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A BILL INTITULED :—

**An Act for establishing a Court of
Appeal.**

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

Short Title.

I. The short Title of this Act shall be “The Court of Appeal Act, 1862.”

Interpretation.

II. The term “Inferior Court” in this Act shall mean and include all Courts of Judicature within the Colony of inferior jurisdiction to the Supreme Court.

Court of Appeal constituted.

III. There shall be a Court of Record in the Colony to be styled “The Court of Appeal of New Zealand.”

Judges.

IV. The Judges of the Supreme Court of the said Colony for the time being shall be the Judges of the Court of Appeal.

Quorum of Judges.

V. Any two or more of the said Judges shall have power to act as the Court of Appeal: Provided that two Judges at least shall concur in every decision of such Court.

Decisions to be ruled by majority of Judges.

VI. The judgment of the Court shall be in accordance with the opinion of the majority of the Judges present. The Chief Justice, or in his absence the senior Puisne Judge present, shall preside in the said Court.

Decision appealed from to be affirmed under certain circumstances.

VII. If the Judges present shall be equally divided in opinion, the judgment, decree, or order appealed from or under review shall be deemed to be affirmed.

Time and place of Sittings.

VIII. The Court shall hold its sittings at such times and places as shall be from time to time fixed by the Governor in Council, and proclaimed in the “Government Gazette” sixty days at least before the times so fixed respectively.

Governor may appoint Officers of Court.

IX. The Governor may from time to time in the name and on behalf of Her Majesty appoint such Registrars, Deputy Registrars, Ushers, Clerks, Criers, and other officers, as may be required for the conduct of the business of the Court who shall severally hold office during the Governor's pleasure. Provided that until such appointment by the

Governor it shall be competent for any Registrar, Deputy Registrar, Usher, Clerk, Crier, or other Officer for the time being of the Supreme Court to act in the like capacity within his District in the Court of Appeal.

Powers and duties of Officers.

X. All such Registrars and other officers in the last section mentioned shall have in respect of such Court of Appeal, such powers and duties as the said Court of Appeal shall prescribe by Rules made under the provisions of this Act.

Court Seal.

XI. The Court shall have in the custody of the Registrar, or Deputy Registrar, a seal for the sealing of writs, orders, decrees, office copies, certificates, reports, and other instruments issued by such Registrar and requiring to be sealed.

Court may adjourn.

XII. The Court shall have power to adjourn its sittings from time to time till such time and to such places as to it shall seem fit.

Judges may make and alter rules.

XIII. It shall be lawful for the Judges of the Court of Appeal to make Rules for the practice and procedure of the Court, and from time to time, to revoke and alter such Rules, and make new and other Rules, and all Rules so made or altered shall have the same force and effect as if they had been inserted in this Act.

Causes may be remitted for special object to Supreme Court.

XIV. The Court of Appeal shall have power to remit any proceedings in any cause pending before it to the Supreme Court or a single Judge thereof.

Orders, &c., may be enforced by the Supreme Court.

XV. All orders, judgments and decrees of the Court of Appeal may be enforced by the Supreme Court as if the same had been made by the Supreme Court.

Fees.

XVI. *The Court of Appeal shall have power from time to time with approval of the Governor in Council to settle a Scale of Fees, and with such approval as aforesaid to alter such Scale and all fees payable under this Act shall be taken and deemed to be fees of the Supreme Court.*

Civil and Criminal decisions may be reviewed.

XVII. The Court of Appeal shall have power to review the decisions of any Judge of the Supreme Court on appeals from the District Courts or other Inferior Courts in matters both Civil and Criminal: Provided that no such appeal shall lie to the Court of Appeal, except by leave of the Judge whose decision is appealed against.

CIVIL JURISDICTION

I. JURISDICTION CONCURRENT WITH SUPREME COURT.

When cause may be shewn against a rule in the Court of Appeal in the first instance.

XVIII. Whenever a Rule *Nisi* shall have been granted by the Supreme Court if it shall be made to appear to the satisfaction of such Court, or of a Judge at Chambers, at any time before the day mentioned in such rule as the day for shewing cause against it, that the party who has obtained such rule and the party who is thereby called upon to shew cause, have consented that cause shall be shewn in the Court of Appeal; and if the Supreme Court, or such Judge at Chambers shall be of opinion that the question or questions to be raised on the shewing cause against such rule, is or are of sufficient difficulty or importance, such last mentioned Court or Judge may, at its or his discretion, order the proceedings to be removed, and the same shall then be removed into the Court of Appeal, which Court shall thereupon have the same power and authority to adjudicate upon such Rule as the Supreme Court would have had but for such removal.

For removing Demurrers, Special cases, and Special Verdicts from the Supreme Court into Court of Appeal.

XIX. Whenever issue shall have been joined on a demurrer, or a special case shall have been stated, or a special verdict shall have been found according to the practice of the Supreme Court; if it shall be made to appear to the satisfaction of such Court or a Judge at Chambers, at any time before the hearing of such demurrer, special case, or special verdict, that all the parties thereto have consented that the same shall be heard in the Court of Appeal, and if the Supreme Court or such Judge at Chambers shall be of opinion that the question or questions to be raised on such hearing is or are of sufficient difficulty or importance, such last mentioned Court or Judge may, at its or his discretion, order the proceedings to be removed, and the proceedings shall then be removed into the Court of Appeal; which Court shall thereupon have the same power and authority to adjudicate on such demurrer, special case, or special verdict, as the Supreme Court would have had but for such removal.

For removing final hearing on motion for final decree in actions for specific relief. Also application to summary jurisdiction, &c., into Court of Appeal.

