or their solicitors and to the Sheriff. At the time so appointed, the Sheriff shall attend at the office of the Registrar or Deputy Registrar, and the parties or their solicitors shall then alternately strike out one name from the list until the number of names be reduced to eighteen, which number shall form the panel. Special jurymen shall be summoned as by law provided in the case of common jurymen.

In all matters of practice not especially provided for by the Rules for the time being of the Supreme Court, the practice of Her Majesty's Superior Courts at Westminster shall be followed so far as the same shall be applicable to the constitution of the Court and consistent with the laws and circumstances of the Colony.

SCHEDULE OF FORMS.

DECLARATIONS.

No. 1.

I, A.B., of _____, do solemnly and sincerely declare that I am a barrister-at-law [or advocate] duly authorized to practice in the Superior Courts of England [Ireland or Scotland], and that I was called to the Bar by the Honorable Society of _____, [or admitted, &c.] on the _____ day of _____, and that I am the person named in the certificate now produced.

A.B.

Made and declared at _____, the _____ day of _____, before me _____.

No. 2.

I, A.B., of _____, do solemnly and sincerely declare that I am an attorney of Her Majesty's Court of _____, at Westminster [or writer or proctor, &c., as the case may be], and that I was duly admitted an attorney of the said Court at Westminster [or writer, &c.] on the _____ day of _____, and that I am the person named in the certificate.

A.B.

Made and declared at _____, the _____ day of _____, before me _____.

WARRANTS.

No. 3.—WARRANT TO SUE.

I HEREBY authorize _____, of _____, to appear and act as my solicitor in the Supreme Court in a suit wherein I am plaintiff and _____ is defendant.

A.B.

Dated _____, [Place of abode and calling.]

No. 4.—WARRANT TO DEFEND.

I HEREBY authorize _____, of _____, to appear and act as my solicitor in the Supreme Court in a suit wherein I am defendant and _____ plaintiff.

A.B.

Dated _____, [Place of abode and calling.]

WRITS.

No. 5.—SUMMONS TO APPEAR BEFORE A JUDGE OF THE SUPREME COURT.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, to _____, of _____, in the District of _____, Greeting:

We command you that without delay you render to _____, of _____, aforesaid, the sum of [Sum in words following the entry made by the Registrar in the Plaintiff Book], or in default of your so doing that you appear, personally or by solicitor, before a Judge of our Supreme Court of New Zealand, at _____, on such one of the appearance days of the said Court as shall fall next after the expiration of _____ clear days after the personal service hereof, at ten o'clock in the forenoon. And take notice that if you shall fail so to appear, the said _____ may proceed in his suit in your absence.

Witness, WILLIAM MARTIN, Esquire, Chief Justice [or Henry Samuel Chapman, Esquire, a Judge] of our Supreme Court of New Zealand, at _____, the _____ day of _____, one thousand eight hundred and forty _____.

N.B.—

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N.B.—The appearance days are the tenth, twentieth, and twenty-eighth of every month except the months of March, April, September, and October, and excepting the following holidays, viz., Good Friday, Easter Eve, Easter Monday, Easter Tuesday, Whit Monday, Whit Tuesday, the days from Christmas Day to New Year's Day, both included, and the twentieth day of June; also excepting Sundays, the twenty-eighth day of February, and the twenty-eighth day of August. If the twentieth day of February or the twentieth day of August shall fall on a Sunday, the business of such day shall be taken on the Monday following.

Indorsements on the Writ.

THIS writ was issued by E.F., of _____, solicitor for the said AB. [or, This writ was issued in person by A.B., who resides at _____].

The plaintiff claims	... £	for debt or damages.
Together with	... £	for costs.
	£	

THIS writ was served by me, _____, on _____, the _____ day of _____, one thousand eight hundred and forty _____.

A.B.

No. 6.—WRIT OF SUMMONS IN EJECTMENT AND FOR MESNE PROFITS.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, to _____, of _____, in the District of _____, Greeting:

WE command you that without delay you yield up to C.D., of _____, possession of [*Here describe the land sought to be recovered*], and that you also render to him [*Sum in words*] for mesne profits, or in default of your so doing that you appear, personally or by solicitor, before a Judge of our Supreme Court of New Zealand, at _____, on such one of the appearance days of the said Court as shall fall next after the expiration of _____ clear days after the personal service hereof, at ten o'clock in the forenoon. And take notice that if you shall fail so to appear, the said _____ may proceed in his suit in your absence.

Witness, WILLIAM MARTIN, Esquire, Chief Justice [or Henry Samuel Chapman, Esquire, a Judge] of our Supreme Court of New Zealand, at _____, the _____ day of _____, one thousand eight hundred and forty _____.

