

*Supreme Court.*

foregoing provisions of this Act may do exercise and perform all the acts powers and duties which may be done exercised and performed by a Commissioner appointed for a like purpose in England by the Chief Justice or other Judge of the said Court of Common Pleas.

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**No. XVII.**
**SUPREME COURT.**

AN ACT to consolidate and amend the Law relating to the Supreme Court in New Zealand.

[27th October, 1860.]

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

Short Title.

1. The Short Title of this Act shall be "*The Supreme Court Act, 1860.*"

Repeal of former Ordinances and Acts.

2. The several Ordinances and Acts specified in the First Schedule hereunto annexed are hereby repealed.

Supreme Court a Court of Record.

3. The Supreme Court of New Zealand (hereinafter called the Court) shall be a Court of Record for the administration of justice throughout the Colony.

Legal jurisdiction.

4. The Court within the Colony shall have jurisdiction in all cases whatsoever as fully as Her Majesty's Courts of Queen's Bench Common Pleas and Exchequer at Westminster and each of such Courts have or hath in England at the time of the passing of this Act.

Equitable &amp;c.

5. The Court shall also have within the Colony all such equitable and common law jurisdiction as the Lord High Chancellor of England, the Court of Chancery, or any other Superior Court of Equity hath in England; and also all such jurisdiction and control over the persons and estates of infants, idiots, lunatics, and persons of unsound mind, and over the guardians and committees of such persons and estates respectively as the Lord High Chancellor of England hath under or by virtue of the Royal Sign-Manual or otherwise, so far as the same shall be applicable to the circumstances of the Colony.

Ecclesiastical.

6. The Court shall have within the Colony jurisdiction and authority in relation to granting and revoking probate of wills and letters of administration of the effects of deceased persons, and in regard to the hearing and determining of all questions relating to actions testamentary depending or which shall or may arise or be depending within the Colony as fully as the Court of Probate now hath in England in relation to those matters and causes testamentary and those effects of deceased persons which are within the jurisdiction of such Court of Probate, or as any Ecclesiastical Court had in England previously to the coming into operation of the Act 20 and 21 Vict. c. 77, commonly called "*The Court of Probate Act, 1857.*"

Offences committed before 14th January, 1840.

7. The Court shall not take cognizance of any criminal case where the offence shall have been committed before the fourteenth day of January, one thousand eight hundred and forty.

Capital conviction, mode of procedure.

8. Whenever sentence of death shall be pronounced by any Court or Judge in New Zealand, the officer whose duty it may be to carry out such sentence shall not proceed to execute the same till he have received an intimation of the Governor's pleasure with respect to such sentence; and it shall be the duty of such officer, within three days after

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after receiving a notice that the Governor will not interfere with such sentence, to carry out the same.

9. It shall be lawful for the Governor, in the name and on behalf of Her Majesty, from time to time to appoint such Registrars, Deputy Registrars, Clerks, Criers, and other officers as may be required for the conduct of the business of the Court throughout the Colony, who shall severally hold office during the Governor's pleasure.

Appointment of Registrars and other officers.

10. In order that the Court may be enabled to exercise the jurisdiction hereinbefore conferred upon it, every Registrar and Deputy Registrar shall have all the powers and perform all the duties in respect of the Court (except such powers and duties as any other officer may be specially appointed to exercise and perform) which the several officers of the several Courts hereinbefore mentioned respectively have and perform in England.

Powers and duties of Registrars.

11. The Court shall have in the custody of each Registrar or Deputy Registrar a seal of the Court for the sealing of all writs and other instruments or documents issued by such Registrar or Deputy Registrar and requiring to be sealed.

Seals of the Court to be provided for sealing writs probates &c.

12. Every such Registrar or Deputy Registrar shall, for the purpose of authentication, also have a seal or stamp wherewith summonses office copies certificates reports and other documents and writings requiring authentication may be sealed or stamped.

Seals for Registrars to be provided for sealing summonses &c.

13. Every Judge of the Court before entering on his office shall take an oath, according to the form in the Third Schedule hereunto annexed, faithfully to execute the duties thereof.

Judge's oath of office.

14. It shall be lawful for the Governor in Council from time to time to divide the Colony into judicial districts for the purposes of this Act, and the limits of such districts from time to time to alter as occasion may require.

Governor in Council may divide Colony into districts.

15. The Governor in Council shall assign every such district to a Judge or Judges of the Court, who shall have within the same all the powers and jurisdiction hereby given to the Court.

Governor in Council to assign districts to Judges.

16. Every Judge of the Court in his own judicial district shall have the same jurisdiction and may exercise the same powers in all matters whatsoever, and whether the said jurisdiction or powers exist at Common Law or be given by Statute, as fully as any one Judge or as any two or more of the Judges of the several Courts hereinbefore specified hath have or may exercise in England at the time of the passing of this Act.

Jurisdiction of a single Judge.

17. There shall be held Circuit Courts for the dispatch of civil and criminal business of the Court, before one of the Judges thereof, at such places and times as the Governor in Council may from time to time appoint: Provided always that when by reason of the death or absence of any Judge, or from any other cause, the Court cannot be held, a Registrar or Deputy Registrar may adjourn the same to such day as he shall deem convenient.

Circuit Courts.

18. It shall be lawful for a single Judge of the Court, on circuit or otherwise, to hear and determine all cases of crimes and misdemeanours committed within the district which shall have been assigned to him as aforesaid, and any issues of fact joined in any action or proceeding in the Court within the district or removed to such district for trial out of any other district by virtue of any general rules of the Court, and to exercise all such powers and jurisdiction as Courts of Oyer and Terminer and Gaol Delivery and Assize and Nisi Prius have in England.