XX. Whenever in any action or proceedings in the Supreme Court for specific relief, or petition or application to the Court in the exercise of its summary jurisdiction, the cause is ready for a final hearing, or either party has given notice of his intention to move such Court for a decree, which, according to the practice of such Court, would be a final decree, or when any question of law or equity has been raised for the decision of the Supreme Court at an earlier stage of the proceedings, if it shall be made to appear to the satisfaction of the Court or a Judge at Chambers, at any time before such hearing or motion petition or application, or the raising of such questions of law or equity, that all the parties to the action have consented by themselves or their Solicitors, that the same shall be heard in the Court of Appeal, and if the Supreme Court or such Judge at Chambers shall be of opinion that the question or questions to be raised on such hearing or motion is or are of sufficient difficulty or importance, such last mentioned Court or Judge may, at its or his discretion, order the proceedings to be removed, and the same shall then be removed to the Court of Appeal, which Court shall thereupon have the same power and authority to adjudicate on such case or motion, as the Supreme Court would have had, but for such removal.

Decision of Appeal Court final as regards Tribunals of the Colony.

XXI. On the removal of any case from the Supreme Court to the Court of Appeal under Sections 18, 19, and 20, of this Act, the decision of

the Court of Appeal shall be final as regards the tribunals of the Colony; and the same judgment shall be entered up in the Supreme Court, and the same execution and other consequences and proceedings shall follow thereon as if the decision had been given in the Supreme Court.

Transmission and return of Proceedings.

XXII. As soon as the Supreme Court or a Judge at Chambers shall have made an order for the removal of any case under sections 18, 19, or 20, to the Court of Appeal, the Registrar of the Supreme Court for the Judicial District in which such order was made, shall forthwith transmit to the Registrar of the Court of Appeal, the pleadings, cases, rules and affidavits, and all other documents and proceedings in the action, motion, petition, or application; and after the decision of the said Court of Appeal thereon, the Registrar of such Court of Appeal shall remit the same with a note of the along decision of such Court thereon, certified by the presiding Judge, to such Registrar of the Supreme Court as aforesaid.

II. APPEAL FROM DECISIONS OF SUPREME COURT.

Appeal on point reserved at the Trial.

XXIII. In every case of a rule to enter a verdict or nonsuit upon a point reserved at the trial, if a rule to shew cause be refused, or be granted and then discharged, or made absolute, by the Supreme Court, the party decided against may appeal to the Court of Appeal.

On motion for new Trial, Rule refused made absolute or discharged.—Decree in action for specific relief, &c.

XXIV. In every case of a Motion in the Supreme Court for a new trial on the ground that the Judge has not ruled according to law, or upon matter of discretion in respect of which a new trial may by law be granted by the Supreme Court, or in case of any other motion for a rule to shew cause, if the rule to shew cause be refused, or, having been granted, be discharged or made absolute by such Court, and in every case of a decree in an action for specific relief, or a rule or order for an injunction, or a rule or order on petition, or on application to the summary jurisdiction of the Court, where the matter complained of is not a proper subject for proceedings in Error under this Act, the party decided against may appeal to the Court of Appeal, provided the Supreme Court shall be of opinion that there is a reasonable ground of appeal, and shall grant leave to such party to appeal, subject to such terms, as to costs and otherwise, as the said Supreme Court shall direct.

If Court refuse leave to appeal petition to Court of Appeal.

XXV. In any case in which an appeal would lie from the Supreme Court according to the provisions of the last section, if the Court were to grant leave to bring such appeal, but where the Court refuses to grant the same, the party desiring to appeal may give notice in writing to the other party, within six days of such refusal, of his intention to present a petition to the Court of Appeal at its next sitting for leave to appeal, and in the meantime a case shall be stated in like manner as if leave to appeal had been granted by the Supreme Court; and if the Court of Appeal on hearing the said petition shall be of opinion that the Supreme Court ought to have granted the party leave to appeal, it shall then hear and determine the matter of the appeal; and all such proceedings shall be had thereupon as if leave to appeal had been granted by the Supreme Court; but if the Court of Appeal shall be of opinion that the Supreme Court properly refused to grant leave to appeal, it may dismiss the petition and give the other party single or double costs, including the costs of such party's appearance in the Court of Appeal and of his preparation for arguing the matter of such proposed appeal.

Notice of appeal.

XXVI. No appeal shall be allowed, under the twenty-third and twenty-fourth sections of this Act, unless notice thereof be given in writing to the opposite party or his Solicitor within four days after the decision complained of, or such further time as may be allowed by the Supreme Court or a Judge at Chambers,

When stay of Execution.

XXVII. Notice of appeal shall, except in cases of a decree or rule for an injunction to stay or prevent irreparable injury, be a stay of execution, provided bail to pay the sum recovered and costs, or to perform the judgment, decree, or order of the Court, and to pay the costs, or to pay costs where the appellant was plaintiff below, be given in like manner and to the same amount as for bail in error (as hereinafter is provided) within four days after the decision complained of, or before execution delivered to the Sheriff, but otherwise such notice shall not operate as a stay of execution.

Case to be stated for Court of Appeal.

XXVIII. The appeal in sections 23 and 24 of this Act mentioned shall be upon a case to be stated by the parties (and in case of difference, to be settled by the Supreme Court or a Judge at Chambers), in which case shall be set forth so much of the pleadings and evidence and the ruling or judgment objected to as may be necessary to raise the questions for the decision of the Court of Appeal.

Argument on rule nisi granted by Court of Appeal.

XXIX. When the appeal is from the refusal of the Supreme Court to grant a rule to shew cause, if the Court of Appeal shall grant such rule, such rule shall be argued and disposed of in the Court of Appeal.

Judgment of Court of Appeal to be as if given in Supreme Court.

