

Supreme Court Rules.

No. XII.

SUPREME COURT
RULES.

AN ORDINANCE to confirm certain Rules, Forms, and Tables of Fees touching the Practice of the Supreme Court. [5th November, 1846.]

WHEREAS by an Ordinance enacted by the Governor of New Zealand, with the advice and consent of the Legislative Council thereof (Session III., No. 1), intituled "*An Ordinance for establishing a Supreme Court,*" it is amongst other things 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 for holding the Court, and the practice and pleadings upon all indictments informations suits and other proceedings therein, the proceedings of the Sheriffs 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 whereas 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 recited 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:

Preamble reciting
Ordinance Session
III., No. 1.And that Rules have
been made by the
Judges.

1. Be it therefore enacted by the Lieutenant-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.

The said Rules con-
firmed.

RULES, FORMS, AND TABLES OF FEES.

BARRISTERS AND SOLICITORS.

1. Every solicitor of the Supreme Court shall enter his name and his place of abode or some other place where he may be served with summonses orders rules notices and other proceedings in a book to be kept for that purpose at the office of the Registrar or Deputy Registrar, and shall make the like entry as often as he shall change his place of abode or other such place as aforesaid.

2. Every solicitor residing in any town or settlement other than Auckland and Wellington shall give notice to the Registrar of Auckland or Wellington or to both (if requisite) of the appointment of any person to act as agent for such solicitor, and such Registrar shall cause an entry to be made in the book mentioned in the foregoing Rule.

3. Every barrister who shall practice as a solicitor under the provisions of the Supreme Court Ordinance, Session III., No. 1, sec. 17, shall in all such matters as belong to his practice as a solicitor be subject to the control of the Court in like manner as solicitors are by law subject thereto.

4. It shall be competent for any barrister or solicitor of the Supreme Court to act as a perpetual Commissioner for taking the acknowledgments of married women under the Statute 3 and 4 William IV. c. 74, (the Act for the abolition of fines and recoveries,) upon payment to the Registrar of such fee as may be required by the Rules of the Court.

COMMENCEMENT OF SUIT.

5. The 12th Rule shall be deemed to apply to any complaint or demand of a civil nature within the ecclesiastical jurisdiction of the Court.

6. Where

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6. Where a plaintiff shall reside beyond the limits of the Colony, it shall be sufficient to file a written warrant or authority in the following form:—

I, the attorney of , under a power of attorney dated the day of , do hereby, &c. [as in Form No. 3].

At the time of filing such warrant or authority, the power of attorney therein mentioned shall be exhibited to the Registrar.

SERVICE OF PROCESS.

7. The 19th Rule shall be deemed to extend to the service of notices or other proceedings in any cross action or suit relating to the same property or arising out of the same instrument or transaction as the original suit.

8. In all applications to a Judge of this Court under Rules 21 and 22, it shall be necessary for the plaintiff or some other person to swear that at the time of making the application the defendant still keeps out of the way and cannot be personally served with process.

ARREST.

9. When a defendant shall be arrested under the 26th Rule the writ of summons, if not already served, shall be served at the time at which the writ of arrest is executed.

10. In all cases in which according to the practice of the Courts of Equity in England a party would be entitled to a writ *ne exeat regno*, the party so entitled shall proceed in the manner prescribed by the 26th Rule, and the writ, with such alterations as the circumstances of the case may render necessary, shall be in the Form No. 8.

IRREGULARITIES.

11. All objections on the ground of irregularity or insufficiency of the writ of summons, or particulars of demand or service thereof, shall be made when the cause shall be called on the appearance day and not afterwards. Notice in writing, specifying the irregularity or insufficiency complained of, shall be served on the plaintiff or his solicitor two clear days at least before such appearance day.

PLEADING.

12. The explicit particulars of set-off required by the 30th Rule shall be delivered to the plaintiff or his solicitor four clear days before the appearance day, and not to the Registrar at the time of pleading the same as required by the said Rule.

13. Where a defendant pleads a set-off exceeding in amount the sum claimed by the plaintiff, he shall be at liberty to add to his particulars of set-off a notice that he claims to recover the excess; and if the Jury shall find that the sum due by the plaintiff to the defendant exceeds the sum due to the plaintiff, the defendant shall be entitled to judgment and execution accordingly.

14. In an action of a bill of exchange or promissory note a partial failure of consideration may be pleaded, although the amount sought to be deducted shall be unliquidated and not in the nature of a debt certain.

UNDEPENDENT CAUSE.

15. The 43rd Rule shall be deemed to extend to actions brought for the recovery of an account stated by the plaintiff and defendant and signed by the defendant.

DISCOVERY.

16. The 57th Rule, relating to discovery, shall be extended to any party or intended party to a suit or action in the Supreme Court who would be entitled, according to the practice of the Superior Courts at Westminster, to file a bill in equity against the opposite party for a discovery.

EXAMINATION DE BENE ESSE.

17. The examination of a witness *de bene esse* may be taken before a Judge in the manner prescribed by the 57th Rule, or under a Commission, as the case may require.

EXECUTION.

18. The following Rule is substituted for Rule 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 the hearing of motions for a rule calling on the opposite party to show cause why a new trial should not be granted. Such motion may be made on circuit, but cause must be shown at Auckland or Wellington. If no such motion be made, or if the rule be refused, execution may issue forthwith. Writs of execution shall be in one other of the Forms Nos. 13 and 14 in the Appendix.

19. The provisions of the 1 and 2 Vict. c. 110, sec. 13, relative to the mode in which a judgment creditor shall proceed to obtain a sale of lands bound by the judgment, are substituted for the 65th Rule.