Power of Judges on Circuit.

19. Subject to the power of alteration and revocation hereinafter contained, the General Rules of Procedure and the Schedule thereto annexed, specified in the Second Schedule to this Act, shall henceforth

Rules of Procedure.

be

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be the sole authority by which all matters and questions of practice pleading and procedure in all actions suits and other proceedings, civil and criminal, in the said Court shall be regulated and determined, except only those matters as to which the practice of any of the superior Courts of England is in the said rules expressly retained: Provided always that the rules of the Supreme Court (second day of May, one thousand eight hundred and forty-four,) touching the administration of estates and effects of persons deceased, and the rules (seventeenth day of December, one thousand eight hundred and forty-five,) touching official administration, shall have the same force and effect as though this Act had not been passed.

Judges may make other rules.

**20.** It shall be lawful for the Judges of the said Court from time to time, by other rules to be made for that purpose, to alter or revoke the aforesaid rules or any of them, or any other rules of the Court which now may or hereafter shall be in force, and also from time to time to make such additional rules touching the practice pleading and procedure of the Court in all matters, both civil and criminal, as the Judges may deem advisable; and all rules so made or altered shall have the same force and effect as if they had been inserted in the Second Schedule to this Act.

Each Judge may make certain rules for his judicial district.

**21.** Each Judge of the Court may in his own judicial district make such rules as he may think fit respecting the sittings of the Court, sittings at Chambers, and the order of disposing of business, and respecting hours for the service and delivery of process and pleadings, and the hours of attendance at the office of the Court by the Registrar or Deputy Registrar and his Clerks, and respecting other such matters: Provided that such rules shall not be inconsistent with the general rules of the Court, the laws of the Colony, or the proclamations of the Governor.

Judges may by consent try questions of fact.

**22.** The parties to any action may by consent in writing signed by them or their solicitors, as the case may be, leave the decision of any issue of fact to the Court, provided that the Court, upon a rule to show cause, or a Judge on summons, shall in their or his discretion think fit to allow such trial; or provided the Judges, in pursuance of the powers hereinbefore given to them, make a general rule or order dispensing with such allowance either in all cases or in any particular class of cases to be defined in such rule or order.

How to be tried.

**23.** Such issue of fact may thereupon be heard and determined and damages assessed, when necessary, in open Court by any Judge of the Court, either with or without the assistance of any other Judge or Judges of the Court; and the verdict of such Judge or Judges shall be of the same effect as the verdict of a jury, save that it shall not be questioned as being against the weight of evidence; and the proceedings upon and after such trial, as to the power of the Court or Judge, the evidence, and otherwise, shall be the same as in the case of trial by jury.

Proceedings pending.

**24.** All proceedings which shall have been commenced in the Court under the authority of any Ordinance or Act heretofore in force, which are still pending and incomplete, shall continue in as full force and effect, and may be continued executed and enforced, as if the same had been commenced under the authority of this Act.

Commencement of Act.

**25.** This Act shall come into operation on the first day of January, one thousand eight hundred and sixty-one.

*Barristers and Solicitors Admission.*

## SCHEDULES.

## FIRST SCHEDULE.

Session and Number.	By what Legislature passed.	Title.
Session II., No. 1.	Governor and Legislative Council.	"An Ordinance for establishing a Supreme Court."
Session III., No. 1.	Governor and Legislative Council.	"An Ordinance for establishing a Supreme Court."
Session IV., No. 1.	Governor and Legislative Council.	"An Ordinance to Confirm certain Rules, Forms, and Tables of Fees touching the Practice of the Supreme Court."
Session VII., No. 3.	Lieut.-Governor and Legislative Council.	"An Ordinance to amend 'An Ordinance for establishing a Supreme Court and to establish a Court of Appeals.'"
Session VII., No. 12.	Lieut.-Governor and Legislative Council.	"An Ordinance to Confirm certain Rules, Forms, and Tables of Fees touching the Practice of the Supreme Court."
Session IX., No. 3.	Governor-in-Chief and Legislative Council.	"An Ordinance to amend 'The Supreme Court Ordinance.'"
Session IV., No. 15.	General Assembly.	"An Act for regulating the Procedure of the Supreme Court."

## SECOND SCHEDULE.

GENERAL Rules of Procedure annexed to an Act of the General Assembly of New Zealand, Session IV., No. 15, intituled "*An Act for regulating the Procedure of the Supreme Court,*" except so far as the said rules are revoked or altered by any subsequent rules.

"Regulæ Generales, May, 1859," made by the Judges of the Court and approved by the Governor in Council the 31st day of May, 1859, except so far as the said Regulæ Generales are revoked or altered by any subsequent rules.

## THIRD SCHEDULE.

I, A.B., do swear that I will truly and faithfully, and to the best and utmost of my skill and knowledge, discharge the duties of [Chief Justice, or Judge of the Supreme Court, *as the case may be,*] without fear favour or malice. So help me God.

## No. XVIII.

AN ACT to continue, until the end of the next Session of the General Assembly, certain provisions for the Admission of Barristers and Solicitors of the Supreme Court. [27th October, 1860.]

BARRISTERS  
AND SOLICITORS  
ADMISSION.

WHEREAS by an Ordinance of the Governor and Legislative Council of New Zealand, Session III., No. 1, provision was made for the enroiment of certain persons as barristers and solicitors of the Supreme Court, and for the making of rules regulating the admission of barristers and solicitors to practice therein: And whereas by an Act of the General Assembly, intituled "*The Supreme Court Act, 1860,*" the said Ordinance is repealed: And whereas it is intended

Preamble.