XXX. The Court of Appeal shall give such judgment as ought to have been given in the Supreme Court; and all such further proceedings may be taken thereupon as if the judgment had been given in the said Supreme Court.

Power to award costs, &c.

XXXI. The Court of Appeal shall have power to adjudge payment of costs and to order restitution; and on such appeals as are mentioned in sections 23 and 24, it shall have the same powers of awarding process, and otherwise, as hereinafter provided in case of proceedings in error.

If appellant do not appear Court to affirm Judgment and give Costs.

XXXII. The Court of Appeal shall not be bound to consider the matter of the Appeal, unless the party appealing duly appear, in person or by counsel, to support such Appeal; and in case such party do not appear, the Court shall give judgment affirming the judgment of the Supreme Court: and if in such case the other party appear in person or by counsel, it shall be lawful for the Court of Appeal, in its discretion, also to give judgment to such last mentioned party for the costs of the appeal, against the party appealing.

III. CASES RESERVED BY JUDGES.

Case stated by Judge of Supreme Court for decision of Court of Appeal.

XXXIII. If in the course of any proceedings before the Supreme Court, a single Judge presiding therein shall be of opinion that any question

of law or relating to the exercise by him of any discretionary power vested in him which has arisen therein is a fit question for the consideration of the Court of Appeal, due regard being had to the interests of the parties concerned, it shall be lawful for such Judge to state a case in writing for the decision of such Court of Appeal, and to transmit the same to such Court; and the said Court of Appeal shall be bound to hear the parties, or either of them, or their counsel; but if neither party shall appear in person or by counsel before such Court, it shall nevertheless take the case into consideration, and shall pronounce its decision thereon, which shall be forthwith intimated to the Registrar of the Supreme Court for the district in which such Judge as last aforesaid was acting; and thereupon such judgment shall be entered, and such execution and other proceedings shall be had thereon, as if such decision had been given in the Supreme Court: Provided that such decision shall be final as regards the tribunals of the Colony.

Provision for amending the case if parties dissatisfied.

XXXIV. The Judge, who shall state such case as in the last section mentioned shall, before transmitting the same to the Court of Appeal, cause the same, on application for that purpose to the Registrar of the Supreme Court, to be shewn and a copy to be given to the parties interested, or their Solicitors; and if such parties or either of them shall, within three days after such case shall have been so shewn, object to the statement of the case by the Judge, such Judge shall cause the parties to come before him at Chambers, by summons, and shall, if he think fit, on hearing the parties or either of them who may appear before him, amend or alter such case, or finally adopt the same.

IV. STRIKING BARRISTERS OR SOLICITORS OFF THE ROLLS.

If Supreme Court think rule to strike Barrister or Solicitor off the roll, should be made absolute, or doubt thereon, case to be sent to Court of Appeal.

XXXV. Whenever a rule *nisi* has been granted by the Supreme Court, calling upon a Barrister or Solicitor on the rolls thereof to shew cause why he should not be struck off the rolls, if, upon cause being shewn, the said Supreme Court shall be of opinion that the rule ought to be made absolute, or that it is doubtful whether the rule ought to be discharged or made absolute, such Court shall reserve the case for the consideration of the Court of Appeal at its next sitting, and shall cause such rule and all affidavits made in support of or against such rule, and all other proceedings referred to in such rule to be forthwith transmitted to the Registrar of such Court of Appeal; and the Court of Appeal shall, at its next sitting, whether the party or his counsel appear in support of or against such rule, or not, decide thereupon, and order such rule to be made absolute, or to be discharged, as it shall think fit.

Nothing to prevent Supreme Court from discharging rule.

Provided that nothing herein contained shall prevent the Supreme Court from discharging the rule *nisi* hereinbefore mentioned, on cause being shown before, if it shall think fit.

Or from suspending Barrister or Solicitor from practice.

Provided also, that nothing herein contained shall prevent the Supreme Court from directing and ordering, but such Court may direct and order, if it shall think fit, on cause being shown against such rule, that the Barrister or Solicitor against whom it has been granted shall be suspended from acting as a Barrister or Solicitor, and from enjoying all or any of the privileges of such Barrister or Solicitor until the decision of the Court of Appeal upon such rule.

V. ERROR.

For what error will lie.

XXXVI. Error shall lie to the Court of Appeal upon any judgment of the Supreme Court whether given in the ordinary course of an action, or on a special case, and upon any award of a trial *de novo* by the Supreme Court or Court of Appeal upon matter appearing on the record in respect of any ground for which error would have lain from any of the Superior Courts of Common Law at Westminster to any Court of Error in England, on the 14th January, A. D., 1840.

Time for bringing error limited.

XXXVII. No judgment or award in any action or proceeding shall be reversed or avoided for any error or defect, unless proceedings in error be commenced and prosecuted with effect, within three years after the right to bring error shall have first accrued to the Plaintiff in Error, or within three years after the passing of this Act, whichever shall last happen.

Provision for disabilities.

XXXVIII. If any person entitled to bring error be at the time of the judgment signed or award made, within the age of 21 years, or a married woman, or of unsound mind, or out of the Colony of New Zealand, such person shall be at liberty to commence proceedings in error at any time within three years after coming to the age of 21 years, or ceasing to be a married woman, or becoming of sound mind, or coming into the Colony, respectively; or if the opposite party be out of the Colony at the time of the judgment signed, error may be brought against him, provided the proceedings in error be commenced and prosecuted with effect against him within three years after he has come into the Colony.

Writ of error unnecessary.

XXXIX. No writ of error shall be required in any case for the commencement of proceedings in error.

Memorandum and grounds of Error.

