1881.

NEW ZEALAND

LAW PROCEDURE COMMISSION

(INTERIM REPORT OF THE).

Presented to both Houses of the General Assembly by Command of His Excellency.

The SECRETARY of the LAW PROCEDURE COMMISSION to the Hon. the COLONIAL SECRETARY

SIR,— Brandon Street, 7th June, 1881.

Herewith I have the honor to transmit to you the interim report of the Law Procedure Commission.

I have further the honor to request that you will be good enough to lay the same before His Excellency the Governor

His Excellency will observe that some of the Commissioners have not signed the interim report; the reason for this is that those who did not sign were, for various reasons, unable to attend at the sittings of the Commission.

All those Commissioners who actually attended have signed the report.

I have, &c.,

MARTIN CHAPMAN,

Secretary, Law Procedure Commission.

The Hon. the Colonial Secretary.

REPORT.

To His Excellency the GOVERNOR.

WE, your Excellency's Commissioners to inquire into the constitution, practice, and procedure of the Supreme Court and other Courts of the colony, and to ascertain by what means the administration of justice therein may be rendered more speedy and efficacious, and generally for the purposes in the said Commission set forth, do respectfully submit to your Excellency the following interim report:—

An informal meeting of those of your Commissioners who happened at the time to be present in Wellington was held on the 2nd September, 1880, and, in accordance with a resolution passed thereat, further informal meetings were held at Wellington, Auckland, Christchurch, and Dunedin, of the members of the Commission resident in or near those towns, for the purpose of receiving suggestions relative to the reforms which are necessary or desirable to be made.

The Commission formally met on the 23rd November, 1880, and held seven sittings, at which the resolutions, of which a copy is annexed to this report, were passed, as a basis for the future proceedings of the Commission, though not to be taken as an expression of the general opinion of all the members of the Commission.

A copy of the digest referred to in Resolution 1 is also annexed to this report.

The Commissioners adjourned on the 30th November, 1880.

The Committee, appointed by Resolution 26, having prepared a draft code of procedure and practice in accordance with the resolution, the Commissioners again met on the 16th May, 1881, when the Committee, under Resolution 26, brought up a draft code of procedure and practice, with a report thereon, and the following resolution was passed with reference thereto: "That, in the opinion of the Commission, the draft code now submitted is so far in conformity with the instructions given to the Committee as to justify its being considered in detail."

On consideration of the draft code in detail a few alterations were made by the Commission. The draft code was then referred to a Committee consisting of the Hon. Mr. J N Wilson, Mr George Harper, and Mr. Allan Holmes, to report on its verbal accuracy and fitness, and to prepare forms.

On the 25th May, 1881, this Committee brought up its report to the Commission, annexing thereto the draft code as amended and revised.

The Commission resolved, in view of the shortness of time available for its consideration, that the code, with the amendments proposed by the Committee, should be circulated.

The Commission also resolved to meet again in July, to prepare its final report, so as to enable the Legislature to pass the enactments necessary to give effect to the recommendations of the Commission.

A Committee has been appointed to prepare a code of rules for the local Courts, and the Commission has passed the following resolution: "That the Law Officers of the Crown be requested to prepare the legislative measures necessary to carry out the proposals of the Commission."

A copy of the code, of the reports of the Committees, and of the amendments made by the Commission and the Committee, is annexed to this report.

JAMES PRENDERGAST, Chairman.	W. GISBORNE.
ALEXANDER J. JOHNSTON.	ROBERT STOUT.
C. W. RICHMOND.	JOHN N. WILSON.
THOMAS B. GILLIES.	ROBERT CLAPHAM BARSTOW
FRED. WHITAKER.	GEORGE HARPER.
W. S. REID.	ALLAN HOLMES.

MARTIN CHAPMAN,
Secretary.
27th May, 1881.

RESOLUTIONS PASSED.

1. That a digest of the suggestions handed to the Commission be made and printed.

2. That the Commission now proceed to consider what Courts should exist in New Zealand, and what their respective jurisdictions should be.

3. That, in the opinion of the Commission, there should be Justices of the Peace with similar jurisdiction, civil and criminal, to that which they now possess.

4. That the District Courts, as at present constituted, be abolished, and that the present procedure of the Supreme Court be modified, so as to enable cases now disposed of in the District Court to be disposed of as quickly and cheaply as they now are in the District Court.

5. That "The Matrimonial Causes Act, 1867," be so amended that one Supreme Court Judge have the jurisdiction now exercisable by three or more Judges.

6. That there be local Courts in New Zealand,—(*a.*) With an ordinary jurisdiction up to £50 in cases of claim for money, subject, however to exceptions hereafter mentioned, (*b.*) With an extended jurisdiction in like claims up to £200. (*c.*) That only barristers have the extended jurisdiction, but that the Resident Magistrates, not being barristers, who have an extended jurisdiction up to £100 under the present Resident Magistrates Act, may be allowed to retain

such. (*d.*) That there be also extended jurisdiction in the following cases: (1) In partnership disputes where the amount involved does not exceed £200, (2) In cases where title to land is in question, and the land does not exceed £200 in value.

7. That no cases be tried in limited jurisdiction save for the claims now triable under the present Resident Magistrates Act, and none in extended jurisdiction, save for those triable in District Courts and those above specified.

8. That the judicial officers presiding over local Courts of extended jurisdiction be appointed during good behaviour, with salaries fixed by Act.

9. That in all cases over £50 in the local Courts a short statement of defence should be lodged in the Court before hearing

10. That, in all cases in the extended jurisdiction in the local Courts, at the request of either of the parties, a jury of four shall be summoned, as in the District Court at present.

11. That the judgment of local Courts on questions of title shall not bind the parties or their privies in any other proceedings.

12. That in the Bill constituting the local Courts the equity and good-conscience clause be not inserted.

13. That the local Courts in the extended jurisdiction have summary power for the recovery of possession of tenements up to £100 rental.

14. That in all cases there be no formal pleadings, save particulars of claim and statement of defence.

15. That, in all cases where the amount in dispute is under £500, the action be tried without a jury, unless one of the parties request it or the Judge order it; then only by a jury of four

16. That there be no appearance, and that in any suit the trial be held at the first sitting of the Court, say days after service of writ, unless otherwise ordered by the Judge.

17 That solicitors be allowed to make agreements as to costs, the agreements not to be taxable, but to be liable to be set aside or modified in a summary way by a Judge in Chambers, if shown to have been induced by fraud or misrepresentation.

18. That a scale of costs be prepared to cover the costs between party and party in the Court of Appeal and the Supreme Court, fixing as far as possible a lump sum for every action and proceeding, varying according to the nature of the proceeding and the amount claimed or recovered on somewhat the same principle as is now followed in the District Court.

19. That costs between party and party be borne as fixed by the English Judicature Act and rules.

20. That a Sub-Committee be appointed to frame new rules of practice and procedure for the Supreme Court, and having as a basis the resolutions of the Commission, and as far as practicable the rules of the English County Courts.

21. That plaintiffs proceeding in the Supreme Court in cases where the local Courts have jurisdiction do not recover greater costs than they would have recovered in the local Courts if the judgment be less than £50, unless the Judge otherwise order.

22. That no local Courts with extended jurisdiction shall be created in any town where a Judge of the Supreme Court is resident.

23. That, in any Act to be drawn in pursuance of the report, the rules of Court form a part of the Act by way of schedule.

24. That it is desirable that provision be made for preliminary settlement of issues in actions to be tried by a jury

25 That the Court or Judge have full power to amend proceedings before and at the trial, on such terms as may be deemed just.

26. That a Sub-Committee of Mr Justice Williams, Mr Stout, and Mr Holmes be appointed to draft rules of procedure in Appeal, Supreme, and local Courts, and that, if possible, they be embodied in one code.

27 That a Sub-Committee be appointed, to consist of the Chief Justice, Mr. Justice Richmond, Mr. Conolly, Mr. Reid, and Mr. Wilson, to suggest simplifications in the procedure for separation and divorce.

28. That, if practicable, one sitting of the Court of Appeal be held every year in Christchurch.

29. That printed copies of the draft rules of procedure, when prepared, be circulated amongst the members of the Commission before the next full meeting of the Commission takes place, and that the members be permitted to lay the same before the respective Law Societies for their opinion thereon.

30. That the criminal jurisdiction of the local Courts with limited jurisdiction be the same as is now exercised by the present Resident Magistrates, and in local Courts with extended jurisdiction be at least as extensive as that now exercised by the present District Courts.

31. That all motions for new trial on leave reserved be made on notice of motion; and that on all motions or rules for new trials cause be shown in Banco, if practicable, before two Judges.

32. That Registrars and Deputy-Registrars hereafter appointed be, if possible, members of the legal profession, and that no service as Registrar or Deputy-Registrar hereafter serve as qualified for admission as barrister or solicitor

DIGEST OF SUGGESTIONS MADE

NOTE.—*Suggestions on matters not within the scope of the Commission, or dealing with small matters of detail, and all argumentative matters, have been omitted.*

PAPERS LAID ON THE TABLE.

1. From Government, as to amendment of Divorce and Matrimonial Causes Act.
2. As to sittings of the Supreme Court at Invercargill.
3. Extract from New York Civil Code of Procedure.

NAME OF PERSON SUGGESTING.

SUGGESTIONS

RETURNS.

Mr. Gisborne. That a list of District Court Judges and Resident Magistrates be obtained, with the salaries, duties, and officers, also statistics of the work done in the several offices, the number of Petty Sessions, amounts paid for travelling expenses. The information to be obtained for the current year

COURTS.

Mr. Woodward. District Courts should be abolished. Resident Magistrates should always be lawyers.

Some amendment should be made of the law by which very small cases are often dismissed on account of the questions of title to land being incidentally raised.

Mr. Travers. All Courts should be guided by the same rules of law No Magistrate ought to be allowed to decide according to equity and good conscience.

Mr. Ollivier. Resident Magistrates should try all questions of fact in many actions, and cases should come up to the Supreme Court on special case, the facts being found by the Resident Magistrate.

District Courts and Petty Sessions Courts should be abolished.

Mr. Stout. That there must be a Supreme Court, and, with the present system of one Supreme Court Judge sitting in Banco, there must be an Appeal Court.

The only Court that might be abolished is the District Court.

That the procedure of the Supreme Court should be simplified, and that it should sit at such additional times and places as to enable it to overtake the work at present done by the District Courts; additional Judges to be appointed if necessary

That, in proceedings before the Court of Appeal,—

(1.) The costs should be fixed at a definite sum, thus:—(*a.*) Cost of printing, (*b.*) All other costs, so much for case.

(2.) The Court should sit twice a year in the Middle Island, the sitting could be at Christchurch,

That all Banco business be heard before two Judges.

That the salaries of Resident Magistrates should be raised, and trained men appointed to the office. That the jurisdiction might be slightly increased, and this not in the amount of claim only, but in the kinds of action that a Magistrate can try, as, for instance, actions for land where the value did not exceed £100, and actions for damages in cases of defamation, and of breach of contract to marry, where the amount claimed was within Magistrate's jurisdiction.

That if possible all sittings in Banco be arranged so as to be taken before two Judges of the Supreme Court. Canterbury District Law Society.

That the circuit sittings of the Supreme Court, the sittings of the Court of Appeal, and the Divorce and Matrimonial Court, be altered so as to arrange for a long vacation during the whole of the months of December and January

That the sittings of the Court of Appeal should be held consecutively in the various centres of population—*i.e.*, Dunedin, Christchurch, Wellington, and Auckland. Mr. A. E. T. Devore.

That the jurisdiction of the Supreme Court should be limited to the trial of the higher classes of felonies, such as treason, murder, &c., cases in which Maoris are concerned, civil cases in which the parties agree to take the opinion of the Court on questions of law, and divorce and matrimonial cases.

That Resident Magistrates' Courts should be abolished, and their powers transferred to District Courts.

That the jurisdiction of the District Courts should be extended in civil cases to £250, and that the powers exercised by Resident Magistrates' Courts and the powers proposed not to be exercised by the Supreme Court should be vested in the District Courts, which would give District Courts power to try the inferior classes of felonies, misdemeanours, &c., bankruptcy, and to grant probate and letters of administration. The Courts to sit weekly

Judges to be barristers of not less than ten years' standing.

That the jurisdiction of Police Courts should be extended in felonies and misdemeanours.

That Magistrates should be appointed who should be barristers of not less than ten years' standing.

That the jurisdiction of the District Court might be extended so as to relieve the Supreme Court to a greater extent. Mr. Forwood.

That the separate jurisdiction of the Resident Magistrates be abolished.

That cases of debts under £5 should be heard in the Police Court before honorary Magistrates.

That there is no occasion for two inferior Courts with similar and concurrent jurisdiction. Mr. Brandon.

That the Resident Magistrates should have jurisdiction up to £50, £5 without appeal, and in ejectment with simplified rules, also jurisdiction in slander and libel.

That the District Courts should have jurisdiction only beyond miles from the Supreme Court office, and jurisdiction in slander, &c. That their jurisdiction should not be ousted in cases relating to land unless a question of title be really involved.

That there should be Courts of Petty Sessions, with a good clerk, in country districts.

Supreme Court Judges to try cases from £50 to £200 summarily without appeal, unless by leave of the Judge. The Hon. Mr. Wilson.

Supreme Court Judges to sit once or twice a month in principal towns, and once in three months in summary jurisdiction.

A jury to be summoned in such cases only by order of a Judge.

District Courts to be abolished.

Resident Magistrates to take criminal business as now, and civil cases up to £50.

No fees to solicitors should be allowed in small-debt cases.

More care should be taken in the appointment of Justices of the Peace, whose jurisdiction should be as at present in criminal cases, and up to £10 in civil cases.

Juries.

Mr. Justice Johnston. To make the minor-jury system compulsory

Mr. Woodward. That the number of jurymen on each jury is too large. A less number could work better together.

Mr. Ollivier. That the jury system adds greatly to expense by forcing the party to collect all his witnesses in one day.

Mr. Stout. That a jury should only be granted if requested, and in all actions under £500 the number of the jury should be four.

Mr. A. E. T. Devore. To abolish Grand Juries.

Mr. Forwood. Civil juries seem to be too large, and of the wrong sort of men.

Common juries ought not to try Supreme Court civil cases.

Civil juries, as now struck in the District Court, are a farce.

To have juries of seven, four to be entitled to give a verdict, but that either party might have a jury of eleven, six to give a verdict.

To do away with common juries altogether in civil cases.

In criminal cases, that if the prisoner demanded it he should be entitled to have a special jury.

All criminal juries to be thirteen, seven to find a verdict.

To abolish Grand Juries.

Mr. Brandon. All cases under £ to be taken before minor juries, and all above likewise by consent.

Otago District Law Society. That juries be optional with either party, as in the District Court.

Procedure.

Mr. Woodward. That the issues put to the jury be simplified. A jury, by answering questions the bearing of which they do not understand, frequently give a verdict opposite to that which they intend.

Mr. Ollivier. In certain cases there should be an appeal on fact. Appeal on law a matter of right. Appeal on fact on giving security for costs.

Mr. Stout. There should only be two kinds of actions—(*a.*) Actions for wrong; (*b.*) Actions for relief, and for special property The (*b*) kind of actions would include what are termed equity suits, and actions for land or specific personal property

There should be no interlocutory proceedings except for the following purposes:—

1. Further particulars of claim or defence,
2. Postponement of trial, or fixing another place of trial;
3. Leave to take evidence of witnesses about to leave place of trial, or absent from place of trial in or out of the colony

Canterbury District Law Society. That the whole of "The Law Amendment Act, 1878" (N.Z), be brought into operation, and that rules of practice and procedure be made by the Judges of the Supreme Court, following as nearly as possible the English Judicature Act, the rules of Court and orders made thereunder

Mr. Devore. That the rules relating to cases in equity in the Supreme Court should be amplified, and forms found in English precedent-books adopted.

That it should be unnecessary for plaintiffs to appear in undefended cases in action of debts, and they should be allowed to obtain judgment on proof of affidavit of service and that the debt is still due.

That there should be provision for the attachment of debts, similar to the provisions of "The Law Amendment Act, 1856."

That there should be power to issue distress three days after judgment entered.

Mr. Forwood. That the plaintiff should only be required to deliver a short statement of claim with the writ, and should deliver his declaration afterwards, with liberty to enlarge his claim and cause of action.

Trials in actions for specific relief should only be by direction of a Judge. In many cases they are unnecessary, and greatly add to the expense of the suit.

That a plaintiff should be allowed to give notice of trial after replication, instead of after settlement of issues. Ten days' notice to be sufficient.

That appearances be abolished. Otago District Law Society.

That the plaintiff on default in filing notice of defence be entitled to sign final or interlocutory judgment, as the nature of the case may require, on filing the usual affidavit of service.

That notice of trial be abolished, and that all actions shall come on for trial as of course at the first sitting which shall be held, say, thirty days after service of the writ; and that writs of summons be framed accordingly.

Pleading and Practice.

Demurrers ought to be abolished as a means of objecting to defects in pleading, except in cases where the whole case can be decided on demurrer Mr. Travers.

The point on demurrer should be first brought before Judge in Chambers, who might order an amendment on terms, or, if the point be sufficient, might order the case to be argued in Court. The Hon. Mr. Wilson.

Motions in arrest of judgment, judgment *non obstante veredicto*, error, &c., ought to be abolished, all objections to pleadings being raised before, at the settlement of issues. Mr. Stout.

A more liberal construction of Rule 153 should be made, or a more liberal rule.

There should only be two pleadings recognized—(*a.*) The statement of claim; (*b.*) The statement of defence.

There should be no demurrers.

The declaration should give a short narrative of the facts on which the action is based, and conclude with a summary of the claims and relief sought. The claim of a sum certain for damages, except in cases of debt, ought to be abolished. Mr. Forwood.

Pleas or defences, both at law and in equity, should admit or deny the allegations of the declaration, and in the latter case state the facts intended to be relied on by the other side.

That the Supreme Court pleading should be carried on as provided by the Act of 1844, viz.,— Mr. Brandon.

Plaintiff to deliver his statement; defendant his statement in reply Copies with objections and proposed issues to be left at the Supreme Court office three days before appearance-day, so that the Judge may have an opportunity of perusing them before appearance-day.

Parties to appear before Judge, when any omission or allegation in either statement can be rectified, and issues therefrom elicited and set down for argument on trial.

The Registrar to note order then made, and further notice of trial or argument necessary.

That the plaintiff should serve at once with the writ of summons a concise statement of the nature of his claim, and that there should be no necessity for any second or fuller statement of claim. Otago District Law Society.

That the defendant file a short notice of defence.

That the statement of claim and notice of defence be the only pleadings in the action.

That demurrer be abolished.

Evidence.

That prisoners should be permitted to be examined on oath in all Courts in the same manner as provided by "The Evidence Further Amendment Act, 1875." Mr. Devore.

Costs.

Costs in the Supreme Court are too high. Mr. Woodward.

Costs of demurrers might be fixed by the Judge. Costs generally should be limited to those parts of the proceedings essential to the determination of the question at issue. Mr. Travers.

In small actions, say, actions for money up to £500, the Court might fix the costs as in District Courts.

The review of taxation should extend to the amount allowed, as Registrars are seldom solicitors of experience. Mr. Allan.

Mr. Ollivier. After a bill of costs has been sent in, the person liable to pay ought to be at liberty to tender such sum as he may consider sufficient. If this sum be refused, and on taxation no more be allowed, the costs of taxation should fall on the person refusing the tendered sum.

The party taxing and reviewing successfully should have the costs of review.

Mr. Stout. There might be a division of actions, but only for the purpose of fixing costs into—(*a.*) Cases under £500, (*b.*) Cases over £500 that is, where the money demand was under or over £500, and where the value of the property in dispute did or did not exceed £500. In both cases the costs should, if possible, be fixed as in the District Court.

Canterbury District Law Society That the greatest facility for the taxation of bills of costs of every kind be provided, and that taxation be allowed on request, subject only to a proper appointment for that purpose.

Mr. Devore. That there should be a uniform scale of costs throughout the colony in each Court, and that a scale should be prepared for use in the various Courts, the costs necessarily incurred by suitors in District Courts being far in excess of the sums allowed under the various Acts.

Mr. Forwood. The fees for summonses in the Resident Magistrates' Courts are ridiculously high · indeed, all the fees require to be greatly reduced, and the practitioner's fees should be 5 per cent. on the claim, beginning with 10s. 6d., and no fee should be allowed in cases under £5 except by leave of the Court.

Mr. Brandon. That a Judge should have power to disallow costs, and review taxation by Registrar, including counsel's fees.

When solicitors and counsel of same firm no costs of attendance on each other to be allowed.

No counsel's fees to be allowed for settling simple statement of claim.

Otago District Law Society. That, as far as possible, the costs of all proceedings be fixed.

The Hon. Mr. Wilson. The Judge to fix costs in all interlocutory proceedings.

Costs of a trial to be borne as ordered by the Judge, whatever the event.

A fixed scale of costs to be made on the plan of that in the District Court, with power to the Judge to increase.

Registrars, Sheriffs.

Mr. Devore. That poundage, mileage fees, and charges shall be abolished, and that there should be substituted actual disbursements, with allowance for bailiffs at 8s. per day

Mr. Forwood. That the offices of Registrar and Sheriff should not be held by the same person.

That Registrars should be experienced professional men.

Mr. Ollivier. Registrars should be solicitors of experience.

Miscellaneous.

Mr. Woodward. There ought to be a Public Prosecutor

Mr. Devore. That Crown Prosecutors be paid by salary instead of by fees as at present.

That solicitors of the Supreme Court should be empowered to take declarations and affidavits for use and filing in all Courts and offices in the colony

Papers from the Government,

1. As to the amendment of the Divorce and Matrimonial Causes Act, so as to confer on single Judges the powers of the full Court,

2. As to quarterly circuit sittings and more frequent Banco sittings of the Supreme Court at Invercargill—

were laid on the table.

An extract from the New York Code of Civil Procedure as to costs was also laid on the table by Mr. Justice Williams.

REPORT OF THE SUB-COMMITTEE APPOINTED TO PREPARE A CODE OF PROCEDURE.

THE Sub-Committee of the Commission of Inquiry into the constitution, practice, and procedure of the Supreme Court and other Courts of the colony, appointed by the following resolution, passed at the first sitting of the Commission, viz. "That a Sub-Committee of Mr Justice Williams, Mr Stout, and Mr Holmes be appointed to draft rules of procedure in Appeal, Supreme, and local Courts, and that, if possible, they be embodied in one code," have to report as follows:—

1 They have prepared a code of civil procedure which they hope will be found applicable to all Courts of civil jurisdiction in the colony The code is annexed to this report, and is now submitted to the Commission for consideration.

2. His Honor Mr. Justice Williams, having left the colony on leave of absence towards the end of February, was able to attend only the meetings of the Sub-Committee at which the rules up to Rule 384 were considered, the remaining members of the Sub-Committee are, therefore, alone responsible for the subsequent rules. The general scheme of the code had, however, been considered by the Sub-Committee before his Honor's departure, and approved of by him.

