

NEW ZEALAND.

ANNO VICESIMO SEXTO

VICTORIÆ REGINÆ.

No. 12.

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An Act to define and extend the powers of the Judges of the Supreme Court to provide for the more speedy administration of Justice in certain cases and to amend the law relating to the administration of the Estates of deceased persons.

Title.

[9th September, 1862.]

WHEREAS it is desirable that certain doubts as to the Jurisdiction of the Supreme Court and its Judges should be set at rest and that certain additional powers and jurisdiction should be granted to the Court and the Judges thereof:

Preamble.

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

I. The Short Title of this Act shall be “The Supreme Court Amendment Act, 1862.”

Short Title.

II. It is hereby declared and enacted that the Jurisdiction of each of the Judges of the Supreme Court shall extend over the whole Colony.

Jurisdiction of each Judge.

III. Clause 4 of the “Supreme Court Judges Act 1858” is hereby repealed.

Repeal of Clause 4 of Supreme Court Judges Act.

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Removal of Judges.

IV. It shall be lawful for Her Majesty upon the Address of both Houses of the General Assembly to remove any Judge of the Supreme Court from his Office and to revoke his Patent or Commission And for the Governor to suspend any such Judge upon a like Address.

AND IT IS FURTHER ENACTED AS FOLLOWS :

Two or more Judges may act together at any place.

V. Any two or more Judges of the Supreme Court shall have power to sit at any place within the Colony and there exercise all the powers of the Court.

Power of single Judge out of his District on Circuit or otherwise.

VI. Any one Judge of the Supreme Court at any place within the Colony in case of the unavoidable absence from such place or of the death or illness of the Judge to whom the District within which such place is situate has been assigned or at the special request of such Judge in writing to be filed of record shall have all the Jurisdiction and may exercise all the powers which such last-mentioned Judge has or can exercise whether on Circuit or otherwise.

Minor Jury Sittings.

VII. Each Judge of the Supreme Court is hereby empowered to fix sittings at such times and places within the Judicial District assigned to him as he may think advisable to be called "Minor Jury Sittings" at which such questions of fact as in the section next hereinafter are mentioned may be decided by a Jury of six whose verdict shall have the same force effect and consequences as if such verdict had been given by a Jury of twelve at the ordinary Circuit Courts Provided that such Judge shall cause Public Notice of such sittings to be given in such way as shall seem to him most proper at least five days previously thereto.

Notice.

Cases triable at Minor Jury Sittings.

VIII. The following classes of Cases may be tried at the "Minor Jury Sittings" hereinbefore mentioned—

(1.) Inquiries of damages after judgment for default of plea where the damages are unliquidated and the amount claimed does not exceed One hundred pounds.

(2.) Issues of fact settled by the parties to any action after writ and with or without pleadings if both parties shall consent and shall agree to the Judgment which is to be entered upon the finding of the Jury on such issues.

(3.) Actions for liquidated demands not exceeding One hundred pounds where no special defence (as hereinafter defined) has been pleaded.

In such last mentioned cases joinder of issue and settling of issues shall be unnecessary and the Plaintiff shall be at liberty to set down the case for trial at any

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“Minor Jury Sittings” to be held not less than five days after plea pleaded having first given the Defendant four days notice of his intention to try. If the Plaintiff in such case do not give the defendant notice of trial for the next practicable “Minor Jury Sittings” after plea pleaded the Defendant may by summons call upon the Plaintiff to shew cause before a Judge at Chambers why the case should not be tried at such sittings and the Judge shall thereupon have power to order that it shall be tried at such sittings or otherwise as he may think fit.

(4.) Actions for unliquidated damages not exceeding One hundred pounds where no special defence (as hereinafter defined) is set up by the Defendant. Provided that if the Defendant should find security for the costs of the action to the satisfaction of the Registrar or Deputy Registrar the action shall proceed in the ordinary course according to the general practice of the Court.

(5.) Issues of fact in Actions for the recovery of possession of land or of chattels by leave of a Judge at Chambers.

(6.) Questions of fact raised in Actions for specific relief by order of a Judge with or without the consent of the parties.