N.B.—The appearance days are the tenth, twentieth, and twenty-eighth of every month except the months of March, April, September, and October, and excepting the following holidays, viz., Good Friday, Easter Eve, Easter Monday, Easter Tuesday, Whit Monday, Whit Tuesday, the days from Christmas Day to New Year's Day, both included, and the twentieth day of June; also excepting Sundays, the twenty-eighth day of February, and the twenty-eighth day of August. If the twentieth day of February or the twentieth day of August shall fall on a Sunday, the business of such day shall be taken on the Monday following.

[Indorsements as before.]

No. 7.—AFFIDAVIT OF SEARCH FOR A DEFENDANT WHO KEEPS OUT OF THE WAY.

In the Supreme Court.

Between A.B., Plaintiff, and C.D., Defendant.

E.F., clerk to G.H., of _____, gentleman, solicitor for the above-named plaintiff, maketh oath and saith, that having been instructed to serve the above-named defendant with a copy of the writ of summons hereunto annexed, this deponent did, on the _____ day of _____, one thousand eight hundred and forty _____, call at the residence of the said defendant, situate at _____, in _____, for the purpose of serving the said writ, and was answered by a person who described herself to be, and whom this deponent believes to have been, the wife [daughter or servant, as the case may be] of the said defendant, that the said defendant was not within, and that she could not say when he would be at home, or words to that effect. That this deponent then informed the said wife [daughter or servant] of the defendant that this deponent called to serve the defendant with a writ of summons at the suit of the plaintiff, naming him, and that he should call again for that purpose at _____ o'clock the next morning. That this deponent did accordingly call at the said residence of the defendant at _____ o'clock on the morning of the _____ day of _____, one thousand eight hundred and forty _____, and then saw the son of the defendant [or as the case may be], who informed this deponent that his father was not at home, and that he could not say when he would be at home or where he might be met with, and that this deponent informed the said son that he called for the purpose of serving a writ of summons on the defendant at the suit of the plaintiff, naming him, and that he should call again for that purpose at _____ o'clock in the evening of the following day. And this deponent saith that he did call accordingly, at _____ o'clock in the evening, on the _____ day of _____, one thousand eight hundred and forty _____, and again saw the wife [daughter or servant] of the defendant, who informed this deponent that she had acquainted her husband with the fact of deponent having previously called, but that he said it was of no use to meet him, this deponent, for that he could not pay the debt, or words to that effect [*Stating the substance of what actually occurred*]. And this deponent further saith that thereupon he delivered to and left with the said wife [daughter or servant] of the defendant a true copy of the said writ of summons, and desired her to deliver it to the defendant, and that she promised so to do. And this deponent further saith that he hath not been able to serve the defendant personally with the said writ of summons, and that from the answers made to his inquiries on his so calling as aforesaid, and from the information which this deponent has received from persons living in the same neighbourhood, deponent verily believes that the defendant is now within the jurisdiction of this honorable Court, but that he keeps out of the way to avoid being personally served with a copy of the said writ.

Dated this _____ day of _____, one thousand eight hundred and forty _____.

Sworn &c.

E.F.

No. 8.—WRIT OF ARREST.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, to the Sheriff of _____, Greeting:

WE command you that you take _____, of _____, in the district of _____, if he shall be found in your district, and him safely keep until he shall have given you bail, or made a deposit with you, according to law, in a suit wherein _____, of _____, aforesaid, seeks to recover the sum of [*Sum in words, briefly stating the plaintiff's claim*], or until the said _____ shall by other lawful means be discharged from your custody; and we hereby require the said _____ to take notice that within eight days after the execution hereof on him, inclusive of the day of such execution, he should cause special bail to be put in for him in our Supreme Court of New Zealand to the said suit, and that in default of so doing, such proceedings may be had and taken as are mentioned in the warning written or indorsed hereon. And we do further command _____

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command you that on execution hereof you deliver a copy hereof to the said . And we do further command you that immediately after the execution hereof you do return this writ to our said Supreme Court, together with the manner in which you shall have executed the same and the day of execution thereof; or that if the same shall remain unexecuted, then that you do so return the same at the expiration of one calendar month after the date hereof, or sooner if you shall be required by order of the said Court or of any Judge thereof.

Witness, &c.

This writ is to be executed within one calendar month from the date hereof, including the day of such date, and not afterwards.

A Warning to the Defendant.

If the defendant, having given bail on the arrest, shall omit to put in special bail as required, the plaintiff may proceed against the Sheriff, or on the bail bond.