XL. Either party alleging error in law may deliver to the Registrar of the Supreme Court a Memorandum in writing, in the form contained in the Schedule to this Act annexed, or to the like effect, alleging that there is error in law in the record and proceedings, and stating the grounds of error intended to be relied on, whereupon the Registrar shall file such memorandum, and deliver to the party lodging the same—who shall thereafter be called the plaintiff in error—a note of the receipt thereof; and a copy of such note and of the memorandum and statement of grounds of error shall within six days after the delivery of such note by the Registrar be served by the plaintiff in error upon the opposite party, who shall thereafter be called the Defendant in error, or to his Solicitor.

Proceedings when Supersedes of Execution.

XLI. Proceedings for error in law shall be deemed a *supersedeas* of the execution from the time of the service of the copy of such note and of the memorandum and statement of the grounds of error, as last aforesaid, until default in putting in bail, or an affirmance of the judgment, or discontinuance of the proceedings in error, or until the proceedings in error shall be otherwise disposed of, without a reversal of the judgment: Provided always that if the grounds of error shall appear to be frivolous, the Court or a Judge may, on summons, order execution to issue.

Giving Bail in Error.

XLII. Upon any judgment hereafter to be given in the Supreme Court, execution shall not be stayed or delayed by proceedings in error either in law or in fact, or *supersedeas* thereupon, without the special order of such Court or a Judge, unless the person in whose name such proceedings in error are brought, with two, or by leave of the Court or a Judge, more than two sufficient sureties, such as the Court or a Judge or a Registrar of the Court shall approve of shall within six days after lodging the memorandum alleging error, or after the signing of the judgment, whichever shall last happen, or before execution executed, be bound unto the party for whom any such judgment is or shall be given, by recognizance acknowledged in the said Court or before a Judge at Chambers, in double the sum adjudged to be recovered by the said judgment (except in case of a penalty), and in case of a penalty in double the sum really due, and double the costs, to prosecute the proceedings in error with effect, and also to satisfy and pay (if the said judgment be affirmed, or the proceedings in error be discontinued by the plaintiff therein) all money and costs adjudged upon the former judgment, and also costs and damages to be awarded for the delaying of execution, and shall give notice thereof to the defendant in error or his Solicitor.

Pleas and Joinder in Error.

XLIII. Within fourteen days after the service of a copy of such note as in section 40 mentioned by the Plaintiff in error on the Defendant in error, the Defendant in error shall either deliver to the Registrar a joinder in error which the said Registrar shall then file, or shall deliver to the Plaintiff in error or his Solicitor a plea or pleas to the effect that the proceeding in error is barred by lapse of time, or by release of error, or of some other like matter of fact; and in default of the defendant in error delivering such joinder or plea within such time as last aforesaid, the judgment shall be reversed by the Supreme Court or a Judge at Chambers on application on behalf of the Plaintiff in error, notice of such application having been previously given to the defendant in error or his Solicitor: Provided always that such Court or Judge may enlarge the time for delivering such joinder or plea on reasonable cause being shewn, or may, on the hearing of such application for a judgment of reversal, on reasonable cause being shewn, grant to such Defendant in error further time to deliver such joinder or plea, on such terms as to costs or otherwise as to such Court or Judge shall seem fit.

Disposing of Issues of Law and Fact in a plea in Error.

XLIV. After the delivery by the Defendant in error of a plea in error as hereinbefore last mentioned, the pleadings thereupon shall proceed as in the ordinary course of an action, and if in such pleadings an issue of law be raised by demurrer, the case shall be set down for argument as hereinafter is provided for when there has been a joinder in error; but if in such pleadings an issue or issues of fact be raised, the Supreme Court or a Judge shall, on the application of either party, settle the issue or issues to be tried, and summon a Jury to try such issue or issues on such day as such Court or Judge may think fit, and the said Judge or some other Judge of the Supreme Court shall preside at such trial.

Result of Verdict on Pleas in Error.

XLV. If at the trial of such issues or issue of fact a verdict shall be found for the Defendant in error, the Court shall forthwith, on motion by such defendant, direct that the judgment already given by the Court shall be affirmed; and no further proceedings in error shall be taken on the judgment. But if the verdict be for the plaintiff in error on the issue, if there be but one, or on all the issues if there be several, then the case shall be set down for argument as if there had been a joinder in error.

Error by several joint parties.

XLVI. In case error be brought upon a judgment given against several persons, and one or some of them only shall proceed in error, the memorandum alleging error, and the note of the receipt of such memorandum shall state the names of the persons by whom the proceedings are taken, and the proceedings shall be continued in their names; but if the others elect to join before the case is set down for argument in the Court of Appeal, they may give notice thereof to the Registrar, who shall thereupon enter a suggestion to that effect, and they shall then become "Plaintiffs in Error."

Argument and Judgment in Error.

XLVII. Upon the receipt by the Registrar of the Supreme Court of the joinder in error, he shall cause the case to be set down for argument in the Court of Appeal at its next practicable sitting, and he shall, as soon as may be transmit to the Registrar of the said last mentioned Court the pleadings and judgment and all other proceedings in the action or matter within the custody of the Court; and the Court of Appeal may and shall thereupon review the proceedings, and give judgment as it shall be advised thereon; and such proceedings and judgment, as altered or affirmed, shall be remitted by the Registrar of the Court of Appeal to the Registrar of the Supreme Court, by whom the same had been transmitted; and such further proceedings as may be necessary thereon shall be awarded by the Supreme Court. Provided that if the Registrar of the Supreme Court shall be acting as Registrar of the Court of Appeal no such transmission of proceedings shall be necessary.

Quashing of Proceedings and Judgment by Court of Appeal.