IX. The words “special defence” in the last section shall be construed to mean any defence other than a denial of some material fact stated or implied in the declaration affecting either the cause of action or the amount to be recovered and pleas of payment tender set-off and the Statute of Limitations shall not be deemed special defences but if the Plaintiff shall desire to reply specially to any of such last mentioned pleas he must forthwith apply for leave to do so to a Judge at Chambers who may thereupon grant leave to reply and may make any order as to the trial of the case either at a “Minor Jury Sittings” or at the ordinary Circuit Court as he may think fit or in the absence of a Judge the Registrar or Deputy Registrar may on affidavit of the truth of the matter which the plaintiff seeks to reply grant him leave to reply accordingly.

Special defence defined.

Leave to reply.

X. At any such “Minor Jury Sittings” fixed as hereinbefore provided the Judge presiding thereat may try and decide any issues of fact which he is by law empowered to try.

Trial of issues of fact by Judge

XI. When Public Notice has been given by a Judge of the Supreme Court of the time and place at which a Minor Jury Sittings of such Court is to be held the Registrar of such Court shall forthwith give notice thereof to the Sheriff of the District within

Choosing and summoning Jurors.

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- which such place shall be situate and such Sheriff shall thereupon choose twelve persons by ballot out of the Jurors on the Jury List whose places of residence respectively are not more than three miles from the place at which such sitting is to be held Provided that the name of no person shall be again placed in the ballot box for the purpose of choosing such Jurors until all the persons liable to serve as Jurors at such Minor Jury Sittings shall have been summoned and provided that no person who shall have been summoned as a Juror to any such Minor Jury Sittings shall be summoned as a Juror to any Circuit Court till all the other persons on the list have been summoned The Jury at such Sittings shall consist of six Jurors chosen by ballot out of the twelve returned.
- Number of Jury.**
- Challenges.** XII. Each party in cases to betried at such Sittings may challenge four Jurors peremptorily and if there be not a sufficient number to form a Jury after such challenges then the Registrar of the Court may call upon any male bye-standers of full age not exempt from service on Juries to serve on such Jury.
- Power to summon Jury out of ordinary course.** XIII. It shall be competent for any Judge whenever any disputed question of fact has arisen in the course of any proceedings in the Supreme Court otherwise than in the ordinary course of an action or when it is in his opinion desirable that any fact should be determined at an earlier time than any appointed Circuit Court or Minor Jury Sittings to direct any Sheriff by *præcipe* to summon either 36 Jurors or if the parties consent to a Minor Jury of six 12 Jurors selected by ballot from the jury list in the same manner as Jurors are selected for the ordinary Circuit Courts or the Minor Jury Sittings to attend before any Judge of the Court at any time and place where such Jurors are liable so to serve as Jurors and serve on a Jury of twelve or of six according to the directions contained in such *præcipe* and the verdict of such Juries respectively shall be as valid and have the same effect as if they had been given by any Jury at an ordinary Circuit Court.
- Exemption.** XIV. Attendance in pursuance of a summons to serve on such last mentioned Juries shall exempt Jurors from liability to be re-summoned till the list has been exhausted in the same manner as if the attendance had been at an ordinary Circuit Court.
- Rules touching Administration.** XV. The rules now in force touching the administration of the Effects and Estates of persons deceased shall remain in force till rescinded or altered as provided by this Act.
- Rules may be revoked or amended.** XVI. The Judges of the Supreme Court from time to time with the approval of the Governor in Council may revoke or alter any of the said Rules and with such approval as aforesaid may make new and other Rules in that behalf and also touching the practice and procedure of the Supreme Court in respect of any matter or thing now or which shall at any time be within the Jurisdiction of the Supreme Court and such new and other Rules

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with such approval as aforesaid may from time to time alter and revoke.

XVII. For avoiding doubts as to the power of the Supreme Court to establish Fees the Fees now appointed to be taken by the Supreme Court shall continue to be taken and the Judges of the Supreme Court are hereby empowered from time to time to alter such Fees and from time to time to establish new and other Fees in respect of proceedings matters and things within the jurisdiction of the Court and to cause Tables of all Fees to be made printed and distributed as they shall from time to time direct and the same from time to time to revise and alter Provided nevertheless that all new Fees and alterations of existing Fees shall be approved of by the Governor in Council and shall be published in the *Government Gazette* and being so approved of and published shall be fixed and paid accordingly.

Supreme Court
to establish Fees.

XVIII. All Fees of the Supreme Court shall be paid to the Colonial Treasurer for the Use of Her Majesty for the Public Service as Revenue of the Colony.

Appropriation of
Fees.