Indorsement on the Writ.

BAIL for [*In words*] pounds, by order of [*Naming the Judge making the order*], dated this day of .—This writ was issued by E.F., of , attorney for the plaintiff within named [*or*, This writ was issued in person by the plaintiff within named, who resides at].

No. 9.—WRIT TO CONTINUE SUIT BY EXECUTOR OR ADMINISTRATOR OF PLAINTIFF.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, to , of , in the District of , Greeting:

WHEREAS , of , lately commenced a suit in our Supreme Court against you: And whereas we have been informed that before final judgment in the said suit the said died, having first duly made his last will and testament in writing, and thereby appointed executor thereof, and that the said hath duly proved the said last will and testament, and taken upon himself the execution of the same [*In case of intestacy say,—died intestate, and that administration of the estate of the said intestate hath been granted to*]: Now we hereby command you that you be before our said Supreme Court at on such one of the appearance days, &c. [*As in Form No. 5*], to show cause why the said ought not to continue the aforesaid suit against you.

Witness, &c.

No. 10.—WRIT TO CONTINUE SUIT AGAINST EXECUTOR OR ADMINISTRATOR OF DEFENDANT.

(Similar to the above, changing only the names and positions of the parties.)

No. 11.—WRIT TO CONTINUE SUIT AGAINST HUSBAND AND WIFE.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, to , of , in the District of , Greeting:

WHEREAS , of , lately commenced a suit in our Supreme Court of New Zealand against , of : And whereas we have been informed that before final judgment in the said suit the said became the wife of you the said : Now we hereby command you that you be before our said Supreme Court at on such one, &c. [*As in Form No. 5*], to show cause why the said , of , ought not to continue the aforesaid suit against you and the said jointly.

Witness, &c.

No. 12.—WRIT TO CONTINUE SUIT BY HUSBAND AND WIFE.

(Similar to the above, changing only the names and positions of the parties.)

No. 13.—WRIT OF EXECUTION AGAINST GOODS.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, to the Sheriff of the District of , Greeting:

We command you that of the goods and chattels of , of , in your district, you cause to be made the sum of [*In words*], which , of , hath recovered against him in our Supreme Court of New Zealand by virtue of a judgment bearing date the day of , one thousand eight hundred and forty , together with interest upon the said sum of [*In words*], at the rate of eight pounds per centum per annum, from the day of , on which day the judgment aforesaid was entered up, and cause that money, together with such interest aforesaid, immediately after the execution hereof, to be rendered to the said , and in what manner you shall have executed this our writ make appear to our said Court immediately after the execution hereof, and have you then and there this writ.

Witness, &c.

No. 14.—WRIT OF EXECUTION AGAINST THE PERSON.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, to the Sheriff of the District of , Greeting:

We command you that you take , of , if he be found in your district, and him safely keep until he shall have satisfied the sum of [*In words*], which , of , hath recovered against him in our Supreme Court of New Zealand by a judgment bearing date the day of , one thousand eight hundred and forty , together with interest upon the said sum of [*In words*], at the rate of eight pounds per centum per annum, from the day of , on which day the judgment aforesaid was entered up, and in what manner you shall have executed this our writ make appear to our said Court immediately after the execution thereof, and have you then and there this writ.

Witness, &c.

No. 15.—WRIT TO ENFORCE A JUDGMENT MORE THAN TWELVE MONTHS OLD.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, to , of , in the District of , Greeting:

WHEREAS , of , lately commenced a suit against you: And whereas we have been informed that although judgment was given on the day of in favour of the said , yet execution thereon still remains to be made: Now we hereby command you that you be before a Judge of our Supreme Court of New Zealand at on such one, &c. [*As in No. 5*], to show cause why the said ought not to have execution against you.

Witness, &c.

No. 16.—SUMMONS TO SHOW CAUSE WHY FINE SHOULD NOT BE LEVIED.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, to , of , in the District of , Greeting:

WHEREAS a fine of [*In words*] hath been set by William Martin, Esquire, Chief Justice [*or* Henry Samuel Samuel

Supreme Court Rules.

Samuel Chapman, Esquire, a Judge] of our Supreme Court of New Zealand, upon you, for [failing to appear in Court on the day of , when publicly called as a juror]: Now we hereby command you that you appear, personally or by solicitor, before the said Chief Justice [or Judge], at , on the day of , in the forenoon, to show cause why the fine aforesaid should not be levied by process of the Court.

Witness, &c.

N.B.—Cause is to be shown upon affidavit filed one clear day before the said day of , one thousand eight hundred and forty .