XLVIII. The Court of Appeal shall have power to quash the proceedings in error in all cases in which error does not lie, or where they have been taken against good faith; and it shall have power in all cases except as hereinbefore provided, to give such judgment, and award such process as the Supreme Court ought to have done, without regard to the party alleging error.

Proceedings on error in fact.

XLIX. Either party alleging error in fact may deliver to the Registrar of the Supreme Court a memorandum in writing intitled in the Court and Cause, and signed by the party or his Solicitor, alleging that there is error in fact in the proceedings, together with an affidavit of the matter of fact in which the alleged error consists, (which the Registrar shall then file in the said Court), and may serve upon the other party a copy of such memorandum or affidavit; and such other party may demur or plead to the matter contained in such memorandum, and the pleadings after such memorandum shall be conducted in the same manner as if the said memorandum were the first pleading in an action, and every issue of law or fact arising in such pleadings shall be disposed of in the same way as issues of law or fact in the ordinary course of an action, and after such issue or issues of law or fact or both has or have been disposed of the Court shall give judgment of affirmance or reversal, or cause a *renire de novo* to issue or give such other judgment as the circumstances of the case may require.

Plaintiff may discontinue proceedings in Error.

L. The Plaintiff in error, whether in fact or law, shall be at liberty to discontinue his proceedings, by giving to the defendant in error a notice, headed in the Court and Cause, and signed by the Plaintiff in error or his Solicitor, stating that he discontinues such proceedings; and thereupon the Defendant in error may sign judgment for costs of, and occasioned by, the proceedings in error, and may proceed upon the judgment on which the error was brought.

Defendant may confess Error and consent to reversal of Judgment.

LI. The Defendant in error, whether of fact or law, shall be at liberty to confess error and consent to the reversal of the judgment, by giving to the Plaintiff in error a notice, headed in the Court and Cause, and signed by the Defendant in error or his Solicitor, stating that he confesses the error, and consents to the reversal of the judgment; and thereupon the plaintiff in error shall be entitled to and may forthwith sign a judgment of reversal.

Death of plaintiff in error no abatement.

LII. The death of a Plaintiff in error after service of the note of the receipt of the memorandum alleging error, with a statement of the grounds of error, shall not cause the proceedings to abate, but they may continue as hereinafter mentioned.

Death of one of several Plaintiffs in Error.

LIII. In case of the death of one of several Plaintiffs in error, a suggestion may be made of the death, which suggestion shall not be traversable, but shall only be subject to be set aside if untrue, and the proceedings may be thereupon continued at the suit of, and against the surviving Plaintiff or Plaintiffs in error, as if he or they were the sole Plaintiff or Plaintiffs.

Death of sole Plaintiff or of all the Plaintiffs in Error.

LIV. In the case of the death of a sole plaintiff or of all of several Plaintiffs in error, the legal representative of such plaintiff, or of the last surviving Plaintiff, may, by leave of the Court or a Judge enter a suggestion of the death, and that he is such legal representative, which suggestion shall not be traversable, but shall only be subject to be set aside if untrue, and the proceedings may thereupon be continued at the suit of, and against such legal representative, as the Plaintiff in error; and, if no such suggestion shall be made, the defendant in error may proceed to an affirmance of the judgment according to the practice of the Court, or take such other proceedings thereupon as he may be entitled to.

Death of Defendant in Error no abatement.

LV. The death of a defendant in error shall not cause the proceedings to abate, but they may continue as hereinafter mentioned.

Procedure on death of one of several Defendants in Error.

LVI. In case of the death of one of several Defendants in error, a suggestion may be made of the death, which suggestion shall not be traversable, but only be subject to be set aside if untrue; and the proceedings may be continued against the surviving defendant or defendants.

Procedure on death of sole Defendant, or of all the Defendants in Error.

LVII. In the case of the death of a sole Defendant or of all the Defendants in error, the Plaintiff in error may proceed, upon giving ten days' notice of the proceedings in error, and of his intention to continue the same, to the representatives of the deceased Defendants, or if no such notice can be given, then by leave of the Court or a Judge, upon giving such notice to the parties interested, as it or he may direct.

Marriage not to abate proceedings in Error.

LVIII. The marriage of a woman, plaintiff or defendant in error, shall not abate the proceedings in error, but the same may be continued in like manner as by the Rules of Practice and Procedure of the Supreme

Court is or may be provided with reference to the continuance of an action after marriage.

VI. APPEALS FROM DISTRICT COURTS.

Repeal of section 102 District Courts Act.

LIX. So much of the 102nd section of "The District Courts Act, 1858," as directs that the orders made by the Supreme Court on appeals from any District Court shall be final, is hereby repealed.

Proceedings for removing Appeal from Supreme Court into Court of Appeal.

LX. It shall be lawful for any party against whom any order of the Supreme Court shall have been made under the 102nd section of the last mentioned Act, on an appeal from any District Court, to give notice within six days after such order shall have been made to the other party or his Solicitor, and to the Registrar of the Supreme Court, of his wish to appeal to the Court of Appeal on some ground or grounds to be specifically alleged by him in such notice, and if the Judge who made such order shall certify in writing that in his opinion the ground or grounds alleged in such notice are, or that some one ground is fit to be argued in the Court of Appeal, and if such party so wishing to appeal shall within four days after the granting of such certificate, give security for the costs of such appeal, and for the amount of the judgment, if he be the defendant, to the satisfaction of the Registrar of the Supreme Court; then, on proof of notice that such certificate and security have been given, having been served upon the party appealed against, the said Registrar shall transmit to the Registrar of the Court of Appeal, the case agreed upon or settled under the 103rd section of the last mentioned Act, along with a memorandum of the order of the Supreme Court thereon, certified by the Judge who pronounces the same; and the said Court of Appeal, on hearing the parties or their Counsel, or such party or the Counsel of such party, as shall appear before it shall proceed to adjudicate upon such case, and its judgment thereon shall be final.

