



NEW ZEALAND GOVERNMENT GAZETTE.

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Government House,
Auckland, August 8th, 1857.

IN exercise of the powers in me vested by "The Resident Magistrates' Courts Extension of Jurisdiction Act, 1856," I, THOMAS GORE BROWNE, the Governor of the Colony of New Zealand, with the approval of SYDNEY STEPHEN, Esq., the Chief Justice of the said Colony, do hereby establish the following Rules and Orders for all proceedings under the said Act in the Resident Magistrate's Court of Auckland, in the said Colony.

THOMAS GORE BROWNE,
Governor.

Approved

SYDNEY STEPHEN,
Chief Justice.

GENERAL RULES of Practice and Procedure in the Resident Magistrate's Court, Auckland, under the "Resident Magistrates' Courts Extension of Jurisdiction Act, 1856."

1. Every action in the Resident Magistrate's Court, shall be commenced by taking out a summons, which summons shall be in the form in the schedule hereunto annexed marked A.

2. The summons shall set forth the christian or first name or names of the defendant and plaintiff in full, but a summons may be granted, and shall be held valid in every case where the plaintiff or his attorney files a written declaration stating that he has made enquiry and cannot find out the christian or first names of the defendant in full.

But in actions on Bills of Exchange, or Promissory Notes, or other written instruments, any of the parties to which are designated by the initial letter or letters, or some contraction of the christian or first name or names, it will be sufficient in any summons issued against such party, to designate such party by the same initial letter or letters, or contraction of the christian or first name or names instead of stating the christian or first name or names in full.

3. Any party may be designated in the summons by any name or names which he may have acquired by usage or reputation, whether any such name be the christian or first name or the surname.

4. In every such summons shall be mentioned the place, and county or district, of the residence of the plaintiff, and also the place and county or district of the residence of the defendant, or wherein the defendant shall be or supposed to be, together with the calling or description of the defendant.

But if the plaintiff at the time of issuing the summons shall be ignorant of the defendant's place of abode, or where he is to be found, it shall suffice to describe him as "late of" naming the last known place of abode.

5. The summons must contain the names of all the plaintiffs in the action, and likewise of all the defendants.

6. The summons shall require the defendant to appear at the Resident Magistrate's Court, Auckland, to answer the plaintiff's demand at a certain time to be named in such summons.

The time so to be named shall be the Court day next after the expiration of a certain number of clear days after personal service of the summons, according to the scale of distances of the residence of the defendant from the Court House, by the nearest available road, which scale is set out in the schedule hereunto annexed, marked B.

7. No Solicitor shall take out any summons on behalf of any plaintiff or shall appear for any defendant until he shall have filed with the Clerk of the Court a warrant or authority in that behalf, signed by the plaintiff or defendant as the case may be in the form in the schedule hereto annexed, marked C. But it shall be sufficient for a Solicitor to sign a written declaration; that he is authorised to act as Solicitor in the action on behalf of such plaintiff or defendant, provided that he file a regular warrant signed by the party himself as early as may be afterwards.

8. Upon every summons shall be endorsed by the Clerk of the Court the actual amount of what the plaintiff claims for costs, in respect of such summons and of the service thereof and incidental thereto, and also a memorandum that, upon payment of the plaintiff's claim and costs to the Clerk of the Court two clear days before the day of hearing, proceedings in the action will be stayed.

9. A copy of the summons must be served personally on the defendant. If there be more defendants than one it must be served upon each of the defendants.

But if the summons is against husband and wife, service on the husband alone will be sufficient.

Where the defendants are sued as co-partners in any trade or business, service on one of the co-partners shall be deemed good service on all the co-partners.

10. If the summons be served on a Sunday, Christmas day, or Good Friday, such service shall be wholly void.

11. Personal service is unnecessary when a solicitor has undertaken in writing to accept service on behalf of the defendant. In such case it is sufficient to leave a copy of the summons at the office of such Solicitor.

12. An affidavit in the form marked D in the schedule hereto annexed, showing the personal service of a copy of the summons together with a copy of the bill of particulars, and the time and place of the service, may be filed by the plaintiff in the office of the Court. Such affidavit being filed the plaintiff may then proceed in the action, even though the defendant fail to appear.

