



SUPPLEMENT

TO THE

NEW SOUTH WALES

GOVERNMENT GAZETTE,

OF WEDNESDAY, MAY 16, 1838.

Published by Authority.

FRIDAY, MAY 18, 1838.

THE following Rules and Orders of the Supreme Court, are published for the information of the Public.

SUPREME COURT.

REGULÉ GENERALES.

28th April, 1838.

ARTICLED CLERKS.—ADMISSION OF ATTORNIES.

Whereas, by the Statute 4 Henry IV. c. 18. it was enacted, "That all the Attornies shall be examined by the Justices, and by their discretion their names put on the Roll, and they that be good and virtuous, and of good Fame, shall be received, and sworn well and truly to serve in their Offices."

And Whereas, by the Statute 3 Jac. 1. c. 7. s. 2, it was enacted "That none shall from henceforth be admitted Attornies in any of the King's Courts of Record, but such as have been brought up in the same Courts, or otherwise well practised in soliciting of causes and have been found by their dealings to be skilful and of honest disposition; and that none be suffered to solicit any cause or causes in any of the Courts aforesaid, but only such as are known to be men of sufficient and honest disposition."

And Whereas by a Rule made in Michaelmas Term, 1654, in the Courts of King's Bench and Common Pleas at Westminster, it was ordered, "That the Courts should once in every year, in Michaelmas Term, nominate twelve or more able and credible practisers to continue for the ensuing year, to examine such persons as should desire to be admitted Attornies, and appoint convenient times and places for the examination, and the persons desiring to be admitted were first to attend with their proofs of service, then to repair to the persons appointed

to examine, and being approved, to be presented to the Court and sworn."

And Whereas, by the Statute 2. Geo. II. c. 23. sec. 2, it was enacted "That the Judges, or any one, or more of them, should, and they were thereby authorised and required, before they should admit such person to take the oath, to examine and enquire by such ways and means as they should think proper, touching his fitness and capacity to act as an attorney; and if such Judge or Judges respectively, should be thereby satisfied that such person is duly qualified to be admitted to act as an Attorney, then, and not otherwise, the said Judge or Judges of the said Courts respectively, should, and they were thereby authorised to administer to such persons the oath therein-after directed to be taken by Attornies, and after such oath taken, to cause him to be admitted an Attorney of such Courts respectively."

And Whereas, by the Statute 9 Geo. IV. c. 83. sec. 13, continued by the Statutes 6 and 7 Willm. IV., c. 46. and 1. Vic. c. 42, respectively, it is enacted, "That it shall be lawful for the Judges of the Supreme Court of New South Wales, to make and prescribe such Rules and Orders touching and concerning, (amongst other things) the admission of Attornies and Solicitors, as may be adapted to the circumstances and condition of the said Colony."

And Whereas, by the 24th Section of the last-mentioned Statute it is enacted, "That all Laws and Statutes in force within the Realm of England, at the time of the passing of that Act, (not being inconsistent therewith, or with any Charters or Letters Patent, or Order in Council which might be issued in pursuance thereof) shall be applied in the administration of Justice

"in the Courts of New South Wales, so far as the same can be applied within the said Colony."

And Whereas, it is expedient to make further Rules and Regulations touching and concerning the admission and enrolment of Attornies and Solicitors in the Supreme Court of New South Wales,

It is Ordered,

I.—That before any person shall be articted to an Attorney, with a view to his admission as an Attorney, he shall be introduced to the Judges by his intended Master, and shall produce at the time of such introduction, certificates of the Tutors, or others under whom he shall have been educated, of the Regularity and Propriety of his conduct whilst under tuition, and of his Academical Acquirements under such tuition, which shall comprise sufficient Classical proficiency, to translate into English any part of the first Six books of the *Æneid* of *Virgil* from the Latin, and of *St. John's Gospel* from the Greek, together with a competent knowledge of Arithmetic, and of the first Six books of *Euclid*: and that he shall not be less than seventeen years of age, and shall be approved of by the Judges before entering into Articles.

II.—That no person during the time he shall be articted to an Attorney, with a view to his admission, shall receive any Salary or emoluments other than board, lodging, and necessities, for his services, nor shall pursue any trade or business, other than the proper business of an Attorney.

III.—That the Master or other Officer performing the duty of Master of the Supreme Court for the time being, together with one Barrister-at-Law and two Attornies of the said Court, be appointed by a Rule of Court for the present year, and in the First Term in every subsequent year, subject to the control of the Judges, to be Examiners for one year, as to the fitness of persons intending to apply for admission as Attornies on the Roll of the Court, any three of whom, one whereof to be either the Master or the Barrister, shall be competent to conduct the examination, and from and after the date of this order subject to such Appeal as hereafter-mentioned, no person shall be admitted to be sworn an Attorney of the Supreme Court, except on production of a certificate signed by the major part of such Examiners, actually present at, and conducting his Examination, testifying his fitness and capacity to act as an Attorney, such certificate to be in force only to the end of the term next following the date thereof, unless such time shall be specially extended by the order of a Judge of the Court.

IV.—That the Examiners so to be appointed shall conduct the said Examinations under regulations to be approved by the Judges.

V.—That in case any person shall be dissatisfied with the refusal of the Examiners to grant such certificate, he shall be at liberty to apply for admission by petition in writing to the Judges, which application shall be heard at Chambers by not less than two of the Judges.

VI.—That such Examinations be held at the Supreme Court House, on such days being within the last ten days of every term, as the said Examiners or any three of them shall appoint.

VII.—That every person not previously admitted a Writer, Attorney, or Solicitor of any of the Courts of Record, at *Westminster*, *Dublin*, or *Edinburgh*, or admitted a Proctor in any

Ecclesiastical Court in *England*, and desirous of being admitted, shall in addition to the notices already required by the Rules of the Court, give a Term's notice to the said Examiners of his intention to apply for examination by leaving the same with the Chief Clerk, which notice shall also state his place or places of residence, and service for the last two years; and in case of application to be admitted on a refusal of the certificate, shall give ten days notice, to be served in like manner, of the day appointed for hearing the same.