3. In preparing the code the Sub-Committee have endeavoured to adhere as nearly as possible to the resolutions passed at the first sitting of the Commission.

4. In order to do this satisfactorily it appeared to the Sub-Committee necessary to devote special and careful attention to framing the code in such a manner as to secure the following results, viz. (*a.*) That the laws of the colony shall be administered as one organic whole, irrespective of any division into law and equity (*b.*) That in every case such relief shall be given to the parties before the Court as they shall prove themselves entitled to, irrespective of defects in the form in which they have invoked the assistance of the Court. (*c.*) To simplify as much as possible the mode of approaching the Court by persons seeking relief or assistance. (*d.*) To secure uniformity in the practice of all Courts, and in all matters brought before the Courts, to the greatest possible extent. (*e.*) To lessen the delay and cost of proceedings.

5 As to the first point, it is hardly necessary to urge anything in the way of argument. The desirability of bringing about a fusion of the systems of law and equity is now admitted to be the chief object that ought to be kept in view in any attempt to reform civil procedure.

The framers of the existing rules of procedure and practice in the Supreme Court seem to have recognized the great importance of this, and have indeed done so much towards bringing about the desired result that your Sub-Committee can only be considered as following in their footsteps. In England, as the Commission are aware, the recent important changes in the law of procedure have also been made principally with the same object.

Your Sub-Committee consider that, as the chief obstacle—arising from part of the law being administered by one class of Courts and part by another class of Courts, as formerly in England does not exist in this colony, there should be no insuperable difficulty in accomplishing this object.

It will accordingly be found that in the code no reference is made to the division, and that it is drafted throughout on the assumption that they will be so administered.

All that seems necessary to complete the work is an Act providing for the cases in which there is any conflict between the rules of the two systems, and section 5 of "The Law Amendment Act, 1878," appears to your Sub-Committee sufficient for this purpose.

6. The second point is of even greater importance, indeed, to it all other amendments must be subsidiary

The Sub-Committee have endeavoured to provide for it partly by giving very full powers to the Court in the exercise of their jurisdiction in particular cases, but principally by Rule 276, which provides that "the judgment shall award to the parties or persons before the Court such relief as, on the facts proved to the Judge, if the action was tried by a Judge, or found by the jury, if the action was

tried by a jury, they or any of them may, under the laws of the colony, be entitled to, notwithstanding any variance between the facts alleged in any statement of claim or of defence, or in any counter-claim, and the facts proved at the trial, and notwithstanding that the relief to which any such party or person may be found entitled may not be the relief claimed by him in the action."

7. As to the third point, the Sub-Committee, following the terms of the resolution passed by the Commission, have substituted statements of claim and of defence for the pleadings heretofore used. The Sub-Committee trust that the change may, in the first place, by doing away with the periods required to intervene between the successive steps in pleading, tend to accelerate the trial of actions, and, in the second place, prevent, or at any rate greatly circumscribe, the power of using the pleadings as means of defeating or of delaying the progress of the action.

The Sub-Committee, after a careful reconsideration of the matter, believe that the original resolutions of the Commission on the subject embody the only practical method of reform.

The Sub-Committee are glad to be able to state, in support of this conclusion, that the same opinion seems to be rapidly gaining ground in England, and to be likely to receive legislative sanction at an early date. As evidence of this, the Sub-Committeee may refer to—(*a.*) the existing English rules, which afford large scope for the trial of actions without pleadings, (*b.*) the gradual extension of the County Court jurisdiction; (*c.*) the attempts made to create local Courts of unlimited jurisdiction without pleadings [members of the Commission may recollect that a Bill brought before the Imperial Parliament for this purpose was laid before the Commission at its first sitting], (*d.*) the fact that by the Indian code of civil procedure, which your Sub-Committee believe represents the views of distinguished English jurists, proceedings are conducted without pleadings.

The legislation, or attempted legislation, referred to, points to a great change in the opinion of English lawyers on this subject; and the tone of even strictly legal publications seems to be tending strongly in the same direction. For instance, an article in the *Law Journal* of the 20th November, 1880, headed "A New Judicature Bill," concludes as follows. "The proposal that pleadings be abolished will be received by lawyers with a pang. But there is no doubt that they have become an abuse, and are the main source of the great cost of law, of which suitors complain with so much justice. If the superior Court does not part with its pleadings, its business will be sent to Courts where there are no pleadings, namely, the County Courts. Those who desire to see the jurisdiction of the superior Court maintained should therefore be prepared to sacrifice this institution, however cherished. When the superior Court has Judges enough to try its cases, and when the cost of putting it in motion is more moderate, it will easily compete with the County Court for the law business of the country."

8. As to the fourth point, the Sub-Committee consider that as a very considerable portion of the procedure in all Courts must be the same, there should be no real difficulty in making one code apply to all Courts, adding a special clause enumerating the particular sections which may be deemed inapplicable to any particular Court. Again, the Sub-Committee are of opinion that the proceedings in an ordinary action might be made to suit all or nearly all applications for the assistance of the Court, subject to slight variations in some special proceedings. The Sub-Committee have, therefore, after dealing with the proceedings in an ordinary action, proceeded on the principle that those proceedings shall apply to all cases, and have added special rules in particular cases where variation appears necessary

The cases referred to will be found in Part VI. of the code, headed "Special Procedure."

With a view to carrying out this design completely, the Sub-Committee have ventured to include procedure in matrimonial causes in this part of the code.

9. As to the fifth point, all the amendments already mentioned are designed to bear directly on bringing about this result, but, in addition, the Sub-Committee have, in order to shorten proceedings and lessen costs, framed the code so as to dispense with rules as to the following steps in the present course of an action:

(*a.*) Appearances; (*b.*) default of appearance; (*c.*) delivery of pleadings other than statements of claim and defence; (*d.*) notice of trial, (*e.*) countermand of trial; (*f*) defendant bringing on trial.

The Sub-Committee have also added a scale of costs, which they trust may, in conjunction with the simplification of procedure, have the effect of greatly lessening the cost of actions.

10. Of the other matters dealt with by the code, the changes made in the mode of trial of actions are perhaps the most important.

The changes are as follows: (*a.*) Trial without a jury in claims under £500, unless a jury is demanded, and then only by a jury of four (*b.*) Trial of actions other than actions for money, specific chattels, or land, by a Judge without a jury; with full power, however, for a Judge to direct the action or issues in the action to be tried by a jury if, from the facts being in dispute or otherwise, it should appear desirable.

The first change simply follows the resolution of the Commission bearing on the subject. The second has been made relying on what the Sub-Committee conceive to be the general opinion, viz., that this class of actions should be tried by a Judge alone, unless well-defined questions of fact should prove to be in contest.

11. In dealing with the important subject of parties it seemed desirable to give very extensive powers, in order to prevent failure of justice or multiplicity of suits through all persons really interested in the subject-matter of any action not being joined. The Sub-Committee have accordingly adopted the elaborate provisions of the existing English rules almost *verbatim*, believing that these will be found sufficient for all requirements.

12. The Sub-Committee have also adopted from the same rules the rules as to change of parties on death, marriage, &c., which appear to provide a simpler mode of procedure than that heretofore in use.

13. Many other rules have been taken from the same source and from the existing Supreme Court rules, either *verbatim* or with slight alterations.

14. The Sub-Committee have also, in compiling the code, frequently consulted—(*a.*) the District Court rules, (*b.*) the English County Court rules, (*c.*) the Indian code of civil procedure, and (*d.*) the New York code of civil procedure.

15. Part IV., dealing with the subject of execution, may be regarded as to a great extent new Less appears to have been done in consolidating the rules as to this branch of procedure than in any other department; and, as the existing law on the subject appeared to the Sub-Committee capable of great simplification, they considered it desirable to make an attempt to frame a set of provisions to regulate future practice in this matter To do this completely it appeared necessary to incorporate the provisions of "The Execution against Real Estate Act, 1880."

16. The best arrangement of the subject-matter of the code is a question of considerable difficulty, and one as to which opinions are sure to differ. After much consideration the Sub-Committee have proceeded as follows· They have placed first, rules affecting those proceedings in all actions which can be carried on in the same way. These will be found in the first five parts of the code. Part VI. deals with the variations necessary in special actions already alluded to. The remaining parts comprise miscellaneous provisions applicable to both of the foregoing heads, or for which no suitable place could be found in either Subject to the foregoing arrangement, the rules as to proceedings in actions generally have been arranged, as far as possible, in the order in which they occur in the action.

The table of contents, prefixed to the code, will show at a glance the method adopted.

17. The number of rules comprised in the code is 603, as compared with 573 in the rules of 1856, and 434 in the rules adopted from the foregoing English rules recently circulated.

Considering the number of rules rendered unnecessary by dispensing with the steps in an action already mentioned, it might have been expected that the length of the code would have been considerably reduced. The fact that it is not may be accounted for as follows: (*a.*) In many cases in which rules have been derived

from other sources, the rules are not complete in themselves, but refer to Acts or other rules; in these cases the necessity of such reference has been obviated by incorporating the provisions referred to, *i.e.*, in the case of interpleader and parties. (*b.*) The number of rules devoted to the subject of execution, as already explained. (*c.*) The incorporation of the rules as to probate, matrimonial clauses, and summary procedure on bills of exchange.

18. The Sub-Committee felt some hesitation as to incorporation of the Act as to summary procedure on bills of exchange, but as the provisions of the Act are of great importance, and are affected in some measure by the code, the Sub-Committee felt that the code would be incomplete unless this was done. As the Act itself is one which has proved very successful in practice, your Sub-Committee have made only such verbal alterations as were necessary to bring the Act into accord with the code.

19. The Sub-Committee are of course aware that many points must have escaped their notice, and that the provisions as to others may prove insufficient. To meet this contingency, they have inserted Rule No. 600, which has been adapted from the provisions of the Prussian code on the same point.

20. The Sub-Committee have not prepared a complete schedule of forms, considering that it was unadvisable to undertake this work, or to incur the expense of printing, till the code had received the approval of the Commission, and also that the members of the Commission will be able to judge for themselves as to the nature of the forms required. The Sub-Committee intend, however, to have some, at least, of the more important forms ready in draft by the time the Commission meets, and these can be printed and laid before the members for consideration, if required.

21. The Sub-Committee have, after careful consideration of the subject, not seen any way to provide for settlement of issues before trial. Provision has, however, been made allowing a Judge at the trial to put to the jury issues agreed on by the parties, or framed by himself.

22. The Sub-Committee wished to have an opportunity of revising the code carefully before preparing the last two rules, bearing on (*a.*) the rules not to apply to local Courts; and (*b.*) the interpretation of terms. These rules will, however, be submitted in print to the Commission when it meets.

23. When the code is brought into force it will be necessary, either at once or as soon as possible, to pass a consolidation Act dealing with all the Courts of civil jurisdiction in the colony, for the purpose of defining their jurisdiction, and other matters not properly coming within the scope of a code of procedure. The Sub-Committee have given as much attention to this matter as the time at their disposal would allow, and expect to have the scheme, if not the actual draft, of such an Act ready by the time the Commission meets.

24. The Sub-Committee have found it impossible to frame rules for the Court of Appeal until the portion of the consolidation Act dealing with this subject has been prepared.

25. In conclusion, the Sub-Committee have to express their regret that they have been unable to circulate the code among the members of the Commission at an earlier date. It has, however, proved impossible to get it completed with greater expedition. Indeed, it has only been by very great exertion that they have been able to get it finished in time for the impending meeting of the Commission.

R. STOUT.

Dunedin, 5th May, 1881. A. HOLMES.

NEW ZEALAND CODE OF CIVIL PROCEDURE.

CONTENTS.

[*The following Rules shall regulate the proceedings in actions in the Supreme Court of New Zealand.*]

PART I.—COMMENCEMENT OF ACTION

CHAPTER I.

THE WRIT OF SUMMONS.

1. Every action shall be commenced by a writ of summons, which may be issued out of any office of the Court.

FORM OF WRIT.

2. The writ shall be in the Form No. 1 in the Schedule hereto, and shall require the defendant to file a statement of his defence to the plaintiff's claim within such time and at such place as shall be stated in the writ, and shall warn the defendant that if he do not file his statement of defence within such time the plaintiff may at once proceed in his action without having it heard in Court.

3. The time to be so stated shall be regulated by the distance of the defendant's residence from the office of the Court in which his statement of defence is to be filed, the times for various distances being shown in Table "A" in the Schedule hereto.

4. The place shall be the office of the Court nearest to the defendant's residence in the judicial district in which the defendant resides.

5. The writ shall also require the defendant if he file a statement of defence, to attend at a place to be named in the writ at the first sitting of the Court which shall be held there after the expiration of the number of days stated in the writ, to answer the plaintiff's claim, and shall further warn the defendant that, if he fail to attend the sitting of the Court named in the writ, the Court may adjudicate upon the plaintiff's claim in his absence.

6. The place at which the defendant shall be required to attend shall be the town in which sittings of the Court for the trial of actions are held in the judicial district, within which is situated the office of the Court in which the statement of defence is to be filed.

7. If sittings of the Court are held in more than one town in such judicial district the place shall be the town nearest the residence of the defendant in which such sittings are held.

8. If there be more than one defendant to the action the place for the purposes of Rules 4, 6, and 7, shall be ascertained by reference to the residence of the defendant first named in the writ.

9. If the cause of action sued on, or some material part thereof, arose in the judicial district in which the plaintiff or the plaintiff first named in the writ resides, the place at which the defendant shall be required to file his statement of defence may be the office of the Court nearest to the residence of the plaintiff or the plaintiff first named, as the case may be, and the place at which the defendant shall be required to attend may be the town nearest the residence of the plaintiff or the plaintiff first named in which sittings of the Court for the trial of actions are held in such judicial district.

10. Before issuing a writ of summons under the last preceding rule, there shall be filed in the office of the Court out of which it is proposed to issue the writ of summons an affidavit by the plaintiff or one of the plaintiffs, or by his solicitor, stating that the cause of action, or some material part thereof, arose within the judicial district in which such office is situated.

11. The number of days to be stated under Rule 5 shall be not fewer than the number shown in Table "B," or more than one hundred and twenty days.

12. The writ shall also specify—

(1.) The number of the writ.

(2.) The judicial district in which it has been issued.

(3.) The first name and surname of each plaintiff and defendant. (*a.*) In actions on bills of exchange or promissory notes, or other instruments, any of the parties to which are designated by the initial letter or letters, or some contraction of the first name, it shall be sufficient to designate such party by the same initial letter or letters, or contraction of the first name, instead of stating the first name in full. (*b.*) Any party may be designated in the writ by any name which he may have acquired by usage or reputation, whether any such name be the first name or the surname. (*c.*) Any person carrying on business in the name of a firm, apparently consisting of more than one person, may be designated by the name of such firm. (*d.*) Any two or more persons carrying on business in copartnership in the name of a firm may be designated in the writ by the name of the firm.

(4.) The residence and calling of each plaintiff and each defendant; but if the plaintiff at the time of issuing the writ shall be ignorant of the defendant's place of residence or calling, it shall be sufficient to describe him as last known of [*naming his late residence*], and to state his last known calling.

(5.) The date of the issue of the writ.

13. The writ shall be sealed with the seal of the Court.

14. At the foot of the writ there shall be written or printed a memorandum stating whether the writ has been issued by the plaintiff in person or by a solicitor on his behalf.

15. No solicitor shall take out any summons on behalf of any plaintiff, or shall file a statement of defence for any defendant, until he shall have filed with the proper officer 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: But it shall be sufficient to file a written declaration, signed by the solicitor, that he is authorized to act as solicitor in the action on behalf of such plaintiff or defendant: Provided that such solicitor file, and it shall be his duty to file, a regular warrant signed by the party himself as early as may be afterwards.

16. The memorandum shall also state an address, to be called the address for service, where the plaintiff, if he sues in person, or his solicitor, if he sues by solicitor, may be served with writs, notices, petitions, rules, orders, summonses, warrants, and other written communications not required to be served on the plaintiff in person.

17 Such address shall be not more than three miles from the office of the Court in which the statement of defence is to be filed.

18. The memorandum shall also state the amount the plaintiff is entitled to for costs for the issue and service of the writ and incidental thereto.

19. There shall be written or printed on the back of the writ the notices to defendants, purporting to be indorsed on the form of writ in the Schedule thereto.

20. No misnomer nor inaccurate description of the plaintiff or defendant shall vitiate the writ.

Issue of Writ.

21. The writ of summons shall be prepared by the plaintiff or his solicitor, and shall be written or printed, or partly written or printed, and shall be tendered to the proper officer of the Court, who shall seal the same, and as many duplicates thereof as may be required for service.

22. The writ, when sealed, shall be deemed to be issued, and the date thereof shall be deemed the date of the commencement of the action.

23. The plaintiff's statement of claim shall be annexed to the original writ before it is sealed.

24. The original writ of summons and statement of claim shall be retained by the officer sealing the same, and filed in the office of the Court out of which the writ of summons has been issued if the statement of defence is to be filed in that office. If the statement of defence is to be filed in another office, the proper officer shall forward the original writ and statement of claim to the proper officer at such office, who shall file the same in such last-mentioned office.

Service of the Writ.

25. The writ must be served on the defendant in person, or, if there be more than one defendant, on each defendant in person.

26. Service may be effected by delivering to the defendant a duplicate of the writ, with a copy of the plaintiff's statement of claim thereto annexed, or by bringing it to the defendant's notice if he refuse to receive it.

27 When a solicitor has undertaken, in writing, to accept service on behalf of any defendant or defendants, such defendant or defendants may be served, by delivering at the office of the solicitor for all the defendants for whom such solicitor accepts service, one duplicate of the writ, with a copy of the plaintiff's statement of claim annexed.

28. The writ of summons may be served by the plaintiff or any person he may employ for that purpose, or by the proper officer of the Court, and service may be proved on oath before the Court or a Judge thereof, or by affidavit.

29. If at any office of the Court an officer has not been appointed to serve writs, the writ must be served by the plaintiff, or any person he may appoint.

30. When the writ is to be served by an officer of the Court, the plaintiff, or his solicitor, at the time of applying for the writ, shall deliver to the proper officer as many duplicates of the writ, with copies of his statement of claim, as there are defendants to be separately served.

31. A writ may be served anywhere within the Colony of New Zealand, but not elsewhere, except in accordance with the provisions hereinafter contained for service of writs beyond the limits of the colony

32. The writ must be served within twelve months from the day of the date thereof, including the day of such date.

33. Service of the writ on Sunday, Christmas Day, New Year's Day, or Good Friday shall be void.

SUBSTITUTED SERVICE.

34. If it shall be made to appear to the Court, or a Judge, that reasonable efforts have been made to effect service of the writ, and either that the writ has come to the knowledge of the defendant, or that the plaintiff is unable to effect prompt personal service thereof, it shall be lawful for the Court, or a Judge, to order that the plaintiff be at liberty to proceed as if personal service had been effected, subject to such conditions as the Court or Judge may think fit to impose.

RENEWAL OF WRITS.

35. When a writ has not been served on the defendant, or any defendant named therein, within twelve months from the date thereof, including the day of such date, the plaintiff may, before the expiration of the said period of twelve months, apply to the Court, or a Judge, for leave to renew the writ, and the Court or Judge, if satisfied that reasonable efforts have been made to serve such defendant, or for other good reason, may order that the original and duplicate writs of summons be renewed for six months from the date of such renewal, and so from time to time during the currency of the renewed writ.

36. The writ and duplicate shall in such case be renewed by being resealed, and being marked by the proper officer of the office of the Court in which the original writ has been filed with the word "renewed," and the date of such renewal, upon delivery to him by the plaintiff or his solicitor of a memorandum in the Form No. in the Schedule hereto.

37 A writ so renewed shall remain in force and be available to prevent the operation of any statute whereby the time for the commencement of the action may be limited, and for all other purposes as from the date of the original issue of the writ.

38. A writ or duplicate writ purporting to be marked, showing the same to have been renewed, shall be sufficient evidence of such renewal, and of the commencement of the action as of the first date of such renewed writ for all purposes.

SERVICE IN PARTICULAR CASES.

39. When husband and wife are both defendants to an action, service on the husband shall be deemed good service on the wife, except in the following cases:—

(1.) Where the action affects the separate estate of the wife.

(2.) Where the husband and wife have been judicially separated by decree, or have entered into a deed of separation.

(3.) Where the wife has obtained a protection or other similar order, under any Act, for the time being in force affecting married women.

40. The Court or Judge, however, at any stage in an action, may order that the wife shall be separately served.

41. When an infant is a defendant to an action, service on his or her father or guardian, or if none, then upon the person with whom the infant resides or under whose care he or she is, shall, unless the Court or a Judge otherwise order, be deemed good service on the infant: Provided that the Court or a Judge may order that service made or to be made upon an infant shall be deemed good service.

42. When an idiot or a lunatic is a defendant to an action, service on the committee of the lunatic, if one have been appointed, or on the person with whom such defendant resides, or under whose care he or she is, shall, unless the Court or a Judge otherwise order, be deemed good service on the lunatic or idiot.

43. Where partners are sued as partners, but not in the name of the firm, the writ may be served on any one or more of the partners or at the principal place in New Zealand of the business of the partnership, on any one appearing to have control of the partnership business there.

44. When one person, carrying on business in the name of a firm, apparently consisting of more than one person is, or two or more persons carrying on business in the name of a firm are, sued in the name of the firm, the writ may be served on such one person, or on any one or more of such partners, or at the principal place in New Zealand of the business of the partnership, on any one appearing to have the control of the partnership business there.

45. Unless otherwise provided by Statute, service may be effected on—

(1.) Corporations, by delivering a duplicate of the writ to the Mayor, President, Chairman, Town Clerk, Secretary, or Treasurer of such Corporation, or any one performing the duties incidental to any of those offices.

(2.) Incorporated companies, by delivering a duplicate of the writ to the president, chairman, managing director, or secretary of such company, or to any one performing the duties incidental to any of those offices, or to any one appearing to have charge of the business of the company at its registered office or principal place of business in the colony

46. Service of a writ of summons in an action to recover land, may, in case of vacant possession, when it cannot otherwise be effected, be made by posting a copy of the writ upon the door of the dwelling-house, or other conspicuous part of the property

47 When a defendant is beyond the limits of the colony, if he have an attorney or agent authorized to transact his affairs generally, and to defend actions on his behalf, the writ may, by leave of the Court or a Judge, be served upon such attorney or agent, subject to such terms as the Court or a Judge may think right to impose.

SERVICE OUT OF THE COLONY.

48. The writ of service may be served out of the colony by leave of a Judge—

(1.) When any act for which damages are claimed was done within the colony

(2.) When the contract which is sought to be enforced or rescinded, dissolved, annulled, or otherwise affected in any action, or for the breach whereof damages or other relief are or is demanded in the action, was made or entered into, or was to be wholly or in part performed within the colony.

(3.) Whenever there has been a breach within the colony of any contract, wherever made.

