

NEW ZEALAND.

ANNO VICESIMO SEXTO

VICTORIÆ REGINÆ.

ANALYSIS:

Title.	4. Judgment may in certain cases be set aside.
Preamble.	5. Court may order Bill &c., to be deposited.
1. Short Title	6. Expenses of Noting may be recovered.
2. Procedure for recovery of contents of Bill &c., and costs.	7. One Summons may issue against several Defendants.
3. Leave may be given to defend action.	8. General Rules of Procedure shall apply.

A BILL, INTITULED:

An Act to facilitate the Remedies on Bills of Exchange Promissory Notes and Cheques by the prevention of frivolous or fictitious defences to actions thereon.

WHEREAS bona fide holders of dishonoured Bills of Exchange Promissory Notes and Cheques on Bankers are often unjustly delayed and put to unnecessary expense in recovering the amount thereof by reason of frivolous or fictitious defences to actions thereon and it is expedient that greater facilities than now exist should be given for the recovery of money due on such Bills Notes and Cheques:

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 Summary Procedure on Bills Act, 1862.”

II. From and after the passing of this Act all actions upon Bills of Exchange Promissory Notes or Cheques on Bankers commenced within six months after the same shall have become due and payable may be by Writ of Summons in the special form contained in Schedule A. to this Act annexed and indorsed as therein mentioned; and it shall be lawful for the Plaintiff on filing an Affidavit of personal service of such Writ within the jurisdiction of the Court or an order for leave to proceed as provided by the Rules of the Supreme Court of New Zealand, and a copy of the Writ of Summons and the indorsements thereon, in case the Defendant shall not have obtained leave to appear and have appeared to such Writ according to the exigency thereof, at once to sign final judgment in the form contained in Schedule B to this Act annexed (on which judgment no proceeding in error shall lie) for any sum not exceeding the sum indorsed on

the Writ together with interest at the rate specified if any and if no rate be specified then at the rate of eight pounds per centum per annum to the date of the judgment and a sum for costs to be fixed by the Judges of the Supreme Court of New Zealand (or any of them within his own district until such sum be fixed by all of the said Judges) and the Plaintiff may upon such judgment issue execution forthwith.

Leave may be given to defend action.

III. Any Judge or Registrar of the said Court shall upon application within the period of twelve days from such service give leave to appear to such Writ and to defend the action on the Defendant paying into Court the sum indorsed on the Writ or giving security for such sum to the satisfaction of the Judge or Registrar and any Judge of the said Court may upon such application give such leave upon affidavits satisfactory to him which disclose a legal or equitable defence or such facts as would make it incumbent on the holder to prove consideration or such other facts as the Judge may deem sufficient to support the application and on such terms as to security or otherwise as to the Judge may seem fit.

Judgment may in certain cases be set aside.

IV. After judgment the Court or a Judge may under special circumstances set aside the judgment and if necessary stay or set aside execution and may give leave to appear to the Writ and to defend the action if it shall appear to be reasonable to the Court or Judge so to do and on such terms as to the Court or Judge may seem just.

Court may order Bill, &c., to be deposited.

V. In any proceedings under this Act it shall be competent to the Court or a Judge to order the Bill Note or Cheque sought to be proceeded upon to be forthwith deposited with the Registrar of the Court and further to order that all proceedings shall be stayed until the Plaintiff shall have given security for the costs thereof.

Expenses of Noting may be recovered.

VI. The holder of every dishonoured Bill of Exchange Promissory Note or Cheque shall have the same remedies for the recovery of the expenses incurred in noting the same for non-acceptance or non-payment or otherwise by reason of such dishonour as he has under this Act for the recovery of the amount of such Bill or Note.

One Summons may issue against several Defendants.

VII. The holder of any Bill of Exchange Promissory Note or Cheque may if he thinks fit issue one Writ of Summons according to this Act against all or any number of the parties in such Bill Note or Cheque resident within the judicial district in which such Writ is issued and such Writ of Summons shall be the commencement of an action or actions against the parties therein named respectively and all subsequent proceedings against such respective parties shall be in like manner so far as may be as if separate Writs of Summons had been issued.

General Rules of Procedure shall apply

VIII. The provisions of the General Rules of Procedure of the Supreme Court of New Zealand now or hereafter made shall so far as the same are or may be made applicable extend and apply to all proceedings to be had or taken under this Act.

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SCHEDULES REFERRED TO IN THE FOREGOING ACT.

SCHEDULE A.

Victoria by the Grace of God of the United Kingdom of Great Britain and Ireland Queen. To C. D. of in the Province of We warn you that unless within twelve days after the service of this writ on you inclusive of the day of such service you obtain leave from a Judge or Registrar of the Supreme Court of New Zealand to appear and do within that time appear and plead in our said Court in an action at the suit of A B, of (Description), the said A B, may proceed to judgment and execution.

Witness New Zealand at Judge of our Supreme Court of this day of 18

Memorandum to be subscribed on the Writ.

This Writ is to be served within six calendar months from the date hereof and not afterwards.

Indorsement to be made on the Writ before service thereof.

This Writ was issued by of Solicitor for the Plaintiff; or, this Writ was issued in person by A. B., who resides at (mention the district town or city and street where the Plaintiff resides. If this be more than one mile from the Court House of the Province in which the Writ is issued add) and whose address for service of pleading is at (mentioning some office within one mile of such Court House).

The Plaintiff claims £, principal and interest (or £ balance of principal and interest and noting charges) due to him as the (payee indorsee or holder) of a Bill of Exchange (Promissory Note or Cheque) of which the following is a copy.

Here copy the Bill Note or Cheque verbatim with all indorsements.

And if the amount thereof with £ costs be paid to the Plaintiff or his Solicitor within twelve days from the service hereof further proceedings will be stayed.

Leave to appear and plead may be obtained on application at the Supreme Court Office upon payment of the above claimed amount into Court or upon sufficient affidavits.

Indorsement to be made on the Writ after service.

This Writ was served on (the Defendant or Defendants), personally on the day of 18 By X. Y. of

SCHEDULE B.

In the Supreme Court of New Zealand District Province of

Between Plaintiff and Defendant.

On the day of 18 (day of signing judgment)

Judgment signed for £, on a Writ indorsed as follows (here copy indorsement from "the Plaintiff claims," &c. to "stayed") which Writ was served on the day of 18, and to which the Defendant has not appeared and pleaded.

R. S. Plaintiff's Solicitor.

