

## New Zealand.



### ANALYSIS.

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1888, No. 22.

AN ACT to amend the Law relating to District Courts. Title.  
[28th August, 1888.]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. The Short Title of this Act is "The District Courts Acts Amendment Act, 1888." Short Title.

This Act shall come into force on the first day of October, one thousand eight hundred and eighty-eight. Commencement of Act.

2. Nothing herein contained shall be held to affect any action commenced prior to the coming into operation of this Act. Act not to affect proceedings pending.

3. Sections fifteen and sixteen of "The District Courts Act, 1858" (hereinafter termed "the said Act"), are hereby repealed. Jurisdiction of Courts.

Every District Court shall have jurisdiction over all cases of a civil nature, whether legal or equitable, in which the claim or demand (whether the original claim or demand, or a balance after allowing payments on account or the amount of a set-off admitted by the plaintiff) shall exceed twenty pounds and not exceed two hundred pounds, and also over all partnership accounts and disputes between partners in which the claim or demand of the plaintiff, or the value of his interest in the property the subject of the action, shall not exceed two hundred pounds: Provided always that every action shall be brought Exceptions.

within the district in which the party sought to be charged resides or carries on business, or is served with the process of the Court, or within the district in which the cause of action arose, either wholly or in some material part: Provided also that no District Court shall have cognisance of any action in which the title to real estate or the validity of any devise or bequest shall be in question, or the limitations under any will or settlement shall be disputed, or in which damages shall be claimed for false imprisonment, or for malicious prosecution, or for any libel or slander, or for seduction, or breach of promise of marriage, where the amount claimed in such action shall exceed one hundred pounds.

Minor may sue for wages.

4. Section twenty of the said Act is hereby repealed.

A minor may sue in the District Court for wages or piece-work or for work as a servant as if of full age. A minor above the age of eighteen years may sue and be sued in the District Court upon any contract which such Court or a Judge thereof shall deem to have been or to be beneficial to such minor, or in any case of tort in which such Court has jurisdiction; and judgment may be given in any such action, and such proceedings may be had and taken to enforce such judgment, as if the minor were of the full age of twenty-one years.

Infant may sue by next friend.

An infant may sue and defend by his next friend, and the District Court or the Judge thereof may summarily admit any person to act as next friend, and the next friend so admitted shall be liable to satisfy the judgment of the Court in all respects as if he had sued or defended in his own proper right.

No further step than the serving of a summons shall be taken in any action against an infant under the age of eighteen years unless and until a next friend is admitted.

Absent defendant may be sued through his agent.

5. Any defendant absent from the colony who has an attorney or agent in the colony empowered to sue or act generally on his behalf may, by leave of the Judge first obtained, be sued in the District Court having jurisdiction in the district in which such attorney or agent resides, or in the district in which the cause of action arose wholly or in some material part.

Affidavit in lieu of oath as to jurisdiction.

6. The deposition on oath mentioned in section thirty-six of the said Act may be made by affidavit sworn in manner prescribed by section one hundred and fifty-eight of the said Act.

Summoning of jurors.

7. Section sixty-four of the said Act is hereby repealed.

Upon receiving the notice mentioned in section sixty-three of the said Act the Clerk of the Court shall, in the presence of a Justice of the Peace for the Colony of New Zealand, place in a box pieces of cardboard, one for each of the persons on the jury-list at the time being in force in the district, and each bearing a number corresponding to that set opposite to the name of each such person on the said jury-list, and shall mix well together such pieces of cardboard, and, without looking into the box, draw out twelve pieces; and the persons whose names are set opposite on the jury-list to the numbers on the pieces of cardboard so drawn shall be the jury to be summoned: Provided that, if and as often as the Clerk of the Court and the said Justice shall be satisfied that any such person is not at that time residing within ten miles of the Courthouse at which the sittings of the Court are to be held, the Clerk shall lay aside the piece of card-

board bearing the number of such person on the jury-list and draw out another piece of cardboard in lieu thereof.