VIII.—That three days at the least before the commencement of the Term next preceding that in which any person not previously admitted, shall propose to be admitted an Attorney of the Court, he shall cause to be delivered to the Chief Clerk, instead of affixing the same on the doors of the Court, as now required, the usual written notices which shall state, in addition to the particulars now required, his place or places of abode, or service for the last two years, and the Chief Clerk shall reduce all such notices as in this rule first mentioned, into an Alphabetical Table or Tables under convenient heads, and affix the same on the first day of Term in some conspicuous place within or near to, and on the outside of the Court.

IX.—An whereas, it is expedient that upon the application for admission on the Rolls of the Supreme Court, of any person who has been previously admitted a Writer, Attorney, or Solicitor of any of the Courts of Record at *Westminster*, *Dublin* or *Edinburgh*, or admitted a Proctor in any Ecclesiastical Court in *England*, the Judges should have the means of inquiring as to the circumstances under which the Applicant had discontinued to practice in the said Courts respectively, and as to his conduct and employment during the time of such discontinuance.

It is further ordered, that at the time of giving the usual notice of his intention to apply for such admission, the party shall cause to be filed, the Affidavit on which he seeks for admission with the Chief Clerk, together with the certificate or certificates of his previous admission, which affidavit shall contain in addition to the particulars now required, the time when he ceased to practise, the time of his arrival in the Colony, the name of the ship in which he arrived, the mode of his employment from the time he ceased to practise, and a reference to one or more respectable Housekeeper or Housekeepers resident within the Colony, to whom the party is known, and the Rule for the admission of such person shall be drawn up; on reading such affidavit, which Rule shall be conditional for twelve months, unless the Judges shall see cause to the contrary.

X.—It is further ordered, that every Attorney having been admitted on the Roll of this Court, and ceasing to practice for twelve months continuously, shall be struck off the Roll, and shall not be re-admitted without a Term's notice of his intention to apply for such re-admission, and at the time of giving such notice shall cause to be filed the Affidavit on which he seeks to be re-admitted, with the Chief Clerk, which Affidavit shall contain in addition to the particulars now required, a statement of his place or places of abode during the last preceding year, and how he has employed his time since he ceased to practise, and

the rule for the re-admission of such person shall be drawn up on reading such Affidavit.

APPOINTMENT OF EXAMINERS.

It is ordered, that the Master, or other Officer performing the duties of Master for the time being, of the Supreme Court, and John Hubert Plunkett, Esquire, Barrister-at-law, Francis Fisher, and James Norton, Gentlemen, Attornies be, and the same are hereby appointed Examiners for the present year, to examine all such persons as shall desire to be admitted Attornies of the Supreme Court, and that any three of the Examiners, one of them being the Master, or other Officer performing the duty of Master, or the Barrister hereby appointed, shall be competent to conduct the said examination in pursuance of and subject to the Rule of the Judges made in that behalf, in the First Term, 1838.

Signed JAMES DOWLING.
W. W. BURTON.
JOHN WALLPOLE WILLIS.

Regulations for the Examination of persons applying to be admitted as Attornies of the Supreme Court of New South Wales, pursuant to the Rule of Court made on the 28th April, 1838.

Whereas, by a Rule of the Supreme Court made on this day, it was ordered, that the Master or other Officer performing the duties of Master for the time being of the said Court, together with one Barrister-at-Law, and two Attornies of the said Court, should be appointed by a Rule of Court for the present year, and in the first Term in every subsequent year, to be Examiners for one year, of persons applying to be admitted Attornies of the said Court, any three of whom, (one whereof to be the Master or other Officer acting as Master, or the Barrister-at-Law so appointed) should be competent to conduct the examination, and that from and after the date thereof, subject to such Appeal as therein-after mentioned, no person should be admitted to be sworn an Attorney of the Court, except on production of a certificate signed by the major part of such Examiners, actually present at, and conducting his examination, testifying his fitness and capacity to act as an Attorney, such certificate to be in force only to the end of the Term next following the date thereof, unless such time should be specially extended by the order of a Judge. And it was further ordered that the Examiners so to be appointed should conduct the said examinations under regulations to be approved by the Judges, and that such examination should be held in the Supreme Court House, on such days (being within the last ten days of every Term, as the said Examiners or any three of them should appoint,) and that any person not previously admitted a Writer, Attorney, or Solicitor of any of the Courts of Record at Westminster, Dublin, or Edinburgh, or admitted Proctor in any Ecclesiastical Court in England, and desirous of being admitted, should in addition to the notices already required by the Rules of the Court, give a Terms' notice of his intention to apply for examination by leaving the same with the Chief Clerk of the said Court.

And Whereas, by a Rule of the said Court made on this day, it was ordered, that the Master, or other Officer performing the duties of Master for

the time being, together with John Hubert Plunkett, Esquire, Barrister-at-Law, Francis Fisher, and James Norton, Gentlemen, Attornies, should be, and the same were thereby appointed. Examiners for the present year to examine all such persons as should desire to be admitted Attornies of the said Court, and that any three of the said Examiners (one of them being the Master, or other Officer performing the duties of Master, or the Barrister-at-Law thereby appointed) should be competent to conduct the said Examination in pursuance of, and subject to the provisions of the said Rule of the said First Term.

In pursuance of the said Rules, the following Regulations for conducting the said Examinations have been approved by the Judges of the said Court :—

I. That every Person applying to be admitted an Attorney of the said Court, pursuant to the said Rules, shall within the first seven days of the Term in which he is desirous of being admitted, leave or cause to be left with the Chief Clerk, his Articles of Clerkship, and also any Assignment which may have been made thereof, together with answers to the several questions hereunto annexed, signed by the Applicant and also by the Attorney or Attornies with whom he shall have served his Clerkship, and also by the Minister of the Church or Chapel he shall have frequented.

II. That in case the Applicant shall show sufficient cause to the satisfaction of the Examiners why the first Regulation cannot be fully complied with, it shall be in the power of the said Examiners upon sufficient proof being given of the same, to dispense with any part of the first Regulation that they may think fit or reasonable.

III.—That every person applying for admission shall also, if required, sign and leave, or cause to be left with the Chief Clerk of the said Court answers in writing to such other written or printed questions as shall be proposed by the said Examiners touching his service and conduct, and shall also if required, attend the said Examiners personally, for the purpose of giving further explanations touching the same; and shall also if required procure the Attorney or Attornies with whom he shall have served his Clerkship as aforesaid, and also if required procure the attendance of the Minister of the Church or Chapel he shall have frequented, to answer either personally or in writing any questions touching such service or conduct, or shall make proof to the satisfaction of the said Examiners of his inability to procure the same.