No. 17.—WRIT TO LEVY FINE.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, to the Sheriff of the District of , Greeting :

We command that of the goods and chattels of A.B., of , in your county [or district], you cause to be made the sum of [*In words*], being a fine set by , &c. [*As in No. 16*], upon the said A.B., &c., &c., for failing, &c. [*As in No. 16*], and that immediately after the execution hereof you render that money unto us, and in what manner you shall have executed this our writ make appear to our said Court, at , immediately after execution hereof, and have you then and there this writ.

Witness, &c.

N.B.—The Forms No. 16 and No. 17 may be adapted to the case of forfeited recognizances.

SPECIAL RULES.

DAY LICENSES.

1. Any person taken in execution for debt, and confined within any debtor's prison within the Colony, may, subject to the conditions and restrictions hereinafter mentioned, obtain from the Sheriff a license authorizing him to go beyond the bounds of the prison and to remain beyond those bounds for the time and for the purpose in such license specified.

2. No person shall receive any such license unless he shall have given security to the Sheriff, by bond, with two or more sureties, to the satisfaction of the Sheriff, that he will conform to the terms of the license and to the rules of the Court relating to such licenses, and shall also have paid to the Sheriff a percentage on the sum for which the prisoner was taken in execution at the rate of sixpence for every one pound sterling: Provided that where such sum shall be less than forty pounds, the Sheriff shall be entitled to receive one pound in lieu of such percentage.

3. Every prisoner who shall have given such security and paid such percentage shall be entitled to receive from the Sheriff, during his imprisonment, any number of licenses not exceeding two in any one week.

4. Every license shall be in the form following:—

I, P.B., Sheriff of the district of , do hereby, under the authority of the Rules of the Supreme Court of New Zealand, license A.B., a debtor now in custody in the debtor's prison in , under an execution issued out of the said Court at the suit of , to go forth from the said prison and to remain beyond the bounds thereof, for the purpose of transacting his lawful business, from eight of the clock in the morning to five of the clock of the evening of this day, provided that the said A.B. shall not go to any distance exceeding one mile from the bounds of the said prison.

Dated this day of , one thousand eight hundred and

P.B., Sheriff.

5. Every prisoner to whom such license shall be granted shall, immediately before the receipt thereof, pay to the keeper of the prison the sum of three shillings for the same, which sum shall be applied towards the current expenses of the prison, and be accounted for accordingly.

6. If the Sheriff shall be satisfied that any prisoner who shall have received such license shall have in any way contravened the terms thereof, he shall not thereafter grant any license to such prisoner.

7. No license shall be granted on a Sunday.

8. The foregoing rules shall cease to be in force so soon as any Ordinance for the relief of insolvent debtors shall come into operation within the Colony.

FORMS OF INDICTMENTS.

The following forms of indictment shall be used in the cases to which they are respectively applicable:—

No. 1.—MURDER (BY STABBING).

District of

THE Jurors for our Lady the Queen on their oath present that A.B., late of , [*Calling or occupation*], did, on the day of , in the year of our Lord one thousand eight hundred and , at , in the district aforesaid, feloniously, wilfully, and of his malice aforethought, make an assault upon one C.D., and strike, wound, and stab the said C.D., of which striking, wounding, and stabbing the said C.D., on or about the day of , did die. And so the Jurors aforesaid, upon their oath aforesaid, do say that the said A.B. did, in manner and form aforesaid, feloniously, wilfully, and of his malice aforethought, kill and murder the said C.D., against the peace of our Lady the Queen.

N.B.—The above form may be varied according to the mode in which death may have been caused.

No. 2.—

Supreme Court Rules.

	£	s.	d.
Execution	0	4	0
Writ of arrest	1	0	0
Admission of barrister or solicitor	3	0	0
Entering up judgment upon cognovit	0	5	0
Filing warrant of attorney and entering up judgment	0	5	0
Order of Court	0	4	0
Motion	0	5	0
Notice of motion	0	2	0
Memorial	0	2	0
Attendance on Registrar as Master, each party	0	10	0
Striking Special Jury	0	10	0

IN the exercise of the powers to us given by the Supreme Court Ordinance (Session III., No. 1, sec. 25), the foregoing Rules, Forms, and Tables of Fees have been settled and approved.

WILLIAM MARTIN, C.J.
H. S. CHAPMAN, J.

GENERAL RULE.

CHANGE OF VENUE IN CRIMINAL CASES.

