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1947, No. 16

Title.

AN ACT to consolidate and amend certain Enactments of the General Assembly relating to Magistrates' Courts and the Jurisdiction of Magistrates in Civil Proceedings, and to make Provision for the Exercise of Criminal Jurisdiction under the Justices of the Peace Act, 1927, in Magistrates' Courts.

[24th October, 1947

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

1. (1) This Act may be cited as the Magistrates' Courts Act, 1947. Short Title.

(2) This Act shall come into force on a date to be appointed for the commencement thereof by the Governor-General by Proclamation. Commencement.

2. (1) In this Act, unless the context otherwise requires,— Interpretation.

“ Action ” means any proceedings in a Court which may be commenced as prescribed by plaint:

“ Bailiff ” means a bailiff of a Court, and includes any deputy bailiff and any person acting as bailiff pursuant to section fifteen of this Act:

“ Court ” and “ Magistrate's Court ” mean a Court constituted under this Act:

“ Landlord ”, in relation to any land, means the person entitled to the immediate reversion of that land, or, if the land is held in joint tenancy or tenancy in common, includes any one of the persons entitled to the immediate reversion:

“ Magistrate ” means a Stipendiary Magistrate appointed under this Act:

“ Matter ” means every proceeding in a Court which may be commenced as prescribed otherwise than by plaint:

“ Officer ”, in relation to a Court, includes any Registrar of that Court, and any clerk, bailiff, usher, or messenger in the service of that Court:

“ Party ” includes every person served with notice of, or attending, any proceeding, whether named as a party to that proceeding or not:

“ Prescribed ” means prescribed by the Rules for the time being in force:

“ Proceedings ” includes both actions and matters:

“ Registrar ” means the Registrar of a Court, and includes any Deputy Registrar:

“ Rules ” means the Magistrates' Courts rules made under section one hundred and twenty-two of this Act.

Cf. 1928,
No. 14, s. 2
Cf. 24 & 25
Geo. V, c. 53,
County Courts
Act, 1934,
s. 191 (Imp.)

(2) Except as expressly provided in this Act, nothing in this Act shall be deemed to relate to any Court in respect of the exercise of the criminal jurisdiction referred to in Part II of this Act and every reference to a Court shall be deemed to relate to a Court in which civil proceedings may be taken.

PART I

CONSTITUTION AND ADMINISTRATION

Magistrates' Courts

Courts
constituted.
Cf. 1928,
No. 14,
ss. 5 (1), 39

3. (1) There shall be within New Zealand Courts of record, possessing civil and criminal jurisdiction, to be called Magistrates' Courts.

(2) Each Court shall have a seal which shall be kept by the Registrar.

Exercise of civil
or criminal
jurisdiction in
Courts
appointed.
Cf. *ibid.*,
s. 6 (1)

4. (1) The Governor-General may from time to time appoint cities, boroughs, or other places in which Courts may be held for the exercise of civil jurisdiction.

(2) The Governor-General may from time to time appoint cities, boroughs, or other places in which Courts may be held for the exercise of criminal jurisdiction.

(3) The Governor-General may from time to time authorize any Court held in any city, borough, or other place appointed under the last preceding subsection to deal with any specified class of matters not within the criminal jurisdiction of the Court.

(4) Notwithstanding anything in the foregoing provisions of this section a Magistrate may hold or direct the holding of a particular sitting of a Court at any place he deems convenient.

(5) The Governor-General may at any time in like manner amend or revoke any appointment or authorization made under the provisions of this section.

Magistrates

Appointment
and
qualifications.
Cf. *ibid.*,
ss. 7 (1), (3),
13 (3), (4), (5)

5. (1) The Governor-General may from time to time by warrant under his hand appoint fit and proper persons to be Stipendiary Magistrates to exercise civil and criminal jurisdiction within New Zealand.

(2) The number of Magistrates shall not at any time exceed thirty-five:

Provided that nothing in this subsection shall affect the power conferred by section ten of this Act.

(3) A person shall not be appointed a Magistrate unless—

(a) He is a barrister or solicitor of the Supreme Court of not less than seven years' standing; or

(b) He has been continuously employed as an officer of the Justice Department for a period of at least ten years, and during that period has been employed for not less than seven years as the Clerk or Registrar of a Magistrate's Court, and is a barrister or solicitor who has been qualified for admission, or admitted, as such for not less than seven years.

(4) The office of Magistrate may be held in conjunction with any other office which the Governor-General shall deem not incompatible.

(5) No Magistrate shall practise as a barrister or solicitor.

(6) Each Magistrate shall take the oath of allegiance and the judicial oath set forth in the Pro-missory Oaths Act, 1908, before any Justice.

See Reprint
of Statutes,
Vol. I, p. 1015

6. (1) Every Magistrate shall be paid a salary at the rate of one thousand two hundred and fifty pounds per annum.

Salaries and
allowances.

Cf. 1945,
No. 45, s. 42

(2) All such salaries shall be paid out of the Consolidated Fund without further appropriation than this Act.

Cf. 1928,
No. 14, s. 10

(3) Every Magistrate shall be entitled to such travelling and other allowances as may be prescribed by regulations made under this Act.

7. (1) The Governor-General may, if he thinks fit, remove a Magistrate for inability or misbehaviour.

Tenure of
office.

Cf. *ibid.*,
ss. 7 (2), 9

(2) Every Magistrate shall retire from office on attaining the age of sixty-eight years.

8. Every Magistrate, by virtue of his office,—

Ex officio
functions of
Magistrates.

(a) Shall be a Justice of the Peace for New Zealand:

Cf. *ibid.*,
s. 14

(b) Shall, though sitting alone, have all such powers, functions, and discretions, unless otherwise specially provided, as now are or hereafter may be exercised by two Justices:

See Reprint
of Statutes,
Vol. II, p. 351

(c) Shall have full power to do alone whatever is authorized to be done by two Justices under the Justices of the Peace Act, 1927, or under any other Act now or hereafter in force in New Zealand:

(d) Shall be a Coroner for New Zealand.

Magisterial
districts.
Cf. 1928,
No. 14, s. 13 (1)

9. (1) Each Magistrate shall be stationed in such town and shall sit in such Courts as may from time to time be determined by the Minister of Justice:

Provided that the fact that a Magistrate sits in any particular Court shall be conclusive evidence of his authority so to do, and no exercise of any jurisdiction or power by a Magistrate shall be questioned on the ground that he was not stationed in the town or authorized to sit in the Court where the jurisdiction or power was so exercised.

1945, No. 45

(2) Where two or more Magistrates are stationed in the same town, the Magistrate who is senior by length of service or who immediately prior to the passing of the Finance Act (No. 2), 1945, was the principal or senior Magistrate in that town shall be responsible for the administrative co-ordination and the allocation of the work between the Magistrates in that town, and any references in any other Act to the principal or senior Magistrate shall be deemed to refer to that Magistrate.

Acting
Magistrates.
Cf. 1928,
No. 14, s. 12

10. (1) The Governor-General may at any time during the illness or absence of any Magistrate, or for any other temporary purpose, by warrant under his hand appoint one or more Magistrates to hold office for such time as is specified in the said warrant. Every such Magistrate shall be paid such salary, not exceeding the amount payable by law to Magistrates, as may be appropriated by Parliament for the purpose.

(2) No person shall be appointed as a Magistrate under this section unless he is eligible for appointment as a Magistrate pursuant to section five of this Act, save that a person otherwise qualified who has attained the age of sixty-eight years (including a Magistrate who has retired after attaining that age) may be appointed as a Magistrate under this section for a period not exceeding twelve months, or for two or more periods not exceeding two years in the aggregate.

11. (1) The Governor-General may from time to time by warrant under his hand appoint a fit person to be a Magistrate to exercise criminal and civil jurisdiction in the Chatham Islands.

Provision as to
Magistrate in
Chatham
Islands.

Cf. 1928,
No. 14, s. 11

(2) A Magistrate so appointed shall hold office during the pleasure of the Governor-General, and shall receive in each and every year such salary as is from time to time appropriated for the purpose by Parliament.

(3) Subsections one to five of section five and sections six and seven of this Act shall not apply to a Magistrate appointed under this section, but except as aforesaid this Act shall apply to such a Magistrate.

Registrars

12. (1) There shall from time to time be appointed for each Court a Registrar.

Appointment
of Registrar.

Cf. *ibid.*, s. 15

(2) One person may be appointed Registrar for two or more Courts.

(3) Each person who on the commencement of this Act holds office as the Clerk of any Court shall without further appointment be deemed to have been appointed Registrar of that Court.

(4) All references to a Clerk of any Court in any Act, rule, regulation, or other enactment, or in any judgment, order, contract, agreement, or other document whatsoever, shall, unless inconsistent with the context, be hereafter read as references to the Registrar of that Court.

13. (1) The Registrar of each Court shall keep or cause to be kept such records of and in relation to proceedings in the Court as may be prescribed.

Record of
proceedings to
be kept by
Registrar.

(2) Any entry in a book or other document required by the rules to be kept by the Registrar, or a copy thereof or extract therefrom sealed with the seal of the Court and purporting to be signed and certified as a true copy or correct extract by the Registrar, shall at all times without further proof be admitted in all Courts and places whatsoever as evidence of the entry and of the proceeding referred to thereby and of the regularity of that proceeding.

Cf. *ibid.*,
ss. 17, 18, 93

(3) If the existence of a record of the Court is in dispute the existence of such record shall be determined by the Court.

Deputy Registrars.
Cf. 1928, No. 14, ss. 19, 21

14. (1) There may be from time to time appointed in respect of any Court one or more Deputy Registrars of the Court. Each person who on the commencement of this Act holds office as an Assistant Clerk of any Court shall without further appointment be deemed to have been appointed Deputy Registrar of that Court.

(2) In any case where the Registrar or Deputy Registrar has died or is prevented by illness or other cause from acting in his office, a Magistrate may appoint a Deputy Registrar to act for such period as the Magistrate thinks fit. A Magistrate may at his pleasure remove any such Deputy Registrar.

(3) Each Deputy Registrar shall, both under this Act and under any other Act, have the same powers and privileges, perform the same duties, and be subject to the same provisions and penalties as if he were the Registrar for the time being, whether those powers, privileges, duties, provisions, or penalties are conferred, imposed, or enacted under this Act or that other Act, or not.

Bailiffs

Appointment of bailiffs.
Cf. *ibid.*, s. 20 (1), (3)

15. (1) There shall be a bailiff or such bailiffs for each Court as may be necessary, who shall be appointed from time to time.

(2) A Magistrate may appoint a constable or other person to act for a particular occasion as bailiff at any Court or place.