IV.—That every person so applying shall also attend the said Examiners at the Supreme Court-house, at such time or times as shall be appointed for that purpose, pursuant to the said Rule as the said Examiners shall appoint, and shall answer such questions as the said Examiners shall then and there put to him by written or printed papers, touching his fitness and capacity to act as an Attorney.

V.—That upon compliance with the aforesaid regulations, and if the major part of the said Examiners, actually present at, and conducting the said Examination (one of them being the said Master or the said Barrister-at-Law, shall be satisfied as to the fitness and capacity of the person so applying, to act as an Attorney, the said Examiners so present, or the major part of them, shall certify

the same, under their hands in the following form, viz.—

"In pursuance of the Rules made on the 28th day of April, 1838, of the Supreme Court of New South Wales, we, being the major part of the Examiners actually present at and conducting the Examination of _____ of &c., do hereby certify that we have examined the said _____, as required by the said Rules, and we do testify that the said _____ is fit and capable to act as an Attorney of the said Court."

QUESTIONS TO BE ANSWERED BY THE CLERK.

- I.—Where did you board and lodge during the continuance of your Articles?
- II.—During what hours were you required to attend to the business of your Master's Office?
- III.—What was your age on the day of the date of your Articles?
- IV.—Have you served the whole term of your Articles at the Office where the Attorney or Attornies to whom you were Articled or assigned, carried on his business? If not, state the reason.
- V.—Have you, at any time during the term of your Articles, been absent without the permission of the Attorney or Attornies to whom you were Articled or assigned? If so, state the length and occasions of such absence.
- VI.—Have you, during the period of your Articles, been engaged or concerned in any profession, business, or employment other than your professional employment as Clerk to the Attorney or Attornies to whom you were Articled or assigned?
- VII.—Have you, since the expiration of your Articles, been engaged or concerned, and for how long a time, in any, and what profession, trade, business, or employment, other than the profession of an Attorney?

QUESTIONS TO BE ANSWERED BY THE MASTER-ATTORNEY.

- I.—Has A. B. served the whole term of his Articles at the Office where you carry on your business? And if not, state the reason.
- II.—Has the said A. B., at any time during the term of his Articles, been absent without your permission? And if so, state the length and occasions of such absence.
- III.—Has the said A. B., during the period of his Articles, been engaged in or concerned in any profession, business, or employment, other than his professional employment as your Articled Clerk?
- IV.—Has the said A. B., during the whole term of his Clerkship, with the exception abovementioned, been faithfully and diligently employed in your professional business of an Attorney?
- V.—What have been the moral conduct, character, and habits of the said A. B. during the time he has served under his Articles?
- VI.—Do you consider the said A. B. as a fit and proper person to be an Attorney of the Supreme Court?
- VII.—Has the said A. B., since the expiration of his Articles, been engaged and concerned, and for how long a time, in any, and what profession,

trade, business, or employment, other than the profession of an Attorney?

And I do hereby certify that the said A. B. hath duly and faithfully served under his Articles of Clerkship (or assignment, as the case may be), bearing date _____, for the term therein expressed, and that he is a fit and proper person to be admitted an Attorney.

QUESTIONS TO BE ANSWERED BY THE MINISTER OF THE CHURCH OR CHAPEL FREQUENTED BY THE ARTICLED CLERK.

- I.—How long have you known A. B.?
- II.—What has been his attendance on divine worship during that period?
- III.—What, as far as came under your observation, has been his moral conduct?
- IV.—With reference to these questions, do you consider him to be a fit and proper person to be an Attorney of the Supreme Court?

Signed } JAMES DOWLING,
W. W. BURTON,
JOHN WALPOLE WILLIS.

ECCLESIASTICAL JURISDICTION
OF THE
SUPREME COURT OF NEW SOUTH
WALES.
REGULÆ GENERALES.

MAY 8, 1838.

WHEREAS, by the Statute 9, Geo. IV, c. 83, sec. 16, continued by subsequent Statutes, it is enacted "That it shall be lawful for the Judges of the Supreme Court of New South Wales, to make and prescribe such Rules and Orders touching and concerning (amongst other things, the granting of Probate of Wills, and Letters of Administration, as may be adapted to the circumstances and condition of the said Colony." And, whereas, it is expedient to make rules and regulations touching the granting of Probates of Wills, and Letters of Administration, and the collecting of Intestate Estates and Effects.

It is therefore Ordered,

I. That all applications for Probate of Wills, or Letters of Administration, which shall not be opposed, may be made in vacation by petition to the Judges, or in Term by motion, at the option of the applicant.

II. That in all cases where a *Caveat* shall have been entered, the Party applying for Probate or Letters of Administration shall by his duly authorised Proctor (such authority being first duly entered with the Registrar) enter with the Registrar a brief statement of the nature and grounds of his Suit, and the names of the Parties by and against whom it is intended to be commenced, together with a brief Schedule particularising all written documents on which he founds or supports his claim, in order that the nature and grounds of action so entered as aforesaid may be copied and inserted in the citation, and the Party clearly know what he is called upon to answer.

III. That every citation originating a Suit, together with the attested copies (by which is meant copies duly examined, certified, and signed by the Proctor) of all written documents on which the

Suit is founded, or which are relied upon in support thereof, and named in the Schedule, directed to be entered with the Registrar according to the preceding Rule, shall be served within eight days, if the Party against whom it issues resides in Sydney, or within twenty-five miles thereof, or within sixteen days, if at any greater distance; and in case the Party so cited shall not appear, if resident in Sydney, or twenty-five miles thereof, within eight days, or within sixteen days, if at any greater distance, after service thereof, or in case any such Party cannot be served, then the same, together with the due service of such citation, and of all such documents as aforesaid; if served, or in case the Party cannot be served, of the impossibility of such service shall be duly verified upon oath, before any further proceedings be had in the cause.

