

No. III.

AN ACT to provide for the Service of the Process of the Supreme Court of New Zealand upon Defendants absent from the Colony.

ABSENT
DEFENDANTS.

[24th September, 1860.]

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

1. The Short Title of this Act shall be "*The Absent Defendants' Act, 1860.*"

Short Title.

2. The Act of the General Assembly of New Zealand, intituled "*The Absent Defendants' Act, 1858,*" is hereby repealed.

Repeal of 21 and 22
Vict. No. 4.

3. This Act shall be deemed and taken to have been in force from the twenty-eighth day of May, one thousand eight hundred and fifty-eight, and any proceeding and act commenced and done under the said "*Absent Defendants' Act, 1858,*" shall have the same force and effect as if the same had been commenced and done under this Act, and may be prosecuted carried out and completed accordingly.

Saving clause.

4. In case any defendant in any action in the Supreme Court is not within the Colony, it shall be lawful for the plaintiff to issue a writ of summons in the usual form according to the nature of the action, but which, in addition to any other indorsements required by law, shall before the same is issued be indorsed as follows, namely:—"This writ is issued out of the Supreme Court of the Colony of New Zealand for service out of the said Colony;" and, "This writ remains in force six calendar months including the day of the date thereof. It cannot be served after such time unless the defendant consent to be served therewith;" and the time for appearing and pleading by the defendant shall be regulated by the distance from New Zealand of the place where the defendant is residing.

Writs with certain
indorsements may be
issued against
defendants absent
from the Colony.

5. Such writ may be served on the defendant anywhere out of the Colony.

May be served
anywhere out of the
Colony.

6. Upon being satisfied upon affidavit that there is a cause of action which arose within the Colony, or a cause of action in respect of a breach of a contract made or to be wholly or in part performed within the Colony, and that the writ with the declaration annexed was personally served upon the defendant, or that reasonable efforts had been made to effect personal service thereof upon the defendant, and that it came to his knowledge, and that either the defendant wilfully neglects

Court or Judge may
direct that the
plaintiff may proceed
in action on certain
conditions.

Absent Defendants.

neglects to appear and plead to such writ and declaration, or that he is living out of the jurisdiction of the said Court in order to defeat or delay his creditors, it shall be lawful for any Court or Judge of the Court to direct from time to time that the plaintiff shall be at liberty to proceed in the action in such manner and subject to such conditions as to such Court or Judge may seem fit, having regard to the time allowed for the defendant to appear and plead being reasonable, and to the other circumstances of the case.

Plaintiff to prove his claim.

7. Provided always that the plaintiff shall and he is hereby required, before he obtain judgment in such action, to prove his damage or demand in such action in such manner either before a jury or otherwise as the Court or Judge may direct, according to the nature of the case and as near as may be in accordance with the rules of the Supreme Court for the time being in force in that behalf.

Omission to make indorsement to be an irregularity only.

8. If the plaintiff or his attorney shall omit to indorse on any writ or copy thereof any of the matters required by this Act, such writ or copy shall not on that account be held void, but it may be set aside as irregular or amended upon application to be made to the Court or a Judge thereof, and such amendment may be made upon an application to set aside the writ upon such terms as to the Court or Judge may seem meet.

Concurrent writs may be issued.

9. A writ for service within the Colony may be issued and marked as a concurrent writ with one for service out of the Colony, and a writ for service out of the Colony may be issued and marked as a concurrent writ with one for service within the Colony, and a writ for service out of the Colony may be issued and marked as a concurrent writ with another for service out of the Colony.

Before whom affidavits under this Act may be sworn.

10. Any affidavit under this Act may be sworn in any place in Her Majesty's dominions before any person authorized by law to administer an oath in the place where the same is taken, and at any foreign port or place before any Consul-General, Consul, Vice-Consul, or Consular Agent for the time being appointed by Her Majesty at such port or place; and every affidavit so sworn may be used and shall be admitted as evidence, saving all just exceptions, provided it purport to have the signature thereto of any person so authorized as aforesaid, or of any such Consul-General, Consul, Vice-Consul, or Consular Agent, and be duly certified in the usual way under the hand and seal of a notary public, or upon such other proof as the Court or Judge shall think fit to receive of the official character and signature of the person appearing to have signed the same.

Use of forged affidavit felony.

11. If any person shall within the Colony use or tender in evidence any such affidavit with a false or counterfeit signature thereto, knowing the same to be false or counterfeit, or containing false evidence knowing the same to be false, he shall be guilty of felony, and upon conviction thereof, liable to penal servitude for any term not exceeding six years or less than one year, and every accessory before or after the fact to any such felony shall be liable to the same punishment as the principal.