WHEN any person shall have been committed or held to bail on a charge of felony or misdemeanour, and it shall be made to appear by affidavit, to the satisfaction of the Court, or of a Judge thereof, that a fair and impartial trial cannot be had in the county or district wherein the person charged shall have been so committed or held to bail, it shall be lawful for the Court, or Judge thereof, on motion either before or after indictment found, to make order that the trial shall take place in another county or district.

ALLOWANCES TO WITNESSES FOR PROSECUTION.

1.—FOR LOSS OF TIME.

	£	s.	d.	£	s.	d.	
For every witness of the working class residing in the place of trial, or within five miles of the Court House thereof, for each day of necessary attendance in Court, from	0	2	0	to	0	4	0
To every witness of any class residing beyond such distance, for each day of like attendance	0	4	0				

2.—FOR TRAVELLING EXPENSES.

To witnesses proceeding to the place of trial by land, from a distance exceeding five and under twenty miles (each way)	0	5	0				
To witnesses residing at a greater distance, for every fifteen miles (each way)	0	5	0				
To persons proceeding by water to or from Auckland, the Bay of Islands, and the eastern side of the Frith of the Thames	2	0	0	3	0	0	
To or from Wellington and Nelson, and the several stations in Cooks Straits	3	0	0	5	0	0	
To or from New Plymouth and Wellington or Nelson	3	0	0	5	0	0	
To or from Akaroa and Wellington or Nelson	3	0	0	5	0	0	

On occasions when passages may not be procurable direct to or from Nelson and New Plymouth or Akaroa, on a certificate by the Sub-Collector to that effect, passages will be allowed *via* Wellington.

On all occasions when the periodical visits of the Government brig to any of the above-mentioned places afford favourable opportunities for the conveyance of witnesses, the Police Magistrates are instructed by His Excellency to cause such parties to proceed to their destination by that vessel.

The above scale is understood to apply to single witnesses. Where two or more witnesses shall take their passage in the same vessel, the allowance may be reduced by the Taxing Officer, according to the circumstances of the case.

NOTE.—The first column is applicable to persons of the working class; the second column to persons not of the working class.

Supreme Court Rules.

**RULES TOUCHING THE ADMINISTRATION OF ESTATES
AND EFFECTS OF PERSONS DECEASED.**

PROBATE.

1. Every person who shall be named in any will as executor thereof, and who shall apply for probate thereof, shall file in the office of the Registrar or Deputy Registrar of the district within which the testator shall have been domiciled or resident at the time of his decease, an affidavit, in the Form No. 1 in the Schedule hereunto annexed, made by some person acquainted with the facts therein set forth, and shall also make and file an affidavit in the Form No. 2 in the said Schedule. Such affidavits shall be sworn before the Registrar or Deputy Registrar of the Supreme Court, or before some person duly authorized for that purpose by a Judge of the said Court. Probate shall thereupon be granted in the Form No. 3 in the said Schedule, unless a *caveat* shall have been previously entered.

2. If none of the executors named in the will shall apply for probate within one calendar month after the death of the testator, and if the residuary legatee, widow, widower, or next of kin of such testator or intestate shall apply for administration within two calendar months from the death of the said testator or intestate, and if the party so applying shall file as aforesaid an affidavit in the Form No. 1, and make and file as aforesaid an affidavit in the Form No. 4 in the said Schedule, the party so applying shall thereupon be entitled to letters of administration, with the will annexed, in the Form No. 6, unless a *caveat* shall have been previously entered.

3. If there be no will, or if there be a will but no executor be named therein, and if the residuary legatee, widow, widower, or next of kin of such testator or intestate shall apply for administration within two calendar months from the death of the said testator or intestate, and if the party so applying shall file as aforesaid an affidavit in the Form No. 1, and shall make and file as aforesaid an affidavit in the form No. 4 or No. 5, the party so applying shall be entitled to letters of administration, with the will annexed, as in the Form No. 6, or to letters of administration in the Form No. 7, as the case may require, unless a *caveat* shall have been previously entered.

CAVEAT.

4. All *caveats* against applications for probates of wills or letters of administration shall be filed in the office of the Registrar or Deputy Registrar. If the same shall be filed by a solicitor, the solicitor shall annex to the *caveat* his warrant for filing the same. The party applying for probate or administration shall be entitled to a summons upon the party on whose behalf the *caveat* is filed, calling upon him to appear before a Judge of the Supreme Court on a certain day, and show cause why the application for probate or administration (as the case may be) should not be granted. If the party so summoned shall fail to appear accordingly, the *caveat* shall be deemed to be abandoned, and the party so applying for probate or administration shall be entitled to the same as if no *caveat* had been filed.