IV. That if a Defendant, duly cited as aforesaid, shall not appear as stipulated in the foregoing Rule, by a duly authorised Proctor (and such authority be duly entered with the Registrar) to defend the Suit, then such default shall be noted by the Plaintiff with the Registrar, and thereupon the Registrar on the application, and at the cost of the Plaintiff, shall declare and publish such default, together with a short peremptory second citation, requiring the defendant to appear within eight days from the date of such publication, or that he will otherwise be totally excluded from making any defence; and in case the said Defendant shall not then appear, the Plaintiff (having first entered the default with the Registrar,) shall be at liberty to examine Witnesses, if necessary, and proceed to sentence or decree *ex-parte*; and in the event of obtaining a sentence or decree, (the said Plaintiff first giving security to the satisfaction of the Court, to abide any further order or decree in the matter in question that shall seem just) may thereupon issue process to compel the performance thereof, in the same manner as if the Defendant had appeared, and such decree or sentence had been obtained in the usual course, such decree or sentence however to be subject to all such provisions as are contained in the Statute in the 1 Wm. IV, c. 36, respecting a decree in Chancery, when the Bill is taken *pro confesso*, for want of appearance, and are applicable thereto; but if the Defendant shall then appear by a duly authorised Proctor, (whose authority shall be entered with the Registrar as aforesaid) then the said Defendant shall be at liberty on payment of all costs occasioned by his default to apply to the Court by petition in vacation, or motion during Term, upon affidavit shewing reasonable excuse for his default, to enter upon his defence, on such terms as the Court shall think fit to impose.

V. That when the Defendant shall appear, he shall be bound to enter an admission or denial of the Plaintiff's claim, as contained in the citation, together with a brief statement of the points of law, matters of fact, or both, or either of them on which he rests his defence, and shall also enter therewith a brief Schedule of all written documents on which he relies in support of his defence, and at the same time hand over to the Plaintiff's Proctor an attested copy of such defence and Schedule so entered as aforesaid, together with attested copies of all the written documents contained in the said Schedule, if demanded, whereupon issue shall be deemed joined between the Parties.

No. 334. May 18, 1838.

VI. That when issue is thus joined, either Party on giving eight days notice to the other, may set down the cause for hearing before one of the Judges of the Supreme Court, on any day appointed for causes during the Term, and both Parties shall be at liberty to subpoena their Witnesses for the day on which the cause is set down to be heard, in the same manner as in a trial at law.

VII. That the course and practice prescribed by the 42nd Rule of Court for regulating proceedings at law, shall be observed when either Party shall apply to postpone the hearing, and such affidavit as therein mentioned shall be required, whenever an application be made to postpone the hearing on the account of the absence of a material Witness, and the same course as prescribed by the 68th and 69th Rules of Court, for regulating proceedings at law, shall also be observed in all cases where it may be necessary to examine any Witness or Witnesses under a commission or a *bene esse*.

VIII. That if in any of the stages of the Suit the Plaintiff shall make default in duly proceeding, then the Defendant or Defendants, if more than one, having entered a note of such default with the Registrar, shall thereupon respectively be absolved from the Suit, and entitled to all such costs as he may have duly incurred by the proceedings, and the Plaintiff shall be compelled to pay all such costs before he be allowed to institute any new Suit or proceedings, and the Defendant shall be at liberty to recover the same in like manner as at law; but if the Defendant shall make any such Default, then the Plaintiff after having duly entered the same with the Registrar shall be at liberty to proceed *ex-parte*.

IX. That on the day of hearing the Registrar or other Officer shall bring into Court all entries; minutes, and documents in his possession, relative to the Suit, and the Parties shall proceed at such hearing in the same manner as at a trial at law, save that the Registrar, or other Officer, shall in all cases take down the evidence in the same manner as at present directed by the Statute, 9 Geo. IV, c. 83, sec. 14, on the trial of an issue at law, before Assessors, where the sum or matter at issue shall exceed the amount or value of £500 and after the case shall have been gone through by both Parties, the Judge shall then, or at such other time as he shall appoint, proceed to declare his sentence or decree, and adjudication of costs in open Court; all which shall be duly minuted and entered with the other proceedings in the cause by the Registrar or other Officer.

X. That in case of an interlocutory sentence, referring any matter to the Registrar or other Officer of Court, an early day shall be appointed by the Registrar, or such other Officer, on application of either Party, for the Parties to attend him, and such appointment being duly signified to the other Parties respectively, shall be sufficient warrant for the said Registrar, or other Officer, to proceed without any further notice, and to continue such proceedings *de die in diem*, or at such other brief intervals as the said Registrar, or other Officer, may deem expedient, until he shall have completed his investigation; and in all cases where in consequence of any such reference it shall be necessary for the Registrar, or other Officer, to examine any Parties, Claimants, or Witnesses, the

Registrar, or other Officer, shall be at liberty at his discretion to examine them, or any of them, either upon written interrogation, or *viva voce*, or in both modes, as the nature of the case may require, the evidence upon such examination being taken down at the time by the Registrar, or other Officer, or his clerk, in his presence, and preserved in order that the same may be used by the Court if necessary; and the said Registrar, or other Officer, shall issue the like subpoena as at law, for the attendance before him of any Witness or Witnesses he may require, at the expense of the Party on whose behalf any Witness shall be required.

XI. That when the sentence pronounced by the Judge shall be in itself or in its nature definitive, it shall be open for any party dissatisfied therewith to file with the Registrar, within four days after such Decree or Sentence shall have been pronounced, exclusive of that day, a Notice of his intention to move by way of Appeal for re-hearing of the said Cause before the full Court, such Notice to set forth in a brief and compendious manner the day on which such Cause was heard, the name of the Judge who heard the same, and the grounds upon which such motion is intended to be made. And the said Party shall within the like time deliver to the Judge who heard the Cause a copy of such Notice, accompanied with a request to bring his Notes to Court on the day appointed for hearing such Motion. And the said Registrar shall cause such Notice and the Evidence taken in the said Cause to be produced in Court at the hearing of the said Motion. And at the said hearing, the Party filing such Notice shall begin, the Party shewing cause shall follow, and the Party in support of the Motion shall reply. And if the Party shall neglect to file such Notice within the time and in the manner hereby directed, then the Sentence may be carried into execution without any Rule or other Notice for such purpose. Provided always, that no new Matter shall be urged, new Documents filed, or new Evidence gone into, unless the Court shall expressly require the same for its own satisfaction, or it shall appear that Evidence ready to be adduced on either side has been improperly excluded.

