

Supreme Court.

ANNO SEPTIMO

VICTORIÆ REGINÆ.

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SESSION III. No. I.

AN ORDINANCE for establishing a Supreme Court. SUPREME COURT. [13th January, 1844.]

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

I.—CREATION OF COURT.

1. There shall be within the Colony of New Zealand a Court of record for the administration of justice throughout the Colony, which Court shall be called the Supreme Court of New Zealand. Creation and style of Court.

II.—JURISDICTION OF COURT.

2. The Court shall have jurisdiction in all cases as fully as Her Majesty's Courts of Queen's Bench, Common Pleas, and Exchequer at Westminster have in England. Legal.

3. The Court shall also have all such equitable jurisdiction as the Lord High Chancellor of Great Britain hath in England. Equitable.

4. The Court shall also have exclusive jurisdiction in all questions relating to testacy and intestacy and the validity of wills of personal property, as fully as any Ecclesiastical Court hath in England. The Court shall also have exclusive power to grant probates of wills and letters of administration of the estates and effects of deceased persons, and to take order for the due passing of the accounts of the executors and administrators of such persons. Ecclesiastical.

5. The Court shall also have power to appoint and control guardians of infants and their estates, and also Committees of the persons and estates of idiots, lunatics, and such as being of unsound mind are unable to govern themselves and their estates. Lunacy.

6. The Court shall also be an Instance Court of Vice-Admiralty, with such power and jurisdiction as belong to Courts of the like nature within the Colonial possessions of Her Majesty. Vice-Admiralty Instance Court.

7. The Court shall have cognizance of all crimes and offences committed within the jurisdiction of the Vice-Admiral of the Colony of New Zealand as fully and effectually as if the same had been committed on the land within the limits of the Colony. Criminal jurisdiction.

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

9. The Court shall have and use a Seal wherewith all writs and other process issuing out of the Court shall be sealed. Seal.

III.—CONSTITUTION OF COURT.

10. The Court shall consist of one Judge, who shall be called the Chief Justice of New Zealand, and of such other Judges as Her Majesty Judges.

*Supreme Court.*

Majesty shall from time to time be pleased to appoint: Provided that it shall be lawful for His Excellency the Governor to appoint such Judges provisionally until Her Majesty's pleasure shall be known. The Judges of the Court shall hold their office during Her Majesty's pleasure.

Oath of office.

**11.** Every Judge before entering on his office shall take an oath according to the form in the Schedule hereunto annexed faithfully to execute the duties thereof.

Districts.

**12.** It shall be lawful for His Excellency the Governor, with the advice of the Executive Council, by Proclamation from time to time to divide the Colony into districts for the purpose of this Ordinance, and the limits of such districts from time to time to alter as occasion may require. It shall also be lawful for His Excellency the Governor to assign to each of such districts a Judge or Judges, who shall have within the same all the powers and jurisdiction hereby given to the Supreme Court.

Officers of the Court.

**13.** There shall belong to the Court such Registrars and inferior officers for each of such districts as to the Judge or Judges of each of such districts shall appear necessary, subject to the approval of His Excellency the Governor.

Registrars.

**14.** The Registrars shall be appointed provisionally by His Excellency the Governor, and shall hold their offices during Her Majesty's pleasure.

Inferior officers.

**15.** The inferior officers of each district shall be appointed by the Judge or Judges of the respective districts, with the sanction of His Excellency the Governor, and shall be removable on reasonable cause by the Judge or Judges of the respective districts with the sanction of His Excellency the Governor.

Barristers and solicitors.

**16.** There shall be enrolled in the Court to practice therein as barristers such persons only as shall have been admitted barristers or advocates in Great Britain or Ireland, or such as shall be admitted hereafter within the Colony under the authority of any Law that may hereafter be passed for that purpose, and to practice therein as solicitors such persons only as shall have been admitted as solicitors, attorneys, or writers in one of the Courts of Westminster, Dublin, or Edinburgh, or proctors in any Ecclesiastical Court in England, or shall have served such term of clerkship with a solicitor of the Court as shall be required by the general rules thereof, or shall have established themselves in the exercise of their profession on or before the twenty-second day of December, one thousand eight hundred and forty-one. All persons so enrolled shall be removable from the rolls of the Court upon reasonable cause, whensoever and wheresoever the same may have arisen.

Their practice.

**17.** The barristers of the Court shall be allowed to act as solicitors and the solicitors of the Court to act also as barristers for the period of five years after the passing of this Ordinance, unless the Court shall in the meantime make order to the contrary; any such order may extend to the whole Colony or may be restricted to any part thereof as to the Court shall seem fit.

Sheriff.

**18.** His Excellency the Governor shall, by warrant under his hand, appoint provisionally, subject to Her Majesty's confirmation, fit persons to be Sheriffs of the several counties or districts (as the case may be) of the Colony, who shall be removable by the Governor on reasonable cause: Provided that no Sheriff shall be in any way concerned in the conduct of any suit in any Court, either as barrister, solicitor, or agent.

Oath.