(3) Whenever any summons, writ, warrant, or other process issued under the authority of this Act is received by any constable for service or execution, the constable in the service or execution of the process shall for all the purposes of this Act be deemed to be a bailiff duly appointed under the provisions of this section.

Deputy bailiffs.
Cf. *ibid.*, s. 21

16. (1) A Magistrate may from time to time appoint a deputy to act for a bailiff, when he is prevented by illness or other cause from acting in his office, and in the case of the death of a bailiff may appoint a deputy to act in the place of the bailiff until another appointment is made, and may remove any such deputy at his pleasure.

(2) Any deputy appointed as aforesaid, while acting under such appointment, shall, both under this Act and under any other Act, have the same powers and privileges, perform the same duties, and be subject to the same provisions and penalties as if he were the bailiff for the time being, whether those powers, privileges, duties, provisions, or penalties are conferred, imposed, or enacted under this Act or that other Act, or not.

17. (1) Every bailiff shall—

- (a) Have the powers of a constable, and shall take the oath prescribed by the Justices of the Peace Act, 1927, for special constables, or to the like effect, before any Justice:
- (b) Attend each sitting of the Court to which he is appointed for such time as is required, unless his presence is excused by the Court:
- (c) Serve all summonses and orders and execute all warrants issued out of any Court and coming to his hands for the purpose of service or execution, or may authorize any person to act for him in effecting any such service or execution:
- (d) Conform to all rules and regulations affecting the execution of his office, and in other respects be subject to the directions of the Magistrate or Registrar:
- (e) Be answerable for all acts and defaults of himself and those acting under him and by his authority, in like manner as any Sheriff in New Zealand is responsible for the acts and defaults of himself and his officers.

(2) In executing any process of the Court the bailiff shall have such powers and be subject to such liabilities as a Sheriff has or is subject to in like cases in executing the process of the Supreme Court.

Miscellaneous Provisions as to Officers

18. If any person assaults an officer of a Court while in the execution of his duty, that person shall be liable, on an order made by a Magistrate in that behalf, to a fine not exceeding twenty pounds, and the bailiff or any constable may take him into custody, with or without warrant, and bring him before a Magistrate:

Powers and
duties of
bailiffs.

Cf. 1928,
No. 14, s. 22
See Reprint
of Statutes,
Vol. II, p. 351

Penalty for
assaulting
officers.

Cf. 1928,
No. 14, s. 23
Cf. County
Courts Act,
1934, s. 31
(Imp.)

Provided that nothing in this section shall be deemed to prevent proceedings in respect of that assault being taken against that person under some other Act instead of under this section.

Misconduct of officers.

Cf. 1928, No. 14, ss. 25, 26

Cf. County Courts Act, 1934, s. 32 (Imp.)

19. (1) If any officer of a Court is charged—

(a) With extortion or misconduct while acting under colour or pretence of the process of the Court; or

(b) With not duly paying or accounting for any money levied or received by him under the authority of this Act,—

it shall be lawful for a Magistrate to inquire into the matter in a summary way.

(2) For the purpose of any such inquiry as aforesaid, the Magistrate may summon and enforce the attendance of all necessary parties in like manner as the attendance of witnesses in any action may be enforced.

(3) On the inquiry the Magistrate may make such order as he thinks just for the repayment of any money extorted or the due payment of any money levied, and for the payment of damages and costs, and also, if he thinks fit, may impose such fine upon the officer, not exceeding twenty pounds for each offence, as appears to him to be adequate.

Officers of Court not to act as solicitors therein.

Cf. *ibid.*, s. 30 (Imp.)

20. (1) Except as provided by this Act or the rules or by any other enactment, no officer of a Court shall be directly or indirectly engaged as solicitor or agent for any party in any proceedings in any Court.

(2) Every person who contravenes the provisions of this section shall, for each offence, be liable on summary conviction to a fine not exceeding ten pounds.

Sittings

Place of sittings.

21. (1) Regular sittings of the Courts for the despatch of civil business may be held in the Courthouse in any city, borough, or other place appointed under subsection one of section four of this Act.

(2) Special or adjourned sittings for the despatch of civil business may be held in any such Courthouse as aforesaid or in any other place wheresoever which the Magistrate deems convenient.

(3) Sittings for the despatch of criminal business by the Courts may be held in the Courthouse in any city, borough, or place appointed under subsection two of section four of this Act, or in any other place where-soever which the Magistrate or the Justice or Justices constituting the Court deem convenient.

22. (1) Sittings for the despatch of civil business and sittings for the despatch of criminal business shall be held on such days and at such times as may be appointed by the Magistrate exercising jurisdiction at the place in which the sittings are held:

Times of
sittings.
Cf. 1928,
No. 14, s. 6 (1)

Provided that the days appointed for regular sittings shall be subject to the approval of the Minister of Justice.

(2) Nothing in this section shall derogate from the power of the Magistrate or any Justices to hold sittings on any day or at any time for the disposal of criminal business.

23. (1) A Magistrate may from time to time adjourn any Court held by him.

Adjourned
sittings.
Cf. *ibid.*, s. 43
Cf. County
Courts Act,
1934, s. 36
(Imp.)

(2) If for any cause a sitting of the Court in the exercise of its civil or criminal jurisdiction cannot be held upon a day appointed by reason of the absence of the Magistrate or otherwise, the Registrar, after exercising any powers which he is authorized to exercise by or under this Act or any other enactment, may adjourn the Court to such day as he thinks convenient.

PART II

CRIMINAL JURISDICTION

REFER 19 No.

24. (1) Where jurisdiction is conferred on a Magistrate or on one or more Justices in relation to any matter in respect of which proceedings may be commenced by an information or complaint under the Justices of the Peace Act, 1927, that jurisdiction (in this Act referred to as criminal jurisdiction) shall after the commencement of this Act be exercised by Magistrates' Courts.

Criminal
jurisdiction.
Cf. 1927,
No. 37, s. 61
See Reprint
of Statutes,
Vol. II, p. 351

(2) Unless the contrary appears in this or any other Act, any Court exercising its criminal jurisdiction may be presided over by one Justice.

(3) Where by any Act it is provided that any criminal jurisdiction conferred thereby shall be exercised by two or more Justices or by a Magistrate alone, the Court exercising the jurisdiction shall be a Magistrate's Court presided over by two or more Justices or a Magistrate alone, as the case may be.

(4) Notwithstanding anything in the foregoing provisions of this section, a Court consisting of a Magistrate alone may exercise any criminal jurisdiction conferred on a Justice or on two or more Justices.

25. Every Magistrate shall have and may exercise the jurisdiction conferred under Part I of the Imperial Act cited as the Fugitive Offenders Act, 1881, to hear a case and commit a fugitive to prison to await his return in the manner prescribed by that Act.

Jurisdiction as to fugitive offenders.

Cf. 1928, No. 14, s. 38
44 & 45 Vict. c. 69 (Imp.)

Halsbury's Statutes of England, Vol. VIII, p. 469

Informations and complaints to be filed in nearest Court.

26. (1) As soon as practicable after an information or complaint is taken, laid, or made under the Justices of the Peace Act, 1927, the information or complaint shall be filed in the office of that Court appointed for the exercise of criminal jurisdiction which is nearest by the most practicable route to the place where the offence was alleged to have been committed or the subject-matter of the complaint arose or where the person filing the information or complaint believes that the defendant may be found:

Provided that if all the parties to the proceedings agree the information or complaint may be filed in the office of some other Court:

Provided also that failure to comply with the provisions of this section shall not be deemed to invalidate any proceedings.

(2) Notwithstanding anything in the last preceding subsection, in any case where two or more informations or complaints are laid or made against the same defendant it shall be a sufficient compliance with the provisions of this section if the informations or complaints are filed in an office of the Court in which any one of the informations or complaints could be filed.

(3) Nothing in this section shall apply in any case where there is a statutory provision to the contrary.

27. (1) Unless a Magistrate or Justice otherwise orders or unless there is a statutory provision to the contrary, all proceedings in a Court on an information or complaint shall be heard and determined in the Court in the office of which the information or complaint is filed.

Place of
hearing of
informations
and
complaints.

(2) Any Magistrate or Justice may order that an information or complaint may be dealt with by some other Court, and on the making of any such order the Registrar shall forward the information or complaint to the Registrar of the Court to which it is ordered to be transferred.

28. (1) The Registrar of each Court appointed for the exercise of criminal jurisdiction shall keep a Criminal Record Book in the form in the First Schedule to this Act in which shall be entered a minute or memorandum of all proceedings in the Court under its criminal jurisdiction.

Criminal
Record Book.
Cf. 1927,
No. 37,
s. 74 (1), (2)

(2) If an information or complaint is heard at any place other than a Courthouse, a minute or memorandum of the decision shall be endorsed on the information or complaint or, where there is no written information or complaint, on the charge-sheet, and the minute or memorandum shall be signed by the Magistrate or Justice or Justices holding the Court. The information, complaint, or charge-sheet, as the case may be, shall be forwarded to the nearest Courthouse there to be kept, and the Registrar shall make an appropriate entry in respect of the case in the Criminal Record Book kept by him.

(3) Any entry in the Criminal Record Book, or a copy thereof or extract therefrom sealed with the seal of the Court and purporting to be signed and certified as a true copy or correct extract by the Registrar, shall at all times without further proof be admitted in all Courts and places whatsoever as evidence of the entry and of the proceeding referred to thereby and of the regularity of that proceeding.

REFER 19 No.

PART III

CIVIL JURISDICTION AND TRANSFER OF PROCEEDINGS

Actions of Contract and Tort

General jurisdiction in actions on contract and tort.

Cf. 1928, No. 14, s. 27 (a), (b), (c), (e)
Cf. County Courts Act, 1934, s. 40 (Imp.)

29. (1) The Courts shall have jurisdiction to hear and determine any action founded on contract or on tort where the debt, demand, or damage, or the value of the chattels, claimed is not more than five hundred pounds, whether on balance of account or otherwise:

Provided that the Courts shall not, except as in this Act provided, have jurisdiction to hear and determine—

(a) Any action for the recovery of land; or

(b) Any action in which the title to any franchise is in question.

(2) The Courts shall have jurisdiction to hear and determine any action where the debt or demand claimed consists of a balance not exceeding five hundred pounds after a set-off of any debt or demand claimed or recoverable by the defendant from the plaintiff, being a set-off admitted by the plaintiff in the particulars of his claim or demand.

Money recoverable by statute.

Cf. *Ibid.*, s. 41 (Imp.)