13. A copy of the particulars of demand shall be annexed to and delivered with the summons.

14. Where a plaintiff shall seek to recover compensation for special damage, but such special damage shall not be essential to the cause of action, he shall at the foot, or in, the particulars of demand give notice of such special damage, and the nature and amount thereof.

15. Where a defendant shall be allowed by law to give evidence in mitigation of damages, and shall propose to offer such evidence, he shall give notice of the nature of the matters so to be given in evidence at the foot of his written defence to be delivered to the Clerk of the Court as hereinafter mentioned.

16. Whenever a defendant in any action for possession of goods, or for damages for the withholding or non-delivery or conversion thereof, shall rely upon a right of ownership, over such goods, whether absolute or limited, in himself or in a third person, he shall set forth specifically the material facts out of which such right shall arise.

17. In every case where the plaintiff shall seek to recover a sum of money made up of a number of distinct items, he shall set forth in his particulars of demand the several items, their dates and amounts.

18. In any case in which the plaintiff shall give credit in the particulars of his demand for any sum or sums of money therein admitted to have been paid to the plaintiff, and shall set forth in such particulars the dates of such payments respectively, it shall not be necessary for the defendant to state the payment of such sum or sums in his written defence. But if the defendant shall rely on any other or further payments not admitted in the plaintiff's particulars of demand, he shall in his written defence state the same specifically, stating the dates of such payments respectively.

19. Also if the plaintiff shall not set forth the dates of the payments admitted to have been made, the defendant shall in his written defence state specifically all the payments upon which he shall rely, setting forth the dates respectively.

20. If the defendant does not set forth the dates of the several payments relied on, it may be set aside as irregular.

21. Where the defendant claims a set off, he shall set forth such particulars thereof as would be necessary in case he were suing thereon—otherwise it may be set aside as irregular.

22. Where a set-off is claimed exceeding in amount the sum claimed by the plaintiff, the defendant shall be at liberty to add to his particulars of set-off a notice, that he claims to recover the excess, and the same may be recovered accordingly.

23. The particulars of demand, set-off, or payment annexed to any written defence are to be taken as a part of such defence, to all intents and purposes.

24. In any action brought by a man and his wife for any injury done to the wife in respect of which she is necessarily joined as co-plaintiff; it shall be lawful for the husband to add thereto claims in his own right, and separate actions brought in respect of such claims may be consolidated if the presiding Judge shall think fit.

25. In an action for possession of a chattel, a claim for damages for the detention or non-delivery or deterioration of the same may be joined.

26. The plaintiff may serve upon the de-

defendant or his Solicitor at any time before the trial, notice in writing that he does not intend to bring the same to trial at the time fixed. Whereupon the defendant shall be entitled to have his costs of preparing for trial taxed, and shall have an order for payment of such amount as he shall be found by the Clerk of the Court to have reasonably incurred in so preparing.

27. Every cause shall be tried in the order in which it has been entered, without preference or delay, unless it be made out to the satisfaction of the presiding Judge in open Court, that it is impracticable or inconvenient so to do, who thereupon may make such order for the trial of ~~the cause so put off as to him shall seem just.~~

28. When the cause is called on, if the plaintiff's counsel and witnesses be not in attendance, the presiding Judge may order the cause to be transferred to the bottom of the cause-list for that day, and if the trial be delayed in consequence thereof, to a future day, the plaintiff shall pay the extra costs occasioned thereby.

29. If the set-off be proved to an amount less than that of the plaintiff's demand, the plaintiff shall have a verdict for the balance of his demand after deducting the portion of the set-off proved by the defendant.

If the set-off be proved to an amount exceeding that of the plaintiff's demand, and the defendant have given notice under Rule 22 that he claims to recover the excess, the defendant shall have a verdict for such excess together with his costs.

30. Where interest upon any sum shall be recovered or allowed in any suit, but the rate of such interest shall not have been previously agreed upon by the parties thereto, the party entitled to such interest shall not recover or be ~~allowed the same at any rate exceeding the~~ rate of eight pounds per cent. per annum.