Direct appeal from District Courts decision.

LXI. If either party in any cause in any District Court shall be dissatisfied with the determination or direction of the Court in point of law, or upon the admission or rejection of any evidence and shall intimate the same, and state the ground or grounds of dissatisfaction to the Judge of the said Court, either at the hearing of the cause or within six days after such determination or direction, and the Judge shall certify, under his hand, such ground or grounds of dissatisfaction, and that such ground or grounds seem in his opinion, to involve some question of law of considerable difficulty or great importance, the party so dissatisfied may appeal directly to the Court of Appeal; and on notice of such appeal, and of such certificate and grounds being given to the other party or his Solicitor, and also on security being given as in the 102nd section of the said Act is provided, such proceedings shall be had, such case stated and settled, and such judgment or order shall be made by the said Court of Appeal, as if the said Appeal had been made under the provisions of that Act to the Supreme Court; and the judgment of the Court of Appeal on the said appeal shall be final.

Judgment of Court of Appeal when Appellant does not appear.

LXII. If the party appealing under either of the last two sections do not appear in person or by Counsel before the Court of Appeal, such Court shall affirm the order or judgment appealed against; and if the party appealed against shall appear, in person or by Counsel, the Court of Appeal may in its discretion, make an order that the costs of the appeal shall be paid by the appellant; and the judgment of the said Court of Appeal shall have the same effect and consequences and the

same proceedings may be taken thereon as if the judgment had been given in the District Court and the said last mentioned Court had jurisdiction to give such judgment.

CRIMINAL JURISDICTION.

I. TRIAL AT BAR.

Trial at Bar.

LXIII. When any Bill of Indictment hath been found in the Supreme Court or at a Circuit Court thereof, or any inquisition hath been found, or any criminal information been granted against any person for any crime or misdemeanour; if it shall be made to appear to the Supreme Court on affidavit, on the part of the accused or of the prosecutor, that the case is one of extraordinary importance or difficulty, and that it is desirable that it should be tried before the Judges at bar, the Supreme Court may grant a rule *nisi*, and if no sufficient cause be shown, may make the same absolute for the removal of such indictment, inquisition, or information, and the proceedings thereon, into the Court of Appeal, and for the trial of the same at bar at the next or other sitting of such Court of Appeal, and may direct that a Special or Common Jury, as the Supreme Court shall think fit, be summoned from the Province in which the alleged offence was committed or the accused was apprehended, or from the Province in which such sitting of the Court of Appeal shall take place, (or from some other Province, if sufficient reason be shewn to the Court), to serve upon such trial; and such proceedings, as nearly as may be, shall thereupon be had as upon a trial at bar in England; and the said Court of Appeal shall have the same jurisdiction, authority, and power in respect thereof, as the Court of Queen's Bench hath in England in respect of a trial at bar.

II. SPECIAL JURY.

Special Jury on Bill found.

LXIV. When any Bill of Indictment hath been found in the Supreme Court or at a Circuit Court thereof, or any inquisition hath been found, or any criminal information hath been granted to be tried in the Supreme Court or at a Circuit Court thereof, against any person for any misdemeanour, the accused or the prosecutor may, after notice given to the other party, apply on affidavit to the Supreme Court or the Judge presiding in a Circuit Court of the Supreme Court, for an order that such Indictment, inquisition, or information be tried by a Special Jury; and such Court or Judge may, after hearing the objections, if any, of the other party, direct, if it or he think that there are good grounds for so doing, and that it is practicable consistently with the public convenience to do so, that a Special Jury be summoned from the Province in which the alleged offence was committed or the accused was apprehended, (or from some other Province if sufficient reason be shown to the Court) to serve upon the trial, and that the trial take place in the Province from which such Jury shall be summoned, on some day to be specially fixed for such trial by such Court or Judge.

Mode of striking, &c., Jury.

LXV. The Special Jury directed to be summoned under either of the two last sections shall be struck and summoned in like manner as Special Juries are struck and summoned in civil actions.

What Jury shall try indictments, &c., on *certiorari*.

LXVI. If any indictment, information, or inquisition, be removed by *certiorari* from any inferior tribunal into the Supreme Court, it shall be lawful for the Supreme Court on granting the *certiorari* to order

that such indictment, information, or inquisition shall be tried either by Special or Common Jury as it may think fit.

III. REMOVAL OF CONVICTIONS AND ORDERS INTO COURT OF APPEAL.

Removal of Convictions and Orders to Court of Appeal direct.

LXVII. Whenever the Supreme Court grants a *certiorari* to bring up a conviction or order of a penal nature from an inferior Court, or in any case of Appeal on such conviction or order, such Supreme Court may, if the parties interested shall so agree, order that such conviction or order shall be removed directly into the Court of Appeal, which shall thereupon have such authority to hear and determine the same, and give such judgment thereon as the Supreme Court would have had, if it had been removed into it.

Appeal from Judgment of Supreme Court thereon.

LXVIII. Any party aggrieved by the judgment of the Supreme Court on any conviction or order removed into such Court by *certiorari*, or on appeal against any such order, may appeal to the Court of Appeal, and the same proceedings shall be taken for the transmission of the documents into such last mentioned Court, and for the hearing and determining of such appeal, as in civil cases, and the said Court of Appeal shall have power to give such judgment upon such appeal as the said Supreme Court might have done, besides judgment for the costs of the appeal.

IV. CASES RESERVED BY THE JUDGES.

Power to Judge of Supreme Court to reserve cases.