XIX. In all cases of Official Administration granted to a Registrar or Deputy Registrar of the Supreme Court such Official Administrator shall cause an advertisement to be inserted in not less than two newspapers (if there be two) usually circulating in the place where the intestate was domiciled or resident at the time of his death in case he was domiciled or resident in the Colony or in case he was not domiciled or resident in the Colony then in the place where the property which the Official Administrator has to administer is situated calling upon all creditors of the Intestate to come in within three months and prove their claims and after the expiration of such period of three months the Official Administrator may at any time proceed to distribute the assets of the estate and if the same shall be sufficient after deducting all lawful costs and charges to pay the whole of the debts which have been proved before him he shall pay the same in full but if the same after such lawful deductions be insufficient for that purpose then he shall distribute the same to all the creditors who have proved as far as the same will go according to such priorities if any and subject to such directions as the Court or Judge shall declare in respect thereof Provided that any creditor may at any time before the final payment or distribution apply to the Court or a Judge at Chambers for leave to come in and prove his claim after the lapse of the said period of three months and such Court or Judge may grant him leave accordingly upon such terms as it or he may think fit.

Official Administration.

Notice to bar creditors

Distribution of assets.

XX. As soon as the Official Administrator has paid all the debts proved and paid over the residue if any to the Colonial Treasurer or if the assets were insufficient to pay all the debts proved has distributed them as above provided he shall be exonerated

Exoneration of
Official Administrator

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from and shall not be liable to any action claim or proceeding at the suit of any person who may have failed to come in and establish a claim within the period of three months above mentioned except for wilful misconduct.

Registrar may take charge of property of deceased before administration granted.

XXI. In case of the decease of any person and before probate of the will or administration to the estate and effects of such person has been granted or in case it shall at any time be made to appear by affidavit or otherwise to any Registrar or Deputy Registrar of the Supreme Court that there are grounds for believing that any person is dead if in either of the above cases it shall be made to appear by affidavit or otherwise to the satisfaction of a Registrar or Deputy Registrar of the Supreme Court that any goods chattels or effects of such person deceased or believed to be deceased situated and being within the district in which such Registrar or Deputy Registrar is acting are about to be or that there is any reasonable probability that the same will be wasted destroyed removed sold or otherwise disposed of to the prejudice of any person having an interest therein it shall be lawful for such Registrar or Deputy Registrar to cause possession and care to be taken of such goods chattels and effects by some person on behalf of the parties interested subject to the orders of the Supreme Court or a Judge thereof in respect of the same unless some person being in possession of such goods chattels and effects or claiming an interest therein shall give to such Registrar or Deputy Registrar security to his satisfaction that such person will not waste destroy remove sell or otherwise dispose thereof until probate of the will or letters of administration to the estate and effects of the deceased shall have been granted or other order shall have been made by the Supreme Court relating thereto and if afterwards administration shall be granted to a Registrar or Deputy Registrar as Official Administrator such Official Administrator may retain out of the proceeds of the estate and effects along with other lawful costs and charges the expenses of the custody and taking care of such estate and effects to be allowed by a Judge of the Supreme Court under his hand and if the Court or a Judge shall grant administration to any other person than such Registrar or Deputy Registrar or shall grant probate of the will of the deceased it shall be lawful for such Court or Judge to make such grant subject to the payment by the person to whom it shall be made of the expenses aforesaid allowed as aforesaid. And if the person believed to be dead shall afterwards appear and establish his claim to such goods chattels and effects the Court or Judge may order the same to be delivered to such person subject to and on payment of the expenses allowed as aforesaid.

Judges may delegate powers.

XXII. The Judge of the Supreme Court in any District may by an Instrument under his hand to be registered in the Registry of the Supreme Court for such District delegate to any person quali-

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fied as hereinafter mentioned the powers hereby created of exercising the Jurisdiction and functions of the Supreme Court in the Minor Jury Sittings constituted by this Act and the person to whom such Delegation shall be made may exercise such Jurisdiction accordingly as effectually as a Judge of the Supreme Court.

XXIII. The person to whom such Delegation shall be made shall be a Barrister or Solicitor of the Superior Court who shall have practised in the Superior Courts of Westminster or in the Supreme Court of New Zealand for the period of three years before such Delegation. To whom Delegation may be made.

XXIV. No such Delegation of powers shall continue in force for any longer period than twelve months. Continuance of Delegation.

XXV. No such Delegation shall be of any force or effect until the same shall have been approved of by the Governor in Council and shall have been registered as aforesaid. Approval &c. of Delegation.