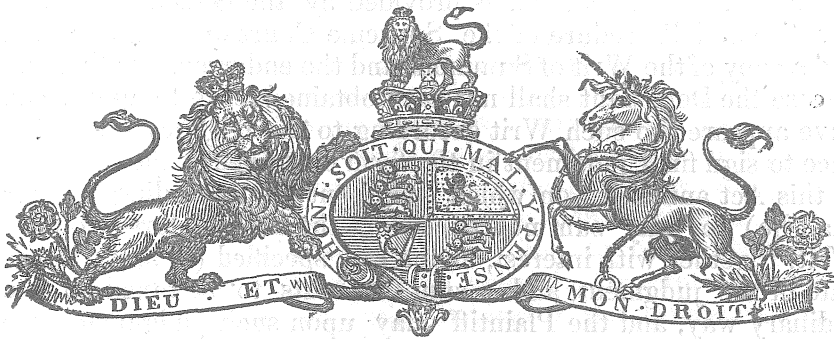


NEW ZEALAND.



ANNO VICESIMO QUARTO

VICTORIÆ REGINÆ.

[As Initiated into the Legislative Council, and lapsed there.]

ANALYSIS:

- | | |
|--|---|
| <p>Title.
Preamble.</p> <ol style="list-style-type: none"> 1. Commencement of action. 2. Defendant showing a defence upon the merits to have leave to appear. 3. Judge may, under special circumstances, set aside judgment. 4. Judge may order Bill to be deposited with Officer of Court in certain cases. 5. Remedy for the recovery of expenses of noting non-acceptance of dishonoured Bill. | <ol style="list-style-type: none"> 6. Holder of Bill of Exchange may issue one Summons against all or any of the parties to the Bill. 7. Rules of Practice of Supreme Court to apply. 8. Governor may direct that this Act shall apply to any District Court. 9. Judge of the Supreme Court may depute powers to Judge of District Court. 10. Short Title.
Schedule. |
|--|---|

A BILL to facilitate the remedies on Bills of Exchange and Promissory Notes by the prevention of frivolous or fictitious defences to actions thereon. Title.

WHEREAS *bond fide* holders of dishonoured Bills of Exchange and Promissory Notes are often unjustly delayed and put to unnecessary expense in recovering the amount thereof by reason of frivolous or fictitious defences to actions thereon, and it is expedient that greater facilities than now exist should be given for the recovery of money due on such Bills and Notes: Preamble.

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

I. From and after the 1st day of January, 1861, all actions upon Bills of Exchange or Promissory Notes commenced within six months after the same shall have become due and payable may be by Writ of Summons in the special form in the Schedule to this Act annexed, and endorsed as therein mentioned; And it Commencement of action.

shall be lawful for the Plaintiff, on filing an Affidavit of personal service of such Writ within the jurisdiction of the Court, or an order for leave to proceed, as provided by the General Rules of Practice and Procedure of the Supreme Court of New Zealand, and a copy of the Writ of Summons and the endorsements thereon, in case the Defendant shall not have obtained leave to appear and have appeared to such Writ according to the exigency thereof, at once to sign final judgment in the form contained in the Schedule to this Act annexed (on which judgment no proceeding in error shall lie) for any sum not exceeding the sum endorsed on the Writ, together with interest, at the rate specified (if any), to the date of the judgment, and a sum for costs to be taxed in the ordinary way, and the Plaintiff may upon such judgment issue execution forthwith.

Defendant showing a defence upon the merits to have leave to appear.

II. A Judge of the Supreme Court of New Zealand shall upon application within such period after the service of the Writ as shall be mentioned in the Writ, give leave to appear to such Writ, and to defend the action, on the Defendant paying into Court the sum endorsed on the Writ, or upon Affidavits satisfactory to the Judge, which disclose a legal or equitable defence, or such facts as would make it incumbent on the holder to prove consideration, or such other facts as the Judge may deem sufficient to support the application, and on such terms as to security or otherwise as to the Judge may seem fit.

Judge may, under special circumstances, set aside judgment.

III. After judgment, the Court or a Judge may, under special circumstances, set aside the judgment, and, if necessary, stay or set aside execution, and may give leave to appear to the Writ, and to defend the action, if it shall appear to be reasonable to the Court or Judge so to do, and on such terms as to the Court or Judge may seem just.