30. The Courts shall have jurisdiction to hear and determine any action for the recovery of any penalty, expenses, contribution, or other like demand which is recoverable by virtue of any enactment for the time being in force, if—

(a) It is not expressly provided by that or any other enactment that the demand shall be recoverable only in some other Court; and

(b) The amount claimed in the action does not exceed the sum of five hundred pounds:

Provided that for the purposes of this section the expression "penalty" shall not include a fine to which any person is liable on conviction on indictment or on summary conviction.

Jurisdiction in actions for recovery of land.

Cf. 1928, No. 14, ss. 27 (f), 180 to 183
Cf. County Courts Act, 1934, s. 48 (Imp.)

31. (1) The Courts shall have jurisdiction to hear and determine any action for the recovery of land where the rent (if any) payable in respect thereof does not exceed the rate of three hundred and twenty pounds a year or (if no such rent is payable) where the value of the land in question does not exceed four thousand pounds in the following cases:—

(a) Where the term and interest of the tenant of any land held by him at will, or for any term, whether the tenant is or is not liable for the

payment of any rent has ended or been determined, either by the landlord or by the tenant, by a legal notice to quit or demand of possession, and the tenant, or (if the tenant does not actually occupy the land, or occupies only a part thereof) any person by whom the same or any part thereof is then actually occupied, has neglected or refused to quit and deliver up possession of the land or of such part thereof respectively:

- (b) Where any tenant holding any land under any demise or agreement, either written or verbal, is in arrear in payment of rent for such period that the landlord is entitled to exercise a right of re-entry under the terms of the demise or agreement:
- (c) In the circumstances referred to in the next succeeding section:
- (d) Where any person without right, title, or licence is in possession of any land.

(2) For the purpose of paragraph (a) of the last preceding subsection, one month's notice in writing determining a tenancy shall be deemed sufficient unless the defendant proves that there is an agreement as to the duration of the tenancy within the meaning of section sixteen of the Property Law Act, 1908.

(3) Where the capital value of any land appears in the district valuation roll for the time being in force that value shall be taken to be the value of the land for the purposes of this section.

32. (1) If the rent payable by any tenant holding any land by the week, or month, or quarter, or any longer term not exceeding three years, is in arrear for ten days in the case of a weekly tenancy, or twenty-one days in the case of a monthly tenancy, or thirty days in the case of a quarterly tenancy, or forty-two days in the case of a tenancy for any such longer term, and if no right of re-entry for non-payment of rent has been expressly reserved to the landlord by agreement, the landlord shall be entitled, subject to the provisions of subsection three hereof, without any formal demand or re-entry, to an order for recovery of the land. A tenant holding land on any tenancy shall, for the

See Reprint
of Statutes,
Vol. VII,
p. 1082

Landlord's
right where
rent is in arrear
or premises
deserted.

Cf. 1928,
No. 14, ss. 181,
182.

purposes of this section, be deemed to be holding the land on a monthly tenancy unless he proves that there is an agreement for a tenancy of some other duration.

(2) If a tenant holding any land under a demise or agreement, either written or verbal, is in arrear for two months in the payment of rent and deserts the premises leaving the same uncultivated or unoccupied so that no sufficient distress can be had to countervail the arrears of rent, then, subject to the provisions of the next succeeding subsection, and, although no right of re-entry for deserting the premises or for non-payment of rent may have been expressly conferred on the landlord, the landlord shall be entitled to an order for recovery of the land.

(3) If at any time before the execution of any warrant issued in pursuance of an order made under the foregoing provisions of this section the full amount of the rent due to the date of judgment and all costs including the costs of the order and of the warrant (if any) is paid, the proceedings shall cease, and if a warrant has been issued, it shall be withdrawn.

33. The Courts shall have jurisdiction in relation to—

- (a) The settlement of disputes between any building society and its members where the amount involved does not exceed five hundred pounds:
- (b) The recovery of moneys and enforcement of claims by or against any building society not exceeding in amount or value the sum of five hundred pounds:
- (c) All other matters arising under the Building Societies Act, 1908, not exceeding in amount or value the sum of five hundred pounds.

Equity Proceedings

34. (1) The Courts shall have jurisdiction to hear and determine any of the following proceedings, that is to say,—

- (a) Proceedings for enforcing any charge or lien, where the amount owing in respect of the charge or lien does not exceed the sum of five hundred pounds:
- (b) Proceedings for the specific performance, or for the rectification, delivery up, or cancellation, of any agreement for the sale, purchase, or

Jurisdiction
as to building
societies.

Cf. 1928,
No. 14, s. 27 (j)

See Reprint
of Statutes,
Vol. I, p. 708

Equity
jurisdiction.

Cf. 1928,
No. 14,
ss. 27 (e), 66

Cf. County
Courts Act,
1934, s. 52
(Imp.)

lease of any property, where, in the case of a sale or purchase, the purchase money, or, in the case of a lease, the value of the property, does not exceed the sum of five hundred pounds:

- (c) Proceedings for the dissolution or winding-up of any partnership (whether or not the existence of the partnership is in dispute), where the whole assets of the partnership do not exceed in amount or value the sum of five hundred pounds:
- (d) Proceedings for relief against fraud or mistake, where the damage sustained or the estate or fund in respect of which relief is sought does not exceed in amount or value the sum of five hundred pounds:
- (e) Proceedings for the recovery of any specific or pecuniary legacy or share of residue not exceeding in value or amount the sum of five hundred pounds.

(2) Where any chattels not exceeding five hundred pounds in value belong to persons in undivided shares, the persons interested in a moiety or upwards may apply to a Court for an order for division of the chattels or any of them according to a valuation or otherwise, and the Court shall have jurisdiction to hear and determine the application and to make such order and give such consequential directions as it thinks fit.

(3) No proceeding for the dissolution or winding-up of a partnership or order thereon shall prevent any creditor from petitioning for an adjudication of bankruptcy against the partnership firm or any member or members thereof.

Miscellaneous Provisions as to Jurisdiction

35. (1) No Court shall have cognizance of any proceedings in which the validity of any devise or bequest is in question or the limitations under any will or settlement are in dispute.

Jurisdiction
where title in
question.

Cf. 1928,
No. 14,
ss. 30, 31

(2) A Court shall have jurisdiction to hear and determine any proceedings in which the title to any corporeal or incorporeal hereditament comes in question if the proceedings would otherwise be within the jurisdiction of the Court.

Abandonment of part of claim to give Court jurisdiction.

Cf. 1928, No. 14, s. 33
Cf. County Courts Act, 1934, s. 42 (Imp.)

36. (1) Where a plaintiff has a cause of action for more than five hundred pounds in respect of which the Court would have had jurisdiction had the amount been not more than five hundred pounds, the plaintiff may abandon the excess, and thereupon the Court shall have jurisdiction to hear and determine the action.

(2) Where any action, in which the plaintiff has abandoned part of his claim under this section, is heard in a Magistrate's Court, the plaintiff shall not recover an amount exceeding five hundred pounds together with costs thereon, and the judgment of the Court in the action shall be in full discharge of all demands in respect of the cause of action, and entry of the judgment shall be made accordingly.

Extension of jurisdiction by agreement between the parties.

Cf. 1928, No. 14, s. 27(h)
Cf. County Courts Act, 1934, ss. 43, 53 (Imp.)

37. If, but for the amount or value of the subject-matter claimed or in issue, a Magistrate's Court would have had jurisdiction under sections twenty-nine to thirty-four of this Act and the parties, by memorandum signed by them or by their respective solicitors or agents, agree that a Magistrate's Court shall have jurisdiction to hear and determine the proceedings, that Court shall, notwithstanding anything in any enactment, have jurisdiction to hear and determine the proceedings.

Division of cause of action not allowed.

Cf. 1928, No. 14, s. 32

38. A cause of action may not be divided for the purpose of bringing two or more actions or any counter-claim.

Proceedings against absent defendant.

Cf. *ibid.*, s. 37

39. The Court shall not determine any proceedings against a defendant absent from New Zealand unless it is satisfied either—

- (a) That service has been effected on the defendant in accordance with the rules; or
- (b) That the defendant has a duly appointed agent in New Zealand authorized to sue and be sued on his behalf and service has been effected on the agent in accordance with the rules.

Exercise of Jurisdiction and Ancillary Jurisdiction

Persons who exercise jurisdiction of Court.

Cf. *ibid.*, s. 5 (2)
Cf. County Courts Act, 1934, s. 70 (Imp.)

40. Any jurisdiction and powers conferred on Magistrates' Courts by this or any other Act may be exercised by any Magistrate or, to the extent authorized by this or any other Act or by the rules, by the Registrar of the Court or by any person authorized to discharge the functions of the Registrar.

41. Every Magistrate's Court, as regards any cause of action for the time being within its jurisdiction, shall (subject to the provisions of section fifty-nine of this Act) in any proceedings before it—

General ancillary jurisdiction. Cf. County Courts Act, 1934, s. 71 (Imp.)

- (a) Grant such relief, redress, or remedy, or combination of remedies, either absolute or conditional; and
- (b) Give such and the like effect to every ground of defence or counterclaim equitable or legal,—

as ought to be granted or given in the like case by the Supreme Court and in as full and as ample a manner.

42. A Magistrate shall have jurisdiction in any proceedings pending to make any order or to exercise any authority or jurisdiction which, if it related to an action or proceeding pending in the Supreme Court, might be made or exercised by a Judge of the Supreme Court in Chambers.

Ancillary powers of Magistrate. Cf. *ibid.*, s. 72 (Imp.)

Transfer of Proceedings

43. (1) Where there is commenced in a Magistrate's Court any action in which the amount of the claim or the value of the property or relief claimed or in issue exceeds one hundred pounds, the defendant in the action may, within such time as may be prescribed or at any time thereafter by leave of the Magistrate, give notice that he objects to the action being tried in the Magistrate's Court, and, where notice is so given, the Magistrate shall order that the action be transferred to the Supreme Court.

Transfer to Supreme Court of proceedings within jurisdiction. Cf. 1928 No. 14, s. 162 Cf. County Courts Act, 1934, ss. 44, 49, III (Imp.)

(2) Where there is commenced in a Magistrate's Court any action in which the amount of the claim or the value of the property or relief claimed or in issue does not exceed one hundred pounds, the defendant may, within such time as may be prescribed or at any time thereafter by leave of the Magistrate, give notice that he objects to the action being tried in the Magistrate's Court, and, where notice is so given, the Magistrate may order that the action be transferred to the Supreme Court if, in his opinion, some important question of law or fact is likely to arise or a question of title to any hereditament is likely to arise otherwise than incidentally.

