1881.

NEW ZEALAND

LAW PROCEDURE COMMISSION

(SECOND INTERIM REPORT OF THE).

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

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:—

Since the date of our previous report, the Committee appointed to prepare draft rules of procedure for local Courts has presented its report and the draft rules, a copy whereof is appended hereto. These have not been yet considered by the Commission.

Circumstances have, unfortunately, occurred which prevented the Commission making a final report before another meeting

The Commission proposes to report finally to your Excellency at its next meeting, to be held in November next.

All necessary documents to give effect to the final report will be prepared in time for submission to the General Assembly at its next session.

JAMES PRENDERGAST.	W S. REID.
C. W. RICHMOND.	W GISBORNE.
FRED. WHITAKER.	J N. WILSON.

4th August, 1881.

REPORT OF SUB-COMMITTEE APPOINTED TO PREPARE A CODE OF PROCEDURE FOR LOCAL COURTS IN NEW ZEALAND.

IN preparing the code of civil procedure in the local Courts the Sub-Committee have, in compliance with instructions, "adhered as closely as practicable to the language, method, and forms existing in the code of procedure in the Supreme Court." The Sub-Committee have thought it advisable to a great extent to exclude from the code matters of jurisdiction, and have only treated of jurisdiction where it was necessary for the sake of consistency, relying for general jurisdiction upon the forthcoming statute, and with which the code will be incorporated. Your Sub-Committee think it will be necessary in future legislation to consider the advisability of extending the powers now existing in the Resident Magistrates' Courts relative to the recovery of tenements, the examining of witnesses under "The Evidence Amendment Act, 1870," and "The Abolition of Imprisonment for Debt Act, 1874."

The principal variation in this proposed Local Courts Code from that prepared for the superior Court will be found in the mode of commencement of actions. In the local Courts it is made necessary that the original summons be delivered to the serving officer, so that, after comparison, affidavit of service may be indorsed upon the original, otherwise, where the summons is sent to remote parts, or even out of the district, the serving officer would have no opportunity of comparing the original and copy The plaint and a statement of claim will be lodged in the office of the Court in place of the writ of summons.

No forms have been prepared, as the Sub-Committee have not been furnished with the forms proposed to be used in the Supreme Court, but those forms can be readily adapted to the local Courts procedure.

J E. MACDONALD.
R. C. BARSTOW
A. DEVORE.

NEW ZEALAND CODE OF CIVIL PROCEDURE IN LOCAL COURTS.

CONTENTS.

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

PART I.—COMMENCEMENT OF ACTION

CHAPTER I.

THE PLAINT.

1. Every action shall be commenced by a plaint, which shall be in the Form No. 1 in the Schedule hereto, marked "A," and shall be signed by the plaintiff, and lodged in the office of the Court out of which the summons hereinafter mentioned shall issue, which plaints shall be numbered consecutively in each year by the Clerk of the Court, and shall be entered by him in a book to be kept for that purpose.

FORM OF SUMMONS.

2. The summons in every action shall be in the Form No. 2 in the Schedule hereto, and in cases where the sum claimed exceeds £20 shall require the defendant to file a statement of his defence to the plaintiff's claim, and to serve a copy upon the plaintiff or his solicitor within such time and at such

place as shall be stated in the summons, 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 on the day stated in the summons or at any adjournment thereof.

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 (marked "B") in the Schedule hereto, marked "B," or such additional time as shall be fixed by the Judge out of whose Court the summons shall issue.

4. The place shall be the office of the Court out of which the summons shall have issued.

5. The summons shall also require the defendant, if he file a statement of defence, to attend at the time and place to be named in the summons 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 summons, the Court may adjudicate upon the plaintiff's claim in his absence.

6. Such summons may be issued against any defendant residing or being without the district within which the Court has jurisdiction, but not out of the colony, upon the application of any plaintiff who will depose on oath that he has good cause of action, and that such cause of action arose wholly or in some material point within the jurisdiction of the Court.

7 The number of days to be stated under Rule 3 shall be as shown in Schedule B, or such other time as the Judge, out of whose Court the summons has issued, may from time to time order.

8. The summons shall also specify—

(1.) The number of the summons.