Judge may order Bill to be deposited with Officer of Court in certain cases.

IV. In any proceedings under this Act it shall be competent to the Court or a Judge to order the Bill or Note sought to be proceeded upon to be forthwith deposited with an Officer of the Court, and further to order that all proceedings shall be stayed until the Plaintiff shall have given security for the costs thereof.

Remedy for the recovery of expenses of noting non-acceptance of dishonoured Bill.

V. The holder of every dishonoured Bill of Exchange or Promissory Note shall have the same remedies for the recovery of the expenses incurred in noting the same for non-acceptance or non-payment, or otherwise, by reason of such dishonour, as he has under this Act for the recovery of the amount of such Bill or Note.

Holder of Bill of Exchange may issue one Summons against all or any of the parties to the Bill.

VI. The holder of any Bill of Exchange or Promissory Note may, if he think fit, issue one Writ of Summons, according to this Act, against all or any number of the parties to such Bill or Note, and such Writ of Summons shall be the commencement of an action or actions against the parties therein named respectively, and all subsequent proceedings against such respective parties shall be in like manner, so far as may be, as if separate Writs of Summons had been issued.

Rules of Practice of Supreme Court to apply.

VII. The provisions of the "General Rules of Practice and Procedure" of the Supreme Court of New Zealand, and the "Regulæ Generales, May, 1859," of the said Court, and all Rules made or hereafter to be made by the Judges of the said Court

by virtue of the powers vested in them by the law, shall so far as the same are or may be made applicable, extend, and apply to all proceedings to be had or taken under this Act.

VIII. It shall be lawful for the Governor from time to time to direct, that all or any part of the provisions of this Act shall apply to all or any District Court or Courts in New Zealand, and within one month after such order shall have been made and published in the *Government Gazette* such provisions shall extend and apply in manner directed by such order, and any such order may be in like manner from time to time, altered and annulled, and in and by any such order the Governor may direct by whom any powers or duties incident to the provisions applied under this Act shall and may be exercised with respect to matters in such Court or Courts, and may make any orders or regulations which may be deemed requisite for carrying into operation in such Court or Courts the provisions so applied.

Governor may direct that this Act shall apply to any District Court.

IX. It shall be lawful for any Judge of the Supreme Court from time to time by writing under his hand to give and depute to the Judge of any District Court within his own judicial District, the powers to do and perform all or any the acts which such judge of the Supreme Court is empowered by this Act to do or perform.

Judge of the Supreme Court may depute powers to Judge of District Court.

X. The Short Title of this Act shall be "The Summary Procedure on Bills Act, 1860."

Short Title.

SCHEDULE.

Form of Writ.

Victoria by the Grace of God, &c.
 To _____ of _____ in the Province of _____
 in the Colony of New Zealand, (designation)
 we warn you that unless within _____ clear days (being the number of days allowed for pleading to a declaration under Supreme Court rule 9,) after and exclusive of the day upon which this Writ shall be served upon you, you obtain leave from one of the Judges of our Supreme Court of New Zealand, to appear, and do within that time appear, in our said Court _____ District in an action at the suit of A.B., _____ the said A.B., may proceed to judgment and execution
 Witness, &c.

N.B.—If the last day for obtaining leave shall fall on any day from 20th March to 30th April, both included, the clear days are to be reckoned from 30th April.

Indorsements same as on Writ of Summons, under Rules 12, Supreme Court, and also,

The Plaintiff claims £ _____ principal and interest (or £ _____ balance of principal and interest) due to him as the payee (or indorsee) of a Bill of Exchange (or promissory note) of which the following is a copy (here copy it with all indorsements.)

And also _____ for noting (if any) and £ _____ for costs, and if the amount thereof be paid to the Plaintiff or his Attorney within _____ days from the serving hereof (being the same number of days as in the body of the Writ) further proceedings will be stayed.

Judgment.

Supreme Court of New Zealand, _____ District
 Province of _____ on the _____
 day of _____ 18 _____ A.B. in his own person (or by _____ his Solicitor) sued out a Writ against C.D., indorsed as follows: (here copy indorsement of Plaintiff's claim) and the said C.D. has not appeared.

Therefore it is considered that the said A.B. recover against the said C. D. £ _____ together with £ _____ for costs of suit.