(3) Any order for the transfer of an action to the Supreme Court made pursuant to the foregoing provisions of this section may be made subject to such conditions as the Magistrate thinks fit requiring that the defendant give security for the costs of the proceedings in the Supreme Court.

(4) The foregoing provisions of this section shall, with the necessary modifications, apply to a counterclaim as if it were an action and as if the defendant in the counterclaim were the defendant in the action. On the transfer of a claim where there is a counterclaim, or of a counterclaim, all proceedings in the action, including both the claim and the counterclaim, shall be transferred.

(5) The provisions of this section do not apply to any action for the recovery of land except where the Magistrate certifies that in his opinion an important question of law is likely to arise or a question of title to any hereditament is likely to arise otherwise than incidentally.

(6) Notwithstanding the foregoing provisions of this section the Supreme Court or a Judge thereof on the application of any party to the proceedings may order the removal into the Supreme Court, by writ of certiorari or otherwise, of any proceedings commenced in a Magistrate's Court, if the Supreme Court or Judge thereof thinks it desirable that the proceedings should be heard and determined in the Supreme Court. Any such removal shall be on such terms as to payment of costs, giving security, or otherwise as the Supreme Court or a Judge thereof thinks fit to impose.

44. Where any proceedings are commenced in a Magistrate's Court in which the Court has no jurisdiction, the Court may, unless it is given jurisdiction by an agreement under the provisions of section thirty-seven of this Act, order that the proceedings be transferred to the Supreme Court or to such other Court as appears to the Magistrate's Court to have jurisdiction:

Provided that where it appears to the Court that the plaintiff or one of the plaintiffs knew or ought to have known that the Court had no jurisdiction in the proceedings, the Court may, if it thinks fit, instead of

Transfer
of proceedings
beyond
jurisdiction.
Cf. 1928,
No. 14, s. 175
Cf. County
Courts Act,
1934, s. 64
(Imp.)

ordering that the proceedings be transferred as aforesaid, order that they be struck out, and, in such event may award costs to the same extent and recoverable in the same manner as if the Court had jurisdiction and the claim had not been established.

45. (1) Where, in any action commenced in a Magistrate's Court, any counterclaim or set-off and counterclaim which involves matter beyond the jurisdiction of a Magistrate's Court has been filed by any defendant, any party to the action may, within such time as may be prescribed by rules of the Supreme Court, apply to the Supreme Court or a Judge thereof for an order that the whole proceedings, or the proceedings on the counterclaim or set-off and counterclaim, be transferred to the Supreme Court.

(2) On any such application the Supreme Court or Judge may, as it or he thinks fit, order either—

- (a) That the whole proceedings be transferred to the Supreme Court; or
- (b) That the whole proceedings be heard and determined in the Magistrate's Court; or
- (c) That the proceedings on the counterclaim or set-off and counterclaim be transferred to the Supreme Court and that the proceedings on the plaintiff's claim and the defence thereto other than the set-off (if any) be heard and determined in the Magistrate's Court:

Provided that, where an order is made under paragraph (c) of this subsection, and judgment on the claim is given for the plaintiff, execution thereon shall, unless the Supreme Court or a Judge thereof at any time otherwise orders, be stayed until the proceedings transferred to the Supreme Court have been determined.

(3) If no application is made under this section within the time prescribed as aforesaid, or if on such an application it is ordered that the whole proceedings be heard and determined in the Magistrate's Court, the Magistrate's Court shall have jurisdiction to hear and determine the whole proceedings, notwithstanding any enactment to the contrary.

(4) Where the Supreme Court makes any order under the provisions of this section, the Registrar of the Supreme Court shall send to the Registrar of the Magistrate's Court a copy of the order so made.

Transfer of proceedings where there is a counterclaim.

Cf. County Courts Act, 1934, s. 63 (Imp.)

Transfer of proceedings from Supreme Court by agreement between parties.

Cf. County Courts Act, 1934, s. 65 (Imp.)

46. If, where proceedings have been commenced in the Supreme Court,—

(a) An agreement is made under the provisions of section thirty-seven of this Act that a Magistrate's Court shall have jurisdiction; or

(b) The subject-matter of the proceedings is within the jurisdiction of Magistrates' Courts and the parties agree that they desire the proceedings transferred to a Magistrate's Court,—

the Supreme Court or a Judge thereof shall, on the application of any party to the proceedings, order that the proceedings be transferred to that Magistrate's Court.

Procedure on transfer of proceedings from Supreme Court to Magistrate's Court.

Cf. Ibid., s. 74 (Imp.)

47. (1) Where any proceedings are ordered to be transferred under the provisions of the last preceding section from the Supreme Court to a Magistrate's Court the proper officer of the Supreme Court shall, on the sealing of the order, send to the Registrar of the Magistrate's Court a copy of the order, the writ or a copy thereof, all pleadings, affidavits, and other documents filed in the Supreme Court relating to the proceedings and such other documents (if any) as the Supreme Court or a Judge may direct.

(2) On the documents aforesaid being so sent, the proceedings shall be transferred to the said Magistrate's Court, and, subject to the Magistrates' Courts rules, all further proceedings therein shall be heard as if the proceedings had been originally commenced in that Magistrate's Court, and the Magistrate's Court shall have jurisdiction to deal therewith, notwithstanding any enactment to the contrary:

Provided that the transfer shall not affect any right of appeal in the Supreme Court or to the Court of Appeal from the order directing the transfer, or the right to enforce in the Supreme Court any judgment signed, or order made, in that Court before the transfer.

48. Where an action, counterclaim, or matter is ordered to be transferred or removed—

(a) From the Supreme Court to a Magistrate's Court; or

(b) From a Magistrate's Court to the Supreme Court; or

Costs in cases transferred or removed.

Cf. ibid., s. 73 (Imp.)

(c) From one Magistrate's Court to another Magistrate's Court—

the costs of the whole proceedings both before and after the transfer shall, subject to any order made by the Court which ordered the transfer, be in the discretion of the Court to which the proceedings are transferred, and that Court shall have power to make orders with respect thereto:

Provided that, as regards so much of the proceedings in any action transferred from the Supreme Court to a Magistrate's Court as take place in the Supreme Court before the transfer,—

- (d) The costs thereof shall be subject to the provisions of Rule 559 of the Code of Civil Procedure under the Judicature Act, 1908; and
- (e) The powers of a Judge to make an order allowing costs on the Supreme Court scale shall, subject to any order of the Supreme Court or of the Judge by whom the transfer was ordered, be exercisable by the Magistrate.

See Reprint
of Statutes,
Vol. II, p. 60

PART IV

PROCEDURE

Parties

49. (1) Any trustee, executor, or administrator may sue and be sued in a Magistrate's Court in like manner as if he were a party in his own right, without joining any of the parties beneficially interested in the trust or estate, and shall be considered as representing such parties in the action.

Trustees,
executors, and
administrators.
Cf. 1928,
No. 14, s. 48
Cf. County
Courts Act,
1934, s. 76
(Imp.)

(2) The Court 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.

50. (1) Any person under the age of twenty-one years may sue in a Magistrate's Court for any sum of money not exceeding five hundred pounds which may be due to him for wages or piece-work, or for work as a servant, in the same manner as if he were of full age.

Infants.
Cf. 1928,
No. 14, s. 47
Cf. County
Courts Act,
1934, s. 77
(Imp.)

(2) Any minor above the age of eighteen years may sue or be sued without a next friend or guardian *ad litem* upon any cause of action arising out of contract

or tort in respect of which he might sue or be sued by a next friend or guardian; and judgment may be given in the action, and such proceedings may be had and taken to enforce the judgment as if the minor were of full age.

Persons jointly liable.

Cf. 1928, No. 14, s. 56

Cf. County Courts Act, 1934, s. 78 (Imp.)

51. (1) Where a plaintiff has a claim recoverable under this Act against two or more persons jointly liable, it shall be sufficient to serve any of those persons with process, and judgment may be obtained and execution issued against any person so served, notwithstanding that others jointly liable may not have been served or sued or may not be within the jurisdiction of the Court.

(2) Where judgment is obtained against any person as aforesaid and is satisfied either in part or for the whole amount by that person, he shall be entitled to recover in a Magistrate's Court contribution from any other person jointly liable with him.

Bankruptcy of plaintiff.

Cf. 1928, No. 14, s. 63

Cf. County Courts Act, 1934, s. 79 (Imp.)

52. (1) The bankruptcy of the plaintiff in any action in a Magistrate's Court which the Official Assignee might maintain for the benefit of the creditors shall not cause the action to abate if, within such reasonable time as the Court orders, the Official Assignee elects to continue the action.

(2) The hearing of the action may be adjourned until such an election is made.

(3) Where the Official Assignee does not elect to continue the action within the time limited by the order, the defendant may avail himself of the bankruptcy as a defence to the action.

Witnesses and Evidence

Witness entitled to expenses.

Cf. 1928, No. 14, s. 89

53. Every witness attending a Court upon a witness summons, and every other person giving evidence in the course of proceedings, shall be entitled as against the party calling him to a sum for his expenses and loss of time according to the prescribed scale:

Provided that the Court may disallow the whole or any part of such sum.

54. (1) Any person summoned in pursuance of the rules as a witness in any Court who—

Penalty for neglecting witness summons.

(a) Refuses or neglects, without sufficient cause, to appear or to produce any documents required by the summons to be produced; or

Cf. 1928, No. 14, s. 90

(b) Refuses to be sworn or to give evidence,—
is liable to a fine not exceeding twenty pounds:

Cf. County Courts Act, 1934, s. 81 (Imp.)

Provided that no person so summoned shall be liable to such penalty as aforesaid unless there has been paid or tendered to him at the time of the service of the summons, or at some other reasonable time before the hearing, such sum in respect of his expenses as may be prescribed.

(2) Any person present in Court who is required to give evidence but refuses to be sworn or give evidence is liable to a like penalty.

(3) The payment of such fine or the undergoing of a term of imprisonment for non-payment of such fine shall not exempt any person from any action for disobeying a summons or refusing to be sworn or give evidence.

55. (1) The Supreme Court shall, on application made in manner prescribed by rules of the Supreme Court, have the same power to issue a commission, request, or order to examine witnesses abroad for the purpose of proceedings in a Magistrate's Court as it has for the purpose of an action or matter in the Supreme Court.

Examination of witnesses abroad.

Cf. *ibid.*, s. 82 (Imp.)

(2) Where such an application is made, the Supreme Court may, if it thinks fit, order that the proceedings be transferred to the Supreme Court.

56. An affidavit or affirmation to be used in a Court may be sworn or made before any Magistrate or Registrar, or before any Justice, or before any solicitor of the Supreme Court not engaged in the proceedings.