The Clerk of the Court shall immediately thereafter cause the said jury to be summoned, and such jury so summoned shall be deemed to have been duly summoned for the trial of all jury causes of a civil nature to be tried at the same sittings of the Court.

8. Notwithstanding anything to the contrary contained in section sixty-seven of the said Act, in case the jury shall, after having retired to consider their verdict, and remained at least three hours in deliberation, intimate to the Judge that there is no probability of their agreeing upon a unanimous verdict, the verdict of three-fourths of such jury may be taken and accepted, and shall have the effect of a unanimous verdict.

Verdict of three-fourths jury may be taken in certain cases.

9. A deed may be proved and given in evidence in a District Court in the same manner as a document which does not require attestation.

Proof of deeds.

10. Where an action has been commenced in any District Court, and a person, whether a party to such action or not, shall be resident more than fifty miles from the Courthouse where the hearing of such action is appointed to be held, the party desiring to use the evidence of himself or of such person at the hearing may, at least seven days before the day appointed for the hearing, give notice in writing of such desire to the Clerk of the Court in which such action has been commenced (hereinafter termed "the Court for hearing"), and to the other party to the action, and such notice shall specify the name of the person to be examined, and the place where it is desired that such person should be examined, such place being one at which a sitting of a District Court or of a Resident Magistrate's Court is held at intervals of not more than one month.

When witness more than fifty miles from Court, party may apply for examination.

- (1.) Upon receiving such notice the Clerk of the Court for hearing shall forthwith transmit the same either to the Clerk of the District Court or to the Clerk of the Resident Magistrate's Court holding sittings at the place named in such notice (hereinafter termed "the Court for examination"), and the Clerk of the Court for examination, on receiving the same notice, shall forthwith appoint a time for the taking of such evidence, and shall transmit a copy of such appointment to the Clerk of the Court for hearing, who shall, immediately upon receiving the same, give notice of the time so appointed to both parties to the action, and forward to the Clerk of the Court for examination an affidavit of service of such notice.

Time and place for examination to be appointed, and notices to be given.

Summonses to witnesses to attend such examination, and to produce books, papers, and writings, may issue out of either Court, and the procedure on such examination shall be the same in all respects as if such examination were the hearing of an action in the Court for examination, excepting as may be otherwise prescribed by regulations from time to time.

- (2.) All evidence given at such examination shall be reduced into writing and signed by the Judge, Magistrate, or Justices, as the case may be, before whom it is taken, and by the

Evidence to be in writing, and signed.

persons giving such evidence, and shall be forwarded by the Clerk of the Court for examination to the Clerk of the Court for hearing, together with all books, documents, and things admitted in evidence, and such evidence shall be read at the hearing of the action, and shall, subject to all just exceptions, be held and deemed to be evidence given at such hearing.

Costs of examination.

(3.) The costs of such examination may in all cases be dealt with by the Court of hearing, or the Judge thereof, as if the same were costs incurred in and about the hearing of the said action; and, in addition to the costs of the action, the same allowance for solicitors and witnesses may be made as if such examination had been the hearing of an action.

Evidence given at examination deemed to be given in action.

(4.) Every person giving evidence at any such examination shall be deemed to have given his evidence in such action; and in any indictment and information it shall be sufficient to allege that such examination was held under the provisions of this Act, and proof of the summons having been issued in such action, and of the person having given evidence at such examination, shall, without proof of any of the notices herein mentioned, be sufficient evidence of the authority of the Court for examination to hold the same, and of such examination having been so held; and the signature of every Judge, Magistrate, and Justice of the Peace to such written evidence shall be judicially noticed without any proof thereof.

Fees to witnesses.

(5.) The fees for the time being payable in respect of the examination of witnesses in actions in Resident Magistrates' Courts under "The Resident Magistrates Evidence Act, 1870," or any Act in substitution therefor, shall be payable in respect of the several proceedings aforesaid, and the same shall be disposed of as if they were fees received in the Court by the Clerk of which the same are taken.