(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 or names, it shall be sufficient to designate such party by the same initial letter or letters, or contraction of the first name or names, instead of stating the first name or names in full. (*b.*) Any party may be designated in the summons by any name or names which he may have acquired by usage or reputation, whether any such name be the 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 summons 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 late of [*naming his late residence*], and to state his last known calling; and, if the defendants are sued as members of a firm, the place of business of the firm shall be stated instead of the names and residences of individual members thereof.

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

9. The summons shall be sealed with the seal of the Court.

10. When a summons is issued by a solicitor it shall be so stated on the summons.

11. Any party to any suit or proceeding may appear and act personally or by a barrister or solicitor of the Supreme Court, and not otherwise: Provided that, under special circumstances, the Court may permit any party to appear by an agent authorized in writing.

12. The summons 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 notices, orders, summonses, and other written communications not required to be served on the plaintiff in person.

13. 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.

14. The summons shall also state the amount the plaintiff is entitled to for costs for the issue and service of the summons and incidental thereto.

15. No misnomer nor inaccurate description of the plaintiff or defendant shall vitiate the summons.

Issue of Summons.

16. The 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 copies thereof as may be required for service.

17 The summons, when sealed, shall be deemed to be issued, and the date thereof shall be the same date as the plaint note.

18. The plaintiff shall furnish as many copies of statement of claims as there are defendants, and two copies in addition for the Court, one of which shall be annexed to each summons.

19. A summons may be issued and served at any time before the holding of a Court if a Judge of the Court shall so order, on being satisfied that the defendant is about to remove out of the jurisdiction of the Court.

Service of Summons.

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

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

22. 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 copy of the summons, with a copy of the plaintiff's statement of claim annexed.

23. The summons may be served by the proper officer of the Court, or any person authorized by the Court, or a Judge, and service may be proved on oath before the Court or a Judge thereof, or by affidavit.

24. A summons may be served anywhere within the Colony of New Zealand, but not elsewhere.

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

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

27. There shall be filed in the office of the Court from which the summons was issued an affidavit of service, which shall state the time and place of service, and the plaintiff shall not be at liberty to proceed by default until such affidavit has been filed or service proved on oath.

28. When any summons is required to be served or warrant executed beyond the district of the Court out of which the same is issued, the Judge shall, except under special circumstances, cause the same to be transmitted to the Clerk of the Court of the district within which the same is to be served or executed, and such Clerk shall indorse thereupon the time when the same shall have been received by him, and shall forthwith deliver the same to the bailiff of the Court of his district, or, if there be no such bailiff, then to such peace officer as such Clerk may appoint for that purpose, and such bailiff and peace officer are respectively hereby authorized and required to serve or execute the same; and such bailiff or peace officer, if required as last aforesaid to serve a summons, shall return to the Clerk of the Court from which he received such summons a copy thereof, accompanied by an affidavit setting forth the fact and mode of such service, or a note that he has been unable to effect such service as the case may be, and if he have been required to execute a warrant he shall certify to the Clerk from whom he received such warrant what he has done thereunder, and, if he have received any money or fees by virtue thereof, shall pay over the same to such Clerk, and out of such fees may be repaid any money actually expended by him or his assistants in like manner as if such warrant had issued out of the Court of which he is bailiff; and such Clerk shall forthwith transmit the copy of the summons or the certificate so received by him, together with any moneys which may have been received by him in manner aforesaid after deducting therefrom the fees allowed for execution, to the Clerk of the Court from whom he has received the same, and the Clerk of the Court transmitting any summons or warrant shall pay or account with the Clerk of the Court to whom the same is transmitted for all fees allowed to be taken for service or execution.

Substituted Service.

29. If it shall be made to appear to the Court, or a Judge, that reasonable efforts have been made to effect service of the summons, or that the summons has come to the knowledge of defendant, or that he wilfully evades service thereof, it shall be lawful for Court, or any Judge, or any Justice of the Peace, to order that the plaintiff be at liberty to proceed as if personal service had been effected, subject to such conditions as such Court or Judge, or Justice of the Peace, may think fit to impose.

Service in Particular Cases.