Persons who may take affidavits, &c.

Cf. 1928, No. 14, s. 40

Hearing

57. (1) A party to any proceedings may appear and act personally or by a barrister or solicitor of the Supreme Court, and not otherwise:

Right of audience.

Cf. *ibid.*, s. 67

Provided that under special circumstances the Court may permit any party to appear by an agent authorized in writing by the party himself, if in New Zealand,

or, if absent therefrom, by any person holding a power of attorney from the party authorizing such person to sue and be sued for and in the name of the party; but any agent, unless he is a barrister or solicitor, shall not be entitled to receive any fee or reward for so appearing or acting.

(2) A corporation may appear by any officer, attorney, or agent of the corporation.

58. The Magistrate shall be the sole judge in all proceedings brought in a Court, and shall determine all questions of fact as well as of law:

Provided that nothing in this section shall affect the power to make rules authorizing the Registrar to exercise jurisdiction and powers conferred on the Court by this or any other Act.

59. Where the amount claimed or the value of the property claimed or in issue does not exceed fifty pounds, a Court may receive any such evidence as it thinks fit, whether the same be legal evidence or not, and may give such judgment between the parties as it finds to stand with equity and good conscience.

60. (1) At the hearing of any proceedings in a Court in which there is a right of appeal without leave, the Magistrate shall, unless the parties have agreed not to appeal, make or cause to be made a note—

- (a) Of the facts in evidence; and
- (b) Of any question of law or equity raised at the hearing; and
- (c) Of his decision thereon and of his determination of the proceedings.

(2) Where such a note has been taken, the Magistrate (whether notice of appeal has been served or not) shall, on the application of any party to the proceedings, and on payment by that party of such fee as may be prescribed, cause him to be furnished with a copy of the note.

61. (1) A Magistrate may, with the consent of the parties to any proceedings, order the proceedings to be referred to arbitration (whether with or without other matters within the jurisdiction of the Court in dispute between the parties) to such person or persons and in such manner and on such terms and subject to such costs as he thinks just and reasonable.

Trial by
Magistrate.
Cf. 1928,
No. 14, s. 99
Cf. County
Courts Act,
1934, s. 87
(Imp.)

Equity and
good
conscience.
Cf. 1928,
No. 14,
s. 100 (2)

Magistrate to
take notes.
Cf. County
Courts Act,
1934, s. 108
(Imp.)

Power of
Magistrate to
refer to
arbitration.
Cf. 1928,
No. 14, ss. 154,
155
Cf. County
Courts Act, 1934,
s. 89 (Imp.)

(2) No such reference shall be revocable by any party except with the consent of a Magistrate.

(3) If the award of the arbitrators or their umpire is not given within one month of the date of the order of reference, either party may apply to the Court to revoke the order of reference.

(4) On any such reference, the award of the arbitrator, arbitrators, or umpire shall be entered as the judgment in the proceedings and shall be as binding and effectual to all intents as if given by a Magistrate:

Provided that the Court may, if it thinks fit, on application made at the first sitting of the Court held after the expiration of ten days after the entry of the award, set aside the award, or may, with the consent of the parties, revoke the reference or order another reference to be made in the manner aforesaid.

(5) Execution of a judgment so entered shall not issue until after such first sitting has been held.

(6) On the hearing of an application to set aside or vary an award and judgment entered thereupon the Court shall take evidence if offered, or may of its own accord call for evidence; and the decision of the Court given after hearing the application shall be entered as a judgment of the Court.

62. (1) Subject to the rules, a Magistrate may refer to the Registrar or a referee for inquiry and report—

(a) Any proceedings which require any prolonged examination of documents or any scientific or local investigation which cannot, in the opinion of the Magistrate, conveniently be made before him:

(b) Any proceedings where the question in dispute consists wholly or in part of matters of account:

(c) With the consent of the parties, any other proceedings:

(d) Any question arising in any proceedings.

(2) Where any proceedings or question are referred as aforesaid, a Magistrate may direct how the reference shall be conducted, and may remit any report for further inquiry and report, and on consideration of any report or further report may give such judgment or make such order in the proceedings as may be just.

Power of
Magistrate to
refer to
Registrar or
referee.

Cf. County
Courts Act,
1934, s. 90
(Imp.)

(3) A Magistrate may, after deciding or reserving any question of liability, refer to the Registrar or to the Registrar and an accountant any mere matter of account which is in dispute between the parties, and after deciding the question of liability, may give judgment on the Registrar's report.

Judgments and Orders

Finality of judgments and orders.

Cf. 1928, No. 14, s. 116

Cf. County Courts Act, 1934, s. 95 (Imp.)

63. Every judgment and order of a Magistrate's Court shall, except as provided by this or any other Act or by the rules, be final and conclusive between the parties.

Want of form.

Cf. 1928, No. 14, s. 117

Payment of judgments and orders.

Cf. *ibid.*, ss. 100 (1), 124

Cf. County Courts Act, 1934, s. 96 (Imp.)

64. No judgment, order, or other proceeding in a Court shall be quashed or vacated for want of form.

65. (1) Where a judgment is given or an order is made by a Court under which a sum of money of any amount is payable, whether by way of satisfaction of the claim or counterclaim in the proceedings or by way of costs or otherwise, the Court may, as it thinks fit, order the money to be paid either—

(a) In one sum, whether forthwith or within such period as the Court may fix; or

(b) By such instalments payable at such times as the Court may fix.

(2) Except where an express order for payment is made under the last preceding subsection, every judgment or order for the payment of a sum of money shall be deemed to include an order for the payment forthwith of the whole amount payable thereunder.

(3) If at any time it appears to the satisfaction of a Magistrate that any party to any proceedings is unable from any cause to pay any sum recoverable against him (whether by way of satisfaction of the claim or counterclaim) or any instalment thereof, the Magistrate may, in his discretion, suspend or stay or vary any judgment or order given or made in the proceedings for such time and on such terms as the Magistrate thinks fit, and so from time to time until it appears that the cause of inability has ceased.

Removal of Judgments

66. (1) Where any final judgment or order for the payment of any sum of money is obtained in any one proceeding in a Magistrate's Court, that judgment or order may be removed into the Supreme Court, and for that purpose the Registrar, upon the application of the judgment creditor or of any person on his behalf, shall issue a certificate thereof in the prescribed form. Every such certificate shall bear on the face thereof a statement to the effect that it has been issued for the purposes of this section, and it shall not be available for any other purpose.

Removal of judgment of Magistrate's Court into Supreme Court.
Cf. 1928, No. 14, s. 156

(2) No such certificate shall be issued before the expiration of the time allowed for giving notice of appeal or before the time at which execution could be issued out of the Magistrate's Court, and if any proceedings for enforcement of the judgment or order have been issued out of that Court no such certificate shall be issued until after the withdrawal or completion of those proceedings.

(3) After the certificate has been filed in the Supreme Court pursuant to the next succeeding subsection, no further proceedings shall be had or taken in the proceeding in the Magistrate's Court.

(4) The person obtaining the certificate may file the same in the Supreme Court by delivering it for that purpose at the office of the Registrar of the Supreme Court in the district or registry of which the Magistrate's Court aforesaid is situated; and thereupon, without any previous process, may sign final judgment in the Supreme Court in the prescribed form or to the effect thereof (against which judgment no appeal shall lie) for the sum mentioned in the certificate to be unpaid, together with such fees and costs as may be paid or allowed in connection with such removal and entry of judgment.

(5) Upon such final judgment as aforesaid execution may be forthwith issued, and all other remedies had thereon in the same manner as on any other judgment of the Supreme Court.

(6) Notwithstanding anything in this section, any certificate or final judgment signed under the provisions of this section may be set aside or amended by a Judge of the Supreme Court upon such terms as to costs or otherwise as he deems just.

Action in Supreme Court on judgment or order of Magistrate's Court.

Cf. 1928, No. 14, s. 157

Removal of judgment or order of Supreme Court into Magistrate's Court.

Cf. *ibid.*, s. 36

67. An action may be brought in the Supreme Court on a judgment or order of a Magistrate's Court, but no costs shall be allowed in such action to the plaintiff unless the Judge of the Supreme Court certifies that the action was necessary and proper for the enforcement of the judgment of the Magistrate's Court against the person or property of the defendant.

68. (1) In any action or proceeding in the Supreme Court in which execution may be issued upon a judgment, order, or decree of the Supreme Court for the payment of a sum of money, a certificate under the seal of the Supreme Court setting forth the particulars of the judgment, order, or decree may be obtained from the Supreme Court and filed in a Magistrate's Court having jurisdiction to the amount of that sum of money and of any interest thereon; and upon the filing of the certificate all proceedings may be taken and enforced in and by that Magistrate's Court for the amount recoverable under the judgment, order, or decree, and any fees and costs paid or allowed in connection with the obtaining and filing of the certificate, as fully and effectually as if the judgment, order, or decree had been a judgment of the Magistrate's Court signed and entered up at the time of filing the certificate.

(2) After the issue of the certificate no further proceedings shall be had in the Supreme Court upon such judgment, order, or decree.

(3) Save as aforesaid, no action shall be brought in a Magistrate's Court on a judgment of the Supreme Court.

69. (1) Where any final judgment or order for the payment of any sum of money is obtained in any one proceeding in a Magistrate's Court, the judgment or order may be removed into any other Magistrate's Court, and for that purpose the Registrar, upon the application of the judgment creditor or of any person on his behalf, shall issue a certificate thereof in the prescribed form. Every such certificate shall bear on the face thereof a statement that it has been issued for the purposes of this section, and it shall not be available for any other purpose.

(2) No such certificate shall be issued before the expiration of the time allowed for giving notice of appeal or before the time at which execution could be

Removal of judgment from one Magistrate's Court to another.

issued out of the Court first aforesaid, and if proceedings for enforcement of the judgment or order have been issued out of that Court no such certificate shall be issued until after the withdrawal or completion of those proceedings.

(3) The person obtaining the certificate may file the same in any other Magistrate's Court by delivering it at the office of the Registrar; and thereupon all proceedings may be taken and enforced in and by that other Magistrate's Court for the amount recoverable under the judgment or order, and any fees and costs paid or payable in connection with the obtaining and filing of the certificate, as fully and effectually as if the judgment or order had been a judgment of that other Magistrate's Court signed and entered up at the time of filing the certificate, and no further proceedings shall be had or taken in the Magistrate's Court from which the judgment or order has been removed as aforesaid.