XII. That in the event of no Appeal being granted, or when any definitive Sentence shall be given on any such Appeal, the same shall be carried into execution in the same manner as Judgments at Law.

XIII. That the like fees be allowed to the Proctors of this Court for Instructions for Special Petitions, Affidavits and Pleadings, and for drawing and copying any Pleading or other Document, and for attendance thereon, as are or shall be allowed for business done on the Equity Side of this Court, and that the proper Officer of the Court do tax and allow all Bills of Costs accordingly, so far as the same shall apply.

(Signed) JAMES DOWLING, C. J.
W. W. BURTON.
JOHN WALPOLE WILLIS.

Rules to be observed by the Registrar of the Supreme Court, with regard to the effects of Deceased Persons, to which he has been, or may be, authorised to collect, and relative to Administrators of Deceased Persons.

Whereas, it is expedient that the effects of Deceased Persons, which have already been, or may

in future be, collected by the Registrar, by and under the authority and direction of the Supreme Court in the exercise of its Ecclesiastical Jurisdiction, should be separately accounted for, and invested at interest, so as to become as beneficial as circumstances will admit for the parties respectively who may ultimately be entitled thereto: And whereas it is also desirable that all possible diligence be used to ascertain the parties respectively who may be so entitled, and also to enable such several parties at once to ascertain and be informed of the precise amount of the property they may be entitled to; and for that purpose that distinct and accurate accounts of all and each of such Estates and Effects, and of the money produced thereby, should be duly rendered: And whereas it is also desirable that all persons to whom administration has been granted within the last six years, and also all persons to whom administration shall hereafter be granted, should file their inventories and accounts of their administrations in this Court, pursuant to the condition of their administration bonds.

It is therefore hereby ordered, that the Registrar of this Court do forthwith call in and compel payment of all sums of money belonging to the Estates of any Intestate Persons heretofore invested by order of this Court, together with all interest due thereon: And also that on or before the first day of September next, the said Registrar do make out, render, and verify, to the satisfaction of the Court, a full and particular account of all and each of the several Estates and Effects of such Deceased Persons respectively, as the said Registrar has, by any order of this Court, heretofore been authorised to receive and collect, and which have not hitherto been disposed of to the parties respectively entitled thereto, in pursuance of any subsequent order or orders of this Court, together with an inventory and statement of the nature and amount of the Estate and Effects of each of such Deceased Persons respectively; and when and how, the said Estates, and each of them, and each, and every part thereof, have, or has been, converted into money, and what part or parts thereof respectively remain unconverted into money, and why? and when, to whom, and for what purpose, the same, and each and every part thereof respectively, have, or has been applied and disposed of, and what now remains in the hands of the said Registrar unapplied and undisposed of; and what has been, and now is, invested and outstanding, and on what securities or security, and at what rate of interest, on account, or in respect of all, and every, or any, and which in particular, of such Estates respectively as aforesaid; and what claims thereto hitherto have been put forth, together with the nature and extent thereof respectively; and when, and by whom; and what inquiries have hitherto been made, or steps taken, to ascertain and identify such parties respectively as are, or may be, entitled to all, and each, or any, of the Estates of such Deceased Persons respectively as aforesaid: And the particular reason of the delay, if any, which has taken place in and about the several matters aforesaid, or any of them: And also a full, true, and particular account of the costs, charges, and expenses which he has incurred in the receipt, or collection, or otherwise, with regard to the said Estates respectively, or in ascertaining, or endeavouring to ascertain, the parties respectively entitled thereto. And after the said accounts shall be examined and allowed by

of the Judges thereof. And upon the same being the said Court, or a Judge thereof, the said Registrar shall forthwith pay over the balances remaining in the said accounts respectively (if any) to the Trustees of the Savings' Bank at Sydney, and invest the same at interest, in the said bank, in the name of the Registrar of this Court, in trust for the next of kin of each and all such Deceased Person or Persons by name respectively. And shall, from time to time, invest as aforesaid (if necessary), so as to be made productive, all interest, dividends, proceeds, and profits, arising from all, and each, or any, of such Estates: And all sum or sums of money, together with all interest and dividends so to be invested in the said bank as aforesaid, shall remain therein to the credit of the said Estate of such Deceased Person or Persons, subject to the further orders of this Court.

And it is hereby further ordered, that the said Registrar shall diligently and without delay use all lawful ways and means to discover and make known to the said Court, the names and additions of all persons who shall die within the Colony of New South Wales intestate, without having any next of kin in the said Colony, and leaving Effects which shall be exposed, or liable to waste, or of any other nature whatsoever. And the said Registrar is hereby required and directed, upon discovery thereof, to apply to this Court, either in or out of term, on petition, to be filed with the Chief Clerk and verified by affidavits, for an order to collect the same.

And it is further ordered, that in all cases where an Order shall be granted as aforesaid, for the said Registrar to collect the Estate and Effects of any Deceased Person, he shall forthwith cause an Inventory thereof to be taken, and file the same together with his Order to collect as of record in his Office; and shall (if necessary) as soon as conveniently may be, cause the said Estate and Effects to be advertised and sold by Public Auction to the best purchaser or purchasers that can be got for the same. And also cause an Advertisement to be inserted in the *Government Gazette* for the Creditors of such Deceased Person or Persons to come in, on or before a short day to be therein named, and prove their Debts before the said Registrar, or in default thereof, to be peremptorily excluded from any benefit arising from the said Estate: And out of the money arising from the sale of the said Estate and Effects of any such Deceased Person, the said Registrar shall in the first place reimburse himself all costs and charges he shall reasonably have been put to in collecting and selling of such Estate and Effects, (such costs and charges being first examined and allowed by one of the Judges of this Court;) and in the next place, the Debts which shall be proved to the satisfaction of the said Registrar are to be paid by the said Registrar, if so much money shall remain for the payment thereof in full, but if a sufficient sum shall not remain for the payment of all such Creditors of any such Deceased Person as shall prove their Debts as aforesaid, within the time aforesaid, in full; then the same shall be divided equally and rateably amongst such of the said Creditors as shall so prove their said Debts.