(4.) Whenever it is sought to compel or restrain the performance of any act within the colony

(5.) Whenever the subject matter of the action is land, stock, or other property situated within the colony, or any act, deed, will, or thing affecting such land, stock, or property.

49. Upon any application to serve a writ of summons under subsection 2 or subsection 3 of the last preceding rule, the Judge, in exercising his discretion as to granting leave to serve such writ, shall have regard to the amount or value of the property in dispute or sought to be recovered, and to the existence in the place of residence of the defendant, of a Court having jurisdiction in the matter in question, and to the comparative cost and convenience of proceeding in New Zealand, or in the place of such defendant's residence, and, in the above-mentioned cases, no such leave is to be granted without an affidavit stating the particulars necessary for enabling the Judge to exercise his discretion in manner aforesaid, and all such particulars (if any) as he may require to be shown.

50. Every application for an order for leave to serve a writ out of the colony, shall be supported by evidence, by affidavit or otherwise, showing in what place or country such defendant is or probably may be found, and whether such defendant is a British subject or not, and the grounds on which the application is made.

51. Any order giving leave to effect such service shall fix the time within and the place at which the defendant is to file his statement of defence, and the sittings of the Court at which the action is to be heard.

SERVICE GENERALLY.

52. In all cases where the defendant does not speak the English language the plaintiff shall serve a translation of the writ and statement of claim upon the defendant, together with the writ itself.

53. In any case not provided for by these rules service shall be effected in such manner as the Court or a Judge shall direct.

CHAPTER II.

PARTIES TO AN ACTION

54. All persons may be joined as plaintiffs, in whom the right to any relief claimed is alleged to exist, whether jointly, severally, or in the alternative. And judgment may be given for such one or more of the plaintiffs as may be found entitled to relief, for such relief as he or they may be entitled to, without any amendment. But the defendant, though unsuccessful, shall be entitled to his costs occasioned by so joining any person or persons who shall not be found entitled to relief, unless the Court, in disposing of the costs of the action, shall otherwise direct.

55. When an action has been commenced in the name of the wrong person as plaintiff, or where it is doubtful whether it has been commenced in the name of the right plaintiff or plaintiffs, the Court or a Judge may at any time, if satisfied that it has been so commenced through a *bonâ fide* mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person or persons to be substituted or added as plaintiff or plaintiffs upon such terms as may seem just.

56. All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally, or in the alternative. And judgment may be given against such one or more of the defendants as may be found to be liable according to their respective liabilities, without any amendment.

57 It shall not be necessary that every defendant to any action shall be interested as to all the relief thereby prayed for, or as to every cause of action included therein, but the Court or a Judge may make such order as may appear just, to prevent any defendant from being embarrassed, or put to expense, by being required to attend any proceedings in such action in which he may have no interest.

58. The plaintiff may, at his option, join as parties to the same action all or any of the persons severally, or jointly and severally liable on any one contract, including parties to bills of exchange and promissory notes.

59. When in any action, whether founded upon contract or otherwise, the plaintiff is in doubt as to the person from whom he is entitled to redress, he may join two or more defendants to the intent, that in such action the question as to which (if any) of the defendants is liable, and to what extent, may be determined as between all parties to the action.

60. Trustees, executors, and administrators may sue, and be sued, on behalf of, or as representing the property or estate of which they are trustees or representatives, without joining any of the parties beneficially interested in the trust or estate, and shall be considered as representing such parties in the action; but the Court or Judge may, at any stage of the proceedings, order any of such parties to be made parties to the action, either in addition to, or in lieu of, the previously existing parties thereto.

61. Married women, infants, idiots, and lunatics may sue and defend by a guardian, *ad litem*, admitted for that purpose by the Court or a Judge. Married women may also, by leave of the Court or a Judge, sue or defend without their husbands, and without a guardian, *ad litem*, on giving security for costs.

62. Before any person shall be allowed to act as a guardian, *ad litem*, under the last preceding rule, he shall first be admitted for that purpose by the Court or Judge upon a petition signed by him.

63. The guardian, *ad litem*, shall be a person not interested in the result of the action, and, in the case of a lunatic, shall be his committee, if one have been appointed, unless the Court or Judge see fit to allow some other person to act as guardian, *ad litem*.

64. The writ of summons and statement of claim may be served in manner hereinbefore provided, upon a married woman, an infant, an idiot, or a lunatic, although a guardian, *ad litem*, has not been admitted to defend for such married woman, infant, lunatic, or idiot, but no further step shall be taken in the action until a guardian, *ad litem*, has been admitted.

65. If no application is made for admission as guardian, *ad litem*, to any defendant who is a married woman, an infant, an idiot, or a lunatic, within five days after service of the writ of summons, the Court or a Judge, on the application of the plaintiff, may order that a solicitor of the Court do act as guardian, *ad litem*, of such defendant, and such defendant shall be liable to pay to the solicitor so appointed his costs of defending the action. Provided that in the case of a lunatic defendant, the Court or a Judge may order his committee, if one have been appointed, to act as guardian, *ad litem*.

66. A solicitor, appointed under the last preceding rule, may, by leave of the Court or a Judge, decline to continue the defence of the action unless he be prepaid by the defendant for whom he has been appointed to act the amount of all necessary disbursements.

67 The guardian, *ad litem*, may be removed by the Court upon sufficient cause being shown.

68. The guardian, *ad litem*, shall be liable for costs, and will not be allowed to retire without giving security for the costs already incurred, if such security be required by the opposite party Provided that a solicitor appointed guardian, *ad litem*, under Rule 65, shall not be so liable.

69. In case of the death, or retirement, or removal of a guardian, *ad litem*, a fresh guardian shall be appointed in the same manner as the original guardian, *ad litem*. Provided that a guardian, *ad litem*, shall not be permitted to retire without leave of the Court.

70. When an action has been commenced in the name of an infant, and he, upon coming of age, shall elect to go on with it, all subsequent proceedings shall be carried on in his own name, and in such case he will be liable to all the costs of the action in the same manner as if he had commenced it after coming of age.

71 Any two or more persons claiming, or being liable as partners, may sue, or be sued, in the name of their respective firms (if any), and the opposite party may in such case apply for the names of the persons who are partners in any such firm, and until an affidavit has been filed stating the names and addresses of such partners, all proceedings in the action shall be stayed.

72. Any person carrying on business in the name of a firm, apparently consisting of more than one person, may be sued in the name of such firm.

73. When there are numerous parties having the same interest in an action, one or more of such parties may sue, or be sued, or may be authorized by the Court to defend in such action on behalf of or for the benefit of all parties so interested.

74. Any residuary legatee, or next of kin, may, without joining as parties the remaining residuary legatees, or next of kin, sue for the administration of the personal estate of a deceased person.

75. Any legatee interested in a legacy charged upon land, and any person interested in the proceeds of land directed to be sold, may, without joining as parties any other legatee or person interested in the proceeds of the land, sue for the administration of the estate of a deceased person.

76. Any residuary devisee may, without joining as a party any co-residuary devisee, sue for the administration of the estate of a deceased person.

77 Any one of several *cestuis que trust*, under any deed or instrument may, without joining the other *cestuis que trust* as parties, sue for the execution of the trusts of the deed or instrument.

78. In all actions for the protection of property pending litigation, and in all cases, in the nature of waste, one person may sue on behalf of himself and of all persons having the same interest.

79. Any executor, administrator, or trustee may sue any one legatee, next of kin, or *cestui que trust* for the administration of the estate or the execution of the trusts.

80. In the cases provided for by Rules 74 to 79, both inclusive, the Court or a Judge may require any other person or persons to be made a party or parties to the action, and may give the conduct of the action to such person as may seem proper, and may make such order in any particular case as may seem just for placing the defendant on the record on the same footing in regard to costs as other parties having a common interest with him in the matter in question.

81. In the cases provided for by Rules 74 to 79, both inclusive, such persons as the Court or a Judge may direct shall be served with notice of the judgment, and, after such notice, they shall be bound by the proceedings in the same manner as if they had been originally made parties to the action, and they may, by an order, of course, have liberty to attend the proceedings under the judgment, and any party so served may, within such time as shall in that behalf be prescribed by the judgment, apply to the Court to rescind, add, or to vary the judgment.

82. In all actions concerning real or personal estate which is invested in trustees under a will, settlement, or otherwise, such trustees shall represent the persons beneficially interested under the trust in the same manner, and to the same extent, as the executors or administrators in actions concerning personal estate, represent the persons beneficially interested in such personal estate, and in such cases it shall not be necessary to make the persons beneficially interested under the trust parties to the action, but the Court may, upon consideration of the matter on the hearing, if it shall so think fit, order such persons, or any of them, to be made parties.

83. No action shall be defeated by reason of the misjoinder of parties, and the Court may, in every action, deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.

84. The Court or a Judge may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court or a Judge to be just, order that the name or names of any party or parties, whether as plaintiffs or as defendants, improperly joined, be struck out, and that the name or names of any party or parties, whether plaintiffs or defendants, who ought to have been joined, or whose presence before the Court may be necessary to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the action, be added.

85. No person shall be added as a plaintiff without his own consent thereto.

86. Any application to add, or strike out, or substitute a plaintiff or defendant, may be made to a Judge at any time before trial or at the trial of the action in a summary manner.

87. When a defendant is added, unless otherwise ordered by the Judge, the plaintiff shall serve on such defendant a copy of the order joining him as a party, and of the statement of claim in the action, and may, before service, amend the statement of claim in such manner as the making of such new defendant a party shall render desirable.

88. If the statement of claim be amended before service under the last preceding rule, the statement of claim filed in Court and served upon the original defendant shall be amended in the same manner, or copies of such amended statement of claim shall be filed in Court and served upon the original defendant.

89. When a defendant claims to be entitled to contribution, indemnity, or other remedy, or relief, over against any person not a party to the action, or from any other cause it appears to the Court or a Judge that a question in the action should be determined, not only as between the plaintiff and defendant, but as between the plaintiff, defendant, and any other person, or between any or either of them, the defendant may, by leave of the Court or a Judge, issue a notice to that effect, stamped with the seal with which writs of summons are sealed.

90. A copy of such notice shall be filed with the proper officer, and served upon such person according to the rules relating to the service of writs of summons. The notice shall state the nature and grounds of the claim, and shall, unless otherwise ordered by the Court or a Judge, be served within the time limited for delivering his statement of defence. Such notice may be in the form or to the effect of the Form No. in the Schedule hereto, and therewith shall be served a copy of the statement of claim.

91. If the order giving leave to serve such notice be made at the trial, the Judge may postpone the trial as he may think fit.

92. If a person, not a party to the action, who is served as mentioned in Rule 90, desires to dispute the plaintiff's claim in the action as against the defendant, on whose behalf the notice has been given, he must file a memorandum to that effect, in the Form No. in the Schedule hereto, within days from the service of the notice. In default of his so doing, he shall be deemed to admit the validity of the judgment obtained against such defendant, whether obtained by consent or otherwise: Provided that a person so served, failing to file a memorandum within such time, may apply to the Court or a Judge for leave to defend, and such leave may be given on such terms (if any) as the Court or a Judge may think fit.

93. If a person, not a party to the action served under these rules, file a memorandum pursuant to the notice, the party giving the notice may apply to the Court or a Judge for directions as to the mode of having the question in the action determined, and the Court or Judge, upon the hearing of such application, may, if it shall appear desirable so to do, give the person so served liberty to defend the action upon such terms as shall seem just, and may direct such amendments to be made in the statements of claim and of defence, or such fresh statements to be delivered, and, generally, may direct such proceedings to be taken, and give such directions as to the Court or Judge may appear proper for having the question conveniently determined, and as to the mode and extent in or to which the person so served shall be bound or made liable to the decision of the question.

CHAPTER III.

Joinder of Causes of Action.

94. Subject to the following rules, the plaintiff may unite in the same action, and in the same statement of claim, several causes of action, but if it appear to the Court or a Judge that any such causes of action cannot be conveniently tried or disposed of together the Court or Judge may order separate trials of any such causes of action to be had, or may make such other order as may be necessary or expedient for the separate disposal thereof.

95. No cause of action shall, unless by leave of the Court or a Judge, be joined with an action for the recovery of land, except claims in respect of mesne profits, or arrears of rent in respect of the premises claimed, or any part thereof, and damages for breach of any contract under which the same or any part thereof are held.

96. Claims by a trustee in bankruptcy as such shall not, unless by leave of the Court or a Judge, be joined with any claim by him in any other capacity

97. Claims by or against husband and wife may be joined with claims by or against either of them separately.

98. Claims by or against an executor or administrator as such may be joined with claims by or against him personally, provided the last-mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor or administrator.

99. Claims by plaintiffs jointly may be joined with claims by them, or any of them, separately against the same defendant.

100. The last three preceding rules shall be subject to Rule , and to the rules hereinafter contained.

101. Any defendant alleging that the plaintiff has united in the same action several causes of action which cannot be conveniently disposed of in one action may at any time apply to the Court or

a Judge for an order confining the action to such of the causes of action as may be conveniently disposed of in one proceeding.

102. If, on the hearing of any such application as in the last preceding rule mentioned, it shall appear to the Court or to a Judge that the causes of action are such as cannot all be conveniently disposed of in one action, the Court or the Judge may order any of such causes of action to be excluded, and may direct the statement of claim to be amended, and may make such order as to costs as may be just.

PART II.—PROCEEDINGS PRELIMINARY TO DISPOSAL OF ACTION

CHAPTER I.

Statement of Claim.

103. On applying for a writ of summons the plaintiff shall file in Court a statement of his claim against the defendant.

104. The statement of claim shall be annexed to the original writ of summons, and a copy thereof shall be annexed to each duplicate of the writ issued for service, and it shall be the duty of the officer issuing any duplicate writ to see that a correct copy of the statement of claim is annexed before it is issued.

105. If the plaintiff sue, or the defendant or any of the defendants is sued, in a representative character, the statement of claim shall show in what capacity the plaintiff sues or the defendant is sued.

106. The statement of claim shall show the general nature of the cause of action.

107 If the plaintiff wish to allow a set-off or to relinquish a portion of his claim the statement shall show the amount so allowed or relinquished.

108. If the plaintiff claim to recover compensation for special damage the statement of claim shall show the nature thereof.

Prayer of Statement.

109. The statement of claim shall ask for such judgment on each cause of action separately, as the plaintiff shall consider himself entitled to, either simply or in the alternative.

110. The plaintiff may, besides asking for a specific judgment, ask generally for such judgment as the Court may consider him entitled to.

111. If the statement of claim seek the recovery of a sum of money the amount must be stated as precisely as the nature of the case admits.

112. Whenever the plaintiff considers it necessary that accounts should be taken, inquiries made, or any other acts or things done, or proceedings taken to enable the Court to pronounce a final judgment, he may ask that such accounts be taken, inquiries made, acts and things done, and proceedings taken as the nature of the case may require, and the Court shall have full power either before, at, or after trial, to order such accounts, inquiries, acts, things, or proceedings, or any other accounts, inquiries, acts, things, or proceedings of whatsoever nature, and whether prayed or not, which the Court may consider necessary, to enable him to pronounce final judgment in the action.

113. When the plaintiff, in his statement of claim, has prayed to have accounts taken, he may at any time after the defendant has filed his statement of defence, or made default in filing a statement of defence, apply for an order to have accounts taken at once; and unless the defendant satisfy the Court or a Judge, by affidavit or otherwise, that there is some preliminary question to be tried, an order may be made for taking the accounts claimed: and such order may be proceeded upon in the same manner as a judgment of the Court under the last preceding rule.

114. The application for such order as in the last preceding rule mentioned shall be by summons in chambers, and shall be supported by an affidavit filed on behalf of the plaintiff, stating concisely the grounds of his claim to an account.

Statement of Defence.

115. In all cases except where the plaintiff seeks only to recover a sum of money under fifty pounds, the defendant shall, within the number of days stated in the writ, file in the office of the Court named in the writ, a statement of his defence to the plaintiff's claim, and shall also serve a copy of such statement on the plaintiff.

116. At the foot of the statement of defence there shall be subscribed a memorandum stating whether it has been filed by the defendant in person or by a solicitor on his behalf, and an address to be called the address for service where writs, notices, petitions, orders, summonses, warrants, and other documents and proceedings not requiring to be served on the defendant in person may be left for him.

117 Such address shall be not more than three miles from the office of the Court in which the statement of defence is to be filed.

118. If further time to file a statement of defence is required, the defendant may apply to a Judge on summons, and the Judge may allow such further time as he may deem reasonable, and may adjourn the trial for such time and on such terms as to payment of costs and otherwise as may appear just.

119. The statement of defence shall either admit or deny the allegations in the plaintiff's statement of claim.

120. When the defendant denies any allegation of fact in the statement of claim he must not do so evasively, but answer the point in substance. Thus, if it be alleged that the defendant received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received, and so when a matter is alleged with circumstances it shall not be sufficient to deny it as alleged with those circumstances, but a fair and substantial answer must be given.

121. Every allegation not denied shall be deemed to be admitted.

122. When an affirmative defence is intended the statement of defence shall show the general nature thereof.

123. If the plaintiff is prepared to admit any allegations of fact in the defendant's statement of claim, he shall, within days after the same has been served upon him, serve upon the defendant a notice stating distinctly the allegations he admits, and any allegation of fact not so admitted shall be deemed to be denied.

Set-off and Counter Claim.

124. If the defendant have a counter claim against the plaintiff alone, he may, without issuing a writ of summons within the time limited for filing his statement of defence, file a statement of such claim.

125. Such statement of claim shall be headed with the words "Counter Claim," but shall in all other respects conform to the rules as to statements of claim.

126. A copy of such statement of claim shall be served upon the plaintiff, and all further proceedings thereon shall be taken in the same manner as if the defendant had commenced an independent action against the plaintiff, except that the plaintiff shall file his statement of defence in the same office, and the said counter claim shall be tried at the same place as the statement of claim in the original action, and such trial shall take place immediately after the trial of the original action.

127 The Court or a Judge may order that the plaintiff's claim and the defendant's counter claim be tried together if it be made to appear that such claim and counter claim can be disposed of more conveniently by hearing them together than separately

128. If the counter claim be against the plaintiff jointly with other persons it must be prosecuted by independant action.

129. The Court or a Judge may adjourn the hearing of a counter claim if it be made to appear that the plaintiff will be prejudiced by the trial taking place as hereinbefore provided.

Statements of Claim and of Defence generally

130. The statements of claim and defence respectively shall give such particulars of time, place, amount, names of persons, dates of instruments, and other circumstances as may suffice to inform the opposite party of the cause of action or ground of defence, as the case may be.

131. If at the trial it appear to the Judge presiding at the trial that either party is taken by surprise by the nature of the case or defence set up by the opposite party, the Judge presiding at the trial may adjourn the trial to such time and place as shall seem just.

132. If at the trial of the action the Judge presiding at the trial shall be of opinion that any allegation of fact not admitted by either party under the provisions hereinbefore contained ought to have been admitted, the Judge presiding at the trial may order that the cost of proving such allegation be borne by the party not admitting the same, whatever be the result of the action.

133. The statements of claim and of defence shall be divided into paragraphs numbered consecutively, and each paragraph containing as nearly as may be a separate allegation. Dates, sums, and numbers shall be expressed in figures and not in words.

134. Distinct causes of action and distinct grounds of defence, founded on separate and distinct facts, shall be stated as nearly as may be separately and distinctly

135. If either party wishes to deny the right of any other party to claim as executor or trustee, whether in bankruptcy or otherwise, or in any representative or other alleged capacity, or the alleged constitution of any partnership firm, he shall deny the same specifically

136. A bare denial of a contract shall be construed only as a denial of the making of the contract in fact, and not of its legality or sufficiency in law, whether with reference to the Statute of Frauds or otherwise.

137 If either party in his statement relies upon any document it shall be sufficient to state the effect thereof as briefly as possible, without setting it out.

Amendment of Statements of Claim and Defence.

138. Either party may at any time before trial file an amended statement of claim or of defence, and serve a copy thereof on the opposite party

139. Each party may, by notice, require the opposite party to file and serve, within four days after the service of such notice, a more explicit statement of claim or of defence.

140. Such notice shall indicate as clearly as may be the points in which the statement, in respect of which it has been served, is considered defective.

141 If the party on whom such notice is served neglect or refuse to comply with the same, the Court or a Judge may, if the statement objected to appear not to give fair notice of the cause of action or ground of defence, order a fuller and more explicit statement to be filed.

142. When an amended statement of claim or defence has been filed under the foregoing rules, the party filing such amended statement shall bear all the costs of the original statement, and any application for amendment, unless the Court or Judge shall otherwise order.

143. When any ground of defence to a claim or counter claim arises after the commencement of an action, the defendant or the plaintiff, as the case may be, may, within days after such ground of defence has arisen, by leave of the Court or Judge, file and serve a special statement of defence setting forth the same.

144. Whenever either party in his original or in any special statement of defence to a claim or counter claim alleges any ground of defence which has arisen after the commencement of the action, the other party may deliver a confession of such defence, which confession may be in the Form No. in the Schedule hereto, and may thereupon sign judgment for his costs up to the time of filing such statement of defence, unless the Court or a Judge shall, either before or after the delivery of such confession, otherwise order.

145. When a statement of claim or defence has been amended under the preceding rules of this chapter, the Court or a Judge may, either before or at the trial, adjourn the trial for such time to such place, and upon such terms as to payment of costs by the party amending as may appear just.

ISSUES.

146. When it shall be made to appear that any matter in question between the parties is of sufficient importance on the ground (*a*) that the amount or value of the sum of money or property in question exceeds £500, and that difficult questions of law are involved in the controversy; or, (*b*) that intricate and difficult questions of fact are involved; or, (*c*) that personal character or reputation is directly involved; or, (*d*) that questions of public interest are involved; or, that on any other ground the matter in question is one of sufficient gravity, it shall be lawful for the Court or a Judge, on the application of either party, in a summary way to order that the parties shall state issues of fact and of law, or of fact or law only, as the case may seem to require, such issues to be settled by a Judge upon such terms as to costs and other terms as to the Court or Judge shall seem meet.

147 On settling the issues, the Judge may allow or order such amendments to be made in the statements delivered between the parties, or on the issues themselves as, may be necessary to remove ambiguities and defects in such statements or issues, and render them conclusive whatever may be the findings thereon, subject to such terms as to adjournment of the trial, payment of costs, and otherwise, as to the Judge may appear proper.

148. If on the issues as settled it appears to the Judge that the matter in dispute is one of law only, or that a substantial point of law is involved which ought to be decided before the trial of the action, the Judge may order that such matter or point of law be argued before the Court before the trial of the action, and that the trial of the action do stand adjourned pending the decision of the Court thereon.

CHAPTER II.

MEANS OF EVIDENCE.—DISCOVERY AND INSPECTION

149. Either party may at any time after the commencement of an action, by leave of the Court or of a Judge, deliver interrogatories for the examination of the opposite party, with a note at the foot thereof stating which of such interrogatories each of such parties is required to answer.