70. (1) Where any Magistrate's Court established under this or any former Act relating to Magistrates' Courts is or has been abolished or is no longer a Court appointed for the exercise of civil jurisdiction, the Minister of Justice may direct that the records of the Court be delivered to the Registrar of some other Magistrate's Court. In any such case all proceedings may be continued or completed, and all judgments and orders of the first-mentioned Court may be enforced, in and by the last-mentioned Court as fully and effectually as if the judgments and orders had been judgments and orders of that Court.

Removal of
judgment of
abolished
Court.

Cf. 1928,
No. 14, s. 158

(2) Where any Magistrate's Court established under this or any former Act relating to Magistrates' Courts is or has been abolished or is no longer a Court appointed for the exercise of civil jurisdiction and no such direction as aforesaid has been given, a certificate of any judgment or order of that Court may be obtained from the Registrar or Clerk of that Court, or from the Registrar or officer having custody of the records of that Court, and such certificate may be filed in any Magistrate's Court.

(3) On the filing of such certificate all proceedings may be taken and enforced in and by the last-mentioned Magistrate's Court for the amount recoverable under

the judgment or order, and any fees and costs paid or allowed in connection with the obtaining and filing of the certificate, as fully and effectually as if the judgment or order had been a judgment or order of that Court signed and entered up at the time of filing the certificate.

PART V

APPEALS

Right to
appeal.
Cf. 1928,
No. 14,
s. 164 (1)

71. Any party to any proceeding in a Magistrate's Court may appeal as hereinafter provided to the Supreme Court against any non-suit or final determination or direction of the Magistrate's Court—

- (a) Without the leave of the Magistrate's Court where the amount of the claim or the value of the property or relief claimed or in issue exceeds twenty pounds or where the title to any hereditament has come in question; and
- (b) With the leave of the Magistrate's Court where the amount of the claim or the value of the property or relief claimed or in issue does not exceed twenty pounds:

Provided that the parties did not before the determination or direction agree in writing in manner prescribed that the judgment of the Court should be final.

Notice of
appeal.
Cf. ibid.,
ss. 164(2), 165,
166, 167

72. (1) Every appeal to the Supreme Court shall be brought by notice of motion lodged with the Registrar of the Supreme Court in the district or registry of which the Magistrate's Court from which the appeal is made is situate.

(2) The appellant may by the notice of motion appeal from the whole or any part of the non-suit or final determination or direction. The notice of motion shall state whether the whole or any part of the non-suit or final determination or direction is complained of, and in the latter case shall specify which part.

(3) A duplicate of the notice of motion shall be served on all parties directly affected by the appeal either before or immediately after the notice of motion is lodged in the Supreme Court, and it shall not be necessary to serve parties not so affected.

(4) The Supreme Court may direct notice of the appeal to be served on all or any parties to the proceedings or upon any person not a party, and may

adjourn the hearing of the appeal on such terms as may seem just, and may give such judgment and make such order as might have been given or made if the persons served with the notice had originally been parties.

(5) Notice of appeal shall be a fourteen days' notice.

(6) A duplicate of the notice of motion shall be lodged with the Registrar of the Court appealed from either before or immediately after the notice of motion is lodged in the Supreme Court.

73. (1) No appeal shall be brought after the expiration of twenty-one days from the day on which the non-suit, final determination, or direction was given or made or after the expiration of such further time as may be allowed by the Supreme Court or a Judge thereof on application made within one month after the expiration of the said twenty-one days.

Time for
appeal;
security for
appeal.
Cf. 1938,
No. 20,
s. 37 (1)

(2) Except where the appellant is a poor person within the meaning of regulations made under the Legal Aid Act, 1939, the appellant shall give security to the satisfaction of the Registrar of the Court appealed from to abide the event of the appeal. The security shall be for such amount (not exceeding twenty-five pounds) as may be estimated by that Court or a Magistrate to be the amount of the costs likely to be awarded in respect of the appeal in the event of its being dismissed.

1939, No. 42.

(3) If no such security as is required under the last preceding subsection is given within seven days of the service of the notice of appeal, or within such further time as in special cases the Registrar of the Court appealed from may permit, that Registrar shall notify the Registrar of the Supreme Court of the failure, and the notice of appeal shall be deemed to be abandoned.

(4) As soon as security is given as provided in the foregoing provisions of this section, the Registrar of the Court appealed from shall forward to the Registrar of the Supreme Court—

(a) A copy of the pleadings;

(b) A copy, signed by the Magistrate, of the Magistrate's note made pursuant to section sixty of this Act; and

(c) All affidavits and any exhibits remaining in his custody.

Cross-appeals.

74. (1) It shall not be necessary for a respondent to give notice of motion by way of cross-appeal, but if a respondent intends upon the hearing of the appeal to contend that the decision of the Court below should be varied, he shall give notice of his intention to any parties who may be affected by such contention.

(2) The omission to give such notice within a reasonable time shall not diminish the powers conferred on the Supreme Court, but may at the discretion of that Court be ground for an adjournment of the appeal or for a special order as to costs.

Procedure where appeal not prosecuted.
Cf. 1928, No. 14, s. 171

75. (1) If the appellant does not appear at the time appointed for hearing the appeal his appeal shall stand dismissed.

(2) If the appellant does not prosecute his appeal with due diligence the respondent may by appropriate proceedings apply to the Supreme Court to dismiss the notice of motion by way of appeal, and the Supreme Court may dismiss the notice of motion accordingly.

(3) In any case to which this section applies the Supreme Court may order the payment by the appellant to the respondent of such amount for costs as it thinks proper.

Procedure on appeal.
Cf. ibid., ss. 165, 166, 167

76. (1) All appeals shall be by way of rehearing.

(2) The Supreme Court shall have all the powers and duties as to amendment and otherwise of the Magistrate's Court, and shall have full power to receive evidence upon questions of fact, either by oral evidence or by affidavit or by evidence taken before a Commissioner or Examiner.

(3) Where any question of fact is involved in any appeal any evidence taken by affidavit in the Magistrate's Court may be brought before the Supreme Court by the production of the affidavits, and any evidence given orally in the Magistrate's Court may, if the parties to the appeal agree, be brought before the Supreme Court by the production of a copy of the Magistrate's note:

Provided that, notwithstanding any such agreement, the Supreme Court may in its discretion rehear the whole or any part of the evidence.

77. (1) On the hearing of an appeal the Supreme Court may—

- (a) Order a rehearing of the case in the Magistrate's Court upon such terms as it thinks fit; or
- (b) Order that the case be referred back to the Magistrate's Court for amendment; or
- (c) Order judgment to be entered in the Magistrate's Court for either party; or
- (d) Make a final or other order on such terms as it thinks proper to ensure the determination on the merits of the real questions in dispute between the parties; and
- (e) Make such order as to costs as it thinks proper.

(2) The powers aforesaid may be exercised by the Supreme Court notwithstanding that the notice of appeal may be that part only of the decision be reversed or varied, and such powers may be exercised in favour of all or any of the respondents or parties, although those respondents or parties may not have appealed from or complained of the decision.

78. (1) The Registrar of the Supreme Court shall transmit to the Registrar of the Court from which the appeal was brought a memorandum of the decision of the Supreme Court, and such proceedings shall be had thereon as if the decision had been given by the Magistrate's Court.

(2) The Registrar of the Supreme Court shall also return to the Registrar of the Court from which the appeal was brought all affidavits and exhibits forwarded by that Registrar to the Registrar of the Supreme Court pursuant to section seventy-three of this Act.

Powers of Supreme Court on appeal.

Cf. 1928, No. 14, s. 168

Cf. County Courts Act, 1934, s. 109 (Imp.)

Court appealed from to be advised of decision.

Cf. 1928, No. 14, s. 169

PART VI

ENFORCEMENT OF JUDGMENTS

Enforcement Generally

79. (1) Any judgment or order of any Court or of any Magistrate for the payment of a sum of money may be enforced in Magistrates' Courts by any one or more of the proceedings following, that is to say,—

- (a) Execution against the goods and chattels of the judgment debtor under a distress warrant:

Nature of proceedings for enforcement of judgment.

Cf. *ibid.*, ss. 121, 200

See Reprint
of Statutes,
Vol. IV, p. 388

(b) Garnishee proceedings for the attachment of moneys due to the judgment debtor:

(c) Proceedings under the Imprisonment for Debt Limitation Act, 1908.

(2) Any judgment or order in the nature of an injunction, and any judgment or order within the competence of a Magistrate's Court which, if it were given or made in the Supreme Court, could in that Court be enforced by writ of attachment, may be enforced, by order or warrant of a Magistrate, by committal for a term not exceeding three months:

Provided that an order for the recovery of land shall not be enforceable by committal.

(3) A judgment or order for the recovery of land may be enforced under a warrant for the recovery of land.

(4) A judgment or order for the delivery of specific chattels may be enforced, by order of the Magistrate, either under a warrant for the recovery of chattels or by committal.

(5) Except by leave of a Magistrate, no proceedings for the enforcement of a judgment or order shall be commenced in any Court until after the expiry of forty-eight hours from the time of the entering of the judgment or the making of the order:

Provided that if the judgment or order is one which may be appealed against without the leave of the Court, any Magistrate may order a stay of any proceedings for the enforcement of the judgment or order until after the time allowed for giving notice of appeal has expired.

(6) It is hereby declared that two or more proceedings for the enforcement of a judgment or order may be taken concurrently, but the judgment creditor shall not be entitled to recover a greater sum than the amount owing under the judgment or order and the costs and fees of any proceedings for enforcement.

Enforcement
of judgments
more than six
years old.

Cf. 1928,
No. 14, s. 119

80. (1) No judgment or order of the Court more than six years old shall be enforced without the leave of the Court unless some payment has been made into Court by or on behalf of the party liable therefor within the twelve months immediately before the issue of the proceedings for enforcement.

(2) The Court may, if it thinks fit, grant such leave on an *ex parte* application.

81. (1) Where the Court has made an order for the payment of any sum of money by instalments, proceedings for the enforcement of the order shall not be taken or issued until after default in the payment of some instalment according to the order.

Enforcement of order for payment by instalments.

Cf. 1928, No. 14, s. 125

(2) On any such default, proceedings or successive proceedings may be taken or issued for the whole of the said sum of money and costs then remaining unpaid unless the Court on the application of the party liable otherwise orders.

Cf. County Courts Act, 1934, s. 117 (Imp.)

82. If there are cross-judgments between the parties, proceedings for enforcement may be taken out only by that party who has obtained judgment for the larger sum, and then only for so much as remains after deducting the smaller sum. Satisfaction for the remainder shall be entered as well as satisfaction on the judgment for the smaller sum, and if both sums are equal satisfaction shall be entered upon both.

Proceedings on cross-judgments.