And it is further ordered, that the said Registrar shall within three months after the time limited for the Creditors of any such Deceased Person to come in and prove their Debts as aforesaid, file in this Court his Account of such Estate, and pass the same before this Court or one

examined and allowed by the said Court or Judge, the said Registrar shall forthwith pay the balance (if any) to the Trustees of the Savings' Bank at Sydney, and invest the same in the same manner as is herein-before directed with respect to the balances remaining on his accounts of Estates, heretofore committed to him to collect under any previous Order of this Court.

And it is hereby further ordered, that the said Registrar do with all convenient speed, give notice to all Persons in this Colony to whom Administration has been granted of the Goods, Chattels, Credits and Effects of any Deceased Person or Persons within the last six years, or to the Representatives of any such Person as may be dead, to file with the said Registrar a true and perfect Inventory of all and singular the Goods, Chattels, Credits and Effects of such Deceased Persons, and also a true and just account of their several Administrations, on or before a short day to be therein named, and pass the same before this Court, or a Judge thereof. And the said Registrar shall at the expiration of the time limited by the Administration Bonds of Persons to whom Administration shall hereafter be granted, also give notice to such Administrators to file their Inventories and Accounts, and to pass the same as aforesaid on or before a certain day to be named in such notice. And upon the said Accounts being filed; passed, and allowed by the said Court, or a Judge thereof, the said Administrators are respectively forthwith hereby ordered to pay over the balances remaining upon their said Accounts (if any) to the said Registrar. And the said Registrar is hereby ordered and directed forthwith to pay over the same to the Trustees of the said Savings' Bank, to be invested in the same manner, and subject to the same orders and directions as are herein-before contained respecting balances remaining on the Accounts of the said Registrar. And in default of any such Administrator or his Representatives failing to file and pass such Accounts in pursuance of such Notice as aforesaid, the Administration Bonds of all such Persons are hereby ordered to be put in Suit, in the name of Her Majesty's Attorney-General for the time being of the said Colony.

And it is further ordered, that the said Registrar shall, as speedily as circumstances will permit, make, at the expense of the said Estates respectively, all reasonable and diligent enquiry as to the birth-place, and place or places of residence at different periods throughout the life of all and each of the several Deceased Persons, whose Estates and Effects be, has been, or may hereafter be authorised to receive and collect, under any Order of this Court, and of all Persons who have died Intestate, and to whose Goods, Chattels, Credits and Effects, Administration has been granted within the last six years, and of all Persons who shall hereafter die Intestate, and to whose Goods, Chattels, Credits and Effects, Administration shall hereafter be granted, and shall by Advertisement in the Public Papers of the Mother Country, and of this Colony or elsewhere, and by all other diligent ways and means, use his utmost endeavour to ascertain all and each of the Parties or Party respectively, who are, is, or may be justly entitled to all, or any and each of the said Estates so collected, or to be collected by the said Registrar as aforesaid. And the said Registrar shall be at liberty to apply to this Court in all

or in every case as there shall be occasion, by Petition duly signed by him, and left with the Chief Clerk, briefly stating the facts and the precise Order which he applies, and which Order it is hereby declared, any one or more of the Judges of this Court shall be competent to make.

8th May, 1838.

(Signed) JAMES DOWLING, C. J.
W. W. BURTON.
JOHN WALPOLE WILLIS.

Mode of procedure to be observed in the Supreme Court of New South Wales in the exercise within this Colony, or the Dependencies thereof, of such Equitable Jurisdiction as Her Majesty's Court of Exchequer at Westminster lawfully hath, and such Equitable Jurisdiction as the Lord High Chancellor of Great Britain lawfully exercises within the realm of England.

Whereas by an Act of Parliament made and passed in the ninth year of the reign of His late Majesty King George the Fourth, intituled, "An Act to provide for the administration of justice in New South Wales and Van Diemen's Land, and for the more effectual government thereof, and for other purposes relating thereto." This Court is fully invested, amongst other things, with such Equitable Jurisdiction within this Colony, and the Dependencies thereof, as Her Majesty's Court of Exchequer at Westminster lawfully hath, and such Equitable Jurisdiction as the Lord High Chancellor of Great Britain lawfully exercises within the Realm of England.

And by the said Act the Judges of this Court are authorised to make and prescribe all necessary rules and orders for the conduct of business in the said Court.

And whereas it is expedient that one uniform and systematic manner of proceeding should be adopted in all matters within the Equitable Jurisdiction of this Court, whether exercising similar powers to the Court of Exchequer, or to those of the High Court of Chancery in England, and that such manner of proceeding should, as far as circumstances will permit, be assimilated as closely as possible to that in use in the said High Court of Chancery in England.

I. It is ordered, that the respective rules and orders, forms and manner of proceeding in Her Majesty's High Court of Chancery at Westminster shall be adopted and followed in the exercise of the Equitable Jurisdictions of the Exchequer and Chancery in the Supreme Court of New South Wales, so far as the circumstances and condition of the Colony shall require and admit; and so far as such rules, orders, and forms of proceeding shall or may not herein, or at any time hereafter, be altered

II. That all proceedings shall be commenced and continued in the Master's Office, and kept in a distinct and separate form, and shall be entitled in the Court and its Jurisdiction in which they shall be so commenced, and shall be written in a clear legible hand, and the same shall not be received unless they are so written as aforesaid. And the same proceedings shall be entered in a book to be

kept in his office for that purpose, to be called "The Master's Book in Equity."

III. That the Solicitor, in a cause, shall also act as Clerk of Court for his client, and be considered as such in all matters where by the English rules of practice a Clerk in Court is mentioned.

IV. That all Writs of Subpœna to appear and answer may be sued out at any time, and made returnable if the Defendant resides in Sydney, or within twenty-five miles thereof, eight days after service, exclusive of the day of service; and if the Defendant resides at a greater distance, then sixteen days after service. And all Writs of Subpœna shall be sealed with the seal of the Office of the said Master or other Officer, and tested in the name of the Chief Justice of the Court for the time being, and signed by the proper Officer of the said Court.

V. That when an Injunction to stay proceedings at law is prayed by the Bill, and sought to be obtained for want of appearance or answer, the same may issue as of course without any order for that purpose: Provided that if the same be sought for want of an appearance, then the same shall not issue until an affidavit be filed of the due service of the Subpœna. And such Injunction shall stay all further proceedings at law, without further order in whatever state the same may then be.