30. 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.

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

32. 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.

33. 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 idiot or lunatic.

34. Where partners are sued as partners, but not in the name of the firm, the summons 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.

35. 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 summons 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.

36. Unless otherwise provided by statute, service may be effected on—

(1.) Corporations, by delivering a copy of the summons 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 copy of the summons 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

37 Service of a 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 summons upon the door of the dwelling-house, or other conspicuous part of the property

38. 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 summons 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 GENERALLY.

39. In all cases where the defendant is an aboriginal native of New Zealand a translation into the Maori language of the summons and statement of claim shall be served upon him.

40. 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

41. 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.

42. 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.

43. 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.

44. 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.

45. 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.

46. 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 a 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.

47. 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.

48. 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 a Judge upon a petition signed by him.

49. 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*.

50. The summons and statement of claim may be served in manner hereinafter 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.

51. 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 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*.

52. 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.

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

54. 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 51, shall not be so liable.

55. 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.

56. 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.

57. 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 on such terms as to costs and security for costs as the parties may be ordered by the Court.

58. In any case in which the right of an heir-at-law, or the next of kin, or of a class, shall depend upon the construction which the Court may put upon an instrument, and it shall not be known or be difficult to ascertain who is or are such heir-at-law, or next of kin, or class, and the Court shall consider that, in order to save expense, or for some other reason, it will be convenient to have the question or questions of construction determined before such heir-at-law, or next of kin, or class, shall have been ascertained by means of inquiry, or otherwise, the Court may appoint some one or more person or persons to represent such heir-at-law, or next of kin, or class.

59. 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.

60. 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.

61. 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.

62. 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.

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

64. 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.

65. 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.

66. 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.

CHAPTER III.

Joinder of Causes of Action.

67 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.

68. 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.

69. 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

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

71. 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.

72. 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.

73. 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.

74. 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.

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

76. 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.

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

STATEMENT OF DEFENCE.

78. In all cases except where the plaintiff seeks only to recover a sum under twenty pounds, the defendant shall, four days before the day of hearing stated in the summons, file in the office of the Court named in the summons a statement of his defence to the plaintiff's claim, and shall also serve a copy of such statement on the plaintiff or his solicitor, as stated in the summons.

79. 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 summonses, notices, petitions, orders, warrants, and other documents and proceedings not requiring to be served on the defendant in person may be left for him.

80. 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.

81. 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.

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

83. 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.

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

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

86. If the plaintiff is prepared to admit any allegations of fact in the defendant's statement of claim, he shall, within two 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, and shall also file a copy of such notice in the Court out of which the summons issued.

SET-OFF AND COUNTER CLAIM.

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

88. 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.

89. 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.

90. 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

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

92. 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

93. 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.

94. 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.

95. 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.

96. 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.

97 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

98. 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

99. 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 out the whole or any part thereof, unless the precise words of the document, or any part thereof, are material.

AMENDMENT OF STATEMENTS OF CLAIM AND OF DEFENCE.

100. 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

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

102. 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.

103. 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 or more explicit statement to be filed.

104. When an amended statement of claim or of 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.

105. When any ground of defence to a claim or counter claim arises after the commencement of the action, the defendant or the plaintiff, as the case may be, may, within two 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.

106. 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.

107. The rules as to filing statements of defence, set-off and counter claim, statement of claim, and defence generally, shall not apply to actions where the sum claimed is under twenty pounds.

108. The Judge may at all times amend all defects and errors in any civil proceeding in his Court, whether there is anything in writing to amend by or not, and whether the defect or error be that of the party applying to amend or not; and all such amendments may be made with or without costs, and upon such terms as to the Judge may seem fit; and all such amendments as may be necessary for the purpose of determining in the existing suit the real question in controversy between the parties shall be so made if duly applied for.

CHAPTER II.

SPECIAL CASES.

109. The parties may, after the 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.

110. 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.

111. 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, by producing a copy of the order giving leave to set down the same for argument.

ADMISSION OF DOCUMENTS.

112. 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 Judge a saving of expense.

113. 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.

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

115. 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.

116. 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.

WITNESSES.

