

## No. VIII.

AN ORDINANCE to establish Courts of Requests for the COURTS OF REQUESTS  
more easy and speedy recovery of Small Debts.

[27th June, 1844.]

**W**HEREAS by an Ordinance made by the Governor of New Zealand, with the advice and consent of the Legislative Council, Session II., No. 2, and intituled "*An Ordinance for establishing County Courts of Civil and Criminal Jurisdiction, and for repealing an Ordinance for instituting Courts of Requests, Session I., No. 6, and for repealing part of an Ordinance for establishing Courts of Quarter Sessions, Session I., No. 4,*" it was enacted that there should be within the Colony of New Zealand County Courts of Record, possessing civil and criminal jurisdiction, in manner in the said Ordinance provided: And whereas by the appointment of an additional Judge of the Supreme Court it hath become practicable that all crimes and offences committed within the Colony may be tried before a Judge of the said Court: And whereas it is desirable that provision should be made for the recovery of small debts in a more easy and speedy manner than by the said Ordinance was provided: Preamble.

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

1. The said recited Ordinance is hereby repealed, except so far as any prior Ordinance or part of any Ordinance was repealed thereby. County Court Ordinance repealed.

### I.—CREATION OF COURTS.

2. There shall be within the Colony of New Zealand Courts for the recovery of small debts, which shall be called Courts of Requests. Courts to be created.

3. His Excellency the Governor shall, with the advice of the Executive Council, by Proclamation, from time to time appoint fit places for the holding of such Courts, and define the district within which the jurisdiction of each of such Courts shall be exercised, and the limits of such districts from time to time shall alter as occasion may require. And districts defined.

### II.—CONSTITUTION OF COURTS.

4. Every such Court shall be holden by and before a fit person, being a barrister or solicitor of the Supreme Court, who shall be and be called the Commissioner of the Court of Requests. To be holden before a Commissioner.

5. Every

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Commissioner how to be appointed.

5. Every such Commissioner shall be appointed by Her Majesty, her heirs and successors, and shall hold his office during Her Majesty's pleasure: Provided that it shall be lawful for His Excellency the Governor to appoint any such Commissioner provisionally until Her Majesty's pleasure shall be known; and in case any Commissioner shall by reason of sickness or other cause be unable to discharge the duties of his office, it shall be lawful for His Excellency the Governor to appoint a fit person, being such barrister or solicitor as aforesaid, to act in the place of such Commissioner so long as such inability as aforesaid shall continue.

To take an oath.

6. Every Commissioner shall before entering on his office take an oath before a Judge of the Supreme Court or some person specially appointed by such Judge, according to the form in Schedule A hereunto annexed, faithfully to execute the duties of his office.

Officers of Court.

7. For every such Court there shall be a Clerk and a Bailiff, both of whom shall be appointed by His Excellency the Governor, and shall be removable by him on reasonable cause.

Seal.

8. Every such Court shall have and use a seal wherewith all summonses warrants and other process issuing out of the Court shall be sealed, and of the impression whereof judicial notice shall be taken in all Courts without any evidence of such seal having been impressed, or any other evidence relating thereto.

### III.—JURISDICTION OF COURT.

Jurisdiction of Court.

9. Every such Court shall have exclusive cognizance of all suits where the debt or sum alleged to be due and owing shall not exceed twenty pounds sterling, and where the defendant (or any one defendant where there shall be more than one) shall reside within the jurisdiction of the Court: Provided that such Court shall not have cognizance of any suit where the debt sought to be recovered shall be the balance of an account or demand originally exceeding twenty pounds, nor of any suit wherein the title to any real property shall be in question, or where rights in future would be bound by the judgment of the Court: Provided always that any suit which would otherwise fall within the exclusive cognizance of any Court of Requests may by the agreement of all the parties thereto be brought and determined in the Supreme Court: Provided also that any suit which would otherwise fall within the cognizance of the Supreme Court may by the agreement of all the parties thereto be brought and determined in any Court of Requests which might have had cognizance thereof if the debt or amount alleged to be due and owing had not exceeded twenty pounds: Provided that should any suit be dismissed for want of jurisdiction, the Commissioner shall have power to award costs to defendant if he shall think proper to do so.

Cause of action not to be divided.

10. It shall not be lawful for any plaintiff to divide any cause of action into two or more suits for the purpose of bringing the same within the jurisdiction of the Court; but any plaintiff having cause of action above the value of twenty pounds may abandon the excess, and the judgment of the Court, if given in favour of such plaintiff, shall operate as a full discharge of the defendant from all demands in respect of such cause of action.