150. The application for such rule or order shall be made upon an affidavit of the party proposing to interrogate, or of his solicitor, attorney, or agent, if from absence or other unavoidable cause such party is unable to make the affidavit himself.

151. If any party to an action be a body corporate, joint-stock company, or body of persons empowered by law to sue in the name of a public officer, any opposite party may, by leave of the Court or Judge, deliver interrogatories for the examination of any member or officer of such body corporate, joint-stock company, or body of persons.

152. Interrogatories shall be answered by affidavit, to be filed within ten days, or such other time as the Court or a Judge may direct,

153. If any person interrogated omits to answer, or answers insufficiently, the party interrogating may apply to the Court or a Judge for an order requiring him to answer, or to answer further, as the case may be. And an order may be made on such application, or at any subsequent time, requiring him to answer, or answer further, either by affidavit or to attend at such place before the Judge, Registrar, or such other person as the Judge may appoint, to be orally examined as to the matters he has omitted to answer, or answered insufficiently

154. Any party may, at the trial of an action or issue, use in evidence any one or more of the answers of the opposite party to interrogatories without putting in the others. Provided always that in such case the Judge may look at the whole of the answers, and if he shall be of opinion that any other of them are so connected with those put in that the last-mentioned answers ought not to be used without them, he may direct them to be put in.

155. Any party may, without filing any affidavit, apply to a Judge for an order directing any other party to the action to make discovery on oath of the documents which are, or have been, in his possession or power relating to any matter in question in the action.

156. The affidavit to be made by a party against whom such order as is mentioned in the last preceding rule has been made, shall specify which (if any) of the documents therein mentioned he objects to produce, and it may be in the form No. in the Schedule hereto.

157 The Court or a Judge may at any time order either party to produce, for the inspection of the opposite party, such of the documents in his possession or power relating to any matter in question in the action as the Court or a Judge may think right, and the Court or Judge may deal with such documents when produced in such manner as shall appear just.

158. Every application for an order for inspection of documents shall be to a Judge, and, except in the case of documents referred to in the affidavits of the party against whom the application is made or disclosed in his affidavit of documents, shall be founded on an affidavit showing of what documents inspection is sought, that the party applying is entitled to inspect them, and that they are in possession of the other party, and that such party has refused to produce them on being requested so to do.

159. No special case in an action to which a married woman, infant, or person of unsound mind is a party, shall be set down for argument without leave of the Court or of a Judge; the application for which must be supported by sufficient evidence that the statements contained in such special case, so far as the same affect the interest of such married woman, infant, or person of unsound mind, are true.

160. Either party may set down a special case for argument by delivering to the proper officer a memorandum in the form No. in the Schedule hereto; and, also, if a married woman, infant, or person of unsound mind, be a party to the action, producing a copy of the order giving leave to set down the same for argument.

161. On the argument of such point of law the Court may give judgment in the action, or may order the issues of fact or any of them to be tried before giving judgment.

162. Any decision of a Judge at chambers on the settlement of issues shall be subject to appeal to the Court.

SPECIAL CASES.

163. The parties may, after the writ of summons has been issued, concur in stating the questions of law arising in the action in the form of a special case for the opinion of the Court. Every such special case shall be divided into paragraphs, numbered consecutively, and shall concisely state such facts and documents as may be necessary to decide the questions raised thereby Upon the argument of such case, the Court and the parties shall be at liberty to refer to the whole contents of such documents, and the Court shall be at liberty to draw from the facts and documents stated in any such special case any inference, whether of fact or of law, which might have been drawn therefrom, if proved at the trial.

164. If any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he shall be liable to attachment. He shall also, if a plaintiff, be liable to have his action dismissed for want of prosecution, and if a defendant, to have his defence (if any) struck out, and to be placed in the same position as if he had not defended, and the party obtaining the order may apply to the Court or a Judge for a further order to that effect, and an order may be made accordingly

165. Service of an order for discovery or inspection made against any party on his solicitor at his address for service, shall be sufficient service to found an application for an attachment for disobedience to the order. But the party against whom the application for an attachment is made may show, in answer to the application, that he had no notice or knowledge of the order.

166. A solicitor upon whom an order against any party for discovery or inspection is served under the last rule, who neglects, without reasonable excuse, to give notice thereof to his client, shall be liable to attachment.

ADMISSION OF DOCUMENTS.

167 Either party may call upon the other by notice to admit any document, saving all just exceptions, and in case of refusal or neglect to admit after such notice, the cost of proving any such document shall be paid by the party neglecting or refusing, whatever the result of the trial may be, unless at the hearing or trial the Judge presiding at the trial certify that the refusal to admit was reasonable, and no costs of proving a document shall be allowed, unless such notice be given, except when the omission to give the notice is in the opinion of the taxing officer a saving of expense.

168. Notice to admit under the preceding rule need not be given in respect of any document referred to in a statement of claim, or of defence, or in a counter claim which the opposite party might have admitted in his statement of defence, or by notice under rule.

169. A notice to admit documents may be in the Form No. in the Schedule hereto.

170. An affidavit of the solicitor or his clerk of the due signature of any admissions made in pursuance of any notice to admit documents, and annexed to an affidavit, shall be sufficient evidence of such admissions.

EVIDENCE GENERALLY.

171. Evidence at the trial of any action, or any assessment of damages, shall be given by means of witnesses, who shall be examined *vivâ voce* in open Court, but the parties may agree that the evidence at the trial of any action, or any part of such evidence, may be given by affidavit, but the Court or a Judge may, even though no such agreement has been made, at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing or trial, or on any motion for judgment, on such conditions as the Court or Judge may think reasonable, or that any witness whose attendance in Court ought for some sufficient cause to be dispensed with, be examined by interrogatories or otherwise before a Commissioner or Examiner. Provided, that where it appears to the Court or Judge that the other party desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorizing the evidence of such witness to be given by affidavit. Provided, further, that if a witness reside more than two hundred miles from the place of trial, he shall not be compellable to attend personally at the trial, but he may be examined as above mentioned, unless the Court or a Judge shall otherwise order.

WITNESSES.

172. Subpœnas to require the attendance of witnesses at the trial may be issued at any time after the time of filing the statement of defence has elapsed, or if the defendant be not required by these rules to file a statement of defence, at any time after issue of the writ of summons.

173. The writ of subpœna must be served on the witness personally, by leaving a copy thereof with the witness, but it shall not be necessary to show the original writ.

174. If any person whose attendance is required for examination at the trial of the action, or in any proceedings in the action, is in custody, the party requiring his attendance may apply to the Judge on affidavit, stating that he is a material witness and is in custody, whereupon it shall be lawful for the Judge to order that the officer in whose custody the witness is to bring the witness into Court at the trial, or to any place where proceedings in the action may be conducted or held, to be there examined as a witness.

175. On serving the order upon the officer there shall be paid or tendered to him his reasonable charges for bringing the witness, and consequent thereon.

176. The Court or a Judge may, in any cause or matter where it shall appear necessary for the purposes of justice, make any order for the examination, upon oath, before any officer of the Court or any other person or persons, and at any place, either within or beyond the limits of the colony, of any witness or person, and may order any deposition so taken to be filed in the Court, and may empower any party to any such cause or matter to give such deposition in evidence therein on such terms (if any) as the Court or a Judge may direct.

177 When any rule or order shall be made for the examination of witnesses within the colony, it shall be lawful for the Court or Judge thereof, in and by the first rule or order to be made in the matter, or any subsequent rule or order, to command the attendance of any person to be named in such rule or order, for the purpose of being examined, or the production of any writings or other documents to be mentioned in such rule or order, and to direct the attendance of any such person to be at his own place of abode or elsewhere, if necessary or convenient so to do.

EVIDENCE BY AFFIDAVIT.

178. Within ten days after a consent for taking evidence by affidavit as between the plaintiff and the defendant has been given, or within such time as the parties may agree upon, or a Judge may allow, the plaintiff shall file his affidavits and deliver to the defendant or his solicitor a list thereof.

179. The defendant, within ten days after the delivery of such list, or within such time as the parties may agree upon or a Judge may allow, shall file his affidavits and deliver to the plaintiff or his solicitor a list thereof.

180. Within seven days after the expiration of the said ten days or such other time as aforesaid, the plaintiff shall file his affidavits in reply, which affidavits shall be confined to matters strictly in reply, and shall deliver to the defendant or his solicitor a list thereof.

181. When the evidence is taken by affidavit, any party desiring to cross-examine a deponent who has made an affidavit filed on behalf of the opposite party may serve upon the party by whom such affidavit has been filed a notice in writing requiring the production of the deponent for cross-examination before the Court at the trial; such notice to be served at any time before the expiration of fourteen days next after the end of the time allowed for filing affidavits in reply, or within such time as in any case the Court or a Judge may specially appoint, and unless such deponent is produced accordingly, his affidavit shall not be used as evidence unless by the special leave of the Court.

182. The party to whom such notice as is mentioned in the last preceding rule is given shall be entitled to compel the attendance of the deponent for cross-examination in the same way as he might compel the attendance of a witness to be examined.

183. Upon any motion, petition, or summons, evidence may be given by affidavit, but the Court or a Judge may, on the application of either party, order the attendance for cross-examination of the person making any such affidavit.

184. Affidavits shall be confined to such facts as the witness is able of his own knowledge to prove, except on interlocutory motions, on which statements as to his belief, with the grounds thereof, may be admitted. The costs of every affidavit which shall unnecessarily set forth matters of hearsay, or argumentative matter, or copies of or extracts from documents, shall be paid by the party filing the same.

185. In an action or other proceeding in or to which a corporation, joint-stock company, or body of persons empowerd by law to sue in the name of a public officer, is a party or intended party, affidavits may be made on behalf of such corporation, joint-stock company, or public body, by any officer or member thereof respectively, or by their solicitor, if from any unavoidable cause an affidavit cannot be made by an officer or member of the company

186. Affidavits or affirmations may respectively be sworn or made before a solicitor of the Court, or before a Registrar, or Deputy-Registrar, and in cases where there is no such Registrar and no solicitor of the Court qualified to take the affidavit or affirmation in a particular case resident within five miles of the place where it is desired to make an affidavit or affirmation, the same may be sworn before any Justice of the Peace, who shall state in the jurat, after the name of the place where the affidavit or affirmation is sworn or affirmed, the words "there being no qualified solicitor or Registrar of the Supreme Court resident within five miles."

187. An affidavit cannot, however, be read or used if it was taken before a solicitor who, at the time of taking the same, was acting as the solicitor, or as clerk or agent of the person on whose behalf it was to be read or used in the action or proceeding in which it was to be read or used.

188. Affidavits shall be intituled correctly in the cause or proceeding in which they are to be used, and shall state the Christian names and surnames of all parties thereto.

189. The Christian name must be written at length, except where the defendant has been sued by the initial letter of his Christian name, in which case he may in the title be described by such initial letter.

190. The profession, business, or occupation of every person making an affidavit shall be inserted therein, also the true place of abode of the deponent at the time of making the affidavit, unless it be made by a party in the cause, in which case it shall suffice if he describe himself as such party

191. Every affidavit must be signed by the deponent, or if he cannot write he must set his mark thereto.

192. The time of swearing the affidavit must be stated in the jurat, and likewise the place where it is sworn.

193. If the affidavit be sworn by a person who, from his signature or mark, appears to be illiterate, the person taking the affidavit shall certify in the jurat that the affidavit was read and explained by himself to the deponent, and that the deponent appeared perfectly to understand the same, and that he wrote his signature or made his mark in the presence of such person.

194. If any alteration or interlineation be made in an affidavit previously to its being sworn, it shall be initialled by the person before whom it is sworn, otherwise the affidavit cannot be read.

195. If the affidavit be in any language other than English, there must be a translation thereof annexed thereto, together with an affidavit by an interpreter, verifying the translation.

196. The jurat shall be signed by the person before whom the affidavit is sworn.

197. No affidavit shall be read or made use of in any matter in the jurat of which there shall be an interlineation or erasure; but the jurat must be totally cancelled, and a fresh one written underneath.

198. If an affidavit be sworn before a person not authorized to take it it is a nullity

199. An affidavit sworn on a Sunday is a nullity

200. In every affidavit the deponent's statement shall be in the first person throughout the affidavit.

201. Every affidavit shall be divided into paragraphs numbered consecutively, and each paragraph shall, as nearly as may be, be confined to a distinct portion of the subject.

202. Affidavits once filed may be made use of, even though the party who filed them should decline to use them.

203. No affidavit shall be read or used until it has been filed, and, when filed, shall not be taken off the file without leave of the Court or a Judge.

204. Any party to an action or proceeding before the Court requiring the affidavit of a third person, who refuses to make an affidavit, may apply by summons for an order to such person to appear and be examined on oath before a Judge or other officer of the Court, to whom it may be most convenient to refer such examination, as to the matters concerning which he has refused to make an affidavit.

205. Upon any application under the last rule, the Judge may make such order for the attendance of such person before the person therein appointed to take the examination, for the purpose of being examined as aforesaid, and for the production of any documents to be mentioned in such order, and may thereon impose such terms as to such examination, and the costs of the application and proceedings thereon, as he shall think just.

206. Any person disobeying such order shall be liable to attachment.

207 The foregoing rules shall apply to affirmations.

Consolidation of Actions.

208. When several actions are brought by the same plaintiff against several defendants upon the same instrument, *e.g.*, upon the same policy of insurance, the Court or a Judge may, upon the application of the defendants, grant a rule or order to stay the proceedings in all the actions but one (whichever the plaintiff shall elect) until such one be determined, the defendants undertaking to be bound by the verdict in such action, and that judgment be entered up against them accordingly, subject also to such other terms as the Court or a Judge may think proper.

209. The consolidation rule is for the benefit of the defendants, and binds them in case of a verdict being finally found for the plaintiff; but in case of a verdict being found for the defendant, the plaintiff is not restrained from proceeding in the other actions included in the rule.

210. When several defendants have entered into the common consolidation rule, the plaintiff, upon obtaining a verdict and judgment in the first cause, cannot sue out execution at once against the other defendants, but must first obtain a Judge's order for leave to sign judgment in the several other actions which were consolidated, to sue out execution thereon.

PART III.—DISPOSAL OF ACTIONS.

CHAPTER I.

By Payment into Court.

211. If the relief claimed in any action be payment of a sum of money, the defendant may, before trial of the action, pay into Court a sum of money by way of satisfaction or amends.

212. Notice of such payment shall be served upon the plaintiff.

213. Any money paid into Court as aforesaid may be paid out to the plaintiff, or his solicitor, or duly authorized agent.

214. The plaintiff shall, within days after receipt of notice of such payment, serve upon the defendant a notice stating whether he accepts the sum paid into Court.

215. If the relief claimed in any action be possession of land, the defendant may, at any time before trial, deliver, or offer to deliver, possession of the land claimed, or any part thereof.

216. If the relief claimed in any action be possession of chattels, the defendant may, before trial, deliver, or offer to deliver, possession of the chattels claimed, or any of them.

217. If the relief claimed in any action be not payment of a sum of money, or delivery of land or chattels, the defendant may, at any time before the trial, file in Court a memorandum, in the Form No. in the Schedule, stating that he admits that the plaintiff is entitled to the relief claimed, or to some other relief, which must be distinctly stated in such memorandum, and the plaintiff may sign judgment for the relief claimed by him, or offered by the defendant, as the case may be.

218. If the defendant pay into Court the full amount claimed, or deliver all the lands, or all the chattels claimed, or admit the plaintiff's right to the relief claimed, or if the plaintiff accepts as satisfaction the sum paid into Court, or the land or goods delivered or offered to be delivered, or the relief offered by the defendant, the plaintiff shall be entitled to the costs of the action up to the date of such payment or delivery, or of filing such memorandum, as the case may be, and may sign judgment for such costs, and for any land, or chattels, or relief not delivered or given in pursuance of such offer.

219. If the plaintiff do not accept as satisfaction any payment, offer of delivery, or offer of relief under the foregoing rules, and shall fail at the trial to recover a greater sum of money than the sum paid into Court, or to recover other land or chattels than those delivered or offered to be delivered, or if the Judge presiding at the trial shall be of opinion that the relief offered was adequate relief, though not the precise relief the plaintiff may be awarded by the judgment of the Court, the Judge trying the action may allow the defendant his costs of the action subsequently to such payment, delivery, or offer, as the case may be.

220. The defendant may proceed separately under the foregoing rules of this chapter, in respect of each or any cause of action, and file a statement of defence to any cause of action in respect of which he does not so proceed.

BY JUDGMENT BY DEFAULT.

221. If the relief claimed by the plaintiff be payment of a liquidated demand in money, and the defendant do not file his statement of defence within the time limited in the writ of summons, the plaintiff may at once sign final judgment for any sum not exceeding the sum claimed in his statement of claim, together with interest (if any) therein specified to the date of such judgment, and the sum to which he is entitled for costs up to the date of signing judgment.

Note.—The following are instances of claims for a liquidated demand in money in which a plaintiff may proceed under the above rule, namely Claims on simple contract debts, or on bills of exchange, promissory notes, cheques, or on bond or contract under seal for payment of a liquidated amount of money, or on statute where the sum sought to be recovered is a fixed sum of money, or in the nature of a debt, or on a guaranty, whether under seal or not, when the claim against the principal is in respect of such debt, or liquidated demand, bill, cheque, or note.

222. If the relief claimed by the plaintiff be the recovery of land, and the defendant do not file his statement of defence within the time limited for that purpose in the writ of summons, or if the statement of defence be limited to part only of the land claimed, the plaintiff may at once sign judgment that the person whose title is asserted in the statement of claim do recover possession of the land claimed, or any part thereof to which the statement of defence does not apply: Provided that when service has been made under Rule the plaintiff shall not be at liberty to sign judgment by default without leave of the Court or of a Judge.

223. If the relief sought by the plaintiff be the recovery of chattels, and the defendant do not file his statement of defence within the time limited in the writ of summons for that purpose, or if the statement of defence be limited to part only of the chattels claimed, the plaintiff may sign judgment that he do recover possession of the chattels claimed, or any of them to which the statement of defence does not apply, or the value thereof.

224. If possession of the chattels claimed be not recovered before the day mentioned in the writ of summons for the trial of the action, the plaintiff may have the action tried on that day for the purpose of assessing the value of such property

225. If the relief sought by the plaintiff be payment of an unliquidated demand in money, and the defendant do not file his statement of defence within the time limited in the writ of summons, the action shall be tried at the time mentioned in the writ of summons, for the purpose of assessing damages.

226. On any trial for assessment of damages under Rules 224 and 225, the defendant, except by leave of the Court or a Judge, shall not be allowed to adduce evidence, save in mitigation of damages.

227 In all other actions in which the defendant, or any defendant, has not filed a statement of defence within the time limited in the writ of summons, the plaintiff may move for such judgment against a defendant who has not filed a statement of defence as he may consider himself entitled to, and any judgment may be given on such motion that might have been given on the trial of the action.

228. When the plaintiff's statement of claim contains more than one cause of action, the plaintiff may proceed separately under the foregoing Rules Nos. 221 to 227, both inclusive, in respect of any or each cause of action to which no statement of defence has been filed.

229. In actions against several defendants, if any defendant fail to file a statement of defence the action shall be tried in the ordinary way; but such defendant shall not, except by leave of the Court, be permitted at the trial to offer any evidence, save in mitigation of damages.

230. An affidavit of service of the writ of summons and, if the writ of summons has not been served personally on the defendant, or on a solicitor authorized to accept service on his behalf, verifying the statement of claim, must be filed before judgment by default can be obtained.

231. Any judgment obtained by default may be set aside or varied by the Court or a Judge on such terms as may seem just.

232. A plaintiff shall not be entitled to sign judgment by default under the foregoing rules against an idiot or lunatic defendant for whom a solicitor has been appointed guardian *ad litem*, and who has declined to continue the defence of the action under Rule 66, but the Court or a Judge may authorize the plaintiff to pay all disbursements necessary for having the action brought to trial, and allow the plaintiff to add the amount of such disbursements, or any part thereof, to any costs the plaintiff may recover in the action.

BY DISCONTINUANCE.

233. The plaintiff may, at any time before trial, discontinue his action, either wholly or as to any cause of action, by filing in the office of the Court in which the statement of defence is to be filed a memorandum in the Form No. in the Schedule hereto.

234. A copy of such memorandum shall be served upon the defendant by the plaintiff.

235. A plaintiff so discontinuing shall pay to the defendant the costs to which he is entitled in respect of such discontinuance, and the defendant may sign judgment for such costs.

236. The discontinuance of an action shall not be a defence to any subsequent action on the cause of action discontinued.

BY STAY OF PROCEEDINGS.

237 If an action be brought pending a reference which it has been agreed shall operate as a stay of proceedings, or otherwise contrary to good faith, the Court or a Judge may order the action to be stayed, whether such agreement were made under the authority of the Court or not.

238. When two actions are brought by the same plaintiff, grounded on or arising out of the same subject-matter, but seeking different forms of relief, yet so that the plaintiff cannot have both, the Court or a Judge will require the plaintiff to elect, within a time to be fixed for that purpose, in which of the actions he will proceed, and will stay proceedings in the meantime. An election having been made in favour of one, the other shall be dismissed with costs.

239. When two actions are instituted by creditors for the administration of the estate of the same deceased debtor, the Court or a Judge may at any time order that one of such actions be stayed.

By Trial.

240. All actions shall be tried at the place mentioned in the writ of summons, unless it be made to appear by either party that the action cannot be conveniently or fairly tried at the place mentioned in the writ of summons, and the Court or a Judge may at any time order the action to be tried at some other place.

241. The proper officer at the place where the action is to be tried shall set down the action for trial at the sittings mentioned in the writ.

242. Actions set down for trial at the same sittings shall be tried in the order in which the writs of summons in such actions have been issued, without preference or delay; but actions to be tried in different modes may be arranged in separate lists, and each list disposed of before another list is taken.

243. The Court or a Judge thereof may before the trial, or the Judge presiding at the trial may during the trial, if it shall appear expedient in the interests of justice so to do, postpone or adjourn the trial for such time, to such place, and upon such terms (if any) as the Court or such Judge may think fit.

244. Actions shall be tried either before a Judge or Judges of the Court, or before a Judge or Judges of the Court and a jury.

245. An action shall be tried by a Judge without a jury when the relief claimed in the action is—

(1.) Payment of a debt or pecuniary damages not exceeding the sum of £500;

(2.) Delivery of land or of chattels not exceeding £500 in value;

unless a jury is applied for by either party under the next rule, or the Court or a Judge shall otherwise order.

246. If the debt or damages, or the value of the land or of the chattels, claimed in any action exceed £50 but do not exceed £500, either party may have the action tried before a Judge of the Court and a jury of four persons, on delivering to the proper officer of the Court, at least days before the commencement of the sittings at which the action is to be tried, a memorandum in the Form No. in the Schedule hereto. A copy of such memorandum shall be served on the other party at least days before such sittings.