LXIX. When any person shall have been convicted of any treason, felony, or misdemeanour before any Court presided over by a Judge of the Supreme Court, such Judge may, in his discretion, reserve any question of law which shall have arisen on the trial, for the consideration of the Court of Appeal, and thereupon he shall have authority to respite execution of the judgment on such conviction, or postpone the judgment until such question shall have been considered and decided, as he may think fit, and in either case the Court in its discretion shall commit the person convicted to prison, or shall take a recognizance of bail with one or two sufficient sureties, and in such sum as the Court shall think fit, conditioned to appear at such time as the Court shall direct, and receive judgment, or to render himself in execution, as the case may be.

Procedure the same as in civil actions.

LXX. The provisions contained in sections 33 and 34 for the statement, amendment and hearing of a case when a Judge reserves a question of law in civil actions shall be applied, so far as they are applicable, to criminal cases.

Powers and procedure of Court on reserved cases.

LXXI. The Court of Appeal shall have full power and authority to hear and finally determine every such question of law as last mentioned; and thereupon to reverse, affirm, or amend any judgment which shall have been given on the indictment, information or inquisition on the trial whereof such question has arisen, or to avoid any such judgment, and to order an entry to be made on the record that in the judgment of the said Court of Appeal the party convicted ought not to have been convicted, or to arrest the judgment, or to order judgment to be given thereon at the next sittings of the Court in which the case was tried, if no judgment shall have been given before that time, as it shall be advised, or to make such other order as justice may require; and such judgment and order, if any, of the said Court of Appeal shall be certi-

fied under the hand of the presiding Judge to the Registrar, or other proper officer, of the Court in which the case was tried, who shall enter the same on the record in proper form; and a certificate of such entry, under the hand of such Registrar or officer, shall be delivered or transmitted by him to the gaoler in whose custody the person convicted shall be, if he has not been admitted to bail, or to whose custody he ought to be committed if the conviction should be affirmed; and if the judgment shall have been reversed, avoided, or arrested, such certificate shall be a sufficient warrant to the said gaoler to discharge the person so convicted, if in custody, out of his custody; or if the person convicted shall have been admitted to bail, the Court or Judge which shall have so admitted him, shall, on the production of such certificate, vacate the recognizances of bail; and if the judgment shall have been affirmed, or so altered that execution is to follow thereon against the party convicted, such certificate shall be sufficient warrant to such gaoler as aforesaid to execute and carry out such judgment so affirmed or so altered as aforesaid; and if the Court of Appeal shall direct the Court before whom such person was convicted to give judgment, then such last mentioned Court shall, at its next sittings, on the production of such certificate, proceed to give judgment accordingly.

Counsel may be heard, and judgment shall be given in open Court.

LXXII. On the hearing of any question so reserved as last aforesaid, the Court of Appeal shall hear the party convicted and the party prosecuting, or their Counsel, or either of them, if they or either of them appear, and shall pronounce judgment in open Court, whether the parties, or either of them, have appeared in person or by Counsel, or not.

Judge of Supreme Court may reserve for Court of Appeal questions reserved by District Courts.

LXXIII. In case the Judge of any District Court shall have reserved any question of law for the opinion of the Supreme Court, under the provision of the 152nd section of "The District Courts' Act, 1858," or otherwise, the Judge of the Supreme Court before whom such question shall be brought, may if he think fit, either before or after argument, reserve the same for the consideration and determination of the Court of Appeal, and the same proceedings, so far as they are applicable, shall thereupon be had, as if the question had been reserved by the Judge of the Supreme Court at a sitting of the Circuit Court before him: provided that in every such case, the said Court of Appeal on hearing and determining such question shall direct the Judge of the District Court to give judgment at his next sittings, and he then shall give judgment, pursuant to the determination of the Court of Appeal thereon.

V. ERROR.

For what Error will lie in criminal cases.

LXXIV. Error will lie to the Court of Appeal upon the judgement of the Supreme Court, or of any inferior Court, on any indictment, inquisition, or information, for any treason, felony, or misdemeanour, for or in respect of any matter, thing, or ground of error, for which error would have lain in England on the 14th January, A.D. 1840.

Powers of Court therein.

LXXV. The Court of Appeal shall have all such power, authority, and jurisdiction in respect of such proceedings in error as last aforesaid, as any Court of Error had in England on the said 14th January, A.D. 1840.

Fiat to be obtained from Attorney-General.

LXXVI. The party wishing to commence such proceedings in error as last aforesaid, shall obtain from the Attorney-General, or some

person thereunto authorised by him, a *fiat* granting leave to such person to commence proceedings in error, upon a statement of some grounds of error, and the certificate of Counsel that he is of opinion that there is a good ground for commencing such proceedings.

Writ of error unnecessary.

LXXVII. No writ of error shall be necessary to commence proceedings in error in criminal cases.

Delivery of *Fiat*, Memorandum and grounds. (Service on Prosecutor.)

LXXVIII. The party alleging error may deliver to the Registrar of the Supreme Court the *fiat* last mentioned, and also a memorandum in writing alleging that there is error in law in the record and proceedings and stating the grounds of error to be relied on; whereupon the said Registrar shall file such *fiat* and such memorandum, and deliver to the party lodging the same a note of the receipt thereof and a copy of such note and of such memorandum shall within six days of the delivery of such *fiat* and memorandum to the Registrar, be served by the party alleging error upon the prosecutor.

On Judgments for Misdemeanours, proceedings in Error, to be stay of execution.