Judgment to be final.

11. The decision of the Commissioner shall be final on all questions both of fact and of law, nor shall any case be removed on behalf of either party into any Superior Court, by *certiorari* or otherwise, in any stage of the proceedings. Nevertheless it shall be lawful for the Commissioner, upon application by or on behalf of any of the parties to the suit made immediately on the delivery of the judgment, to

reserve

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reserve for the opinion of the Supreme Court any point of law upon which such judgment may directly depend, in which case execution shall not issue until the opinion of the Supreme Court shall have been pronounced.

**12.** No privilege shall be allowed to any person to exempt him from the jurisdiction of any such Court by reason of his being a solicitor of the Supreme Court. No privilege allowed.

## IV.—PRACTICE OF THE COURT.

**13.** In every district a Court shall sit on the first and third Wednesday in each month. Court to sit twice a month.

**14.** The office of the Clerk of the Court shall be open every day (not being Sunday, Good Friday, or Christmas Day) from ten o'clock in the morning to four o'clock in the afternoon of the same day. Office to be open daily.

**15.** Any person having any demand whereof the Court shall have cognizance may apply to the Clerk of the Court, and state to him the nature and amount of such demand. The plaintiff shall also at the same time deliver to the Clerk explicit particulars in writing of the plaintiff's demand, which shall set forth the same in a simple and compendious manner, specifying items dates and amounts. Where plaintiff may state his demand.

**16.** The Clerk shall forthwith issue a summons in the Form No. 2 in the Schedule hereto annexed, requiring the appearance of the defendant on such Court day as shall fall next after the expiration of ten clear days after the day of the service thereof, unless satisfaction shall have been previously made to the plaintiff. The summons and the particulars of the plaintiff's demand shall be forthwith served personally on the defendant and left with him by the Bailiff or his officer. Clerk to issue a summons.

**17.** At the time and place mentioned in the summons, both parties being present, the Commissioner shall proceed to ascertain the point in issue between them, and shall enter a written memorandum thereof in a book to be kept by him for that purpose. He shall then hear the evidence on both sides. The hearing.

**18.** On the hearing or trial of any suit, the parties thereto shall be competent to give evidence; such parties and all persons whatsoever competent in law to give evidence may be examined upon oath touching the matters in question. Before any party or witness shall be so examined, the Commissioner shall administer or cause to be administered an oath or solemn affirmation (as the case may require) to such party or witness accordingly. The parties to the suit may be examined on oath.

**19.** Every examination and cross-examination of any party or witness shall be conducted by the Commissioner alone, nor shall any person be allowed to appear and act as an advocate for any party to any suit. All examinations to be conducted by Commissioner.

**20.** Every defendant shall be allowed to set off any debts claimed to be due to him from the plaintiff, or to claim and have the benefit of any Statute of Limitations: Provided that no such defence shall be admitted unless notice thereof in writing shall have been left at the office of the Clerk of the Court five clear days at least before the day fixed by the summons for the appearance before the Commissioner. Set-off pleaded.

**21.** The Commissioner shall then proceed in a summary way to try the cause and give judgment therein: Provided that in the hearing and determining of all causes the Commissioner shall proceed according to the Laws and Ordinances in force for the time being within the Colony, except so far as the same may be altered or varied by this Ordinance. Causes to be determined in a summary way.

**22.** In case it shall appear to the Commissioner that by reason of the want of material evidence or otherwise he cannot then safely **and** Hearing may be postponed.

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and justly give judgment in the cause, it shall be lawful for such Commissioner to adjourn or postpone the hearing thereof until the next Court day, on which day the cause shall be finally heard and determined.

Commissioner in difficult cases may take time for judgment.

**23.** Provided always that if after the hearing of any cause the Commissioner shall be unable by reason of the difficulty or perplexity thereof at once to give judgment therein, it shall be lawful for such Commissioner to defer the delivery of such judgment for any time not exceeding two clear days after the hearing of the cause.

If defendant fail to appear, cause to be heard in his absence.

**24.** If on the day named in the summons the defendant shall not appear either in person or by agent, the Commissioner shall (after proof made upon oath of the due service of the summons) proceed to hear the cause on the part of the plaintiff only, and to give judgment thereon, whereupon execution may issue: Provided that in every such case it shall be lawful for the defendant to appear either in person or by agent on such next Court 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 day named in the summons; whereupon the Commissioner, if he shall deem the cause shown by the defendant to be sufficient, shall set aside the judgment and execution already given, and grant a rehearing of the cause upon such terms as to the Commissioner shall seem meet: Provided that the Bailiff shall not proceed to a sale of any of the goods and chattels seized under any such execution as aforesaid until after the defendant shall have so failed to appear at such next Court day as aforesaid.