247. If the debt or damages, or the value of the land or of the chattels, claimed in the action exceed the sum of £500, the action shall be tried before a Judge of the Court and a jury of twelve persons, unless both parties shall consent in writing to trial by a jury of four or without a jury

248. All other actions shall be tried by a Judge of the Court, but if it be made to appear to the Court either before or at the trial, that the action, or any issue therein, can be more conveniently tried before a Judge and jury, the Court may direct that the action or such issue be so tried.

249. If in any action tried before a Judge and jury the existence of a record of the Court is in dispute, the existence of such record shall be determined by the Judge presiding at the trial, and not by the jury

250. If during any trial before a Judge and jury a juryman be taken ill, or become incapable of performing his duty, or prove to be beneficially interested in the result of the action, the Judge may discharge the jury, and direct another to be called.

251. The cause being called on, if neither party appear, the Judge shall order it to be struck out, but may order it to be reinstated on good cause shown by either party, and subject to such terms as the Judge may think just.

252. If the plaintiff appear and the defendant do not appear, the plaintiff shall prove his cause of action so far as the burden of proof lies on him.

253. If the defendant appear, but the plaintiff do not appear, the defendant, if he do not admit the claim, shall be entitled to judgment dismissing the action. If the defendant have a counter claim, he may prove such counter claim, so far as the burden of proof lies on him.

254. Any verdict or judgment obtained when one party does not appear at the trial may be set aside or varied by the Court or a Judge upon such terms as may seem fit, upon application within five days after the trial.

255. If both the plaintiff and the defendant appear the plaintiff shall state his case, and adduce his evidence in support thereof. When the plaintiff has closed his case the defendant shall state his case, and adduce his evidence in support thereof.

256. The Judge presiding at the trial may, however, order that the defendant shall state his case and adduce his evidence first, if the burden of proof appear to lie on him.

257 When the action is tried by a jury, after the evidence has been taken, the party who has not the right to begin may address the jury generally on the case, and after him the other party may address the jury in reply; but if the party who has not the right to begin do not adduce evidence in support of his case the opposite party shall address the jury on the case, and after him the party not having the right to begin shall address the jury in reply

258. The Judge presiding at the trial shall then direct the jury on the evidence given in the case, and on any points of law connected therewith, and may leave the case to the jury generally to find for either party, or may ask the jury to answer such issues as he may think fit, or as the parties may agree upon, and take the verdict of the jury on such issues only

259. The Court or a Judge thereof shall have power, either before, at, or after the trial of any action, to amend all defects and errors in the proceedings in the action, whether there be anything in writing to amend by or not, and whether the defect or error be that of the party applying to amend or not.

260. All such amendments shall be made with or without costs, and upon such terms as to the Judge presiding at the trial may seem fit, and all amendments shall be made that may be necessary for the purpose of determining the real controversy between the parties in the action.

By Nonsuit.

261. The plaintiff in any action may, at any time before a verdict or judgment has been given, elect to be nonsuited. After a nonsuit the plaintiff shall not be debarred from proceeding again to

trial on the same statement of claim, all the costs of the first trial having been first paid, and a Judge on the application of the plaintiff may fix a time and place for such trial.

By Discharge of Jury.

262. When the action is tried before a Judge and jury, the jury may, by consent of both parties, be discharged from giving a verdict, and judgment given by the Judge presiding at the trial.

263. If the parties agree to the jury being discharged, but do not agree to accept the judgment of the Judge presiding at the trial, each party shall pay his own costs; but the plaintiff may set down the action for trial at any subsequent sittings, and give days' notice thereof to the defendant.

New Trial.

264. A new trial may be granted on any of the following grounds:

(1.) That the Judge has misdirected the jury on any material point of law, or, if the action be tried without a jury, has decided any point of law erroneously

(2.) That the Judge admitted improper evidence, or rejected evidence which ought to have been admitted.

(3.) When the damages are excessive or too small.

(4.) That the verdict has been obtained by any unfair or improper practice of the successful party to the prejudice of the opposite party

(5.) That material evidence has been discovered since the trial, which could not have been foreseen or known before the trial.

(6.) That the jury or any juror have or has been guilty of misconduct, if such misconduct can be proved by extrinsic evidence, but the verdict cannot be impugned on the evidence of any of the jurymen.

(7.) That any witness has been guilty of such misconduct as to affect the result of the trial.

(8.) That a special verdict or other finding of the jury is so defective that the Judge cannot give judgment upon it.

(9.) That the verdict is against the weight of evidence.

265. A new trial shall not be granted on the ground of misdirection, or erroneous decision on any point of law, or of improper admission, or rejection of evidence, unless, in the opinion of the Court, some substantial wrong or miscarriage of justice has been thereby occasioned in the trial of the action; and if it appears to the Court that such wrong or miscarriage affects part only of the matter in controversy, the Court may give final judgment as to part thereof, and direct a new trial as to the other part only: Provided that no new trial shall be granted as to such last-mentioned part if the amount awarded by the jury can be separately ascertained, and the plaintiff consent to reduce the whole sum awarded to him by that amount.

266. A new trial shall not be granted on the ground of improper admission or rejection of evidence, unless the objection was distinctly taken at the trial.

267. A new trial may be ordered on any question in an action, whatever be the grounds on which a new trial is applied for, without interfering with the decision upon any other question.

268. A new trial may be granted upon terms if necessary, *e.g.*, that the evidence of witnesses infirm or going beyond the sea, or deceased, may be read from the Judge's notes of the first trial, or that certain deeds, books, and papers may be produced at the trial, or that the amount of the verdict be brought into Court, or security given for the same.

269. In every case, if a new trial be granted, the costs of the former trial are in the discretion of the Court.

270. Where the question of costs is reserved by the Court until after the second trial, it will then be entirely in the discretion of the Court whether they will allow the costs of the first trial to the party who succeeds at the second or not.

271. On a motion for a new trial, the Court will not receive any affidavit of any witness to explain or add to evidence given by him at the trial, nor will the Court receive an affidavit of any facts which might have been given in evidence at the trial. But an affidavit may be received from a material witness showing that he made a serious mistake in giving his testimony

272. Notice of motion for a new trial must be given within four days after trial, and in every such notice the grounds upon which it is intended to move shall be shortly stated therein, and a new trial shall not be granted on any ground not so stated.

273. Notice of motion for a new trial shall not operate as a stay of proceedings in the action, unless at or immediately after the trial the Judge presiding at the trial, on the application of the party intending to move, shall so order.

Judgment.

274. Upon the trial of any action, the Judge presiding at the trial, after taking the verdict of the jury, if the action has been tried by a jury, may—

(1.) Give judgment at once.

(2.) Adjourn the case for further consideration.

(3.) Give judgment for either party, and reserve leave for either party to move an arrest of judgment, or to set aside the judgment and to enter any other judgment.

(4.) Abstain from giving judgment.

275. When leave has been reserved to either party to move in arrest of judgment, or to move to set aside any judgment and enter any other judgment, the party to whom such leave has been reserved may move in pursuance of such leave within such time as may have been fixed by the Judge for that purpose, or, if no time has been fixed, within fourteen days after such leave has been reserved.

276. When the Judge has abstained from giving judgment at the trial, either party may within such time as may have been fixed by the Judge for that purpose, or, if no time has been fixed, within fourteen days after trial, move for such judgment as he may consider himself entitled to.

277 When the action has been tried by a jury, either party may, without any leave reserved, apply to set aside any judgment given in the action and enter any other judgment, on the ground that the judgment given is not in accordance with the vervict of the jury.

278. When an action has been tried by a Judge, either party may, without any leave reserved, apply to set aside such judgment and enter any other judgment, upon the ground that upon the finding of the Judge on any question of fact the judgment is wrong.

279. The jury may give a special verdict, stating the facts as they find them to be proved at the trial, without finding for either party A special verdict shall be put into writing and signed by the foreman of the jury before they are discharged.

280. The jury may also give a verdict for either party, subject to a special case to be stated by the plaintiff and defendant.

281. When the jury have given a special verdict, or a verdict subject to a special case, either party may move for such judgment as he may consider himself entitled to. If the motion is on a special case a copy of the case shall be filed in Court along with the notice of motion.

282. If under any of the foregoing rules as to moving for judgment both parties move, their motions shall be heard together, unless it shall appear to the Court desirable to hear them separately

283. If both parties move, their motions shall be heard together, unless it shall appear to the Court desirable to hear them separately

284. A judgment may be either final or may direct such accounts to be taken, inquiries made, or other acts done, and proceedings instituted, as the Judge of the Court giving judgment may deem necessary, and may give the conduct of the action subsequently to judgment to such party to the action as to such Judge may appear proper.

285. If any party having the conduct of an action do not proceed with the accounts, inquiries, acts, or proceedings ordered, or do not take all necessary steps to have the same completed, the opposite party may move to dismiss the action, and the Court or Judge may make such order as to the prosecution of such accounts, inquiries, acts, and proceedings, or the dismissal of the action, or giving the conduct of the action to some other party, as may seem proper.

286. Either party may, at any time, apply for directions or further directions or orders as to such accounts, inquiries, acts, and proceedings, or for an order for additional accounts, inquiries, acts, or proceedings.

287 Any party to an action may, at any stage in the action, upon any admissions made by the statements of any opposite party, or on the result of any accounts, inquiries, acts, or proceedings being made known, move for any limited relief that such admissions, accounts, inquiries, acts, or proceedings may show him to be entitled to.

288. When the accounts, inquiries, acts, and proceedings ordered have been concluded, or if it shall appear unnecessary or impossible to proceed further with such accounts, inquiries, acts, or proceedings, either party may move for any further judgment he may deem himself entitled to.

289. If either party at any stage of the action obtain judgment by default, confession, or otherwise, on any cause of action, or for any limited relief, he shall be entitled to have such judgment prepared and signed, and to issue execution thereon at once without waiting to obtain judgment on any other cause of action, or as to any other relief claimed by him unless the Court or a Judge otherwise order.

290. If a counter claim be proved to any cause of action to an amount less than that recovered on the same cause of action, the plaintiff shall have judgment on that cause of action for the balance of his claim, after deducting the amount of the counter claim proved by the defendant.

291. If a counter claim be proved to any cause of action to an amount exceeding that recovered on the same cause of action, the defendant shall have judgment for such excess.

292. Where 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 Court or a 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.

293. But in one action against several defendants, if the plaintiff succeeds against some and fail as against the others, the defendants who fail may set off the costs of the defendants who succeeds.

294. The judgment may award interest to the date of giving judgment to a successful party at the rate (if any) agreed on, or if no rate has been agreed on, then at such rate as the Judge, if the action is tried by a Judge, or the jury, if the action is tried by a jury, may think proper.

295. Every judgment debt shall carry interest at the rate of eight pounds per centum per annum from the time of judgment being given until the same shall be satisfied, and such interest may be levied under any writ of execution upon such judgment.

296. Judgments shall be drawn up by the proper officer of the Court as of the date upon which they were given, sealed with the seal of the Court, and filed along with the writ of summons and other documents filed in the action, and duplicates thereof may be issued out to any person applying therefor. A judgment when so filed shall be deemed to be signed for the purpose of issuing execution.

297 In actions for money the judgment may be indorsed on the statement of claim, and signed by the Judge presiding at the trial, and execution may issue on a judgment so indorsed.

298. The Judge presiding at the trial may, however, order the proper officer to draw up minutes of his judgment, and may order the successful party, or the party having the conduct of the action, to prepare a formal judgment based on such minutes, and that all necessary parties do attend before him in chambers to settle such judgment.

Judgment by Confession

299. Judgment may be signed in any action upon a written confession of the action given by the defendant to the plaintiff, with or without condition annexed as to the time for satisfying the plaintiff's claim: Provided that no judgment shall be signed subject to condition without the plaintiff's consent in writing.

300. The confession may be of part only of the alleged cause of action, in which case the plaintiff can only sign judgment for the part confessed, and must proceed in the action as to the residue.

301. A confession may be given at any time after the writ of summons is issued.

302. Any judgment signed on the confession of the defendant contrary to good faith may be set aside by the Court or a Judge on motion.

SATISFACTION OF JUDGMENTS.

303. As soon as any judgment has been satisfied by payment, levy, or in any other manner, the party against whom such judgment has been given is entitled to have satisfaction of the same entered up. For this purpose it is necessary to produce and file in the office of the Court an acknowledgment of satisfaction signed by the party obtaining judgment, or his solicitor, general agent, or attorney, or, if the plaintiff be deceased, by his personal representatives.

PART IV.—EXECUTION

CHAPTER I.

WRITS OF EXECUTION GENERALLY

304. Judgments may be enforced by any one or more of the following writs as hereinafter provided: viz., a writ of sale, a writ of possession, a writ of attachment.

305. When, by any judgment or order of the Court or a Judge thereof, any party is entitled to relief subject to or upon the fulfilment of any condition or contingency, the party so entitled shall satisfy the Court by affidavit, or by such other evidence as the Court or a Judge may require, that such condition has been performed or such contingency has happened, before he shall be entitled to issue any of the before-mentioned writs.

306. Any person applying for a writ of execution shall lodge with the proper officer a memorandum in the form No. in the Schedule hereto.

307. Every writ of execution shall be dated as of the day on which it was issued.

308. In every case of execution the party issuing the same shall be at liberty to levy from the person against whom it is issued the fees and expenses to which he may be entitled in respect of and incidental to the issue and execution of such writ.

309. A writ of execution (if unexecuted) shall remain in force for one year only from its issue, unless renewed in manner hereinafter provided.

310. A writ of execution may at any time before its expiration, by leave of the Court or a Judge, be renewed by the party issuing it for one year from the date of such renewal, and so on from time to time during the currency of the renewed writ.

311. A renewed writ shall be marked by the proper officer with the word "Renewed," and, on being so marked, shall have effect and be entitled to priority according to the original delivery thereof.

312. The production of a writ of execution purporting to be marked as renewed shall be sufficient evidence of its having been so renewed.

313. As between the original parties to a judgment, execution may issue at any time within six years from the recovery of judgment.

314. When six years have elapsed since the judgment, or any change has taken place by death or otherwise in the parties entitled or liable to execution, the party alleging himself to be entitled to execution may apply to the Court or a Judge thereof for leave to issue execution accordingly

315. The Court or a Judge may, if satisfied that the party applying under the last rule is entitled to issue execution, make a rule or order to that effect, or may order that any issue or question necessary to determine the rights of the parties may be tried in any way in which an action may be tried. And in either case the Court or Judge may impose such terms as to costs or otherwise as shall seem just.

316. Every order of the Court or a Judge may be enforced in the same manner as a judgment to the same effect.

317 In cases other than those mentioned in Rule 313, any person, not being a party in an action, who obtains any order, or in whose favour any order is made, shall be entitled to enforce obedience to such order by the same process as if he were party to an action; and any person not being party to an action, against whom judgment or obedience to an order may be enforced, shall be liable to the same process for enforcing obedience to such judgment or order as if he were party to an action.

318. Where a judgment is against partners, in the name of the firm, execution may issue in manner following:—

(1.) Against any property of the partners as such.

(2.) Against any person who has admitted on the pleadings that he is or has been adjudged to be a partner.

(3.) Against any person who has been served as a partner with the writ of summons and has failed to appear.

319. If the party who has obtained judgment claims to be entitled to issue execution against any person as a member of a firm, he may apply to a Court or a Judge for leave to do so, and the Court or a Judge may give such leave if the liability be not disputed, or, if such liability be disputed, may order that the liability of such person be tried and determined in any manner in which any question or issue may be tried or determined.

320. Any party against whom a judgment has been given may apply to the Court or a Judge for a stay of execution, or other relief against such judgment, upon the ground of facts which have happened or come to his knowledge since the trial of the action, and the Court or a Judge thereof may give such relief, and upon such terms as may appear just.

321. No relief shall be given under the last rule if the Court or Judge shall be of opinion that the person applying might reasonably have ascertained before the trial the facts which he alleges have become known to him since the trial.

322. When a witness who gave material evidence at the trial of an action has since been indicted for perjury in respect of that evidence, the Court may stay execution until the indictment has been tried, or may order the proceeds of the execution to be paid into Court, there to remain until further order.

323. If execution be sued out contrary to any order of the Court or a Judge, or to the agreement of the party suing it out, or otherwise contrary to good faith, it may be set aside by the Court or a Judge.

324. A writ of execution must strictly pursue the judgment or order in pursuance of which it has been issued, or show on the face of it why it does not.

325. Two or more writs of execution of the same kind may be issued into one or more districts, and if necessary addressed to different officers, provided that the costs of more than one concurrent writ shall not be allowed, unless by order of a Judge.

326. Writs of execution shall be prepared by the proper officer and sealed with the seal of the Court, and when sealed shall be delivered by such officer to the officer for the time being appointed to execute writs of execution, and when so delivered shall be deemed to be issued.

327 The officer of the Court to whom a writ has been delivered for execution, immediately after execution, if he succeed in executing the writ, or after reasonable attempts to execute the writ have been made but without success, shall return the same into the office of the Court out of which it has been issued, with a memorandum indorsed thereon, stating the mode in which the writ has been executed, or the reason for not executing the writ.

328. If any writ be returned unexecuted, such writ may, on the application of the party issuing the writ, be again issued to the proper officer for execution, if it be made to appear that there are grounds for believing that the writ can be successfully executed.

329. Writs of execution shall be in the form given in the Schedule hereto.

Writ of Sale.

330. A writ of sale shall authorize the officer to whom it is directed to seize all the chattels, including moneys, cheques, bills of exchange, promissory notes, bonds, or other securities for money, of the person against whom it is issued, except wearing apparel, bedding, tools and implements of trade, not exceeding £25 in value.

331. Such officer shall pay or deliver to the party suing out such writ of sale any money or bank notes which shall be so seized, or a sufficient part thereof, and shall hold any such cheques, bills of exchange, promissory notes, bonds, or other securities for money as a security or securities for the amount by such writ of sale directed to be levied, or so much thereof as shall not have been otherwise levied and raised, and may sue in his own name for the sum or sums secured thereby if and when the time of payment thereof shall have arrived.

332. The payment to such officer by the party liable on any such cheque, bill, promissory note, bond, or other security, with or without action, or the recovery and levying execution against the party so liable, shall discharge him to the extent of such payment, or of such recovery and levy in execution, as the case may be, from his liability on any such cheque, bill of exchange, promissory note, bond, or other security; and such officer may, and shall, pay over to the party issuing the writ of sale the money so to be recovered, or such part thereof as shall be sufficient to discharge the amount by such writ directed to be levied, and if, after satisfaction of the amount so to be levied, together with the fees and expenses of such execution, any surplus shall remain in the hands of such officer, the same shall be paid to the party against whom such writ shall be so issued: Provided that no such officer shall be bound to sue any party liable upon any such cheque, bill of exchange, promissory note, bond, or other security, unless the party suing out the writ of sale shall enter into a bond, with two sufficient sureties for indemnifying him from all costs and expenses to be incurred in the prosecution of such action, or to which he may become liable in consequence thereof; the expense of such bond to be deducted out of any money to be recovered in such action.

333. A writ of sale shall also authorize the officer to whom it is directed to sell the chattels so seized, not being money, cheques, bills of exchange, promissory notes, bonds, or other securities for money, and all the estate, right, title, or interest, whether in possession, remainder, reversion, or expectancy of the person against whom the writ has been issued, in any lands.

334. Except when otherwise provided by statute, a writ of sale shall bind the chattels of the person against whom it has been issued from the time the writ has been delivered to the proper officer for execution, and shall bind the estate, right, title, or interest of such person in lands immediately after a memorial of the judgment in pursuance of which such writ has been issued, certified by the proper officer, has been registered against such lands in the manner hereinafter mentioned, that is to say :—

(1.) When the title to the land is under "The Land Transfer Act, 1870," or any Act amending the same, such memorial shall be lodged with the District Land Registrar for the district in which such land is situated, and shall be entered as a charge against the land intended to be affected.

(2.) When the title to the land has been brought under the operation of "The Land Registry Act, 1860," such memorial shall be registered in the form and manner prescribed by the rules in force for the time being regulating the procedure under the said Act, with the District Registrar of Land for the land registry district in which such land shall be situated, as a charge against the land intended to be affected.

(3.) When the title to the land shall not have been brought under "The Land Transfer Act, 1870," or any Act amending the same, or "The Land Registry Act, 1860," a memorial shall be registered with the Registrar of Deeds for the district in which such lands shall be situate, according to the law in force for the time being for the registration of deeds.

335. Every memorial so to be lodged or registered as aforesaid shall specify the names of the plaintiff and defendant, the sum recovered by such judgment, and the time of signing the same, together with the date of delivery of the writ of sale to the proper officer for execution, and shall also refer to the land intended to be affected or charged thereby; and shall contain or have indorsed thereon or annexed thereto a plan of such land, showing its extent, boundaries, and relative position, or refer to an existing grant, certificate of title, or receipt or other instrument, for description of the parcels: Provided that any person who or whose land may be prejudicially affected by such memorial may apply to a Judge at chambers to have the registration of such memorial removed or the effect thereof modified, and such Judge may make such order with reference thereto as may be just, and allow such costs to either party as he may consider reasonable.

336. Until the registration of such memorial as aforesaid, no sale or transfer of land under any such writ of sale shall be valid or have any effect as against a purchaser for valuable consideration, notwithstanding such writ may have been actually lodged for execution at the time of the purchase, and notwithstanding the purchaser may have had actual or constructive notice of the lodgment of the writ.

337 Upon depositing with the District Land Registrar, or the District Registrar of Lands, or the Registrar of Deeds, as the case may be, of the district within which the lands are situate, a memorial of the satisfaction of any such judgment, or other sufficient evidence of such satisfaction, or any order of the Court or a Judge, the appropriate entries in the respective registers shall be made, and thereupon such judgment and any writ of sale issued thereupon shall be deemed to be satisfied as regards such lands.

338. Every such judgment as aforesaid shall cease to bind, charge, or affect any such land, unless some deed or instrument of transfer upon a sale under a writ of sale issued thereupon shall be lodged or registered within six months from the day of the registration of the memorial as aforesaid.

339. It shall not be necessary for the officer to whom a writ of sale is directed to make any seizure of land before the sale of such land.

340. The officer to whom the writ is directed shall, as soon as possible, remove the chattels seized to some proper place for the purpose of sale, unless the parties whose chattels have been seized shall in writing consent to the chattels being left on the premises where the same were seized, in the custody of some proper person to be put in possession by the officer, and sold there.

341. The sale shall be held at such place as the officer to whom the writ is directed shall deem most advantageous, and, with the consent of the person against whom the writ has been issued, may, in the case of chattels, be the place of seizure, and, in the case of land, on the land to be sold.

342. Notice of the time and place of any intended sale of chattels shall be given by advertisement in some newspaper circulating in the town or district in which such sale is to take place, and such advertisement shall be published in such newspaper at least five days before the date of the intended sale, and shall be republished in each issue of such newspaper up to the date of sale.

