

NEW ZEALAND.

ANNO VICESIMO SEXTO

VICTORIÆ REGINÆ.

No. 6.

ANALYSIS.

- Title.
Preamble.
1. Short Title
2. Procedure for recovery of contents of Bill &c. and costs.
3. Leave may be given to defend action.
4. Judgment may in certain cases be set aside.

5. Court may order Bill &c. to be deposited.
6. Expenses of Noting may be recovered.
7. One Summons may issue against several Parties to a Bill &c.
8. General Rules of Procedure shall apply. Schedules.

An Act to facilitate the Remedies on Bills of Exchange Promissory Notes Cheques and other Contracts in Writing by the prevention of frivolous or fictitious defences to actions thereon.
[9th September, 1862.]

WHEREAS *bona fide* holders of dishonored Bills of Exchange Promissory Notes and Cheques on Bankers and persons to whom liquidate sums of money have become due upon written contracts 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 Cheques and Contracts:

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 actions upon Bills of Exchange Promissory Notes or Cheques on Bankers and on any written contract signed by the party sought to be charged by virtue of which a sum certain became due on a day certain or within a certain time which has elapsed if such action be commenced within six months after such Bill Note or Cheque or the sum payable under such written Contract respectively 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

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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 and costs of action to the satisfaction of the Judge or Registrar and any Judge of the said Court may upon such application give such leave upon affidavits which disclose to his satisfaction a legal or equitable defence or such facts as would make it incumbent on the Plaintiff 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 any 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 dishonored Bill of Exchange Promissory Note or Cheque drawn out of the Colony 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 dishonor as he has under this Act for the recovery of the amount of such Bill or Note.

One Summons may issue against several Parties to a Bill &c.

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

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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.

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.

General Rules of Procedure shall apply.

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 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 (or if the action be on a contract signed by the Defendant the Plaintiff claims £ due to him on a written contract signed by the Defendant of which the following is a copy or of which the following is the material part).

Here copy the Bill Note or Cheque verbatim with all indorsements or the contract or material part thereof.

If the amount claimed 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
and

Plaintiff
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.