Warrant of execution to be issued by Clerk against goods.

**25.** The Clerk of the Court shall, at the request of any party in whose favour judgment shall have been given, issue a warrant of execution (in the Form No. 4 in the Schedule hereunto annexed) to the Bailiff of the Court, who by virtue thereof shall be empowered to levy by distress and sale of the goods and chattels of the party against whom such judgment shall have been given (such goods and chattels being within the jurisdiction of the Court) such sum of money as shall be mentioned in the said warrant.

If goods insufficient, then against the body.

**26.** If it shall appear upon the return of the warrant that such goods and chattels cannot be found or do not suffice for payment of the sum to be levied, the Clerk of the Court shall upon such request as aforesaid issue a warrant of execution (in the Form No. 5 in the Schedule hereto annexed) to such bailiff as aforesaid, who by virtue thereof shall be empowered to take in execution the body of the person named therein.

Persons taken in execution to be imprisoned in common gaol for a limited period.

**27.** Every person who shall be taken in execution under any such warrant shall be committed to the common gaol of the district within which the Court shall be holden, and shall remain in custody for such time from the day of his commitment as shall be mentioned in such warrant, or until he shall perform and satisfy the judgment or order of the Court, or be discharged by due course of law.

Scale of terms of imprisonment.

**28.** The term of imprisonment shall be as follows, that is to say,—Where the sum for which the party shall have been taken in execution shall not exceed five pounds, one calendar month; where such sum shall exceed five pounds but shall not exceed ten pounds, two calendar months; where such sum shall exceed ten pounds, three calendar months and no more.

Debtor to be maintained in gaol by creditor.

**29.** Every creditor at whose suit any person shall be so imprisoned as aforesaid shall pay to the gaoler or keeper of the prison wherein such person shall be confined the weekly sum of four shillings towards the maintenance of such prisoner, and on proof being made to the Commissioner on oath of the said gaoler or keeper on any Court day

that

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that two such weekly payments are due and in arrear, the Commissioner shall order such prisoner to be forthwith discharged from custody at the suit of the creditor so failing to pay the same. Where any prisoner shall be discharged from custody under the provisions of this Ordinance, he shall not be liable at any time thereafter to be taken in execution for any debt or sum of money with respect to which he shall have been so imprisoned as aforesaid: Provided that, as against the estate and effects of such prisoner whatsoever and wheresoever, the judgment under which he shall have been so imprisoned as aforesaid shall be of as full force and effect as if the body of such prisoner had never been taken in execution by virtue thereof.

**30.** In executing any process of the Court, the Bailiff shall have such powers and be subject to such liabilities as any Sheriff hath or is subject to in like cases in executing the process of the Supreme Court.

In executing process, the bailiff to have same powers as a Sheriff.

**31.** It shall be lawful for any person under the age of twenty-one years to prosecute a suit for wages in any such Court in the same manner as if he were of full age.

Minors may sue for wages.

**32.** Where two or more persons are jointly answerable, it shall be sufficient if one of such persons be served with the process of the Court, and judgment may be obtained and execution issued against such person alone, reserving always any right which he may have to demand contribution from any other person jointly liable.

Process in case of joint liability.

**33.** Either of the parties to any suit may obtain at the office of the Clerk of the Court summonses to witnesses, with or without a clause requiring the production of books papers and writings in their possession or control. In any such summons any number of names may be inserted.

Summonses to witnesses.

**34.** Every person resident within the district of any such Court who, after lawful service of such summons and payment or tender of his expenses according to the scale in the Schedule hereto annexed, shall refuse or neglect without sufficient cause to appear or produce any books papers or writings as by such summons required, or appearing shall refuse to be sworn or make solemn affirmation (as the case may require) and give evidence, shall forfeit and pay such fine not exceeding five pounds as the Commissioner shall think fit to impose. The Bailiff shall thereupon proceed to recover such fine in the same manner and subject to the same provisions and limitations by distress and sale and (if need be) by imprisonment as if the amount had become payable by virtue of a judgment of any such Court.

Penalty for non-attendance.

**35.** Every person who shall be summoned and shall appear as a witness in any action in any Court of Requests shall be entitled to an allowance or compensation for expenses and loss of time according to the scale contained in the Schedule B hereunto annexed: Provided that such allowance or compensation to any witness shall not in any case be deemed to be costs in the cause unless the Commissioner shall have certified in writing, immediately after judgment shall have been pronounced, that the evidence of such witness was necessary to prove the case of the party by whom such witness was called.