343. Notice of the time and place of any intended sale of any estate, right, or interest in land shall be given by advertisement in at least one newspaper circulating in the town or district in which the land is situated, and such advertisement shall be published in such newspaper as aforesaid at least twenty-one days before the date of any intended sale, and shall be republished in such newspaper in each issue of such newspaper up to the date of sale.

344. A copy of the notice of any intended sale shall, previously to the sale, be served by the officer to whom the writ is directed on the person against whom the writ has been issued.

345. The notice of any intended sale shall specify the chattels, or right, or interest in chattels, or the lands, or estate, right, or interest therein intended to be sold, and shall state that the sale is made at the suit of the execution creditor, the name of the officer executing the writ, and the name of the solicitor (if any) of the party issuing the writ.

346. All sales under a writ of sale may be of all the property seized in one lot or in several lots, and shall be to the highest bidder, and, unless the Court or a Judge otherwise direct, shall be for cash before delivery, conveyance, assignment, or transfer, and shall be of the estate, right, title, or interest only of the party against whom such writ has been issued in the chattels or lands put up for sale.

347 The officer to whom the writ has been directed may demand, and, in case of refusal, seize the title deeds of and in possession of any party against whom a writ has been issued, and produce them to any intending purchaser.

348. In the event of such officer being unable to sell any chattels, or not being able to obtain what he considers a reasonable price therefor, he may put up the same for sale again, and on such second, or any subsequent sale, may sell the same to the highest bidder.

349. If both land and chattels belonging to the same person be taken in execution under the same writ of sale, the officer executing the writ shall, unless such person otherwise desire, cause the chattels to be sold first, and in case the proceeds shall be insufficient to satisfy the execution, he shall then sell the land.

350. A person whose lands have been seized may, by notice in writing, delivered to the officer to whom the writ of sale is directed at least ten days previously to such sale, require that any specified portions of the land so advertised be first sold, and such person shall cause the same to be first put up for sale accordingly, and if a sufficient sum shall be realized thereby to satisfy the execution, interest, officer's fees and expenses, no other part of such lands shall be sold, otherwise such officer shall proceed with the sale of the remainder.

351. It shall be lawful for the officer to whom the writ is directed, by himself or his deputy, to sell by auction all lands and chattels which may be taken by him in execution, without having taken out an auctioneer's license, anything in any law, Act, or Ordinance to the contrary notwithstanding.

352. The officer to whom a writ of sale is directed is hereby empowered and required to execute a proper deed of conveyance, assignment, or transfer, as the case may require, to the purchaser of the estate, right, or interest of the execution debtor in any land or chattels, and such deed shall be sufficient to convey to the purchaser all the estate, right, title, and interest of the execution debtor in the property sold.

353. Such conveyance, assignment, or transfer shall be prepared by the purchaser at his own expense, and shall be left with the officer by whom the writ of sale has been executed for approval four days before he is called upon to execute the same.

354. Every conveyance, assignment, and transfer heretofore or hereafter executed by such officer as aforesaid shall be *primâ facie* evidence of the existence of a valid judgment and writ to support a levy by such officer, and of the fact of all necessary notices having been given and published, and of a levy having been duly made, and of a sale having taken place according to law

355. The officer executing any writ of sale shall, before paying over any moneys seized or realized under a writ of sale, discharge any claims which by law are entitled to be paid out of such moneys in priority to the claim of the party issuing the writ.

Writ of Possession

356. A writ of possession shall authorize the officer to whom it is directed to deliver to any party named in the writ possession of any land or of any chattels specified in the writ, and for that purpose to eject any other person from such lands, or to seize and take possession of any such chattels.

Writ of Attachment.

357. A writ of attachment shall empower the officer to whom the writ is directed to arrest any person named in the writ, and shall command such officer to bring such person before the Court at such time and place as shall be mentioned in the writ, and to keep him in the meantime in such safe custody as may be by law allowed.

358. When any person has been brought back before the Court or a Judge upon a writ of attachment, the Court or a Judge may commit such person to prison for such term as to the Court or a Judge may appear necessary, and as may be by law allowed, unless such person shall sooner comply with the judgment of the Court for non-performance or non-observance of which he has been committed.

Issue of Writs.

359. A writ of sale or of possession may be issued whenever the judgment in pursuance of which it is issued has been filed, subject nevertheless as follows:—

(1.) If the judgment is for payment or performance within a period therein mentioned, no writ of execution shall be issued until after the expiration of such period.

(2.) The Judge at the time of giving judgment, or the Court or a Judge afterwards, may stay execution for such time as may seem just.

360. When by any judgment any party is ordered to pay a sum of money, the party to whom such sum of money is ordered to be paid may issue a writ of sale.

361. When any money has been paid on account of a judgment, or the party entitled to judgment wishes to waive any portion thereof, or to waive payment of his costs, or any portion thereof, or when judgment has been given for a larger amount than is actually due, *e.g.*, for the penalty on a bond, damages for a particular breach thereof only having been recovered, such party, on applying for the writ of sale, shall deliver to the proper officer a memorandum shewing the amount he desires to waive, or the sum actually due on the judgment, as the case may be, and the actual amount such party or person claims to recover by virtue of the writ of sale.

362. Such memorandum shall be in the form No. in the Schedule, and shall be annexed to the writ of sale before it is delivered for execution.

363. Any party to whom less is actually due than the amount of the judgment, failing to deliver such memorandum, shall be liable to have the execution set aside.

364. When by any judgment of the Court or a Judge any party is ordered to deliver possession of land or chattels, the party to whom such land or chattels is or are ordered to be delivered may issue a writ of possession.

365. If possession of any chattels ordered to be delivered be not recovered under a writ of possession, the party to whom such chattels are ordered to be delivered may, by leave of the Court or a Judge, issue out a writ of attachment, and if such application be refused, or if the said chattels be not delivered under any such writ of attachment, such party may issue a writ of sale to recover the assessed value of such chattels, or may at his option at once issue a writ of sale to recover the assessed value of such chattels without issuing a writ of possession. But no writ of attachment shall be granted if a writ of sale has been issued to recover the assessed value of the chattels detained, and no writ of sale shall be issued to recover the assessed value of the chattels detained by any party subsequently to the imprisonment of such party under a writ of attachment, except on terms that the party so imprisoned be discharged from custody before the issue of such writ of sale.

366. When by any judgment of the Court a party is ordered to do, or abstain from doing, any act, not being the payment of a sum of money recovered in an action for debt or damages by any judgment of the Court, and fails to obey such judgment, the party entitled to the benefit of the judgment may, by leave of the Court or a Judge, issue a writ of attachment. Notice of the application for leave to issue such writ shall be served on the party against whom it is intended to issue the writ.

367 When by the judgment of the Court a party is ordered to pay a sum of money and to deliver land or chattels, any other party entitled to the benefit of such judgment may issue one writ, to be called a writ of sale and possession, to recover such sum of money and delivery of such land or chattels.

Charging Debts, Trust Funds, and Shares.

368. Any party to an action may, at any time after the commencement of an action and before judgment, by leave of the Court or a Judge, on proof that the opposite party is making away with his property or is about to quit the colony with intent to defeat his creditors, and after judgment without such leave, issue a notice in the Form No. in the Schedule hereto, addressed to,—

(1.) Any person indebted to any opposite party

(2.) Any person seized of any land or possessed of any chattels under an express or implied trust, by virtue of which any opposite party is entitled to any estate, right, or interest, whether in possession, remainder or reversion, or expectancy, or whether vested or contingent.

(3.) Any partner of an opposite party.

(4.) Any company incorporated in New Zealand, or carrying on business in New Zealand, and having an office in New Zealand in which transfers of shares in such company may be registered, in which any opposite party is the registered owners of shares.

369. The term "opposite party," for the purpose of the last preceding rule, shall before judgment mean any opposite party, and after judgment any opposite party who is by the judgment ordered to pay a sum of money

370. Such notice shall be sealed with the seal of the Court, and a duplicate thereof shall be served on the person or some officer of the company intended to be affected thereby

371. After service of such notice, no disposition by any opposite party named therein of any debt, or of any estate, right, or interest, or of any share in any partnership or company affected thereby, shall be valid as against the party issuing such notice, unless made by leave of the Court or of a Judge.

372. Any notice served under Rule 370 shall restrain the person or company served therewith from paying over any debt, interest, income, bonus, profits, or other moneys due or accruing due to the opposite party named in such notice, or from making, or from concurring in making, or permitting any conveyance, transfer, or assignment of any estate, right, title, or interest, or of any share in a partnership or company of such opposite party, except in accordance with the provisions hereinafter contained, or by leave of the Court or of a Judge.

373. If, after service of such notice on any person or company, such person or company shall pay over any moneys, or make or concur in making or permit any conveyance, transfer, or assignment, or dealing in contravention of the terms of such notice, such person or company may be ordered to pay over to the party issuing such notice the amount of the moneys so transferred, or the value of the property so dealt with, or such part thereof as shall be sufficient to satisfy any judgment the party issuing the notice may obtain, or have obtained, in the action.

374. Any person or company served with such notice, and any person alleging that he is prejudicially affected by such notice, may, at any time, move to have such notice cancelled or varied, and the Court or a Judge may on such motion cancel or vary such notice upon such terms as to giving security, and as to costs and otherwise, as may appear proper.

375. Any person or company served with notice under rule may forthwith pay into Court any sum of money then due and payable to the opposite party named in the notice, whether for debt, interest, income, profits, bonus, or on any other account, or an amount equal to the amount then claimable by the person issuing such notice under any judgment in the action, and, in default of such payment, the party issuing such notice, if he have obtained judgment in the action, may at any time thereafter by summons apply to a Judge for an order directing the person or company served with such notice to pay into Court any sum of money affected thereby, or a sufficient part thereof to satisfy the judgment; and if the liability to pay the money claimed is not disputed, or the person or corporation summoned does not appear upon summons, and no other claim appears to have been made on the person or company served with such notice for the money affected thereby, the Judge may order payment to be made, and in default thereof a writ of sale to issue against the person or company so admitting liability or not appearing.

376. If it appear that an independent claim has been set up to any moneys affected by such notice, any summons issued under the last preceding rule must be directed to and served upon the person making such claim as well as upon the person originally served with notice under Rule 370.

377 If the person or company served with such notice dispute his or their liability, or any independent claim is set up, the Court or Judge may decide the matter summarily, or may direct the parties and persons appearing at the hearing of any summons to prepare issues to try the right of the party issuing the notice to have execution against the person or company served with such notice; such issues, in case of dispute, to be settled before a Judge, and, when settled, to be set down and tried at such time and place as he may direct: Provided that the Judge may refuse to interfere when from the smallness of the amount involved the remedy would be vexatious or worthless.

378. Payment made by or execution levied upon any person or company served with notice under Rule 370 shall be a valid discharge as against the person named in any notice to the amount so paid or levied, although any order for payment, or the judgment in aid of which such order was made, be subsequently set aside or reversed.

379. In each office of the Court there shall be kept a book in which entries shall be made of all notices issued under Rule 368, and of the proceedings thereon, with the names, dates, and statements of the amount recovered and otherwise. Copies of any entries made therein may be taken by any person upon application to the proper officer.

380. Any officer appointed to execute writs of sale may, at any time after any judgment has been filed and a notice served by the party who has obtained judgment, upon the written application of the party who has obtained judgment, proceed to sell any estate, right, or interest, or share in a partnership or company mentioned in such notice in the same manner as nearly as may be as sales of land are to be conducted under the provisions of this code; and may for that purpose demand from any attorney, agent or factor, trustee, or partner of such opposite party, or from any company served with such notice, the production of such documents of title as relate to the estate, right, interest, or share intended to be sold, and are in the possession or under the control of the person or company so served as aforesaid; and any person so served refusing to produce such documents shall be liable to attachment.

381. Upon any sale made under the last preceding rule, the officer conducting such sale shall execute such conveyance, transfer, or assignment, as may be necessary for vesting the estate, right, interest, or share sold in the purchaser thereof, and for that purpose may execute any power of appoint-

ment which the opposite party against whom judgment has been given could have executed in his own favour, or for his own benefit; and all other persons who might have been required by such opposite party on a sale by himself to join in the conveyence, transfer, or assignment, or in the execution of such power, shall be bound to join with such officer in the same manner, and if they neglect or refuse so to do, or cannot be found, such officer may execute any conveyance, transfer, or assignment on their behalf.

382. For the purpose of issuing any notice under Rule 368, the party in whose favour any judgment has been given may at the trial of the action, after judgment has been given, or at any time thereafter upon summons in chambers, examine the party against whom judgment has been given—

(1.) As to what debts are owing to him.
(2.) Whether he is entitled to any property in the hands of any attorney, agent, or factor.
(3.) Whether he is entitled to any estate, right, title, or interest, whether in possession, remainder, or reversion, or expectancy, and whether vested or contingent under any express or implied trust.
(4.) Whether he has been or is engaged in carrying on business in partnership with any person.
(5.) Whether he holds shares in any company incorporated or carrying on business in New Zealand.

PART V.—INCIDENTAL PROCEEDINGS IN AN ACTION.

Motions.

383. Any application to the Court or to a Judge in Court not required to be made by petition may be made by motion.

384. A notice in writing of any intended motion must be served on the parties affected thereby, and a copy thereof filed in Court at least three clear days before the day named in the notice for hearing the motion.

385. The Court or a Judge may, however, on a motion *ex parte* make an order for such time and upon such terms as to costs or otherwise, and subject to such undertaking (if any) as the Court or such Judge may think just.

(1.) When the Court or Judge is satisfied that the delay caused by proceeding in the ordinary way would or might entail irreparable injury
(2.) When a motion *ex parte* is authorized by these rules or by statute.
(3.) When the motion appears to affect the party moving only, or is in respect of a matter of routine, or of so unimportant a nature that the interests of any other party to the action cannot be affected thereby.

386. Any party or person against whom an order has been made *ex parte* under the last preceding rule, may at any time move to rescind such order.

387 When, by these rules or any statute, time is limited for making any motion, as, for example, in the case of motions for new trials, the motion shall be deemed to have been made in time if notice of motion has been served and filed within the time so limited.

388. Motions made on notice shall be set down and called upon in the order in which the respective notices of motion have been filed, and, if any party or person serving a notice of motion fail to appear in support of his motion, any party on whom such notice of motion has been served may apply to have the motion struck out, and the Court may make such order with reference thereto and to the payment of costs of such party as may appear just.

389. If, on the hearing of a motion, the Court or a Judge be of opinion that any person on whom notice has not been served ought to have or have had such notice, the Court or Judge may either dismiss the motion or adjourn the hearing thereof, in order that such notice may be served, upon such terms (if any) as the Court or Judge may think fit to impose.

390. Notices of motion shall state precisely the grounds on which it is intended to move; but the Court or a Judge may, except on motions for new trials, make an order on any other grounds if it shall seem expedient so to do.

391. The hearing of any motion may from time to time be adjourned, upon such terms (if any) as the Court or a Judge shall think fit.

392. The plaintiff may without special leave serve any notice of motion upon any defendant who, having been duly served with the writ of summons, has not filed his statement of defence within the time limited for that purpose.

393. The plaintiff may, by leave of the Court or a Judge, to be obtained *ex parte*, serve any notice of motion on any defendant along with the writ of summons, or, at any time after the service of the writ of summons, before the time limited for the defendant filing his statement of defence has expired.

394. No affidavit shall be heard in support of any motion unless such affidavit has been filed in the office of the Court at least two clear days before the day named in the notice for the hearing of the motion, nor can an affidavit be read in answer to any affidavit in support of the motion, unless it shall have been filed in the office of the Court before noon on the day preceding.

395. Affidavits made previously in the same cause and filed in the Court may be used on the argument of the motion, provided that the notice of the intention to use them has been given.

396. Upon any motion founded on affidavits it shall be lawful for either party, by leave of the Court or Judge, to read affidavits in answer to the affidavits of the other party upon any new matter arising out of such affidavits.

397 On hearing motions made on notice, the party giving notice is heard first in support of the motion, and then the parties opposing the motion are heard, and then the party moving is heard in reply.

398. The costs of a motion are always in the discretion of the Court. If in disposing of any motion the Court say nothing as to costs, each party shall pay his own costs, and no subsequent application can be made for them.

399. Where a party fails on a motion from a substantial defect in his case, as shown in his affidavits, he cannot apply again on amended affidavit unless, under special circumstances, leave to apply again be expressly given by the Court. If leave be given, it may be on such terms as the Court shall think reasonable and just.

400. If any order be fraudulently or improperly obtained, the same and any proceedings under it may be set aside by the Court upon motion.

401. The order obtained on any motion shall be drawn up by the party in whose favour such order has been made, and submitted to the proper officer for approval, and, when approved, shall be sealed with the seal of the Court and filed with the writ of summons and other proceedings in the actions; and duplicates of such orders may be issued to any person applying therefor.

Petitions.

402. The rules as to service of notice of motions, setting down motions, and as to reading affidavits relating thereto, and as to costs, and as to orders made thereon, shall apply *mutatis mutandis* to petitions.

403. Every petition shall be verified by affidavit in the following form: "I, A.B., make oath and say that so much of the foregoing petition as relates to my own acts is true, and so much thereof as relates to the acts and deeds of any other person I believe to be true."

Applications in Chambers.

404. A Judge sitting in chambers may exercise any power granted by statute, or these rules, to the Court or a Judge thereof other than powers which are expressly provided to be exercised in open Court, and may adjourn the hearing of any matters in which he has such power from Court to chambers or from chambers to Court.

405. Every application to a Judge sitting in chambers shall be made in a summary manner by summons, or, if made *ex parte*, a notice of the intended application shall be delivered to the proper officer, at the latest during office hours on the day preceding the day on which it is intended to apply.

406. During the absence of a Judge, or during the inability of a Judge to act from any cause whatever, the Registrar of the Supreme Court shall have the same authority and jurisdiction as a Judge at chambers to hear and decide on applications for further time for defendants to file statements of defence and to adjourn the trial.

407 Any person affected by any order or decision of a Registrar may appeal therefrom to a Judge at chambers.

408. An appeal from a Registrar's decision shall be no stay of proceedings, unless so ordered by the Registrar.

409. A Judge's order may be reviewed and rescinded by the Court, except where the jurisdiction of the Court is excluded by express enactment, or where the order has been made upon written consent.

410. The rules as to service of notice of motions, setting down and hearing motions, and as to reading affidavits relating thereto, and as to costs, and as to orders made thereon, shall apply *mutatis mutandis* to proceedings in chambers.

Accounts, Inquiries, Etc.

411. On hearing any summons for directions as to any accounts, inquiries, acts, and proceedings that may have been ordered by the judgment in any action, the Judge hearing such summons, if satisfied by proper evidence that all persons ordered to be served with notice of the judgment under Rule 81 have been so served, may give such directions as to such accounts, inquiries, acts, and proceedings, as he may consider necessary

412. When an order for accounts has been obtained prior to judgment under Rule 113, all necessary directions as to taking the accounts may be given at the time of making the order for taking such accounts.

413. If, on hearing any summons under Rule 411, it shall appear that, by reason of absence or any other sufficient cause, service of notice of judgment upon any person not a party to the action ordered to be served under Rule 81 cannot be made, or ought to be dispensed with, the Judge may, if he think fit, dispense with such service, or may at his discretion order substituted service or notice by advertisement in lieu of service.

414. Accounts may be ordered to be taken before the Registrar, or before an accountant, or before the Registrar and an accountant.

415. When accounts have been ordered to be taken before the Registrar alone, the Registrar shall have power to decide summarily on all disputed items under £10, and all disputed items over that amount shall be referred to a Judge.

416. When accounts have been referred to an accountant, or the Registrar and an accountant, the accountant or the Registrar and the accountant, as the case may be, shall have power to decide summarily on all disputed items of account: Provided that either party, the accountant or the Registrar and the accountant, may refer any items he or they may think proper to the decision of a Judge; and all items of account as to which the Registrar and accountant disagree shall be so referred.

417 When any items have been referred to a Judge under either of the last two preceding rules, the party disputing or seeking to surcharge the account may issue a summons to the accounting party to appear before a Judge in chambers to be examined orally touching the disputed items of account, for the purpose of elucidating and completing the account, and at such examination no person shall be present other than the Judge, the parties to the action, and the counsel and solicitors of the parties.

418. On any examination under the last preceding rule the Judge may either decide summarily as to such disputed items of account, or order that issues be prepared by such party as he may direct, and set down for trial before a Judge and a jury of four persons, or of twelve persons, at such time and place as he may consider most convenient.

419. All accounts shall be prepared in the Form No. in the Schedule hereto, and shall show distinctly the person with whom they purport to be stated and the items denied by such person.

420. If the person with whom an account purports to be stated seeks to charge the accounting party with items not shown in the account, he shall give the accounting party notice in writing, stating, so far as he is able, the amount sought to be charged and the items thereof in a short and succinct manner, and the accounting party shall specify which of such items he denies.

421. If it be found that any account cannot be delivered within the time fixed for delivering the same, it shall be lawful for the Court or a Judge, on the application of the party ordered to account, to enlarge the time for delivering the same, upon such terms as to costs and otherwise as may appear just.

422. Vouchers for all payments must be produced by the accounting party when required, but the Judge, on the original or any subsequent application as to accounts, may give special directions as to the mode of taking and vouching accounts, and, in particular, may order that books of account in which the accounts required to be taken have been kept, or any of them, shall be taken as *primâ facie* evidence of the truth of the matters therein contained, with liberty to the parties to take such objections thereto as they may be advised.

423. Inquiries as to heirs, next of kin, creditors, and other claimants, or as to any other matters of like nature, shall be made before the Registrar; and any other acts or proceedings shall be done or taken by or before such person or persons, at such time and manner, as a Judge may direct.

224. The Registrar or the accountant, or the Registrar and the accountant, as the case may be, before whom any accounts have been ordered to be taken, and the Registrar, as to any inquiries, acts, or proceedings ordered by a judgment in an action, shall have full power to issue advertisements, to summon parties and witnesses, to administer oaths, to take affidavits and acknowledgments (other than acknowledgments by married women), to receive affirmations, and, when so directed by a Judge, to examine parties and witnesses, either upon interrogatories or *viva voce*, as a Judge may direct.

425. Parties and witnesses so summoned shall be bound to attend in pursuance of such summons, and shall be liable to process of contempt in like manner as parties or witnesses are now liable thereto, in case of disobedience to any order of the Court, or in case of default in attendance in pursuance of any order of the Court, or of any writ of subpœna *ad testificandum;* and all persons swearing or affirming before any such Registrar or accountant, or Registrar and accountant, shall be liable to all such penalties, punishments, and consequences for any wilful and corrupt false swearing or affirming contained therein, as if the matters sworn or affirmed had been sworn or affirmed before any person now by law authorized to administer oaths, to take affidavits, and to receive affirmations.

426. The directions to be given by the Judge for or touching any accounts, inquiries, acts, or proceedings shall require no particular form, but the result shall be stated in the shape of a short certificate to the Judge, and shall not be embodied in a formal report, unless in any case the Judge shall see fit so to direct, and, when the Judge shall approve of such certificate or report, he shall sign the same in testimony of his adopting the same.