LXXIX. In every case of judgment whether given before or after the passing of this Act for a misdemeanour where the defendant or defendants shall have obtained a *fiat* granting him leave to commence proceedings in error as hereinbefore provided all execution thereupon shall be stayed until such proceedings in error shall be finally determined; and in case the defendant or defendants shall be imprisoned under such execution, or any fine shall have been levied either in whole or in part in pursuance of such judgment, the said defendant or defendants shall be entitled to be discharged from imprisonment, and to receive back any money levied on account of such fine from the person or persons in whose possession the same shall be until such final determination as aforesaid. Provided always that no execution on any such judgment shall be stayed unless and until the defendant or defendants shall become bound by recognizance to be acknowledged before one of the Judges or a Registrar of the Supreme Court with two sufficient sureties to be approved of by such Judge or Registrar in such sum as such Judge or Registrar shall direct to prosecute such proceedings in error with effect, and in case the judgment shall be affirmed forthwith to render the said defendant or defendants to prison according to the said judgment where imprisonment shall have been adjudged, and every such recognizance shall after justification of bail be filed as of record in the said Supreme Court in like manner and on payment of the like fees as in the case of other recognizances filed therein; and the Judges of the said Supreme Court shall have the like powers in respect of justifying such bail in error, and the examination of the sureties, and the like rules shall apply as in respect of special bail in actions depending in such Court. Provided always that in the case of any defendant under legal disability it shall be sufficient if two persons to be approved of by such Judge or Registrar shall become bound by recognizance on behalf of such defendant to be acknowledged and conditioned as aforesaid. Bail.

Effect of Registrar's certificate as to recognizances.

LXXX. The Registrar of the Supreme Court shall for the purposes hereinafter mentioned make out and deliver to the defendant or defendants, or his or their lawful Attorney, certificates in writing under his hand and the seal of Court that such recognizance is duly filed of record in such Court upon payment of the like fees as for other certificates issued by the said Registrar, and any such certificate shall be a sufficient warrant to every gaoler or other person having custody of such defendant or defendants in execution of such judgment to discharge him or

them out of custody, and also to every person having in his possession the whole or any part of any fine levied in execution of such judgment to authorise and require the re-payment thereof to the defendant or defendants.

Currency of imprisonment, if judgment affirmed.

LXXXI. Where any judgment in any case of treason, felony, or misdemeanour shall be affirmed in error, and imprisonment shall have been adjudged, the period for its continuance in pursuance of such judgment, if such imprisonment shall not have commenced under such judgment, shall be reckoned to begin from the day when the defendant or defendants shall be in actual custody under such judgment, and if the defendant or defendants shall have been discharged from imprisonment, in manner herein before provided, such defendant or defendants shall be liable to be imprisoned for such further period as, with the time during which such defendant or defendants may already have been imprisoned under such judgment, shall be equal to the period for which such defendant or defendants was or were so adjudged to be imprisoned as aforesaid.

Regulations as to fine and imprisonment, if judgment affirmed.

LXXXII. When the judgment shall have been payment of a fine and imprisonment until such fine be paid, either with or without imprisonment for a certain time, and the defendant or defendants shall have paid the fine, or the same or any part thereof shall have been levied, and shall have been received back under the provisions hereinbefore contained and the judgement upon error brought shall be affirmed, the defendant or defendants shall not be entitled by reason of such payment as aforesaid to be discharged from imprisonment notwithstanding the expiration of any certain time of imprisonment for which the original judgment shall have been given, until the fine shall be again paid.

Proviso for joinder in error and procedure on default.

LXXXIII. Within 14 days after the service of a copy of such note and memorandum as in section 78 mentioned, by the plaintiff in error on the defendant in error, the defendant in error shall deliver to the Registrar a joinder in error, which the said Registrar shall then file; and in default of the defendant in error delivering such joinder within such time as last aforesaid the judgment shall be reversed by the Supreme Court or a Judge at Chambers, on application on behalf of the plaintiff in error notice of such application having been previously given to the defendant in error or his solicitor; provided always that such Court or Judge may enlarge the time for delivering such joinder on reasonable cause being shown, or may, on the hearing of such application for a judgment of reversal, on reasonable cause being shown, grant to such defendant in error further time to deliver such joinder on such terms, as to costs or otherwise, as such Court or Judge shall see fit.

Setting down case for argument, transmission and return of process.

LXXXIV. Upon receipt by the Registrar of the Supreme Court of the joinder in error, he shall cause the case to be set down for argument in the Court of Appeal at its next practicable sitting, and he shall, as soon as may be, transmit the same to the Registrar of the Court of Appeal, and the Court of Appeal may and shall thereupon review the proceedings and give judgment as it shall be advised thereon, and such proceedings and judgment as altered or affirmed shall be remitted by the Registrar of the Court of Appeal to the Registrar of the Supreme Court, by whom the same shall have been transmitted, and such further proceedings as may be necessary thereon shall be awarded by the Supreme Court.

On proceedings in error, Court of Appeal may pronounce or remit to Supreme Court for judgment.

LXXXV. Whenever proceedings in error have been brought upon any judgment in any case of treason, felony, or misdemeanour, and the Court of

Appeal shall reverse the judgment, it shall be competent for such Court of Appeal either to pronounce the proper judgment or to remit the record to the Court below, in order that such last mentioned Court may pronounce the proper judgment.

SCHEDULE.

Form of Memorandum in Error.

*In the Court of Appeal
of New Zealand.*

The day of *(the day of lodging the memorandum)*
A B, Plaintiff.
C D, Defendant.

The Plaintiff *(or Defendant, i. e. in the original action)* says that there is error in law in the record and proceedings in this action, and the following are the grounds of error which the Plaintiff *(Defendant)* intends to argue. *(Here state the grounds of error.*

*(Signed) A.B. Plaintiff,
(or B D, Defendant, or EF Solicitor for Plaintiff or Defendant.)*