5. Every person to whom letters of administration shall be committed as residuary legatee, widow, widower, or next of kin, shall, before obtaining the same, give security by bond (in the Form No. 9 in the Schedule) to the Registrar or Deputy Registrar, with two sureties, to the satisfaction of such Registrar or Deputy Registrar, who may require such sureties to justify if he shall think fit. The penalty in such bond shall be twice the amount of the property to be administered, as sworn to by the party applying for administration. Nevertheless it shall be lawful for a Judge of the Supreme Court, upon application to him, to moderate such sum in the following cases:—

- (1.) Where the party taking the administration is solely entitled to the property to be administered, or where all other persons entitled in distribution shall consent thereto in writing, such penalty may be limited to twice the amount of the debts of the intestate.
- (2.) Where some persons so entitled shall consent and others shall either dissent or be legally incapable of consenting, such penalty may be limited to twice the amount of the debts of the intestate together with twice the amount of the shares of the persons so dissenting or legally incapable of consenting. The Registrar or Deputy Registrar may allow the administrators to give security by any number of sureties, so that there be two bound for each portion of the amount.

OFFICIAL ADMINISTRATION.

6. If no person shall apply for administration of the estate and effects of any person deceased within two calendar months after such decease, or if every such application shall have been opposed and the opposition thereto shall have been considered well founded, it shall be the duty of the Registrar or Deputy Registrar of the district within which the deceased shall have been domiciled or resident at the time of his decease, to obtain and file an affidavit, in the Form No. 10, from some person acquainted with the facts therein set forth, and also to make and file an affidavit in the Form No. 11, whereupon letters of administration shall be granted to such Registrar or Deputy Registrar by a Judge of the Supreme Court. Such grant of administration to any Registrar or Deputy

Supreme Court Rules.

Deputy Registrar shall not be revoked or defeated save only upon the production of a will by an executor therein named.

7. Every Registrar or Deputy Registrar who shall not, upon his appointment to his office, have given general security for the true and faithful administration of all estates which shall be committed to his charge, shall, before letters of administration be granted to him in any particular case, enter into bond with sufficient sureties to the satisfaction of a Judge of the Supreme Court, as is hereinbefore provided with respect to ordinary administrators. Such bond shall be made to the Attorney-General of the Colony, and shall be assigned by him to any person who may be authorized, by order of the Court, to sue thereon.

PERISHABLE PROPERTY.

8. If any person deceased shall have left behind him property of a perishable nature, and whereof the value may be greatly diminished in the interval before letters of administration can be duly granted, the Judge may, upon application to him for that purpose, make an order authorizing the sale of such property by some person therein named, and may direct the proceeds to be paid to the Registrar or Deputy Registrar (as the case may be) on account of the estate of the deceased.

INVENTORY AND ACCOUNT.

9. Every executor or administrator shall, within three months from the time of proving the will or from the grant of letters of administration, file in the office of the Registrar of the Supreme Court or Deputy Registrar (as the case may be) an inventory of the estate and effects of the deceased. Every inventory so filed shall be verified by affidavit. If the inventory be filed by the Registrar or the Deputy Registrar, the affidavit shall be made before a Judge of the Supreme Court, or before some other person appointed by the Judge to take such affidavits; if filed by any other person, then before the Registrar or Deputy Registrar, or (where there is no such officer) before the Police Magistrate of the district in which such person shall reside.

10. In all cases of official administration, the Registrar or Deputy Registrar shall also cause an advertisement to be inserted in the *Government Gazette* if the deceased was domiciled or resident in the district of Auckland, or if elsewhere then in one of the newspapers of the county or district where deceased was domiciled or resident at the time of his death, requiring the creditors of the deceased to come in and prove their debts before such Registrar or Deputy Registrar, and giving notice that in default of their so doing they will be absolutely excluded from any benefit to arise from the estate and effects of the deceased.

11. So soon as the estate and effects shall be wholly got in and converted into money, the Registrar or Deputy Registrar shall in the first place retain thereout all costs and charges which he shall have reasonably incurred, or which he shall have become entitled to in respect of such estate and effects, (such costs and charges being first examined and allowed by the Judge of the Supreme Court,) and in the next place he shall proceed to pay the debts proved before such Registrar or Deputy Registrar in a lawful course of administration, and the residue (if any) after payment of such debts he shall cause to be paid to the New Zealand Banking Company, or to a branch of the Union Bank of Australia, to be invested at interest there to an account to be called the "Registrar's or Deputy Registrar's Administration Account—Estate of A.B." No part of the moneys so paid and invested, or of the interest or profits thereof, shall be paid out without the authority of an order of the Supreme Court.