427 Any party shall, either while any accounts are being taken, inquiries made, acts done, or proceedings taken, or within fourteen clear days after such accounts, inquiries, acts, or proceedings have been completed, and before the certificate or report shall have been signed and adopted, be at liberty to take the opinion of the Judge upon any particular point or matter arising in the course thereof, or upon the general result thereof when completed.

428. When any certificate or report shall have been signed and adopted by the Judge, the same shall be filed in the office of the Court, and shall thenceforth be binding on all the parties to the proceedings, unless discharged or varied in open Court upon motion within one calendar month; and nothing herein contained shall prejudice or affect the power of the Court at any time to open any certificate or report upon the grounds of fraud, surprise, or mistake.

429. In all cases where matters in respect of which summonses have been issued are not disposed of upon the return of the summons, the parties are to attend from time to time without further summons, at such time or times as may be appointed, for the consideration or further consideration of the matter.

430. When a judgment or order is made directing an account of debts, claims, or liabilities, or an inquiry for next of kin, or other unascertained persons, unless otherwise ordered, all persons who do not come in and prove their claims within the time which may be fixed for that purpose by advertisement are to be excluded from the benefit of the judgment.

431. When a judgment or order is made directing an account of the debts of a deceased person, unless otherwise ordered, interest is to be computed on such debts as to such of them as carry interest, after the rate they respectively carry, and as to all others after the rate of eight per centum per annum, from the date of the judgment.

432. When a judgment or order is made directing an account of legacies, unless otherwise ordered, interest is to be computed on such legacies after the rate of eight pounds per centum per annum from the end of one year after the death of the deceased, unless any other time of payment or rate of interest is directed by the will, and in that case according to the will.

433. When a judgment or order is made directing any property to be sold, unless otherwise ordered, the same is to be sold with the approbation of the Judge by whom the proceedings in the cause are directed, to the best purchaser that can be got for the same, to be allowed by such Judge, and all proper parties are to join therein as such Judge shall direct.

434. Whenever a defendant is ordered to render an account, he shall also therewith deliver a full, true, and particular list (verified by affidavit) of all books, papers, and documents of any kind which are or ever have been in the possession or power of the defendant relating to any of the matters contained in the account, and shall show what has become of such of the last-mentioned books, papers, and documents as are no longer in his possession or power.

435. The time to be allowed for persons to come in and prove their claims (as creditors, next of kin, &c.) shall be fixed by the Court or a Judge, and shall never be less than one clear calendar month after the date of the first publication of the advertisement to come in and prove. And so much longer time shall be allowed as may appear reasonable, in case there be reason to believe that the creditors, next of kin, &c., are resident out of the judicial district in which the action is pending.

436. Every person coming in to claim as creditor or next of kin shall file a written statement of his claim and of the facts on which it is based, verified by affidavit; and, in the case of a creditor, such affidavit must state that the debt remains due.

437 When any person shall be appointed a receiver in an action, such person shall, before acting as receiver, give security to the satisfaction of the proper officer, duly and annually to account before such officer for what he shall so receive, and to pay the balance which shall be found due from him into Court, or as the Court or a Judge thereof may direct. The account shall be in the form of debtor and creditor, and shall be verified by affidavit.

438. Whenever the rights or circumstances of the parties at the time judgment is given are not such as to enable the Court to order absolutely that payment be made to the persons entitled thereto, and the Court has ordered the share of any party that has not become absolute to be carried over on trust in the cause to a separate account, such party on becoming entitled may by petition apply for payment of his share, notice being given to the other persons interested in the separate account, whereupon payment to the party so entitled may be ordered.

PART VI.—SPECIAL PROCEDURE.

CHAPTER I.

Change of Parties by Death.

439. An action shall not become abated by reason of the marriage, death, or bankruptcy of any of the parties if the cause of action survive or continue, and shall not become defective by the assignment, creation, or devolution of any estate or title *pendente lite*.

440. In case of the marriage, death, or bankruptcy, or devolution of estate by operation of law, of any party to an action, the Court or a Judge, if it be deemed necessary for the complete settlement of all the questions involved in the action, shall order that the husband, personal representative, trustee, or other successor in the interest (if any) of such party be made a party to the action, or be served with notice thereof, in such manner and form as is hereinafter prescribed, and on such terms as the Court or a Judge shall think just, and shall make such order for the disposal of the action as may be just.

441. In case of an assignment, creation, or devolution of any estate or title *pendente lite*, the action may be continued by or against the person to or upon whom such estate or title has come or devolved.

442. Where by reason of marriage, death, or bankruptcy, or any other event occurring after the commencement of an action, and causing a change or transmission of interest or liability, or, by reason of any person interested coming into existence after the commencement of the action, it becomes necessary or desirable that any person not already a party to the action should be made a party thereto in another capacity, an order that the proceedings in the action shall be carried on between the continuing parties to the action, and such new party or parties, may be obtained *ex parte* on application to the Court or a Judge upon an allegation of such change or transmission of interest or liability, or of such person interested having come into existence.

443. An order so obtained shall, unless the Court or Judge shall otherwise direct, be served upon the continuing party or parties to the action or their solicitors, and also upon each such new party, unless the person making the application be himself the only new party; and the order shall from the time of such service, subject nevertheless to the next two following rules, be binding on the person served therewith; and every person served therewith who is not already a party to the action shall be bound to file a statement of defence within the same time and in the same manner as if he had been served with a writ of summons.

444. Where any person who is under no disability, or under no disability other than coverture, or being under any disability other than coverture but having a guardian *ad litem* in the action, shall be served with such order, such person may apply to a Court or a Judge to discharge or vary such order at any time within twelve days from the service thereof.

445. Where any person being under any disability other than coverture, and not having had a guardian *ad litem* appointed in the action, is served with any such order, such person may apply to the Court or a Judge to discharge or vary such order at any time within twelve days from the appointment of a guardian *ad litem* for such party, and, until such period of twelve days shall have expired, such order shall have no force or effect as against such last mentioned person.

CHAPTER II.

Extraordinary Remedies.

446. When the assistance of the Court is sought to compel any officer or person to perform any duty incumbent upon him, other than the payment of a sum of money for the non-payment of which a writ of sale may be issued, or the performance of any act for the non-performance of which he is liable to attachment, the Court may issue a writ of mandamus to such person or officer ordering him to perform such duty.

447 When the assistance of the Court is sought to restrain any officer or person from breach of any duty incumbent upon him which he has threatened or has already commenced to commit, the

Court may issue a writ of injunction to restrain such threatened breach, or the continuance of any breach which is of a continuous character.

448. When the assistance of the Court is sought to prohibit any inferior Court, Magistrate, or Justice of the Peace from exercising any jurisdiction he is not by law empowered to exercise, the Court may issue a writ of prohibition prohibiting the exercise of such jurisdiction.

449. When the assistance of the Court is sought to remove any person from office, or to try the right of any person to hold any office, the Court may order that such person be removed from office, or declare who is entitled to hold the office in question.

450. When the assistance of the Court is sought to remove any action from an inferior Court into the Supreme Court, the Court shall have power to order that such action be so removed.

451. Any person claiming the issue of writ of mandamus, or of a writ of injunction, or of a writ of prohibition, or an order under Rule 449, shall, without issuing a writ of summons, file in Court a statement of claim, verified by affidavit, setting out the facts upon which he bases his claim to the assistance of the Court to which he considers himself entitled.

452. The person filing any statement of claim under the last preceding rule may at any time thereafter move upon his statement of claim, and any affidavits filed in support thereof, for an order in terms of the prayer of his statement, or for such other order as the Court may consider him entitled to.

453. Such motions shall be made in manner hereinbefore provided as to motions generally, and if made upon notice such notice shall be served upon all persons whom it is sought to affect by the order claimed: Provided that the rules as to the time for giving notice of motion and filing affidavits in support thereof shall not apply to motions for a writ of injunction. The Court may, however, upon hearing the motion, or on any motion to rescind an order obtained *ex parte*, direct that any other persons shall be served with notice of motion, and give leave to such persons to appear on the hearing of such motion.

454. If the motion is made on notice, or if any person against whom an order *ex parte* has been made moves to rescind the order served upon him, the person on whom notice has been served or who moves to rescind shall file a statement of his defence to the statement of claim.

455. Such statement of defence shall be verified by affidavit, and additional affidavits in support of the allegations therein contained may be filed.

456. Upon hearing any motion under Rule 452, or motion to rescind an order obtained *ex parte* under that rule, the Court may either decide the matter on the affidavits filed by the persons, appearing on such motion, or may refer the matter for trial by a jury of four persons or of twelve persons upon the statements of claim and defence so filed as aforesaid, or may refer certain issues only to be so tried.

457. The Court, when referring any matter or issues thereon for trial by jury under the last rule, shall order at what place and time such matter or issues shall be tried; and such matter or issues shall be set down for trial at such time and place, and the trial and other proceedings thereon shall be had in the same manner as in an ordinary action.

458. Any party to an action commenced in the ordinary way may, in addition to any other relief, claim the issue of a writ of mandamus or of a writ of injunction; and when such claim is made, the party making such claim may, at any time after the commencement of the action, move for an order for such writ as he has claimed, and the like proceedings may be had upon such motion as upon any motion under Rule 452, save that any order for trial shall, unless the Court otherwise order, be for trial at the same time and place as the action is to be tried, and, if no such motion is made, such claim shall be disposed of at the trial of the action: Provided that the mode of trial of any action under the rules as to trial of actions shall be not affected by a claim for a writ of mandamus or a writ of injunction, but such claim may be tried or disposed of in the same way as the other relief claimed in the action.

459. Any person applying to have an action removed from an inferior Court into the Supreme Court shall proceed by way of motion, and notice of such motion shall be served upon the opposite party in such action or proceeding.

460. Any person disobeying any order made under the preceding Rules Nos. 446 to 459, both inclusive, shall be liable to attachment.

Protection of Property and Other Matters.

461. When by a contract a *primâ facie* case of liability is established, and there is alleged as matter of defence a right to be relieved wholly or partially from such liability, the Court or a Judge may make an order for the preservation or interim custody of the subject-matter of the litigation, or may order that the amount in dispute be brought into Court or otherwise secured.

462. It shall be lawful for the Court or a Judge, on the application of any party to an action, to make any order for the sale by any person or persons named in such order, and in such manner and on such terms as to the Court or Judge may seem desirable, of any goods, wares, or merchandise which may be of a perishable nature or likely to injure by keeping, or which for any other just and sufficient reason it may be desirable to have sold at once.

463. It shall be lawful for the Court or a Judge, upon the application of any party to an action, and upon such terms as may seem just, to make any order for the detention, preservation, or inspection of any property being the subject of such action, and, for all or any of the purposes aforesaid, to authorize any person or persons to enter upon or into any land or building in the possession of any party to such action, and for all or any of the purposes aforesaid to authorize any samples to be taken, or any observation, measurement, or plans to be made, or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence.

464. An application for an order under the two last preceding rules may be made to the Court or a Judge by any party If the application be by the plaintiff, it may be made at any time after the issue of the writ of summons; and, if it be by the defendant, it may be made at any time after he has filed his statement of defence.

465. Where an action is brought to recover, or a defendant in his statement of defence seeks by way of a counter claim to recover specific property other than land, and the party from whom such recovery is sought does not dispute the title of the party seeking to recover the same, but claims to retain the property by virtue of a lien or otherwise as security for any sum of money, the Court or a Judge may, at any time after such last-mentioned claim appears from the statement of defence, or, if there be no statement of defence by affidavit or otherwise to the satisfaction of such Court or Judge, order that the party claiming to recover the property be at liberty to pay into Court, to abide the event of the action, the amount of money in respect of which the lien or security is claimed, and such further sum (if any) for interest and costs as such Court or Judge may direct, and that, upon such payment into Court being made, the property claimed be given up to the party claiming it.

SCIRE FACIAS.

466. Any relief which might heretofore have been obtained by means of a writ of *scire facias* may be claimed in an ordinary action, either alone or together with other relief, and the said writ shall no longer be issued.

INTERPLEADER.

467 When two or more persons claim the same chattels, or the performance of the same duty, from another person who has no interest in the chattels claimed, or is willing to perform the duty claimed, to whichever claimant is by law entitled to such performance, such other person, whether either claimant has commenced an action against him or not, may issue a summons to such adverse claimants to appear before a Judge in chambers, and, upon the hearing of such summons, the Judge hearing the same may:—

(1.) Stay proceedings in any action commenced by either claimant.
(2.) If either claimant does not appear, make an order barring his claim.
(3.) Adjudicate on such adverse claims summarily, if from the smallness of the amount in dispute, or the unimportant nature of the duty, or the preponderating weight of evidence in favour of either claimant, it shall appear to the Judge desirable so to do.
(4.) If the facts are not in dispute, and the question involved appears to be one of law only, the Judge may decide the matter summarily, or order a special case for the opinion of the Court to be prepared by the parties.
(5.) Order that one of the claimants do commence an action against the other to try the question involved, or, if an action has been commenced by one claimant, order that the other claimant do make himself defendant to the action.
(6). Order issues to be prepared by the parties to try the question involved, and set down for trial, at such time and place as the Judge when ordering or settling the issues or at any other time may direct.

468. If either claimant have commenced an action, any application under the last preceding rule must be made before a statement of defence has been filed.

469. The power given by Rule 467 may be exercised, though the titles of the claimants have not a common origin, but are adverse and independent of each other.

470. Any order of the Court or of a Judge, or the judgment in any action, or the judgment on the finding of a jury on any issues, shall be final and conclusive against the parties before the Court, and all persons claiming by, from, or under them.

471. When any chattels seized under a writ of sale are claimed by any person, not being the party against whom the writ of sale has been issued, the officer executing the writ shall deliver possession of the chattels so seized to the person claiming the same, upon such person paying into Court the amount of the sum to be levied under the writ and the fees and expenses of execution, or giving security to the satisfaction of the officer executing the writ for such amount; and the amount so paid or secured shall be subject to the decision of the Court on the claim of such person: Provided that, if the value of the chattels seized is less than the amount of the sum to be levied under the writ, and the fees and expenses of execution, the person claiming such chattels may obtain the delivery thereof on paying into Court or securing as aforesaid the value of such chattels, such value in case of dispute to be settled by the appraisement of some indifferent person to be appointed by a Judge; or the person so claiming any chattels as aforesaid may pay to the proper officer the amount of the fees he is entitled to charge for keeping possession of the chattels seized until a decision of the Court as to the claim of such person can be obtained, and such officer shall thereupon keep possession of such chattels until such decision shall be obtained.

472. When any chattels seized under a writ of sale are claimed by some third person, the officer executing the writ of sale may, before or after the return of the writ, and whether an action has been commenced against him for such seizure or not, issue a summons to the party issuing such writ of sale, the party against whom it is issued, and the person making such claim; and on the hearing of such summons the Judge may, for the adjustment of such claim and the relief of such officer, exercise all or any of the powers conferred by Rule 467, and may make such orders as to any moneys paid into Court or secured, or any chattels retained by an officer of the Court, under the last preceding rule and otherwise, as shall appear just according to the circumstances of the case.

473. When chattels have been seized under a writ of sale, and some third person claims under a bill of sale or otherwise to be entitled to such chattels by way of security for a debt, the Court or a Judge may order a sale of the whole or part of such chattels, upon such terms as to payment of the whole or part of such secured debt or otherwise as they or he shall think fit, and may direct the application of the proceeds of such sale in such manner and upon such terms as to the Court or Judge may seem just.

474. The affidavit in support of an application under Rule 467 shall state that the person issuing the summons,—

(1.) Does not claim any interest in the chattels, or is willing to perform the duty claimed to whichever of the claimants may be entitled thereto.

(2.) That adverse claims have been made by the persons summoned, and the steps which have already been taken by the adverse claimants in support of their respective claims.
(3.) That the person issuing the summons does not collude with either of the claimants, but is ready to bring into Court or dispose of the chattels claimed, or secure the performance of the duty, in such manner as may be ordered.

Bills of Exchange.

475. Actions upon bills of exchange may be commenced by writ of summons in the form No. in the Schedule hereto, instead of the form No. in the said Schedule: Provided that every such action shall be commenced within six months after such bill of exchange shall have become due and payable.

476. On filing an affidavit of service of such writ within the jurisdiction of the Court, or an order for leave to proceed on substituted service or without service, the plaintiff may at once sign final judgment for any sum not exceeding the sum indorsed on the writ as principal, together with interest to the date of the judgment at the rate claimed in the writ, or, if no rate be mentioned in the writ, at the rate of eight per cent. per annum, together with such sum as he may be entitled to for costs.

477. Any Judge or Registrar shall, upon application before judgment has been signed, give leave to the defendant to file a statement of defence and defend the action, on the defendant paying into Court the sum indorsed on the writ, or giving security for such sum and the plaintiff's costs of action.

478. Any Judge, on an application under the last preceding rule, may give leave to defend upon affidavits which disclose to his satisfaction a good 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 and otherwise as to the Judge may seem fit.

479. If a defendant obtain leave to defend under either of the last two preceding rules, no statement of claim other than the statement of claim indorsed on the writ shall be delivered, and the defendant shall file his statement of defence within such time and at such office of the Court, and the action shall be tried at such time and place, as the Registrar or Judge giving leave to defend shall appoint.

480. In any proceedings under a writ of summons issued under Rule 475, the Court or a Judge may order that any bill of exchange or promissory note sought to be proceeded upon be deposited with the proper officer, and that all proceedings be stayed until the plaintiff has given security for costs.

481. The holders of every dishonoured bill of exchange drawn out of the colony may, in any writ issued under Rule 475, claim the expenses incurred in noting such bill of exchange for non-acceptance or non-payment or otherwise by reason of such dishonour.

482. Subject to the foregoing Rules numbered 475 to 481, both inclusive, the proceedings in any action commenced under Rule 475 shall be regulated as nearly as may be by the other rules of this code.

483. The term "bill of exchange" shall, if not inconsistent with the context, for the purposes of Rules 475 to 482, both inclusive, include a promissory note, a cheque on a banker, and any written contract signed by the party sought to be charged, by virtue of which a sum certain became due upon a day certain, or within a certain time which has elapsed.

Actions on Bonds.

484. In an action upon a bond conditioned for the performance of any covenants or agreements in any deed or writing, the defendant shall not be allowed to pay money into Court in satisfaction of the action unless he confess judgment, as a security for future performance of such covenants or agreements.

485. At the trial of any action upon a bond conditioned as aforesaid, damages shall be assessed only for such breaches of the said covenants or agreements as shall be set forth in the statement of claim and proved at the trial. If the plaintiff recover damages, he may sign judgment for the full penalty of the bond and the costs to which he is entitled in the action.

486. Any judgment signed under the two last preceding rules shall remain as a security for any damages that may be sustained by reason of any further breach of the covenants or agreements contained in the bond for the penalty of which judgment has been signed, and the plaintiff may from time to time commence an action on such judgment, setting out in his statement of claim such further breaches and claiming damages in respect thereof, and the defendant will not be allowed to set up any defence to such action that he might have set up in answer to the original action.

Wrongful Distress.

487 The proceedings in an action for an illegal distress, when the chattels seized have been replevied, shall be the same as in an ordinary action.

488. If the plaintiff in such action be nonsuited at the trial, or the defendant obtain judgment, the defendant may prove the amount due for rent in arrear at the time of distraining, and may sign judgment for such amount, whatever may have been the value of the chattels distrained.

Relators.

489. Proceedings by the Attorney-General upon the relation of a private person shall be the same as in an ordinary action, but such relator must be approved of by the Attorney-General, and shall be liable for the costs of the action.

490. If it be made to appear that the relator is not a proper person, proceedings in the action may be stayed till a proper person be named as relator.

491. If the relator or all the relators die the action does not abate, but the Court or Judge may stay proceedings therein until the name of some new relator has been inserted.

492. Before the name of any person shall be used as a relator in any action, he shall sign a written authority to the solicitor for that purpose, and such authority shall be filed in the office of the proper officer.

Writ of Arrest.

493. A writ of arrest for the purpose of arresting any defendant about to leave the colony shall be in the form No. in the Schedule hereto, and shall specify the purpose for which the defendant is to give security

494. Such writ shall empower the officer to whom it is directed to arrest the person named therein, and to commit him to such custody as may be by law allowed, until he shall have given to such officer sufficient security for payment of any sum of money, or for the performance of any act, or not to quit the colony without leave of the Court or otherwise, as may by the writ of arrest berequired.

495. When a defendant is required to give security for the payment of a sum of money, he may pay such sum of money into the hands of the officer executing the writ of arrest, but may obtain repayment thereof at any time on giving to such officer sufficient security for the payment thereof.

496. The Court or a Judge may, at any time after judgment, order that any sum of money so paid or secured, or any part thereof, be paid over to a successful plaintiff, or that any security given by a defendant under a writ of arrest be put in force by the officer to whom it has been given for the purpose of such order.

497 Any person arrested under a writ of arrest may at any time apply to the Court or a Judge to be discharged from custody, on the ground of having been wrongfully arrested, or of being wrongfully detained in custody, and the Court or Judge on such application may make such order as to the discharge of the defendant or otherwise as may appear just.

Probate and Administration.

498. Every person named in any will as executor who desires to obtain probate thereof shall file in some office of the Court an affidavit in the form No. in the Schedule hereto, made by some person acquainted with the facts therein set forth, and shall also make and file an affidavit in the form No. in the said Schedule. Probate shall thereupon be granted in the form No. in the said Schedule, unless a caveat shall have been previously entered.

499. If none of the executors named in the will shall apply for probate within one calendar month after the death of the testator, and if the residuary legatee, widow, widower, or next of kin of such testator or intestate shall apply for administration within two calendar months from the day of the death of such testator or intestate, and if the party so applying shall file as aforesaid an affidavit in the form No. in the Schedule hereto, and make and file as aforesaid an affidavit in the form No. in the said Schedule, the party so applying shall thereupon be entitled to a grant of letters of administration with the will annexed, in the form No. in the said Schedule, unless a caveat shall have been previously entered.

500. If there be no will, or if there be a will but no executor be named therein, the residuary legatee, widow, widower, or next of kin of such testator or intestate may apply for a grant of letters of administration, and if the party so applying shall file as aforesaid an affidavit in the form No. in the Schedule, and shall make and file as aforesaid an affidavit in the form No. or No. , and also affidavits setting out the facts from which the right to administer arises, the party so applying shall be entitled to letters of administration with the will annexed as in the form No. in the said Schedule, or to letters of administration in the form No. , as the case may require, unless a caveat shall have been previously entered.

501. Any person desiring to oppose a grant of probate of a will, or of letters of administration, may file in any office of the Court a caveat in the form No. in the Schedule hereto. If the caveat is filed by a solicitor, the solicitor shall annex to the caveat his warrant for filing the same.

502. Any person applying for probate or letters of administration shall be entitled to issue a summons calling upon the person on whose behalf a caveat is filed to appear before a Judge of the Court in chambers, and show cause why the application for probate or administration, as the case may be, should not be granted. If the party so summoned shall fail to appear accordingly, the caveat shall be deemed to be abandoned, and the party so applying for probate or administration shall be entitled to the same as if no caveat had been filed.