**19.** Each Sheriff shall upon his appointment take an oath before a Judge of the Supreme Court, or some person specially appointed by such

*Supreme Court.*

such Judge, according to the form in the Schedule hereunto annexed, faithfully to execute the duties of his office.

**20.** Each Sheriff shall have such powers and privileges only, and such duties and responsibilities only, as a Sheriff by law hath or is liable to in England as a ministerial officer of one of Her Majesty's Superior Courts at Westminster. Duties.

**21.** Whenever any process shall issue which the Sheriff ought not by law to execute, the Court shall appoint some other fit person to execute the same; and in every such case the cause of such special proceeding shall be entered upon the records of the Court. Process when Sheriff disqualified.

IV.—PRACTICE OF THE COURT.

**22.** All questions of fact upon which issue shall be taken in the course of any proceeding before the Court, and all questions of idiotcy lunacy or unsoundness of mind, shall be decided by a verdict of a jury of twelve men. Trial by jury.

**23.** There shall be holden Circuit Courts for the despatch of civil and criminal business of the Court before one of the Judges thereof, at such places and at such times as His Excellency the Governor shall, with the advice of the Executive Council, by Proclamation from time to time appoint. Circuits.

**24.** It shall be lawful for a single Judge of the Court, on circuit or otherwise, to hear and determine all cases of crimes and misdemeanours committed within the district, and any issues of fact joined in any action or proceeding in the Supreme Court or removed thereto for trial out of any other district by virtue of any General Rules of the Supreme Court, and to exercise all such powers and jurisdiction as Courts of oyer and terminer and gaol delivery and assize and *nisi prius* have in England. Powers of Judge on circuit.

**25.** It shall be lawful for the Judges of the Court from time to time to make rules for regulating the time and place for holding the Court, and the practice and pleadings upon all indictments informations suits and other proceedings therein, the proceedings of the Sheriffs and other ministerial officers, the admission of barristers and solicitors, the fees and poundage to be paid to any officer, costs of suit and the taxing thereof, and all matters relating to the business of the Court, and such rules from time to time to alter or revoke: Provided that the same shall not be repugnant to any of the provisions hereinbefore contained, and provided also that the said rules to be made under the authority aforesaid shall be submitted to the Governor in Council, and upon being approved shall have the same force and effect as if they had been inserted herein until the termination of the sitting of the Legislative Council next following their approval by the Governor in Council. Rules for practice.

**26.** All fees received by the Registrars, as well as those received by the inferior officers of the Court, shall be accounted for and paid over quarterly to the Colonial Treasurer, and shall form a fund, to be called the "Fee Fund," which shall be charged with the salaries of all the officers of the Court. Fee fund.

**27.** All proceedings which have been commenced in the Supreme Court under the authority of the Supreme Court Ordinance, (Session II., No. 1,) and which are still pending and incomplete, shall continue in as full force and effect as if the same had been commenced under the authority hereof. Proceedings pending.

SCHEDULE.

*Juries Amendment.*

## SCHEDULE.

## FORM OF OATH.

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

## No. II.

JURIES AMENDMENT, AN ORDINANCE to make temporary provision for the Constitution of Juries. [13th January, 1844.]

## Preamble.

WHEREAS by an Ordinance enacted by the Governor of New Zealand, with the advice and consent of the Legislative Council, (Session II., No. 3,) intituled "*An Ordinance to regulate the Constitution of Juries,*" it was provided that every man except as therein excepted, between the ages of twenty-one years and sixty years, who should have to his own use a freehold estate in lands and tenements within the Colony and who should reside within the same, should be qualified and liable to serve as a juror therein, and provision was made for the formation of a Jury List in manner therein mentioned: And whereas the registration of titles to land within the Colony is not yet sufficiently advanced for the purpose of the aforesaid Ordinance:

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

## I.—CONSTITUTION OF JURIES.

## Who liable.

1. Every man being a British subject and not an aboriginal native of New Zealand (except as in the aforesaid Ordinance excepted), between the ages of twenty-one years and sixty years, who shall be of good fame and character and who shall reside within the Colony, shall be qualified and liable to serve as a juror therein. Any aboriginal native of New Zealand whose capability may be certified under certain regulations to be from time to time issued by the Governor and Executive Council shall also be held duly qualified and liable to serve as a juror on a mixed jury for the trial of any case, civil or criminal, in which the property or person of any aboriginal native of New Zealand may be affected.

## II.—FORMATION OF JURY LIST.

## Justices of the Peace to prepare Jury List.

2. The Police Magistrate in every district or county shall, on the first day of February in this and every succeeding year, or as soon thereafter as may be, call a special meeting of the Justices of the Peace residing within twenty miles of the Police Office, for the purpose of forming a Jury List; the Justices at such meeting (any two being a quorum) shall prepare a list in alphabetical order of all men residing within such limits as aforesaid who shall be qualified and liable to serve as jurors, setting forth the Christian and surname of each at full length, together with his place of abode and calling or business. The Police Magistrate shall forthwith cause a copy thereof to be published in one or more of the newspapers of the district or county, and shall also cause a copy thereof to be affixed upon the principal door of the Police Office, and to such lists and copy thereof shall