117 Subpœnas to require the attendance of witnesses at the trial may be issued, at the instance of either plaintiff or defendant, at any time after the summons in the action has been issued.

118. 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.

119. 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, and that he is willing to attend, whereupon it shall be lawful for the Judge to order 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.

120. 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.

121. In an action or other proceeding in or to which a corporation, joint-stock company, or body of persons empowered 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

122. Affidavits or affirmations may respectively be sworn or made before the Judge of the Court, or before a solicitor of the Supreme Court, or before a Registrar or Deputy-Registrar of the Supreme Court, or before any Justice of the Peace, or the Clerk of the Court.

123. 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 solicitor, 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.

124. 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.

125. 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.

126. 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

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

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

129. 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.

130. 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.

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

132. 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.

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

134. An affidavit sworn on a Sunday is a nullity

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

136. 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.

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

138. 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.

139. 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.

140. The foregoing rules shall apply to affirmations.

PART III.—DISPOSAL OF ACTIONS.

CHAPTER I.

By Payment into Court.

141. 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.

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

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

144. The plaintiff shall, within twenty-four hours after receipt of notice of such payment, if the amount paid in be less than the amount claimed in the action, give the defendant or his solicitor a notice if he accepts the sum paid into Court.

145. 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.

146. 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.

147 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 not delivered or given in pursuance of such offer.

148. If the plaintiff do not accept as satisfaction any payment or offer of delivery 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 or offer of delivery, as the case may be.

149. 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 Discontinuance.

150. The plaintiff may, at any time before trial, discontinue his action, either wholly or as to any cause or part of a 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.

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

152. 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.

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

By Stay of Proceedings.

154. 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 Court or not.

By Trial.

155. All actions shall be tried at the place and day mentioned in the summons, or at some adjournment thereof.

156. The Court or Judge thereof may before 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 and upon such terms (if any) as the Court or such Judge may think fit.

157 Actions shall be tried before a Judge of the Court.

158. If in any action tried before a Judge 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.

159. 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 at the bottom of the list for that day, on good cause shown by either party and subject to such terms as the Judge may think just.

160. 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 upon him.

161. 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.

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

163. If both the plaintiff and 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.

164. 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.

165. After the evidence has been taken, the party who has not the right to begin may address the Court generally on the case, and after him the other party may address the Court 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 Court on the case, and after him the party not having the right to begin shall address the Court in reply

166. The Court 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.

167. All such amendments shall be made with or without costs, and upon such terms as to the Court 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.

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

CHAPTER II.

JUDGMENT.

169. After hearing the plaintiff and defendant, the Judge before whom the trial takes place shall give judgment, either at once or after taking such time for consideration as may be necessary And in any judgment may prescribe such terms and conditions as to the time and mode of satisfying such judgment as he shall deem just.

170. 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 entered 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 otherwise order.

171. If it shall at any time appear to the satisfaction of the Court, by the oath of any person or otherwise, that any defendant is unable, from sickness or other sufficient cause, to pay and discharge the debt or damages recovered against him, or any instalment thereof ordered to be paid as aforesaid, it shall be lawful for the Court in its discretion to suspend any judgment, order, or execution given, made, or issued in such action, for such time and on such terms as the Court shall think fit, and so, from time to time, until it shall appear by the like proof as aforesaid that such temporary cause of disability has ceased.

172. If the Court shall have made any order for payment of any sum of money by instalments, execution upon such order shall not issue until after default in payment of some instalment according to such order, and execution or successive executions may then be issued for the whole of the said sum of money and costs then remaining unpaid, or for such portion thereof as the Court shall think fit.

173. 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.

174. 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.

175. 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.

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

177 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 may think proper.

178. 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.

179. In actions for money the judgment may be indorsed on the plaint, and signed by the Judge presiding at the trial, and execution may issue on a judgment so indorsed. But every judgment shall thereafter be entered in a book, to be provided for that purpose, and signed by the Judge presiding at the trial.

JUDGMENT BY CONFESSION.

180. 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 condition shall be binding upon the plaintiff without the plaintiff's consent in writing.

181. The confession may be of part only of the alleged cause of action, in which case the plaintiff can only have judgment entered for the part confessed, and may proceed in the action as to the residue, or abandon any further claim in the action.