Expenses of witnesses.

**36.** If in any case a solicitor shall be employed as agent or proxy on behalf either of plaintiff or defendant, the expense of employing such solicitor shall not in any case be considered as costs in the cause.

The expense of employing a solicitor not to be costs in the cause.

**37.** No person shall act as agent for any party plaintiff or defendant until he shall have delivered to the Clerk of the Court a written warrant or authority so to act, signed by the party on whose behalf he shall appear.

Agent to have written authority.

**38.** The Clerk and the Bailiff of the Court shall be entitled respectively to recover the fees specified in Schedule B hereto annexed,

Fees to Clerk and Bailiff.

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and no more. A table of such fees shall be hung up in some conspicuous place in the office of every such Clerk.

To be paid in advance.

**39.** All fees due to any officer shall be paid in advance and shall be paid in the first instance to the Clerk of the Court, but such part of such fees as shall be payable to the Bailiff of the Court shall be paid over to him by the Clerk after the performance of the service in respect whereof they shall have become due, and not before.

Clerk's fees to be paid into the Treasury.

**40.** All fees so received by any such Clerk (except such as shall have been received on account of the Bailiff), and all fines received by him, shall be accounted for and paid over monthly to the Colonial Treasurer or Treasurer of the county or district (as the case may be) to the use of Her Majesty her heirs and successors, for the public uses of the Colony and the support of the Government thereof.

Clerk to make notes of all proceedings.

**41.** The Clerk of the Court shall cause notes of all process issuing out of the Court, and of all proceedings therein, to be fairly entered from time to time in a book which shall be kept at his office, and shall sign his name at the bottom of every page of such book, and at the commencement of the business on every Court day he shall lay the same before the Commissioner in open Court.

Entries in note book to be evidence.

**42.** Any entry so signed, or a copy thereof purporting to be signed and certified as a true copy by the Clerk of the Court for the time being, and sealed with the Seal of the Court, shall be admitted in all Courts as evidence of the proceedings mentioned in such entry or copy thereof.

Contempt of Court to be punished.

**43.** If any person shall wilfully insult the Commissioner of any Court of Requests whilst sitting in Court, or shall in any other manner be guilty of any wilful contempt in the face of the Court, it shall be lawful for such Commissioner by warrant under his hand to commit the person so offending to the common gaol of the district within which such Court shall be holden for any term not exceeding one calendar month.

## V.—MISCELLANEOUS PROVISIONS.

Arrest of debtors escaping from the Colony.

**44.** And whereas debtors cannot be restrained from leaving the Colony except by a writ of arrest issued under the order of a Judge of the Supreme Court: And whereas it may often happen that immediate access cannot be had to a Judge of the Supreme Court for the purpose of obtaining such order: Be it therefore enacted, That it shall be lawful for any such Commissioner as aforesaid (in the absence of a Judge of the Supreme Court) to issue a warrant under his hand for the apprehension of any person so intending to leave the Colony, who shall thereupon give security (to the satisfaction of such Commissioner) to abide the result of an application to be made to a Judge of the Supreme Court for such writ of arrest as aforesaid, or in default thereof shall be kept in custody until the result of such application shall be known: Provided that no such warrant as aforesaid shall be issued except upon such affidavit as may be required in like cases by the Rules of the Supreme Court for the time being.

Period of detention not to exceed three months.

**45.** No person apprehended as aforesaid shall be detained in custody by virtue of any such warrant for any period exceeding three calendar months; and it shall be lawful for the Commissioner at any time within such period to require proof to be made (on affidavit) that due diligence has been used to obtain such writ of arrest as aforesaid, and in default of proof the Commissioner shall discharge the person so detained as aforesaid or cancel his securities, as the case may be.

Commencement of Ordinance.

**46.** This Ordinance shall come into operation on the first day of October, one thousand eight hundred and forty-four: Provided always that

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that when judgment shall have been given in any suit in any County Court before the said first day of October, one thousand eight hundred and forty-four, execution may be had and all other proceedings may be taken on such judgment as fully and effectually as if the said recited Ordinance (Session II., No. 2) had not been repealed.

## SCHEDULES.

## SCHEDULE A.

## FORMS.

(1.)—*Oath of Commissioner.*

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 a Commissioner of the Court of Requests, without fear favour or malice. So help me God.

(2.) *Summons to Defendant.*

To A. B., of [calling or occupation].