Adjournment of hearing after examination applied for.

11. The Court for hearing, or the Judge thereof, may either adjourn the hearing of any such action summarily from time to time on such terms as such Court or Judge may think fit, or may, if satisfied that any such application has been made for the purpose of delay, or if three months has elapsed since the making of such application, cause the action to be heard and disposed of as if no such application to have such evidence taken had been made.

Court may stay action in any matter referred to arbitration.

12. Wherever the parties to any deed or instrument in writing executed by them have agreed that any then existing or future differences between them or any of them shall be referred to arbitration, and any one or more of the parties so agreeing, or any person claiming through or under him or them, shall nevertheless commence any action against the other party or parties, or any of them, or against any person claiming through or under him or them in respect of the matters so agreed to be referred or any of them, it shall be lawful for the Court in which such action is brought, or a Judge thereof, on application by the defendant, before or after a statement of defence is filed, upon being satisfied that no sufficient reason

exists why such matters cannot be or ought not to be referred to arbitration, according to such agreement as aforesaid, and that the defendant was at the time of the bringing of such action, and still is, ready and willing to join in all acts necessary and proper for causing such matters so to be decided by arbitration, to order that all proceedings in such action be stayed, and to make such order as to costs and otherwise as to such Court or Judge may seem fit: Provided that such order may be at any time afterwards discharged or varied as justice may require.

13. If an action shall be brought contrary to good faith, or if an action shall be vexatious or frivolous, the Court or a Judge thereof may on summons order the same to be stayed, and may make such order as to terms, costs, and otherwise as to such Court or Judge may seem fit.

Court may stay action if frivolous or contrary to good faith.

14. The Judge of a District Court may exercise all the powers conferred upon a Judge of the District Court, whether within the district or not. Any application to the Court or a Judge thereof in an action may be by motion, notice whereof shall be served on the parties affected thereby, and filed in Court not less than three clear days before the day named in the notice for hearing the motion, provided that an order may in any case be made on shorter notice, or *ex parte*, on such terms as the Court or the Judge may think fit. Evidence in support of any motion may be by affidavit filed at least two clear days before the hearing, or, by leave of the Court or Judge, at a later period. The Court or the Judge may make such order in respect of any motion and the costs thereof as may seem just, whether in open Court or in chambers, and may set aside the same and all proceedings thereunder in case the same has been fraudulently or improperly obtained. The order shall be drawn up and filed, and a copy thereof served on the party to be affected thereby, unless the Court or Judge shall otherwise direct.

Judge of District Court may exercise jurisdiction while outside of his district.

15. Sections ninety-one, ninety-two, ninety-four, ninety-five, ninety-six, ninety-eight, and ninety-nine of the said Act are hereby repealed.

Repeal of said Act as to imprisonment for debt.

16. Sections one hundred and two and one hundred and three of the said Act are hereby repealed.

Parties aggrieved may appeal.

If either party to any cause or proceeding shall be dissatisfied with the decision or direction of the Court or Judge on point of law or upon the admission or rejection of any evidence, such party may appeal against the same to the Supreme Court, provided that such party shall, within ten days after such decision or direction, give security for compliance with the order that may be made on such appeal, and within such time also deliver to the Clerk of Court and to the other party to such action a notice of appeal specifying the grounds thereof, and otherwise comply with the regulations for the time being in force with respect to the prosecution of such appeals. And the Supreme Court may dispose of the appeal and make such order in respect thereof, and of the costs incidental thereto, as to such Court may seem just. No appeal shall lie from the decision of the Supreme Court unless the Judge thereof shall give permission for an appeal against the same to the Court of Appeal, and the decision of the Supreme Court or Court of Appeal, as the case may be, shall be final.

Appeal to be in form of a case.

Such appeal shall be in the form of a case agreed on by both parties; and, if they cannot agree, the Judge of the District Court, upon being appealed to by them or either of them, shall settle the case and sign it; and such case may then be transmitted by either party to the Registrar of the Supreme Court for the district wherein such decision or direction has been given, or, in case both parties shall consent, to any other Registrar of the Supreme Court.