182. A confession may be given at any time after the summons is issued. But notice thereof must forthwith be served upon the other party or his solicitor, and all costs incurred to the time of serving such notice shall be paid by the party confessing.

183. 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.

184. Any such confession may be signed in the presence of the Judge, or the Clerk of the Court, or a Justice of the Peace, or any solicitor of the Supreme Court, and may be in the form in the Schedule hereto, No. .

185. Unless the Court shall otherwise order, all moneys to be paid in pursuance of any judgment or order shall be paid to the Clerk of the Court; and such Clerk, on days to be appointed by the Judge for that purpose, shall pay over such money to the person entitled or to any person by him authorized in writing to receive the same, and shall keep a true and exact account of all moneys received by him, of whom and when received, and to whom and when paid.

186. Every bailiff, gaoler, or other person levying or receiving money by virtue of any process issuing out of any Court, shall forthwith pay over the same to the Clerk of the Court.

PART IV.—EXECUTION

Writs of Execution generally.

187 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.

188. When, by any judgment or order of the Court, 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 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.

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

190. Every writ of execution shall be dated as of the day and hour on and at which it was issued. The forms in the Schedule hereto may be used.

191. 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.

192. A writ of execution (if unexecuted) shall remain in force for one year only from its issue; but, thereafter, a fresh writ of execution may at any time be issued by leave of the Court.

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

194. 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 thereof for leave to issue execution accordingly.

195. The Court 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.

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

197. 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 summons and has failed to appear.

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.

198. 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 may give such relief and upon such terms as may appear just.

199. 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.

200. 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.

201. 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.

202. Two or more concurrent writs of execution of the same kind may be issued by leave of the Court, and, if necessary, addressed to different officers.

203. Writs of execution shall be prepared by the proper officer and sealed with the seal of the Court and signed by the Judge thereof, and when sealed and signed shall be delivered to the officer for the time being appointed to execute writs of execution, and when so delivered shall be deemed to be issued. A writ of execution may be executed in any part of the colony

204. 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.

205. If any writ be returned unexecuted, the Court or a Judge may order that such writ be redelivered 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.

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

WRIT OF SALE.

207 A writ of sale shall authorize the officer to whom it is directed to seize all the chattels, including money, 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 £10 in value, and may give notice to any Court, or the proper officer of any Court, requiring it and him not to part with any moneys in the possession of the said Court or officer belonging to the party against whom a writ of execution shall have issued, and may apply to the Court *ex parte* for an order for the payment by such officer to the officer appointed to execute such writ of execution; and, upon notice of the making of such order, the officer in whose custody such money may be shall pay the same accordingly

208. Such officer shall pay or deliver to the Court issuing 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.

209. 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.

210. 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

211. 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 party 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.

212. 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 at the place of seizure.

213. 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 twice in such newspaper at least three days before the date of the intended sale, unless such goods shall be of a perishable nature, or upon the request in writing by the party whose chattels shall have been so seized.

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

215. The notice of any intended sale shall specify the chattels, or right or interest in chattels 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.

216. 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, assignment, or transfer, and shall be of the right, title, or interest only of the party against whom such writ has been issued in the chattels put up for sale.

217 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.

218. It shall be lawful for the officer to whom the writ is directed, by himself or his deputy, to sell by auction all 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.

219. Every 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

220. 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

221. 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.

ISSUE OF WRITS.

222. A writ of execution of any kind 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.

223. 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 apply to issue a writ of sale.

224. When by any judgment of the Court 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, and in addition may issue a writ of sale for any sum of money recovered in such action.

PART V.—SPECIAL PROCEDURE.

CHAPTER I.

CHANGE OF PARTIES BY DEATH.

225. 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.*

226. In case of the marriage, death, or bankruptcy, or devolution of estate by operation of law of any party to an action, the Court, 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 hereinafter prescribed and on such terms as the Court shall think just, and shall make such order for the disposal of the action as may be just.

227 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.

228. 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 upon an allegation of such change or transmission of interest or liability, or of such person interested having come into existence.