12. Every executor or administrator shall, within twelve calendar months after the decease of the testator or intestate, file in the office of the Registrar or Deputy Registrar a full and distinct account, in writing, of his administration of the estate (which shall set forth the dates and particulars of all receipts and disbursements), which account shall be verified by affidavit sworn before any solicitor of the Supreme Court or before some other person duly authorized to receive affidavits. If such account shall not be then exhibited, the Judge may fix a further time, at the expiration whereof, if the executor or administrator shall fail to pass his accounts, he shall be chargeable with interest out of his own funds at the rate of ten per cent. per annum for the balance (if any) remaining in his hands, unless he can show good and sufficient cause to the contrary.

13. Every account rendered by any Registrar or Deputy Registrar as such official administrator as aforesaid, shall be transmitted, as soon as conveniently may be, to the Colonial Secretary, for publication in the *Government Gazette*. Every such official administrator shall, as soon as conveniently may be after each of the four usual quarter-days, transmit to the Colonial Secretary (for the purpose of such publication as aforesaid) a true abstract, or balance sheet, exhibiting the actual state of the administration of all the estates under his control upon such quarter-day.

14. It shall be lawful for a Judge of the Supreme Court to allow to the Registrar or Deputy Registrar acting as official administrator, such commission or percentage out of such estate as shall be a reasonable compensation for his pains and trouble. Such percentage shall in no case exceed five pounds per cent., and shall not exceed two pounds ten shillings per cent. in the case of ready money forming part of the effects at the time of the decease, or in case of property specially bequeathed.

TABLE

Supreme Court Rules.

TABLE OF FEES.

Fees on probate or administration (including bond), as follows:—

	£	s.	d.
Where the estate shall be under £20	1	10	0
Where above £20	3	0	0

SCHEDULE.

AFFIDAVITS BEFORE THE GRANTING OF PROBATE.

No. 1.

In the Supreme Court of New Zealand, District of .
I, A.B., of , swear that I knew C.D., of , when alive, and that the said C.D. was resident [or domiciled] at , within this district, and that the said C.D. died at , on or about the day of .

Sworn at , this day of , one thousand eight hundred and , before me,
A.B.
E.F.

No. 2.

In the Supreme Court of New Zealand, District of .
I, , of , swear that I believe the writing now produced, bearing date the day of , and marked , to be the last will and testament of , deceased, and that I am the executor [or one of the executors] therein named. I swear that I will faithfully execute the said will by paying the debts and legacies of the deceased as far as the property will extend and the law binds, and that I will exhibit unto this Court a full and perfect inventory of all the personal estate, effects, and credits of the deceased, on or before the day of , and that I will file a true account of my executorship on or before the day of .

Sworn at, &c.

No. 3.—PROBATE.

In the Supreme Court of New Zealand, District of .
BE it known to all men, that on this day of , in the year one thousand eight hundred and , the last will and testament of , deceased, a copy of which is hereunto annexed, hath been exhibited, read, and proved before [William Martin, Esquire, &c. or Henry Samuel Chapman, Esquire, as the case may be], and administration of the personal estate, effects, and credits of the deceased hath been and is hereby granted to , the executor in the said will and testament named, being first sworn faithfully to execute the said will by paying the debts and legacies of the deceased as far as the property will extend and the law binds, and also to exhibit unto this Court a true, full, and perfect inventory of the said property on or before the day of , and file a true account of his executorship on or before the day of (reserving, nevertheless, to this Court full power and authority to grant like probate and administration to , the other executors named in the will, whenever they shall appear before this Court and sue for the same).

Given under the Seal of the said Court of , this day of , one thousand eight hundred and , Registrar.

No. 4.—AFFIDAVIT BEFORE GRANT OF ADMINISTRATION WITH WILL ANNEXED.

In the Supreme Court of New Zealand, District of .

I, , of , swear that I believe the writing now produced to me, bearing date the day of , and marked , to be the last will and testament of , deceased. I swear that, to the best of my knowledge, information, and belief, the estate, effects, and credits of the deceased, to be administered by me, are under the value of ; that I will faithfully execute the said will by paying the debts and legacies of the deceased, as far as the property will extend and the law binds; and that I will exhibit unto this Court a true, full, and perfect inventory of all the estate and effects and credits of the deceased on or before the day of , one thousand eight hundred and , and that I will file a true account of my administratorship on or before the day of .

Sworn at, &c.

No. 5.—OATH BEFORE GRANT OF ADMINISTRATION WITHOUT A WILL.

In the Supreme Court of New Zealand, District of .