How securities under Act to be given.

17. Sections one hundred and thirty-nine and one hundred and forty of the said Act are hereby repealed.

Where a party is required to give security, such security shall be given for such amount and in such manner and form as the Judge of the District Court shall direct, or, in the absence of such direction, as the Clerk of the District Court shall direct. The District Court or the Judge thereof may in any case make such order in respect of the enforcement or disposal of such security as to such Court or Judge shall seem just.

Power of Judge for arrest of absconding debtors.

18. A Judge of the District Court may as to any matter within his jurisdiction exercise all the powers conferred upon a Judge of the Supreme Court by section fifteen of "The Imprisonment for Debt Abolition Act, 1874," for the arrest of persons believed to be about to quit the colony.

Court to have jurisdiction in partnership accounts under £200, and may appoint Receiver therein.

19. The District Court may hear and determine any claim to partnership assets in the cases mentioned in section three, and may either order payment of such sum as the Court shall find the party making such claim entitled to, not exceeding the amount claimed, on such terms as the Court shall think fit, or may order the partnership assets to be realised and converted into money, and the Court or the Judge thereof by the same or any other order or orders may appoint such person as Receiver (hereinafter termed "the Receiver"), at such rate of remuneration and subject to such terms as to security and otherwise, as the Court or Judge shall deem fit, to take possession of all the partnership assets and property, and of all books, deeds, documents, and papers relating to the partnership.

- (1.) All the assets of the partnership shall, from the date of the order appointing a Receiver, vest absolutely in the person so appointed Receiver.
- (2.) Such Receiver shall, in the name of "the Receiver of the assets of the firm of [*name of firm*], in the District Court of \_\_\_\_\_, holden at \_\_\_\_\_," have full power and authority to ask, demand, sue for, collect, get in, receive, and take possession of all the said assets, and enforce all the contracts, rights, privileges, and claims of the partnership from or against all persons whomsoever, including the members of the partnership, and to realise and convert into money the said assets: Provided that the said Receiver shall exercise the said powers and authorities subject to and in accordance with any orders or directions of the District Judge which may from time to time be made or given.
- (3.) The said Receiver shall pay and discharge, out of the moneys arising out of the realisation of the said assets, in the first place, all the costs, charges, and expenses in connec-

tion with the taking possession, getting in, recovery, sale, realisation, and conversion into money of the said assets or relating thereto, including the personal costs, authorised remuneration, charges, and actual expenses of the Receiver, and in the next place all the lawful debts and liabilities of the partnership firm, and shall pay the balance of such moneys into the Court: Provided that, in case there shall not be sufficient money available to pay and discharge all such debts and liabilities of the firm, the Receiver shall not pay or discharge any of the said debts or liabilities of the firm, but shall pay all such moneys as he may have available for such purpose into the Court.

- (4.) All moneys so paid into Court shall be paid out of Court and applied in such manner, at such time or times, to such persons, and for such purposes as the Court or the Judge thereof shall order or direct.
- (5.) The said Receiver shall not pay or discharge any alleged liabilities of or claims against the partnership which any member of the partnership declares or which the Receiver deems not to be lawful, and shall report to the Court or Judge when paying into Court what, if any, outstanding liabilities or claims exist against the partnership.
- (6.) The Court or Judge may order that the said moneys or any part thereof paid into Court shall remain in Court for any period not exceeding one year to abide the event and allow for the decision of any actions, suits, or proceedings against the partnership firm or any of the partners by any creditors of or claimants against such firm or partners.
- (7.) The Court or Judge may from time to time by order remove any Receiver and appoint any other person as Receiver in his place, and upon the making of any such order the assets unrealised and the proceeds of the assets realised shall vest in the person so appointed, and such person shall and may have and exercise all the powers and shall perform the duties conferred and imposed on the Receiver first appointed.