229. An order so obtained shall, unless the Court 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 summons.

230. 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 to discharge or vary such order at the next sitting of the Court after the service thereof.

231. 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 to discharge or vary such order at any time to be appointed by the Court or a Judge thereof, and, until the hearing of such application, no steps shall be taken against the party applying.

CHAPTER II.

EXTRAORDINARY REMEDIES.

232. 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, and declare who is entitled to hold the office in question, or make such order as the circumstances may require.

PROTECTION OF PROPERTY AND OTHER MATTERS.

233. 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.

234. 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.

235. 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.

236. 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 summons; and, if it be by the defendant, it may be made at any time after he has filed his statement of defence.

237 Where an action is brought to recover, or a defendant in his statement of defence seeks by way of 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 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, 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 may direct, and that, upon such payment into Court being made, the property claimed be given up to the party claiming it.

Interpleader.

238. When two or more persons claim the same chattels, or the performance of the same duty, from another person who has no title to 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 the Court, and, upon the hearing of such summons, the Court 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 Court desirable so to do;
(4.) If the facts are not in dispute, and the question involved appears to be one of law only, decide the matter summarily;
(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.

239. 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.

240. The power given by Rule 238 may be exercised, though the titles of the claimants have not a common origin but are adverse to and independent of one another.

241. Any order of the Court, or the judgment in any action where the moneys claimed or the value of the goods or chattels claimed or of the proceeds thereof do not exceed £10, shall be final and conclusive against the parties before the Court, and all persons claiming by, from, or under them.

242. 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 the Court or 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.

243. 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 Court may, for the adjustment of such claim and the relief of such officer, exercise all or any of the powers conferred by Rule 238, 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.

244 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 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 it 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 may seem just.

245. The affidavit in support of an application under Rule 238 shall state—
(1.) That the person issuing the summons does not claim any title to 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.

Wrongful Distress.

246. 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.

247 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.

Writ of Arrest.

248. 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

249. 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 be required.

250. 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.

251. 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.

252. 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.

PART VI.

Costs.

253. 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 incident 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 these rules shall be regulated by the provisions of such rules respectively

254. The successful party in any action, issue, or proceeding shall be entitled to the costs of the action, issue, or proceeding, unless the Court shall otherwise order.

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

256. 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

257. 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.

258. 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

259. 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.

260. 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.

261. 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.

262. Costs (when allowed) shall be regulated and paid according to scale of costs contained in the Schedule hereto, and the amounts of costs shall be determined and decided by the Judge at the trial.

FEES OF COURT.

263. The proper officer shall receive and take such fees as are specified in the table of fees in the Schedule hereto.

264. 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 VII.—MISCELLANEOUS RULES.

SERVICE.

265. 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.

266. 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.

267 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.

268. But where such service is impracticable, the Court, or a Judge, or a Justice of the Peace, may, on affidavit showing the circumstances of the case and the necessity, give special directions as to service or publication in lieu thereof.

269. Service of all judgments or orders shall be made by delivering a copy of such judgment or of such order.

TIME.

270. 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.

271. 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.

272. 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

273. 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 the Court or a Judge.

SETTLEMENT OF CASES.

274. In any action or proceeding in which a special case is directed to be prepared, and no special provision is made by this code as to settlement of such special case, such special case may, in case of dispute, be settled on application to the Judge of the Court.

FORMS.

275 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, and the forms in the Schedule hereto shall form part of these rules.

TITLE OF PROCEEDINGS.

276. 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 proceedings have been instituted.

NON-COMPLIANCE.

277 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, on any motion or summons taken out with reference to such non-compliance, may deem just.

HOLIDAYS.

278. 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.

279. 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.

280. 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 into force by this code.

281. Rules made under particular statutes 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.

282. No order, judgment, warrant, or other proceeding concerning any of the matters aforesaid shall be quashed or vacated for want of form.

CASES NOT PROVIDED FOR.

283. If any case shall arise for which no form of procedure has been provided by this code, the Court 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 shall deem best calculated to promote the ends of justice.

EXCEPTIONS FROM THE CODE.

284. 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.

By Authority: GEORGE DIDSBURY, Government Printer, Wellington.—1881.