MOTIONS AND AFFIDAVITS.

20. The 68th Rule shall be confined to rules which are absolute in the first instance, and shall not be deemed to extend to rules to show cause. No affidavit shall be read in answer to any affidavit in support of the motion unless it shall have been filed in the Registrar's office during office hours on the day preceding.

21. Where

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21. Where a party would be entitled to move for a common injunction, he shall proceed by motion in the cause to stay proceedings therein, upon proper affidavit.

FINES.

22. The following is substituted for the 73rd Rule:—Cause must be shown on affidavit filed one clear day at least before the day fixed for showing cause. If sufficient cause be not shown, 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 or of such part thereof as to the Judge may seem meet.

SPECIAL JURIES (ADDITIONAL).

23. The 75th Rule shall not be construed to interfere with the practice as to certifying for costs in special jury cases, in conformity with the usage of the Superior Courts of Common Law at Westminster.

INJUNCTION.

24. In order to obtain an injunction to prevent irreparable injury or damage to property, or to restrain waste, or for any of the purposes to which a special injunction is by law applicable, it shall be necessary to apply to the Court or a Judge thereof upon an affidavit setting forth the circumstances out of which the plaintiff's right to such injunction may arise and the nature of the injury apprehended by him, and showing reasonable grounds for such apprehension.

25. Any defendant or other person against whom an injunction shall operate may move the Court to dissolve the same upon affidavit. Notice of such motion shall be given to the opposite party two clear days at least before the day appointed for the hearing thereof.

FEE PAYABLE TO THE REGISTRAR.

26. Appointment as perpetual Commissioner, under 3 and 4 Wm. IV., c. 74, £1.

SHERIFF'S FEES.

Fees shall be payable to the Sheriff and Sheriff's Officer according to the Table following, that is to say,—

	£	s.	d.
For every warrant or writ of arrest	0	4	0
For every arrest, if within five miles of the Court House...	0	10	0
For every arrest, if beyond five miles of the Court House...	1	0	0
For warrant to bailiff on writ of execution against goods ...	0	4	0
Taking possession under writ of execution and making inventory ...	0	5	0
If inventory exceed two folios, for each folio above two ...	0	0	6
Poundage at the English rate			
(In case of execution against goods, the poundage to be calculated upon the actual proceeds of the execution.)			
Drawing advertisement of sale (if required) and inserting same ...	0	5	0
Paid for advertisement			
Replevin bond	0	15	0
Inventory annexed thereto, per folio	0	0	6
Warrant to restore goods replevied	0	4	0
Return to any writ	0	2	0
Warrant on writ of execution against the person	0	4	0
For receiving money under the Statute upon deposit after the arrest ...	0	10	3
For bail bond on amount of debt, £1 per cent.			
Assignment of bail bond	0	5	0
For every sale by auction under execution, where the property sold does not produce £300, 5 per cent.; £400, 4 per cent.; £500, 3 per cent.; and where it exceeds £500, 2 per cent.			
Bond of indemnity	1	10	0
Attending to strike special jury	0	15	0
Summoning jury in civil cases (for each party)	0	6	0
(To be paid immediately after the swearing of the jury.)			
Summoning jury in criminal cases, for each juror	0	1	6

FEES TO SHERIFF'S OFFICER.

	£	s.	d.
Service of writ of summons within one mile from the Court House ...	0	2	0
Mileage beyond that distance, per mile one way	0	1	0
Summons on each juror within one mile from the Court House ...	0	0	4
For conveying defendant to gaol from place of arrest, per mile ...	0	1	0
Bailiff for executing warrant in writ of arrest or execution, if the distance does not exceed five miles	0	10	0

If

Appropriation.

	£	s.	d.
If beyond that, per mile	0	0	6
For each man left in possession, per day	0	4	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.

No. XIII.

APPROPRIATION.

AN ORDINANCE to appropriate the Revenue for the Year
One thousand eight hundred and forty-seven.

[6th November, 1846.]

Preamble.

WHEREAS it is expedient that such part of the general revenue of New Zealand as is subject to the disposal of the Colonial Government should be from time to time appropriated by authority of the Legislative Council:

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

Certain sums to be applied to the service of the year 1847.

I. Out of such part of the general revenue as aforesaid there may be issued and applied in manner hereinafter mentioned any sum or sums of money not exceeding the several sums hereinafter specified, that is to say,—

For defraying the charge of the Government of this Colony for the year one thousand eight hundred and forty-seven, the sum of thirty-four thousand three hundred and twenty-two pounds nine shillings, as hereinafter particularly specified, that is to say,—

	£	s.	d.
1. Superintendent of Southern Division and Establishment	888	0	0
2. Colonial Secretary's Department	290	0	0
3. Colonial Treasurer's Department	1,217	0	0
4. Audit Department	465	0	0
5. Surveyor-General's Department	1,523	12	6
6. Public Works Department	405	2	0
7. Customs Department	2,460	0	0
8. Harbour Department	1,612	15	0
9. Police Department	9,883	19	6
10. Medical Department	180	0	0
11. Militia	191	12	6
12. Supreme Court Department	1,499	15	0
13. Law Officers	606	5	0
14. Local Courts	260	0	0
15. Crown Prosecutions	350	0	0
16. Police Magistrates' Department	1,680	12	6
17. Sheriffs and Gaols	1,128	15	0
18. Coroners	80	0	0
19. Miscellaneous	4,300	0	0
20. Public Works	4,800	0	0
21. Roads at Nelson	500	0	0

Amounting in the whole to the aforesaid sum of £34,322 9 0

2. And