31. On the trial of any action in which the plaintiff's demand, or the set-off shall consist of a number of items, the presiding Judge may put one or more items separately to the Jury and take separate and successive findings thereon, in case it shall appear to the presiding Judge that such a course of proceeding will be convenient or likely to prevent error or confusion. And in cases tried by the presiding Judge, he may give judgment on one or more items, the verdict shall be entered according to the result of all such findings.

32. In any action, and at any time before the Jury have retired to consider their verdict or the presiding Judge has given his judgment, the plaintiff may elect to be non-suited, after a non-suit the plaintiff may proceed again to trial, all the costs of the former trial being first paid by him.

33. In every case it shall be compulsory on the defendant or his solicitor to state explicitly the nature of his defence and to deliver such defence in writing to the Clerk of the Court two clear days before the day of hearing. And in the event of the defendant or his Solicitor so failing to deliver such defence as aforesaid the presiding Judge may on the application of the

opposite party adjourn the case until the next Court day, the defendant paying the costs of such adjournment.

34. At any time before the verdict is given, the Jury may, by consent of both parties, be discharged from giving any verdict. Whereupon the action shall be wholly at an end, unless the parties shall then agree to the contrary. When the Jury are thus discharged, each party has to pay his own costs.

35. When points of law arise incidentally during the trial, the counsel of the party making the objection, or submitting the point, has the right of reply.

~~If in replying he cite a case or authority not previously adduced in support of the objection,~~ the opposite Counsel will be allowed to observe on the case or authority so cited.

36. Costs in the cause shall be paid by the party against whom judgment shall be given: Provided that if the plaintiff in any action for the recovery of damages shall recover by the verdict of the Jury or presiding Judge less damages than 20s. such plaintiff shall not be entitled to any costs whatever, unless the presiding Judge shall immediately afterwards certify that he is of opinion that the costs ought to be allowed.

37. A plaintiff or defendant having obtained a verdict, shall be entitled to issue execution at the expiration of 48 hours, unless the presiding Judge who tries the cause shall order execution to issue at an earlier or later period, with or without terms.

38. Every judgment debt shall carry interest at the rate of eight per cent. per annum, from the time of entering up the judgment until the same shall be satisfied, and such interest may be levied by a warrant of distress on such ~~judgment.~~

This Rule applies to judgments for costs only, as well as to judgments for debt or damages.

39. In every case of execution the party entitled to execution may levy the fees and expenses of the execution, over and above the sum recovered.

40. When there are cross judgments for money between the same parties, whether for debt or damages and costs, or for costs alone, the one may be set off against the other by leave of the presiding Judge.

But no such set off of one judgment against another shall be allowed to the prejudice of the Solicitor's lien for costs due to him in the particular action against which the set off is sought.

41. It shall be lawful for the defendant in an action for the possession of a specific chattel, to deliver the same to the plaintiff and to pay into Court a sum of money by way of compensation for the detention thereof or damage thereto.

42. If the plaintiff refuse to accept the sum paid into Court as a satisfaction of the claim in respect of which it is paid in, and proceed to trial, and at the trial fail to recover more than the amount paid in, the defendant's costs incurred subsequently to the payment into

Court, shall be borne by the plaintiff.

43. If there be two or more causes of action in the bill of particulars the defendant may pay money into Court upon one of them.

44. In paying money into Court, the defendant shall specify the cause of action or particular part of the plaintiff's claim, in respect of which the money is paid in.

45. A defendant will not be allowed to pay money into Court and also state a defence to the same part of the bill of particulars as to which the money is paid in.

46. If the money be paid into Court on account of a debt due to the plaintiff, the plaintiff may at once take the money out of Court: and in such case the money paid into Court belongs to the plaintiff, even though the plaintiff be nonsuited or though the defendant die during the action: and if the plaintiff die during the action, his executor or administrator is entitled to it.

47. But if money be paid into Court as a satisfaction for damages claimed by the plaintiff, and the plaintiff take the money out of Court, he shall be deemed to have accepted it in satisfaction of the whole claim in respect of which it was paid in. If he decline to accept it and proceed to trial, he shall be entitled to so much only as he shall recover for damages, and the residue (if any) shall be returned to the defendant.

48. The plaintiff may at any time before the trial, if he choose not to proceed further, obtain his costs up to the time of the payment of the money into Court, paying, however, to the defendant any costs which he may have incurred subsequently.