Cf. 1928, No. 14, s. 126

83. If at any time it appears to the satisfaction of a Magistrate exercising jurisdiction in the Court in which proceedings have been taken or issued for the enforcement of any judgment or order that any party to the proceedings is unable from any cause to pay any sum recoverable against him (whether by way of satisfaction of the claim or counterclaim in the proceedings or by way of costs or otherwise) or any instalment thereof, the Magistrate may, in his discretion, stay the proceedings for such time and on such terms as he may think fit, and so from time to time until it appears that the cause of inability has ceased.

Power to stay proceedings for enforcement.

Cf. *ibid.*, s. 124

Cf. County Courts Act, 1934, s. 119 (Imp.)

84. Notice of appeal shall not operate as a stay of proceedings under the decision appealed from unless the Magistrate's Court or a Magistrate so orders or the amount of the judgment or order appealed against and its costs is deposited with the Registrar to abide the event of the appeal, or security is given to the satisfaction of the Registrar for that amount.

Stay of proceedings on appeal.

1938, No. 20, s. 38

Warrant of Distress

85. A warrant of distress shall require the bailiff or constable to whom it is directed to levy or cause to be levied such sum of money as is adjudged or ordered to be paid, or so much thereof as then remains unpaid, and also the costs of the execution, and of previous

Warrant of distress.

Cf. 1928, No. 14, ss. 121, 129

proceedings (if any) for the enforcement of the judgment or order, by seizure and sale of the goods and chattels of the person liable under the judgment or order, and the warrant shall authorize the bailiff or constable aforesaid to seize—

(a) Any of the goods and chattels of that person, except the personal and family clothing, furniture, and household effects, and tools or implements of trade, not exceeding in all one hundred pounds in value; and

(b) Any money, bank notes, bills of exchange, promissory notes, bonds, specialties, or other securities for money belonging to that person.

Disposal of bills of exchange, &c., seized.
Cf. 1928, No. 14, s. 130

86. (1) The bailiff shall deliver all bills of exchange, promissory notes, bonds, specialties, or other securities for money which have been seized or taken to the Registrar, for the benefit of the party upon whose application execution has issued, as security or securities for the amount directed to be levied by the execution, or so much thereof as has not been otherwise levied or raised.

(2) The said party may sue in the name of the person against whom execution has issued, or in the name of any person in whose name the person against whom execution has issued might have sued, for the recovery of the sum or sums secured or made payable thereby when the time of payment thereof arrives.

Penalty for rescue of goods seized.
Cf. *ibid.*, s. 23

87. If any person rescues or attempts to rescue any goods seized in execution under a warrant of distress, he shall be liable, either on an order made by the Magistrate in that behalf or on summary conviction, to a fine not exceeding twenty pounds, and any bailiff of the Court or constable may take him into custody, with or without warrant, and bring him before the Magistrate.

Sale of Goods seized

Period to elapse before sale.
Cf. *ibid.*, s. 123 (1)

88. No goods seized in execution under a distress warrant shall be sold for the purpose of satisfying the warrant until the expiration of a period of at least five days next following the day on which the goods have been so seized unless—

(a) The goods are of a perishable nature; or

(b) The person whose goods have been seized so requests in writing.

89. (1) Goods seized in execution under a warrant of distress shall be sold by public auction unless a Court otherwise orders.

Sale of goods by public auction unless otherwise ordered.

Cf. 1928, No. 14, s. 123(3)

(2) Any bailiff authorized to execute a warrant of distress may, with the prior written authority of the Registrar, sell by auction the goods and chattels seized thereunder without having taken out an auctioneer's licence, anything in the Auctioneers Act, 1928, or in any other enactment or rule of law to the contrary notwithstanding.

See Reprint of Statutes, Vol. I, p. 405

90. (1) Where any goods in the possession of an execution debtor at the time of seizure by a bailiff charged with the enforcement of a distress warrant issued from a Magistrate's Court are sold by the bailiff without any claim having been made to them—

Protection of bailiff selling goods under execution without notice of claim by third party.

Cf. County Courts Act, 1934, s. 130 (Imp.)

(a) The purchaser of the goods so sold shall acquire a good title to those goods; and

(b) No person shall be entitled to recover against the bailiff, or anyone lawfully acting under his authority, for any sale of the goods, or for paying over the proceeds thereof prior to receipt of a claim to the goods, unless it is proved that the person from whom recovery is sought had notice, or might by making reasonable inquiry have ascertained, that the goods were not the property of the execution debtor.

(2) Nothing in this section shall affect the right of any claimant, who may prove that at the time of sale he had a title to any goods so seized, to any remedy to which he may be entitled against any person other than the bailiff.

(3) The provisions of this section shall have effect subject to the provisions of sections eighty and eighty-one of the Bankruptcy Act, 1908, and sections two hundred and sixty-two and two hundred and sixty-three of the Companies Act, 1933.

See Reprint of Statutes, Vol. I, p. 511 1933, No. 29

91. Where goods have been seized under a warrant of distress, and some third person claims under a bill of sale or otherwise to be entitled to the goods by way of security for a debt, a Magistrate may order a sale of the whole or part of the goods upon such terms as to payment of the whole or part of the secured debt or

Procedure when goods seized are secured under bill of sale.

Cf. 1928, No. 14, s. 138

otherwise as he thinks fit, and may direct the application of the proceeds of the sale in such manner and upon such terms as he deems just.

Claims in respect of Goods seized

Priority of
Supreme Court
and
Magistrate's
Court
executions.
Cf. 1928,
No. 14, s. 128

92. (1) Where a writ or warrant against the goods of a party has issued from the Supreme Court, and a warrant of distress against the goods of the same party has issued under the provisions of this Act, the right to the goods seized shall be determined, as the case may be, by the priority of the time of the delivery of the writ or warrant to the Sheriff to be executed or of the application to the Registrar for the warrant of distress.

(2) The Sheriff on demand shall, by writing signed by him, inform the bailiff to whom the warrant of distress is directed of the precise time of the delivery of the writ or warrant, and the bailiff of the Magistrate's Court to whom the warrant of distress is directed shall on demand show the warrant to any Sheriff's officer, and such writing purporting to be so signed, and any endorsement on the warrant concerning the time of application to the Registrar for the warrant, shall respectively be sufficient justification to any Sheriff or bailiff acting thereon.

Sale of goods
where claim
made thereto.
Cf. *ibid.*, s. 136
Cf. County
Courts Act,
1934, s. 132
(Imp.)

93. (1) Where a claim is made to or in respect of any goods seized in execution under a distress warrant issued out of a Magistrate's Court, the claimant may—

(a) Deposit with the bailiff either—

(i) The amount of the value of the goods claimed; or

(ii) The sum which the bailiff is allowed to charge as costs for keeping possession of the goods until the decision of the Magistrate can be obtained on the claim; or

(b) Give the bailiff in the prescribed manner security for the value of the goods claimed.

(2) For the purposes of this section, the amount of the value of the goods claimed shall, in case of dispute, be fixed by appraisal in the prescribed manner, and where the amount is deposited as aforesaid it shall be paid by the bailiff into Court to abide the decision of the Magistrate upon the claim.

(3) In default of the claimant complying with the foregoing provisions of this section, the bailiff shall sell the goods as if no such claim had been made, and shall pay into Court the proceeds of the sale to abide the decision of the Magistrate.

94. (1) If a claim is made to or in respect of any goods or chattels seized in execution under a warrant of distress issued by a Magistrate's Court, or in respect of the proceeds or value thereof, the bailiff may, before or after the return of the warrant, and whether an action has been commenced against him for such seizure or not, obtain from the Registrar a summons calling before the Court the party at whose instance the process issued and the party making the claim.

Bailiff's
interpleader.
Cf. 1928,
No. 14, s. 137
Cf. County
Courts Act,
1934, s. 133
(Imp.)

(2) Upon the issue of the summons any action brought in any Magistrate's Court or other Court in respect of the claim or of any damage arising out of the execution of the warrant shall be stayed.

(3) On the hearing of the summons, the Magistrate shall adjudicate upon the claim, and shall also adjudicate between the parties or either of them and the bailiff upon any claim to damages arising or capable of arising out of the execution of the warrant by the bailiff, and shall make such order in respect of any such claim and the costs of the proceedings as he thinks fit.

95. (1) The landlord of a tenement in which goods are taken in execution under this Act, or his agent, may claim the rent thereof at any time within five days from the date of the taking, or before the removal of the goods, by delivering to the bailiff a writing signed by the landlord or his agent stating the nature of the tenancy, the amount of rent claimed to be in arrear, and the period in respect of which the rent is due.

Claims for rent
where goods
seized under
execution.
Cf. 1928,
No. 14, ss. 134,
135
Cf. County
Courts Act,
1934, s. 134
(Imp.)

(2) If such claim is made, the bailiff shall, in addition to the levy under the warrant, distrain for the rent so claimed and the cost of such distress, and shall not, within five days next after the distress, sell any part of the goods seized unless—

- (a) The goods are of a perishable nature; or
- (b) The person whose goods have been seized so requests in writing.

(3) The bailiff shall afterwards sell under the execution and distress such of the goods as will satisfy—

(a) First, the costs of and incidental to the sale;

(b) Next, the claim of the landlord not exceeding—

(i) In a case where the tenement is let by the week, eight weeks' rent;

(ii) In a case where the tenement is let for any other term less than a year, the rent of two terms of payment;

(iii) In any other case, twelve months' rent; and

(c) Lastly, the amount for which the warrant issued.

(4) If replevin is made of the goods seized, the bailiff shall nevertheless sell such portion thereof as will satisfy the costs of and incidental to the sale under the execution and the amount for which the warrant issued.

(5) In any event the surplus of the sale, if any, and the residue of the goods shall be returned to the execution debtor.

(6) The fees and expenses of the bailiff for keeping possession and for sale under any such distress shall be the same as would have been payable if the distress had been an execution of the Court, and no other fees shall be demanded or taken in respect thereof.

Garnishee Proceedings

Garnishee proceedings. .
Cf. 1928,
No. 14, s. 27(a)

96. Any person who has obtained a judgment or order for the payment of money may take proceedings in accordance with the rules to obtain payment to him of the amount of any debt owing or accruing to the judgment debtor from any other person or so much thereof as may be sufficient to satisfy the judgment or order and the costs of the garnishee proceedings.

Committals

Issue and execution of orders or warrants of committal.
Cf. County Courts Act, 1934, ss. 140, 141 (Imp.)

97. (1) Whenever any order or warrant for the committal of any person to prison is made or issued by a Magistrate's Court in pursuance of this Act or the rules the order or warrant shall be directed to a bailiff or constable, who shall thereby be empowered to take the person against whom the order is made or warrant issued, and it shall be the duty of every constable to assist in the execution of every such order or warrant.