503. If the person lodging the caveat appear, the Judge may either decide the matter summarily, or may order the person applying for probate or letters of administration to proceed by action, as hereinafter provided.

504. Every person to whom letters of administration shall be granted, except the Public Trustee, shall before obtaining the same give sufficient security, to the satisfaction of the proper officer, for the proper administration of the estate of the deceased.

505. No probate or letters of administration shall be sealed after the expiration of one calendar month from the day on which the application was granted. After such period a fresh application must be made.

506. Every executor or administrator shall, within such respective periods as the Judge on granting probate or administration shall direct, or within such further periods as a Judge on application may direct, file in the office of the Supreme Court an inventory of the estate and effects of the deceased, and also a full and distinct account in writing of his administration of the estate, which shall set forth the dates and particulars of all receipts and disbursements; every inventory and account so filed shall be verified by affidavit. If such account shall not be exhibited at the time fixed, the Judge may fix a further time, at the expiration whereof, if the executor or administrator shall fail to pass his accounts, he shall be chargeable with interest out of his own funds at the rate of 10 per cent. per annum for the balance (if any) remaining in his hands, unless he can show good and sufficient cause to the contrary.

507 An executor, instead of proceeding to obtain probate by order in chambers, may, and, if a grant of probate is opposed, and a Judge orders the right to be tried by action, must, obtain a judgment of the Court for the issue of probate.

508. The proceedings to obtain probate by judgment of the Court shall be the same as in an ordinary action, and the statement of claim must be served upon all persons against whom it is sought to establish the will.

509. Probate granted by a judgment of the Court shall not be recalled, except in the case of a will subsequent to the will of which probate has been so granted being discovered.

510. Proceedings to have a grant of probate or of letters of administration recalled shall be the same as in an ordinary action.

511. Proceedings to obtain administration when an application for a grant of letters of administration is opposed, and the Judge orders the right to be tried by action, shall be the same as in an ordinary action.

MATRIMONIAL CAUSES.

512. Proceedings to obtain any decree that the Court is authorized to make under "The Divorce and Matrimonial Causes Act, 1867," or any Act amending or in substitution for the same, shall, except as hereinafter specially provided by Rules 513 to 550, both inclusive, be the same as in an ordinary action.

513. Instead of the form of writ of summons No. 1, the form of writ No. shall be used.

514. The statement of claim shall be accompanied by an affidavit made by the plaintiff, verifying the facts of which he or she has personal cognizance, and deposing as to belief of the truth of the other facts alleged in the statement of claim.

515. In cases where the plaintiff seeks a decree of nullity of marriage, or of judicial separation, or of dissolution of marriage, the plaintiff's affidavit filed with his or her statement of claim shall further state that no collusion or connivance exists between the plaintiff and the opposite party

516. Upon a husband bringing an action for dissolution of marriage on the ground of adultery, the alleged adulterers shall be made co-defendants in the action, unless the Judge shall otherwise direct.

517 Application for such direction is to be made to the Judge on motion or summons founded on affidavit.

518. If the names of the alleged adulterers, or any of them, be unknown to the plaintiff at the time of commencing the action, the same must be supplied as soon as known, and application must be made forthwith to the proper officer to amend the writ of summons and statement of claim, by inserting such names therein; and the proper officer to whom the application is made shall give his directions as to such amendment, and such further directions as he may think fit, as to service of the amended writ of summons and statement of claim.

519. The term "defendant" shall include all co-defendants, so far as the same is applicable to them.

520. Before a plaintiff can proceed, a statement of defence must have been filed by or on behalf of the defendants, or it must be shown by affidavit filed in the office of the Court that they have been duly served and have not filed a statement of defence.

521. An affidavit of service must be substantially in the form No. in the Schedule hereto.

522. A statement of defence may be filed at any time before a proceeding has been taken in default, or afterwards by leave of the Judge, or of the Registrar in his absence, to be applied for by motion or summons founded on affidavit.

523. If a party summoned wishes to raise any question as to the jurisdiction of the Court, he or she must file a statement of defence under protest.

524. The Attorney-General, or, in case of a vacancy in that office, the Solicitor-General, if he think fit to appear at the trial to oppose any action which he has by law a right to oppose, shall before trial file a statement of defence and serve a copy thereof on the plaintiff, and may take such further proceedings in the action as a defendant in an ordinary action might take.

525. Any person other than the Attorney-General or Solicitor-General, desiring to appear at the trial to oppose an action claiming a dissolution of marriage, shall apply by motion or summons for leave so to do, and, on obtaining leave, shall before trial of the action file a statement of defence and serve a copy thereof on the plaintiff, and may take such further proceedings in the action as a defendant in an ordinary action might take.

526. The plaintiff shall not be at liberty to obtain a decree by default, but, when the time for filing statements of defence has expired, the plaintiff, or, in case he fail to do so, any defendant who has filed a statement of defence, may apply to a Judge by motion or summons to order trial of the action; and the Judge on hearing the parties may order the action to be tried, at such time and place as may appear most convenient, and may decide whether the action shall be tried before the Court on the facts, or whether the same shall be tried before a jury, and, if so, whether by a common or special jury

527 The decree in the action shall be a decree *nisi* in the first instance, and an application to make the decree absolute must be made to the Court by motion. In support of the application it must be shown by affidavit that search has been made in the proper books of the Registrar's office up to within days of the day for which notice of motion has been given, and that at such time no person had filed notice of intention to oppose the motion to make the decree absolute, or, in case of leave to intervene having been granted, what proceedings (if any) were taken by the person intervening.

528. The Attorney-General, or the Solicitor-General, or any other person wishing to show cause against making absolute a decree *nisi* for dissolution of marriage shall give to the plaintiff at least days' notice of his intention to appear on the application to make the decree absolute, and file in Court a copy of such notice.

529. The Attorney-General, or the Solicitor-General, or any such person as aforesaid shall, at least days before the hearing of the application to make the decree absolute, file in Court affidavits setting forth the facts upon which he intends to rely, and deliver a copy of such affidavits to the plaintiff.

530. An appeal to the Court of Appeal must be by case stated in writing, five copies of which must be filed in the office of the Registrar of that Court, and one copy of which must be served upon each opposite party within the time allowed by law for appealing, at least days before the sitting of the Court of Appeal at which it is intended to be heard; and each opposite party may, within

days of being served with a copy of the case on appeal, file five copies of his case (if any) in reply, in the Registrar's office, and serve one copy on the appellant.

531 Any plaintiff, or any defendant who has filed a statement of defence, may at any time apply to the Court or a Judge by motion or summons touching any collateral question which may arise in an action.

532. Any defendant may be heard in respect of any question of costs, although he has not filed a statement of defence in the action, and a defendant who is the husband or the wife of the plaintiff may be heard also on any question as to the custody of children; but a defendant who is so heard shall not be allowed to read affidavits affecting the relief claimed in the action, and any affidavits filed by such defendant shall not be read or made use of as evidence at the trial of the action.

533. The wife, being the plaintiff in an action in which she is entitled to claim alimony, may issue a summons to her husband to show cause why alimony pending action should not be allowed to her at any time after the writ of summons has been duly served on the husband, or after order made by the Judge to dispense with such service, provided the *factum* of marriage between the parties is established by affidavit previously filed

534. The wife, being the defendant in an action in which she is entitled to claim alimony, after having filed her statement of defence, may also issue a summons to her husband calling upon him to show cause why alimony should not be allowed to her.

535. The husband, being defendant in the action, must file a statement of defence before he can appear to oppose a summons for alimony

536. On any application for alimony the wife must prove her inability to maintain herself.

537 If on hearing the summons the husband alleges that the wife has property of her own, she may file affidavits in reply to that allegation; but the husband is not at liberty to file further affidavits without permission of the Judge, or of the Registrar in his absence.

538. The wife, on the hearing of any summons for alimony, may examine witnesses in support of her claim, notice of the intention to examine witnesses being given to the husband or to his solicitor four days previously to the summons being heard.

539. A wife who has obtained a decree absolute for a judicial separation in her favour, and has previously thereto applied for alimony, pending action on such decree being affirmed on appeal to the Court of Appeal, or after the expiration of the time for appealing against the decree, if no appeal be then pending, may apply to a Judge by summons or motion for an allowance of permanent alimony

540. A wife may, at any time after alimony has been allowed to her, whether alimony pending action or permanent alimony, issue a summons for an increase of the alimony allowed by reason of the increased faculties of the husband, or the husband may issue a summons for diminution of the alimony allowed by reason of reduced faculties; and the procedure in such cases shall be the same as required by these rules in respect of the original summons for alimony, and the allowance thereof, so far as the same are applicable.

541. Permanent alimony shall, unless otherwise ordered, commence and be computed from the date of the decree absolute or the decision of the Court of Appeal, as the case may be.

542. Alimony pending suit, and also permanent alimony, shall be paid to the wife or to some person or persons to be nominated in writing by her and approved of by the Court, as trustee or trustees on her behalf.

543. Applications to the Court to exercise the authority given by sections 27, 37, and 38 of "The Divorce and Matrimonial Causes Act, 1867," are to be made by summons, which must, unless by leave of the Judge, be issued as soon as by the said Act such application can be made, or within one month thereafter.

544. In cases of application for maintenance under section 27, such summons may be issued as soon as a decree has been pronounced, but not before.

545. The summons must be served on the husband or the wife, as the case may be, and on the person or persons who may have any legal or beneficial interest in the property in respect of which the application is made, unless a Judge on summons shall direct any other mode of service, or dispense with service of the same on them or either of them.

546. The husband or the wife, as the case may be, and the other person or persons (if any) who are served with such summons, may file affidavits stating the facts on which it is intended to rely in opposing the summons.

547 The costs of a wife, of and incidental to any summons, shall not be allowed against the husband before the decree absolute in the action, without direction of the Judge.

548. Summonses for alimony, and summonses under Rule 543, must be served at least eight days before the time appointed for hearing the summons.

549. Before the trial or the hearing of any action, a husband or a wife who is a party to it may apply for an order with respect to the custody, maintenance, or education of, and for access to children (issue of their marriage), by motion or summons founded on affidavit.

550. It shall not be necessary for a minor who is an alleged adulterer, when made a co-defendant in a suit, to elect a guardian or to have a guardian assigned to him for the purpose of conducting his defence.

Appeals from Inferior Courts.

551. Cases on appeal from inferior Courts must be left with the Registrar, and the Registrar shall set down such cases for hearing at once. If an appellant do not appear in support of his appeal when the case on appeal is called, the appeal shall stand dismissed, unless the Court or a Judge shall on good cause shown reinstate such case for hearing.

552. Cases reserved for the opinion of the Court, on any criminal trial in an inferior Court, shall be forwarded to the Registrar, and the Registrar shall set down such cases for consideration at once. If, when the case is called upon, counsel appear either for the prosecution or for the prisoner, the Court shall hear such counsel. If no counsel appear the Court shall consider the case, and shall, either then or at a subsequent sitting of the Court, pronounce its opinion thereon, and such opinion shall be

recorded on the case by the Registrar, who is to return the case with such opinion indorsed to the Judge forwarding the case with all convenient speed.

PART VII.

Costs.

553. In addition to any special powers as to costs hereinbefore conferred by these rules upon the Court or any Judge thereof, it is hereby expressly provided that the costs of and incidental to any action or other proceeding shall be in the discretion of the Court, subject, however, to any special provision as to costs contained in any statute or in these rules; but, when no order is made by the Court or a Judge, the right to costs in the several cases mentioned in the next eleven rules shall be regulated by the provisions of such rules respectively.

554. The successful party on the trial of any action or issue shall be entitled to the costs of the trial.

555. If the plaintiff in any action for the recovery of damages shall recover less than 40s. such plaintiff shall not be entitled to any costs whatever, unless the Judge shall at the trial certify upon the statement of claim that the action was brought to try a right other than the mere right to recover damages in the action, or that costs should be allowed.

556. The last preceding rule shall not operate to deprive any plaintiff of costs in any action for a trespass over any lands, or for entering into any dwelling-house or premises in respect of which any notice not to trespass or enter thereon or therein shall have been previously served by or on behalf of the owner or the occupier thereof on the defendant, or left at his last reputed or known place of residence or abode.

557 If any plaintiff in an action commenced in the Supreme Court recover less than the sum of £50, or the value of any chattels recovered is assessed at less than £50, and the action was one that might have been brought in a local Court, the plaintiff shall not be entitled to any greater costs than he would have recovered in the local Court, except in case of judgment by confession or by default, or unless the Judge before whom the action was tried shall certify that the case was a proper one to bring in the Supreme Court.

558. In all actions upon any judgment recovered in any Court, except judgments on bonds, the plaintiff shall not be entitled to any costs.

559. If there be several defendants and the plaintiff have a verdict against them, each of them is liable to the plaintiff for the entire costs, even although they defend separately

560. Plaintiffs suing in a representative character shall be liable to pay costs to the defendant in case of a nonsuit or of a judgment for the defendant.

561. When the Judge at the trial of any action has made an order allowing an unsuccessful party costs under any rule herein contained, the amount of such costs shall be ascertained by the proper officer and deducted from the costs (if any) allowed to the successful party

562. When the statement of claim contains more than one cause of action, and the plaintiff succeeds on one or more causes of action, and the defendant succeeds on another or others, costs shall be allowed to the plaintiff on the cause or causes of action on which he succeeds, and to the defendant on the cause or causes of action on which he succeeds, in the same manner as if separate actions had been brought on the cause or causes of action on which each party respectively has succeeded.

563. When the plaintiff succeeds in his action, and the defendant succeeds in a counter claim, costs shall be awarded as if each party respectively had succeeded in an independent action.

564. When several defendants defend an action separately, costs may be disallowed to all of such defendants except one, or to any of such defendants, if it appear that the defendants or any of the defendants might have joined in their defence.

565. Costs (when allowed) shall be regulated and paid according to scale of costs contained in the Schedule hereto.

566. Any party entitled to costs subject to taxation may obtain from the Registrar an appointment for taxation of such costs. A copy of the appointment shall be served on the opposite party at least two clear days before the day appointed for such taxation.

567 The first appointment made by the Registrar is peremptory, and he will proceed thereon *ex parte* upon proof that due notice has been given to the opposite party, unless sufficient cause shall appear for postponement.

568. Notice of taxing costs shall not be necessary in any case where the defendant has not appeared in person or by solicitor.

569. If extra expenses which do not appear on the face of the proceedings are claimed, such as witnesses' expenses, fees to counsel, attendances, &c., an affidavit must be made as to such extra expenses.

570. The Registrar is the sole judge of all questions of fact which may arise on taxation, and his decision thereon is final.

571. But the Court may, after the taxation is made, upon motion by any party dissatisfied therewith, where it shall appear to have been made upon a wrong principle, refer it back to the Registrar, with directions to review his report and make such alterations in it as may be requisite.

572. In the taxation of costs the Registrars shall, so far as the scale in the Schedule does not extend, guide themselves by the scale of costs heretofore in use, as far as the same may be consistent with these rules.

Security for Costs.

573. If the sole plaintiff or all the plaintiffs in an action be resident out of the colony, the Court or a Judge may, on the application of the defendant, order security to be given for the costs of the action to the satisfaction of the proper officer, and may order proceedings in the action to be stayed until such security has been given. The defendant must apply promptly after the fact of such residence out of the colony has come to his knowledge.

574. A solicitor shall not be allowed to become surety for his client in a bond given to secure payment of costs.

575. If there are several defendants, and only one obtains an order, the security must be given to answer the costs of all.

576. If one of the sureties becomes bankrupt or insolvent, or is discharged from his liabilities by deed of arrangement, the Court or a Judge may order proceedings to be stayed until the plaintiff has found a new surety

FEES OF COURT.

577 The proper officer shall receive and take such fees as are specified in the table of fees in the Schedule hereto.

578. Provided that when it shall appear to the satisfaction of a Judge that any party is unable or ought not to be called upon to pay any of the fees in such table mentioned, or any part thereof, it shall be lawful for the Judge to dispense with the payment thereof, or any part thereof, subject to such terms as he shall think fit.

PART VIII.—MISCELLANEOUS RULES.

SERVICE.

579. In cases where personal service shall not be required, all judgments, orders, notices, and other written communications requiring to be served on a party to an action, shall be served as in the next four rules mentioned.

580. When the party to be served sues or defends by solicitor, they shall be delivered to or left for the solicitor at his address for service (if any), or, in cases in which a solicitor is not required to give an address for service, at his office or place of business, before four o'clock in the afternoon.

581. When the party to be served sues or defends in person, they shall be delivered to him or left for him at his address for service, or his place of residence, in cases in which he is not required to give an address for service, with his wife or a domestic servant, or any person whose business it is or who has authority from him to receive messages and convey or forward them to him.

582. But where such service is impracticable the Court or a Judge may, on affidavit showing the circumstances of the case and the necessity, give special directions as to service or publication in lieu thereof.

583. Service of all judgments or orders shall be made by delivering a duplicate of such judgment or of such order.

TIME.

584. Where by these rules, or by any judgment or order given or made after they come into force, the time for doing any act or taking any proceeding is limited by months, not expressed to be lunar months, such time shall be computed by calendar months.

585. When any limited time less than six days from or after any date or event is appointed or allowed for doing any act or taking any proceeding, Sunday, Christmas Day, New Year's Day, and Good Friday shall not be reckoned in the computation of such limited time.

586. Where the time for doing any act or taking any proceeding expires on a Sunday, or other day on which the offices of the Court are closed, and by reason thereof such act or proceeding cannot be done or taken on that day, such act or proceeding shall, so far as regards the time of doing or taking the same, be held to be duly done or taken if done or taken on the day on which the offices shall next be open.

587. No statement of defence shall be filed and delivered in the vacation unless directed by the Court or a Judge.

588. The time of the vacation shall not be reckoned in the computation of the times appointed or allowed by these rules for filing and delivering any statement of defence, unless otherwise directed by the Court or a Judge.

589. The Court or a Judge shall have power to enlarge or abridge the time appointed by these rules, or fixed by any order enlarging time for doing any act, or taking any proceeding, upon such terms (if any) as the justice of the case may require; and any such enlargement may be ordered, although the application for the same is not made until after the expiration of the time appointed or allowed.

TAKING SECURITY.

590. When any officer is empowered to take security from any person for any purpose, such security shall be given by such number of sureties, and shall be in such form and for such amount, as the officer empowered to take security shall think proper: Provided that the person required to give security may appeal from the decision of such officer on any point to a Judge in chambers.

SETTLEMENT OF ISSUES AND CASES.

591. In any action or proceeding in which issues or a special case are or is directed to be prepared, and no special provision is made by this code as to settlement of such issues or of such special case, such issues or such special case may, in case of dispute, be settled on summons before a Judge in chambers.

FORMS.

592. When the forms in the Schedule hereto are directed or authorized to be used, such variations may be made therein as the circumstances of any particular case may require.

TITLE OF PROCEEDINGS.

593. All statements of claim and of defence, judgments, orders, notices, summonses, and petitions in an action or other proceeding before the Court shall be properly intituled, showing the Court and district in which the action or other proceeding is being prosecuted, and the names of the plaintiff and defendant in the action, or the parties interested in the matter with reference to which any pro-

ceedings have been instituted; and all judgments and orders relating to land shall be prepared on parchment.

NON-COMPLIANCE.

594. Non-compliance with any of these rules shall not render the proceeding in which such non-compliance has occurred void, unless it is by these rules expressly so provided, but such proceedings may be set aside, either wholly or in part, as irregular, or amended, or otherwise dealt with in such manner, and upon such terms as the Court or a Judge, on any motion or summons taken out with reference to such non-compliance, may deem just.

VACATION AND HOLIDAYS.

595. The vacation shall extend from the 25th day of January to the 10th day of March, both days inclusive.

596. The following days shall be holidays in the Court and the offices thereof—that is to say, the days from Good Friday to Easter Tuesday, both inclusive; the days from Christmas Eve to 3rd January, both inclusive; the Birthday and the Accession Day of the reigning sovereign; the day of the proclamation of the Queen's sovereignty over these Islands (29th January); and the Birthday (9th November) of His Royal Highness the Prince of Wales; and, in each district, the anniversary of the establishment of the province.

REPEAL.

597 From and after the time this code is brought into force, all statutes and rules specified in the Schedule hereto, and all other statutes and rules, so far as they are inconsistent with this code, shall be and the same are hereby repealed.

CONSTRUCTION OF STATUTES AND OTHER RULES.

598. When by any statute reference is made to the system of procedure heretofore existing in any Court of civil jurisdiction and hereby abolished, such statute shall, for the purpose of bringing an action or taking proceedings thereunder, be interpreted as if reference had been made to the system of procedure brought in force by this code.

599. The rules made under particular statutes enumerated in the Schedule hereto shall remain in force: Provided that when in any of such rules reference is made to the system of procedure heretofore existing and hereby abolished, such rules shall, for the purpose of bringing any action or taking any proceedings thereunder, be interpreted as if reference had been made to the system of procedure brought into force by this code.

CASES NOT PROVIDED FOR.

600. If any case shall arise for which no form of procedure has been provided by this code, the Court or the Judge before whom such case shall arise shall dispose of such case as nearly as may be in accordance with the rules of this code affecting any similar case, or, if there are no such rules, in such manner as such Court or Judge shall deem best calculated to promote the ends of justice: Provided that the Judges of the Supreme Court shall, as soon as conveniently may be after such case has arisen, make a new rule or new rules to meet such case.

EXCEPTIONS FROM THE CODE.

601. Nothing in the foregoing rules shall affect the existing practice or procedure in any of the following causes or matters:—

(1.) Criminal proceedings.

(2.) Application for a writ of *habeas corpus*.

(3.) Actions or proceedings commenced in any Court before this code is brought into force.

602. The practice, pleading, and procedure in the Supreme Court on all indictments, informations, and other criminal proceedings, and on application such as would be taken for a writ of *habeas corpus*, shall be the same as in England, so far as the English practice, pleading, and procedure is or are applicable to New Zealand, and consistent with any other rules of the Supreme Court and with the laws of New Zealand.

603. Actions or other proceedings commenced in any Court of civil jurisdiction before this code is brought into force, shall be continued according to the system of practice and procedure of such Court at the time action or proceeding was commenced.

REPORT OF SUB-COMMITTEE.

THE members of the Sub-Committee beg to report that they have examined the draft proposed code, and carefully considered the same.

They further beg to report that in their opinion the code proposed, as amended, is in accordance with the resolutions passed by the Commission, and that it will carry out the intention of its compilers—viz., to facilitate the work of the judicature, to prevent delay, and materially to lessen the cost of litigation.

Subject to further careful revision, the Sub-Committee annex herewith a draft of the proposed code.

J. N WILSON.
GEORGE HARPER.
ALLAN HOLMES.

By Authority: GEORGE DIDSBURY, Government Printer, Wellington.—1881