VI. That in all cases where the Lord Chancellor of England could or would grant or direct the writ of *Ne Exeat Regno* to issue in that Kingdom, or the Court of Exchequer at Westminster, could or would grant an order that the party should give security in the nature of such writ, a writ of *Ne Exeat Colonia*, to restrain any party from leaving this Colony, or the Dependencies thereof, may, on the order of any of the Judges of this Court, be directed to issue under the seal of this Court, and tested in the name of the Chief Justice thereof, and signed by the proper Officer; and such writ shall have the same effect in this Colony and its Dependencies, and shall be applied for and served in the like manner and under the same circumstances only, and subject to the said rules of practice as the said writ of *Ne Exeat Regno* in England.

VII. That in all cases where any Defendant has appeared to a Bill filed, (except when an Injunction is prayed) the Plaintiff's Solicitor shall, upon being thereto requested, deliver to such Defendant, or his Solicitor, an attested copy, that is, a copy of the Bill of Complaint so filed as aforesaid, duly examined, certified, and signed by himself. And until such copy shall be delivered as aforesaid (if demanded), all further proceedings therein shall be stayed.

VIII. That in all cases where an Injunction is prayed, the Plaintiff shall, together with the subpœna, serve a notice, duly signed by his Solicitor, on the Defendant, in the following words:—"Take notice that on or before the return of this Writ of Subpœna, an attested copy of the Bill, (or Information, as the case may be) to which you are required to appear, and answer will, (if demanded,) be delivered to

you, so as to enable you without delay to answer the same."

IX. That if a Defendant on being duly served with a Subpoena shall not appear at the return thereof, and give due notice of his having so appeared to the Solicitor for the Plaintiff, the Solicitor for the Plaintiff, on filing an affidavit of the due service of the Subpoena, and that a copy of the Bill has been delivered (if the same has been demanded), or that the same has not been demanded (if the Bill do not pray for an Injunction), or if an Injunction be prayed, that such notice was given as required by the preceding rule; and that a copy of the Bill has been delivered, or that none has been demanded, may forthwith publish in the *Government Gazette* the following notice, entitled, "Take notice that unless you appear on or before next (within eight days after the date of this notice), and clear your contempt, and put in your answer to the Bill filed against you in this cause within sixteen days from the date of this notice, I shall proceed to a Decree *Ex parte*. Yours, &c., J. S., Plaintiff's Solicitor." And in case the Defendant shall not appear in compliance with such notice, then the said Plaintiff shall be at liberty to set down the cause for hearing, and to examine his witnesses, if necessary, without any order for that purpose, so as to obtain a Decree *Ex parte*; and in the event of obtaining a Decree, the said Plaintiff (first giving security to the satisfaction of the Court to abide any order or decree in the matter in question that shall seem just) may thereupon issue process to compel the performance thereof in the same manner as if the said Defendant had appeared, and such Decree been obtained on hearing of both parties, such Decree however to be subject to all such provisions as are contained in so much of the Statute 1 W. IV., c. 36, where a Bill is taken *pro confesso* for want of an appearance as are applicable thereto.

X. That in case the Defendant shall appear, but after appearance shall not duly answer within the time limited, and in the manner prescribed by the Tenth General English Order of 1833, then the said Plaintiff shall personally serve the said Defendant with a notice in writing to put in his answer forthwith, or in case he cannot be found, the Plaintiff shall, on affidavit to that effect, and stating that all due and reasonable diligence has been used for that purpose, be at liberty to publish the following notice in the next *Government Gazette*.

In the Supreme Court of } A. B., Plaintiff,
New South Wales (in } and
Chancery or Exchequer } C. D., Defendant.

"Take notice that unless you put in a full and sufficient answer to the Bill filed against you in this cause, within sixteen days after the date of this notice, I shall proceed to obtain a Decree *Ex parte*. Yours, &c., J. S., Plaintiff's Solicitor."

And if the Defendant shall not then put in a full and sufficient answer the said Plaintiff shall be at liberty to proceed to a Decree *Nisi, Ex parte*.

Provided always, that if the Plaintiff shall
No. 334. May 18, 1838.

make it appear to the satisfaction of the Court after obtaining a Decree *Nisi*, that a Subpoena to show cause against the said Decree has been duly issued by him, and that during two calendar months from the issuing of such Subpoena, the said Plaintiff, after using all reasonable diligence, has been unable to serve the same on the Defendant, then the said Plaintiff shall be entitled to apply to the Court to have the said Decree made absolute in like manner as if the said Subpoena had been duly served.

XI. That all Demurrers, Pleas, and Answers, shall be filed with the Master, or other Officer, within the time limited, and in manner prescribed by the Tenth General English Order of 1833, and the Defendant's Solicitor shall at the same time serve on the Plaintiff's Solicitor an attested copy thereof, and either party shall within four days after any Demurrer or Plea shall have been so filed (if it be a Plea for Argument, and the Plaintiff shall not think fit to reply thereto and take issue thereon;) on giving two clear days' notice to the opposite party, and without any order for that purpose, set down the same for hearing, either in term or vacation, before any one of the Judges of the Court, giving due notice thereof through the Master or other Officer, in order that the Judge may attend and hear the same, and in default thereof such demurrer or Plea shall be allowed.

XII. That if a reference respecting any Plea so filed as aforesaid be required, the Plaintiff may at any time, by motion in term, or petition in vacation, obtain the order of any one of the Judges of this Court, for such reference to the Master or other Officer, whose report thereon the said Plaintiff shall obtain within the time limited by the English Rules; or if the Defendant, after any such Plea has been set down, should be desirous of withdrawing it, he may do so on undertaking to pay taxed costs.

XIII. That all Pleas required to be put in on oath and Answers shall be taken before a Commissioner of the said Court, and no Commission for taking the Answer of any Defendant shall be issued unless upon a special application to the Bench in term, or to the Judges by petition in vacation.