49. Upon the application of either party and upon an affidavit by such party of his belief that any document, to the production of which he is entitled for the purpose of discovery or otherwise, is in the possession or power of the opposite party, it shall be lawful for the presiding Judge to order that the party against whom such application is made (or, if such party is a body corporate, that some officer to be named of such body corporate), shall answer an affidavit, stating what documents he or they has or have in his or their possession or power, relating to the matters in dispute, or what he knows to the custody they or any of them are in and whether he or they objects to or object (and if so on what grounds) to the production of such as are in his or their possession or power: and upon such affidavit being made the presiding Judge may make such further rule or order thereon as shall be just.

50. Where it is shown to the satisfaction of the Court by affidavit, that certain parts of the books or documents to be produced do not relate to the matters in dispute, the party producing the same will be allowed to seal up such parts.

51. If the plaintiff shall not proceed to trial at the time fixed, the defendant will be entitled to such costs as he may have reasonably incurred with a view to the trial, before he received notice in writing from the plaintiff of his intention not to proceed to trial. And he shall

be entitled to have them taxed forthwith and to have an order for payment of the same.

52. When it shall be made to appear that by reason of the absence of a material witness for either party, or on other grounds, it is necessary for the purposes of justice to postpone the trial, the presiding Judge may put off the trial to another day to be fixed by both parties or by the presiding Judge.

The application to postpone the trial shall be made promptly after the cause for it is known.

It may be made to the Judge even after the cause has been called on, but not after the first witness is sworn.

53. If the application be made on the ground of the absence of a material witness, it shall be supported by an affidavit showing the endeavours which have been made to secure the attendance of such witness on the trial, and the likelihood of the witness being forthcoming at the time proposed for the future trial.

54. When the trial is thus put off, the party applying for the postponement shall pay to the opposite party such costs as he may have been put to in preparing for trial, unless it is alleged that the necessity for the postponement has been caused by the misconduct of such opposite party, in which case the presiding Judge shall make such order as to the costs as shall appear to be just.

55. A trial may be postponed more than once, but if the defendant shall apply for such further postponement, the presiding Judge may grant the same on terms of his bringing into Court the money sought to be recovered or part thereof, or giving security for the same to the satisfaction of the Clerk of the Court.

56. Judgment by confession may be entered up in any action for money upon a written confession of the action given by the defendant to the plaintiff with or without condition annexed as to the time for payment of the debt or damages. The amount of debt or damages shall be stated in the confession.

57. The confession may be of part only of the alleged cause of action in which case the plaintiff can proceed for the residue.

58. The written confession of judgement given by any person shall not be of any force unless it be signed in the presence of a Solicitor, Justice of the Peace, or the Clerk of the Court, and witnessed by such Solicitor, Justice of the Peace, or Clerk of the Court.

59. It shall be lawful for the presiding Judge at all times to amend all defects and errors, whether there is anything in writing to amend by or not, and whether the defect or error be that of the party applying to amend or not; and all such amendments may be made with or without costs, and upon such terms as the presiding Judge may deem fit; and all such amendments as may be necessary for the purpose of determining in the existing suit, the real question in controversy between the parties shall be so made.

60. When any person shall have been imprisoned under process from this Court, he shall not be liable at any time thereafter to be taken

in execution for any debt or sum of money in respect of which he has been so imprisoned, provided that as against the effects of such person whatsoever and wheresoever the judgment under which he shall have been so imprisoned as aforesaid shall be of as full force and effect as if the body of such person had never been taken in execution by virtue thereof.

61. If any money, goods or chattels be found and proved to be the property of any person imprisoned under process from this Court the same may be seized and sold for the benefit of the party at whose suit he shall have been so imprisoned.

62. All costs between party and party shall be taxed by the Clerk of the Court, but his taxation may be reversed by the presiding Judge upon the application of either party.

63. The presiding Judge shall in each case direct what number of witnesses are to be allowed on taxation of costs, and their allowance for attendance shall be according to the scale in the Schedule marked E, unless otherwise ordered, but shall in no case exceed the allow- therein mentioned.