I, , of , swear that, to the best of my knowledge, information, and belief, the estate, effects, and credits of the deceased to be administered by me are under the value of ; that I will exhibit unto this Court a true, full, and perfect inventory of all the estate, effects, and credits of the deceased on or before the day of ; and that I will file a true account of my administratorship on or before the day of .

Sworn at, &c.

No. 6.—LETTERS OF ADMINISTRATION WITH WILL ANNEXED.

In the Supreme Court of New Zealand, District of .

To , Widow [Widower or Next of Kin] of , deceased.

WHEREAS the said lately departed this life, leaving a will which has been duly proved in this Court, and whereas no executor is named in that will, you are therefore fully empowered and authorized by these presents to administer the estate and effects of the said deceased, and to demand and recover whatever debts may belong to his estate, and pay whatever debts the said deceased did owe, and also the legacies contained in the said will, so far as such estate and effects shall extend, you having been already sworn well and faithfully to administer the same, and to exhibit a true and perfect inventory of all the estate and effects unto this Court on or before the day of next, and also to file a true account of your administration thereof on or before the day of ; and you are therefore, by these presents, constituted administrator, with the will annexed, of all the estate and effects of the said deceased.

Given under the Seal, &c.

No. 7.—

Supreme Court Rules.

No. 7.—LETTERS OF ADMINISTRATION WITHOUT A WILL.

In the Supreme Court of New Zealand, District of
To , Widow, &c.

WHEREAS the said lately departed this life intestate, you are therefore fully empowered and authorized, &c., &c., and to pay whatever debts the said deceased did owe so far as such estate and effects shall extend, you having been, &c., &c., on or before the day of ; and you are therefore, by these presents, constituted administrator of all the estate and effects of the said deceased.

Given under the Seal, &c.

No. 8.—CAVEAT.

In the Supreme Court of New Zealand, District of

In the Will or Goods of A.B., late of , Deceased.

LET nothing be done in the will [or goods] of A.B., late of , in the Colony of New Zealand, deceased, without notice to , solicitor for C.D., of , having interest [or the widow or creditor of the deceased].

Dated this day of , one thousand eight hundred and

E.F., Solicitor for C.D.

No. 9.—ADMINISTRATION BOND.

In the Supreme Court of New Zealand, District of

Know all men by these presents that we, , of , &c., are held and firmly bound unto Registrar of the Supreme Court for the said district [or to the Registrar for the said district for the time being], in the sum of pounds, for which payment well and truly to be made to the said , or to such Registrar for the time being, we do and each of us doth bind ourselves and each of us, and the heirs, executors, and administrators of us and of each of us, jointly and severally, firmly by these presents.

Whereas by order of this Court of the day of , it is ordered that letters of administration of the personal estate, effects, and credits of , of , deceased, be granted to the said on his giving security for the due administration thereof: And whereas hath sworn that, to the best of his knowledge, information, and belief, the said personal estate, effects, and credits are under the value of pounds: Now the conditions of the above-written bond are, that if the above-bounden shall exhibit unto this Court a true and perfect inventory of all the personal estate, effects, and credits of the deceased which shall come into the possession of the said , or of any other person by his order or for his use, on or before the day of , and shall well and truly administer the same according to law, and shall render to this Court a true and just account of his said administratorship on or before the day of , then this bond shall be void and of none effect, but otherwise shall remain in full force.

A.B.
C.D.
E.F.

Signed the day of , one thousand eight hundred and , in presence of

AFFIDAVITS TO BE FILED BY THE REGISTRAR OR DEPUTY REGISTRAR BEFORE GRANT OF ADMINISTRATION.

No. 10.

In the Supreme Court of New Zealand, District of

In the matter of , Deceased Intestate.

I, A.B., of , swear that I knew C.D. when alive, and that the said C.D., at the time of his decease, was resident [or domiciled] at , within this county or district, and that he died at , on or about the day of , in the year one thousand eight hundred and . I swear that, to the best of my knowledge, information, and belief, the personal estate, effects, and credits of the deceased are under the value of .

Sworn at, &c.

No. 11.

In the Supreme Court of New Zealand, District of

In the matter of , Deceased Intestate.

I, , swear that I will exhibit unto this Court a full, true, and perfect inventory of all the personal estate, effects, and credits of the said deceased on or before the day of , and that I will file a true account of my administratorship on or before the day of .

Sworn at, &c.

IN the exercise of the powers to us given by the Supreme Court Ordinance (Session III., No. 1, sec. 25), the foregoing Rules, Forms, and Table of Fees have been settled and approved.

WILLIAM MARTIN, C.J.
H. S. CHAPMAN, J.