XIV.—That if any Pleading or other matter depending before the Court be objected to for Scandal or Impertinence, Specific Exceptions shall be taken thereto, and whenever a Plaintiff is in a situation to Except, and shall be desirous to Except to the Answer of the defendant for insufficiency, and whenever any party shall be in a situation to Except, and desirous to Except to any Report of the Master or other Officer which by the Rules of English Practice may be excepted to on a Report by a Master, all such exceptions shall be taken according to the English Rules of Practice, save that no objections to the Report shall be allowed, and all such Exceptions of whatever nature shall be filed with the said Master or other Officer, but no such deposit as is required by the English Rules of Practice in cases of Exceptions to a Master's Report shall be demanded, and an Attested Copy of such Exceptions shall be de-

livered to the Solicitor of the opposite party within four days after the party excepting has become entitled to except, and all such exceptions shall be set down for Argument before any one of the Judges of the Court within such time, and in such manner as herein-before directed, with regard to Demurrers and Pleas, or in default thereof shall be disallowed; and in the event of any such Exceptions being allowed, the Judge shall make such order thereon, and fix such time for further proceedings being taken in the cause, as he shall think fit.

XV.—That whenever the Plaintiff shall obtain leave to amend his Bill, and the Amendments are so inconsiderable that no reingrossment is required, he shall, thereupon, give notice to the defendant, if served with an Attested Copy of the original Bill, to hand over the same to the plaintiff for amendment; and the Attested Copy of the Bill, when so amended, or if the amendment be of such a nature as to require a new engrossment then an Attested Copy of such new engrossment shall at the time such amendments are filed if requiring no new appearance or answer be served on the plaintiff's Solicitor (if demanded,) or if a new appearance or answer be required then such amended Attested Copy or Attested Copy of new engrossment shall be (if demanded) duly served on the defendant, together with the subpoena issued for that purpose.

XVI.—That all applications to dismiss a Bill for want of prosecution may be made after such period has elapsed, and in such manner as required by the English Rules of Practice, but without reference to any term or vacation, or other than the ordinary computation of time.

XVII.—That the Plaintiff shall either set down his Cause on Bill and Answer within two calendar months from the time of a sufficient answer being filed, and no further answer being required; or having filed his Replication, and served a subpoena to rejoin, shall within the same period from the date of such service set down the cause for hearing, either in term or vacation, before any one of the Judges of this Court; and in either case shall serve the defendant or his Solicitor with a subpoena to hear judgment on the twenty-first day after the said cause shall have been set down to be heard, and in all such cases where the plaintiff or defendant shall be desirous of examining witnesses, such witnesses shall be summoned according to the mode of summoning witnesses at Common Law, to appear and give evidence at the hearing of the cause, and such witnesses shall then and there be examined in open Court, and give evidence *viva voce* in the same manner as in a trial at Law, provided always that in all cases where the proposed Decree will be consented to, or where it is certified by Counsel on both sides that no witnesses are required, the subpoena to hear judgment may be made returnable, and the cause heard on the third day, or any subsequent period within twenty days after the cause has been set down for hearing as aforesaid.

XVIII.—That the Course and Practice prescribed by the 42nd Rule of this Court for

regulating proceedings at Law, shall be observed when either party shall apply to postpone the Trial, and such Affidavit as therein mentioned shall be required, whenever an application be made to postpone the trial on the account of the absence of a material witness, and the same course as prescribed by the 68th and 69th Rules of this Court for regulating proceedings at Law, shall also be observed in all cases where it may be necessary to examine any witness or witnesses under a Commissioner *de bene esse*, provided always that no examination *de bene esse* shall take place, but when the same would be warranted according to the English Rules of Practice.

XIX.—That on the day of hearing, the Master or other Officer shall bring into Court all the proceedings in the cause which have been filed in his office, and the parties shall proceed at such hearing in the same manner as at a trial at law, save that the Master or other Officer shall in all cases take down the evidence in the same manner as at present directed by the Statute, ix. Geo. IV. c. 83, s. 14, on the trial of an issue at law before assessors, when the sum or matter at issue shall exceed the amount or value of £500; and after the case shall have been gone through by both parties, the Judge shall then, or at any other time as he shall appoint, proceed to declare his sentence or decree and adjudication of costs, in open Court; all which shall be duly minuted and entered with the other proceedings in the cause by the said Master or other Officer.

XX.—That in case of an interlocutory sentence, referring any matter to the Master or other Officer of the Court, a day shall be appointed by the said Master or other Officer, on application of either party, for the said parties to attend him; and such appointment being duly signified to the parties respectively, shall be sufficient warrant for the said Master or other Officer to proceed without any further notice, and to continue such proceedings *de die in diem*, or at such brief intervals as the said Master or other Officer may deem expedient, until he shall have completed his investigation. And the said Master or other Officer shall have the same powers on proceeding on any such reference, and shall proceed to report thereon in the same manner, or as near thereto as circumstances will permit, as a Master in Chancery is now ordered and directed to proceed in similar cases by the English Rules of Practice.

XXI.—That the Solicitors, as Clerks in Court, shall attend the Master or other Officer in settling the minutes of the decree; and the said minutes shall be prepared and the decree drawn up by the said Master or other Officer in the same manner, or as near thereto as circumstances will permit, as directed by the Rules of English Practice, and signed by the Judge pronouncing the same. And any party desirous of entering a *Caveat* to prevent the decree from being enrolled, shall lodge the same with the said Master or other Officer, and pursue the same course in other respects, as directed by the English Rules of Practice. And all decrees and orders in Equity

shall be enforced and carried into execution in the same manner as any judgment or sentence at law in this Court.

XXII.—That any party dissatisfied with the decision of a single Judge may, on due notice to the other party, and also to the Judge whose decision is impugned, within fourteen days from the time of such decision, apply to the Court in term, or in vacation by petition, to discharge or vary; or to stay such order, until the same can be argued by Counsel in term; or he may within the like time, (if he is dissatisfied with the decree,) apply by petition for a re-hearing before all the Judges, in such manner and subject to such rules and forms (without making any deposit with the Master or other Officer,) as prescribed by the English Rules of Practice for a petition of re-hearing by the Lord Chancellor of England, of a case previously heard and decided by the

Master of the Rolls, or Vice Chancellor in that Kingdom.

XXIII.—That all orders of course may be obtained in vacation on petition to the Court, and when any special order is required, the party applying for the same shall obtain from one of the Judges, through the Master or Officer charged with his duties, an appointment to him on such application, which appointment shall contain the subject of the application, and shall be served on the opposite party, together with copies of any affidavits intended to be used on such motion, at least forty-eight hours before the time appointed for the hearing thereof.

JAMES DOWLING, C. J.

W. W. BURTON,

JOHN WALPOLE WILLIS.

Supreme Court, Sydney,
10th May, 1838. }