64. The following scale of Fees will be allowed to Solicitors practising in this Court, for all business done in the progress of the cause whether as Counsel or Solicitor, and will be considered costs in the cause, that is to say.

In every case where the amount claimed exceeds £10 and is under £20, and the same is undefended.....	£	s.	d.
Exceeding £20, and undefended	1	1	0
Exceeding £5, and not exceeding £30, and the same is defended	2	2	0
Exceeding £30, and defended	3	3	0
Every Jury case.....	4	4	0

The above scale will not include the Fees of the Court, nor expenses of the Jury, and witnesses, but will be in addition thereto.

65. On notice of appeal being given as required by the 13th clause of the "Resident Magistrate's Courts Ordinance Extension of Jurisdiction Act," the party appealing shall pay to the Clerk of the Court a fee of £1 1s. which shall be borne by the appellant or respondent as the case may be, together with a further sum not exceeding £2 2s. as costs, as may be directed by the Judge deciding the appeal.

66. In all cases where a Jury is demanded on behalf of a plaintiff and where the defendant fails to appear, it shall be lawful for the Clerk of the Court after proof of personal service of the summons upon the defendant, and after striking off the odd one, if their number be odd, to strike off one of the jury alternately with the plaintiff until the number shall be reduced to four, and the case shall then proceed to trial as though the defendant were present.

Schedule A.

In the Resident Magistrates' Court, Auckland.

To

of

are hereby summoned and required to appear personally or by Solicitor at the Resident Magistrate's Court, Auckland, on such Court day as shall fall next after the expiration of clear days after the personal service hereof, at ten o'clock in the forenoon, to answer the demand of

of

the particulars of which are hereto annexed. Herein fail not, or the case will be heard and determined in your absence.

You are further required to state explicitly in writing your defence, and to deliver such defence to the Clerk of the Court in duplicate, two clear days before the day of hearing, or the case may be adjourned, you paying the costs of such adjournment.

Given under my hand, at the Resident Magistrate's Court, Auckland, this day of

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Resident Magistrate.

N.B.—The Court days are the first and third Thursdays in every month, unless such Thursday falls on a holiday, then the day preceding.

If you wish to confess judgment, you must deliver your confession in writing signed by yourself in the presence of a Solicitor, Justice of the Peace, or the Clerk of the Court, and witnessed by such Solicitor, Justice of the Peace, or the Clerk of the Court, to the Clerk of the Court, two clear days before the day of hearing, otherwise the fees for hearing will be charged.

If you and the plaintiff can agree to the amount due, and the mode of payment, judgment may be entered up at any time by the Clerk of the Court. In which case, you and the plaintiff must attend at the Court for that purpose.

If you wish the cause to be tried by a jury, you can do so by giving notice to the Clerk of the Court, at least two clear days before the day of hearing, and paying the necessary fees, viz., £3 10s.

Summonses for witnesses may be obtained on any day, except holidays, by applying to the Clerk of the Court, at any time between the hours of 10 and 4, except on Saturdays, and then between 10 and 2.

To be indorsed on the Summons.

The plaintiff claims also the sum of for costs.

Upon payment of the plaintiff's claim and costs to the Clerk of the Court, two clear days before the day of hearing, proceedings in the action will be stayed.

Clerk of the Court.

Schedule B.

Table of distances for service of Summons.

Where the defendant resides within 20 miles from the Court House.

5 clear days before the day of hearing.

You

yond 20 and within 50

yond 50 miles.

8 do. do.
14 do. do.

A. B., of (Auckland) maketh oath
and saith that he did on the _____ day
of _____ 185 _____

Schedule C.

hereby authorise
Auckland to appear and act as my Solicitor
the Resident Magistrate's Court, Auckland,
a suit in which I am
and

the above named defendant
with a true copy of the Summons and
bill of particulars hereto annexed by delivering
the same personally to the said defendant.

Sworn before me at _____
this _____ day of _____ 185 _____

s
5

day of

Witness my hand

Schedule D.

in the Resident Magistrate's }
Court, Auckland. }

Between _____ and _____

Plaintiff

defendant,

Schedule E.

For every witness residing
within one mile from the Court
House, any sum not exceed-
ing _____

10s. per diem.

For every extra mile (one
way.) _____

1s.