Auckland. } You are hereby summoned and required to appear, personally  
Court of Requests. } or by agent, before the Commissioner of the above mentioned  
Court, at the office of the said Court at [Auckland], on such Court day as shall fall  
next after the expiration of ten clear days after the personal service hereof, at ten  
o'clock in the forenoon, to answer the demand of C.D., of [calling or occupation],  
for the debt of [Insert the sum in words], the particulars whereof are hereto annexed.  
And take notice that if you shall fail so to appear, the plaintiff will obtain judgment  
and execution against you in your absence.

Dated the        day of       , one thousand eight hundred and         
By the Court. [L.S.]

BRING WITH YOU THIS SUMMONS AND THE PARTICULARS HERETO ANNEXED.

N.B.—The Court days are the first and third Wednesday of every month.

No plea of set-off or of any Statute of Limitations will be admitted unless notice thereof in writing shall have been left at the office of the Clerk of the Court five clear days at least before the day above named for your appearance before the Commissioner.

(3.)—*Judgment or Order for Payment of Money.*

Court of Requests holden at       , on the        day of       , 184 . Between  
      , plaintiff, and       , defendant.—It is ordered that the        do pay to the  
the sum of [Sum in words] for        debt, and [Sum in words] costs.

Entered        By the Court.  
      , Clerk.

(4.)—*Warrant of Execution against Goods.*

To the Bailiff of the said Court of Requests at [Auckland].

Auckland. } You are hereby commanded to cause to be made of the goods and  
Court of Requests. } chattels of       , of       , such goods and chattels being in your  
district, the sum of [in words] which is adjudged to       , of       , by an order of the  
said Court, dated the        day of       , and after levy made thereof forthwith to pay  
the same to the Clerk of the said Court at the office of the said Court in [Auckland];  
and in what manner you shall have executed this warrant make appear to the said Court  
immediately after the execution hereof, and have you then and there this warrant.

Dated the        day of       , one thousand eight hundred and         
By the Court. (L.S.)

(5.)—*Warrant of Execution against the Person.*

To the Bailiff of the Court of Requests at [Auckland].

You are hereby commanded to take       , of       , if he be found in your district,  
and deliver him into the custody of the keeper of the common gaol of the district of  
[Auckland] there to remain for the space       , or until he shall have satisfied the sum  
of [Sum in words] which he hath been ordered to pay to       , of       , by an order  
of the Court, dated the        day of       , one thousand eight hundred and       ;  
and in what manner you shall have executed this warrant make appear to the said  
Court immediately after the execution hereof, and have you then and there this warrant.

Dated the        day of       , one thousand eight hundred and         
By the Court. (L.S.)

*Native Trust.*

## SCHEDULE B.

## SCALE OF FEES, &amp;c.

	On Debts not exceeding 40s.	Exceeding 40s. but not exceeding £5.	Exceeding £5 but not exc. £10.	Exceeding £10.
	£ s. d.	£ s. d.	£ s. d.	£ s. d.
<b>CLERK'S FEES :—</b>				
Every summons ... ..	0 1 0	0 1 6	0 2 0	0 3 0
Every hearing ... ..	0 1 0	0 2 0	0 3 0	0 6 0
Entering notice of special defence ...	0 0 6	0 1 0	0 1 6	0 3 0
Entering any judgment or order ...	0 0 6	0 1 0	0 1 6	0 3 0
Every warrant of execution ... ..	0 1 0	0 2 0	0 3 0	0 6 0
Certifying costs of witnesses ... ..	0 0 6	0 1 0	0 1 6	0 3 0
<b>BAILIFF'S FEES :—</b>				
Serving summons or subpœna if within one mile of the office ... ..	0 0 6	0 1 0	0 1 6	0 2 0
For every mile extra (one way) ... ..	0 0 6	0 0 6	0 0 6	0 0 6
For execution of any warrant against the goods or body, 1s. in the pound upon the sum levied or received, or for which the body is taken in execution.				
If beyond one mile from the office, per mile (one way) ... ..	0 0 6	0 0 6	0 0 6	0 0 6
For conveying any person to prison (including all expenses), for every mile ... ..	0 1 0	0 1 0	0 1 0	0 1 0
Bailiff when in possession, per diem, 2s. 6d.				
<b>ALLOWANCE TO WITNESSES :—</b>				
For every witness residing within one mile of the office ... ..	0 2 0	0 2 0	0 2 0	0 2 0
For every extra mile (one way) ... ..	0 0 6	0 0 6	0 1 0	0 1 0