(2) Any person committed to prison by any Court in pursuance of this Act or the rules shall be committed to a prison established under the Prisons Act, 1908, and the gaoler or superintendent of the prison mentioned in any such order or warrant shall be bound to receive and keep the person therein mentioned until he is lawfully discharged.

See Reprint of Statutes, Vol. VI, p. 966

98. If at any time it appears to the satisfaction of a Magistrate that any person confined to prison pursuant to the last preceding section ought for any reason to be discharged, the Magistrate may order his discharge upon such terms (including liability to rearrest if the terms are not complied with) as the Magistrate thinks fit.

Power of Magistrate to order discharge. Cf. 1928, No. 14, s. 200

Warrant for the Recovery of Land

99. (1) A warrant for the recovery of land shall authorize the bailiff or constable to whom it is directed to give possession of the land referred to therein to the person named in the warrant and shall justify him in entering, by force if necessary, upon the land, with such assistants as he deems necessary, and in giving possession accordingly; but no entry under any such warrant shall be made except between the hours of nine o'clock in the morning and four o'clock in the afternoon. The person to whom possession is given in accordance with the warrant shall hold the land discharged of the tenancy (if any), and the defendant, and all persons claiming by, through, or under him shall, so long as the judgment or order pursuant to which the warrant was issued remains unreversed, be barred from all relief in equity or otherwise.

Warrant for the recovery of land. Cf. *ibid.*, ss. 181 (3), 186

(2) For the purpose of executing any warrant to give possession of any premises, it shall not be necessary to remove any goods or chattels from those premises.

Cf. County Courts Act, 1934, s. 120 (Imp.)

100. (1) Where a person by whom a warrant for the recovery of any land is sued out had, at the time of suing out the same, lawful right to the possession of the land, neither he nor his agent, nor any other person acting in his behalf, shall be deemed to be a trespasser by reason merely of any irregularity or informality in the mode of proceeding for obtaining possession under the authority of this Act; but the

Irregularity in execution of warrant can only be sued for as special damage. Cf. 1928, No. 14, s. 192

party aggrieved may if he thinks fit bring an action in any Court of competent jurisdiction and recover for special damage.

(2) If special damage is not proved the defendant shall be entitled to a verdict; and if proved, but assessed by the last-mentioned Court at any sum not exceeding five shillings, the plaintiff shall recover no more costs than damages unless the Judge or Magistrate of the Court before whom the trial is held certifies that in his opinion full costs ought to be allowed.

Person illegally
obtaining
warrant liable
for trespass.
Cf. 1928,
No. 14,
ss. 187, 188, 191

101. (1) If any person by whom a warrant for the recovery of any land is sued out in a Court had not, at the time of suing out the same, lawful right to the possession of the land, the suing out of the warrant shall be deemed a trespass by him against the tenant or occupier of the land, although no entry is made by virtue of the warrant.

(2) Nothing herein contained shall be deemed to protect any person on whose application and to whom any such warrant as aforesaid is granted from any action against him by any such tenant or occupier as aforesaid for or in respect of any entry and taking possession, where that person had not when the warrant was issued lawful right to the possession of the said land; and nothing herein contained shall affect any rights to which any person may be entitled as outgoing tenant by the custom of the country or otherwise.

(3) No action or prosecution shall be brought against any Magistrate who has made any order for the issue of, or any Registrar who has issued, any warrant for the recovery of any land, or against any bailiff or constable who has executed any such warrant as aforesaid for ordering, issuing, or executing the warrant, by reason only that the person on whose application the warrant was issued had not lawful right to the possession of the land.

Execution of
warrant may
be stayed on
giving bond.
Cf. *ibid.*,
ss. 189, 190

102. (1) If any tenant or occupier becomes bound with two sureties as hereinafter provided, to be approved of by the Court, in such sum as the Court deems reasonable (regard being had to the value of the land and to the probable costs of an action), to sue the person to whom such warrant as aforesaid was granted with effect and without delay, and to pay all the costs of the proceedings in the action in case

judgment is given for the defendant, or the plaintiff discontinues or does not prosecute his action, or becomes nonsuited therein, execution of the warrant shall be stayed until judgment has been given in the action of trespass.

(2) If upon the trial of the action judgment is given for the plaintiff, the judgment thereupon shall supersede the warrant so granted, and the plaintiff shall be entitled to his costs in the action.

(3) Every such bond as aforesaid shall be made to the landlord at the cost of the tenant or occupier, and shall be approved of in writing by a Magistrate; and if the bond so taken is forfeited, or if on the trial of the action for securing the trial of which the bond was given the Judge by whom it is tried does not endorse upon the record in Court that the condition of the bond has been fulfilled, the party to whom the bond has been so made may bring an action and recover thereon; and the Court where the last-mentioned action is brought may by order give such relief to the parties upon the bond as may be agreeable to justice, and the order shall have the nature and effect of a defeasance to the bond.

Recovery of Chattels

103. (1) A warrant for the recovery of chattels may be issued at the request of any person who has obtained a judgment or order for the recovery of specific chattels.

Warrant for the recovery of chattels.

Cf. 1928, No. 14, s. 131 (1)

(2) The warrant shall require the bailiff or constable to whom it is directed to demand and seize the specific chattels referred to therein, if they can be found by him, and to deliver them to the person named in the warrant.

104. (1) If the chattels are not recovered under the warrant aforesaid, application may be made to a Magistrate for an order or warrant of committal. The order or warrant of committal shall direct the committal of the person named therein for such period as the Magistrate thinks fit not exceeding one month.

Further proceedings if chattels not recovered.

Cf. *ibid.*, s. 131 (2), (3)

(2) If possession of the chattels is not recovered under the warrant referred to in the last preceding section, whether or not an order or warrant of committal is issued, the person entitled to the recovery

of the chattels may obtain the issue of a warrant of distress for the value of the chattels, such value to be assessed in such manner as a Magistrate may direct.

Liability and Protection of Officers

Neglect by
bailiffs.
Cf. 1928,
No. 14, s. 24

105. (1) Where a bailiff of any Court, or any person acting under his authority, being employed to levy any execution against goods and chattels, loses the opportunity of levying the execution by reason of neglect, connivance, or omission, any party aggrieved thereby may complain to the Magistrate of that Court.

(2) On any such complaint the Magistrate, if the neglect, connivance, or omission is proved to his satisfaction, shall order the bailiff to pay such damages as it appears that the complainant has sustained by reason thereof, not exceeding in any case the sum for which the execution issued.

Irregularity
in executing
warrants.
Cf. *ibid.*, s. 193

106. No officer of a Court in executing any warrant of the Court, and no person at whose instance any such warrant is executed, shall be deemed a trespasser by reason of any irregularity or informality—

(a) In any proceeding on the validity of which the warrant depends; or

(b) In the form of the warrant or in the mode of executing it;

but any person aggrieved may bring an action for any special damage sustained by him by reason of the irregularity or informality against the person guilty thereof:

Provided that no costs shall be recovered in any such action unless the damages awarded exceed two pounds.

Actions
against bailiffs
acting under
warrants.

Cf. County
Courts Act,
1934, s. 147
(Imp.)

107. (1) No action shall be commenced against any bailiff for anything done pursuant to a warrant issued under this Act, unless—

(a) A demand for inspection of the warrant and for a copy thereof is made or left at the office of the Court by the party intending to bring the action, or his solicitor or agent, in writing signed by the person making the demand; and

(b) The bailiff refuses or neglects to comply with the demand within six days after it is made.

(2) If any action is commenced against a bailiff in a case where such a demand has been made and not complied with, judgment shall be given for the bailiff if the warrant is produced or proved at the trial, notwithstanding any defect of jurisdiction or other irregularity in the warrant; but the officer who issued the warrant may be joined as a defendant in the action, and if the officer is so joined and judgment is given against him the costs to be recovered by the plaintiff against him shall include such costs as the plaintiff is liable to pay to the bailiff.

108. (1) All proceedings against any person for anything done or purporting to be done in pursuance of this Act shall be commenced within six months after the act committed and not afterwards, and notice in writing of any such action and of the cause thereof shall be given to the defendant one month at least before the commencement of the action:

Action to be brought within six months, and one month's notice to be given.
Cf. 1928, No. 14, s. 194

Provided that failure to give notice or commence proceedings as required by this section shall not be a bar to the proceedings if in the opinion of the Court in which the proceedings are taken the failure was occasioned by mistake or other reasonable cause and the defendant is not likely to be prejudiced in his defence by the want of notice or delay in taking proceedings.

(2) A plaintiff shall not recover in such action if tender of sufficient amends has been made before the action is brought, and if, after action is brought, a sufficient sum of money is paid into Court with costs.

(3) In any action commenced against a person for anything done in pursuance of this Act, the production of the warrant of the Court shall be deemed sufficient proof of the authority of the Court previous to the issue of the warrant.

PART VII

MISCELLANEOUS AND GENERAL

Writs of Arrest

109. (1) Where it appears to the satisfaction of any Magistrate by affidavit of the plaintiff or his authorized agent that the plaintiff has a good cause of action against a defendant for a sum within the jurisdiction

Absconding debtors may be held to bail.
Cf. *ibid.*, s. 151

of a Magistrate's Court for which action has been commenced under this Act, and that there is probable cause (the grounds of which shall be stated in the affidavit) for believing that the defendant is about to leave New Zealand and to evade the payment of the said sum, the Magistrate may issue a writ of arrest under his hand, returnable immediately; and, if payment of the said sum is not made before execution of the writ, may thereupon cause the defendant to be brought before him, and upon investigation of the case may either discharge the defendant or hold him to bail for any sum not exceeding the amount sworn to in the affidavit, with costs:

Provided that if the claim is for a debt or amount long overdue the Magistrate may, before issuing the writ, require the person asking for the issue thereof to lodge in the Court any sum of money not exceeding twenty pounds, or to give security therefor to the satisfaction of the Magistrate, to abide the decision of the Court under paragraph (b) of the next succeeding section.

(2) In default of bail being given, or the amount with costs being deposited with the Registrar, as hereinafter provided, the Magistrate may order the defendant to be detained in some prison or lock-up, and to be brought from there to a Magistrate's Court at a time to be stated in the order, being not more than four clear days from the date of the order, unless he sooner gives the prescribed security or makes the said deposit.

(3) A defendant against whom a writ has issued for any amount may deposit that amount with the officer executing the writ, or with the Registrar, in lieu of bail, together with such amount for costs as may be shown on the writ; and the sum so deposited shall be paid, applied, and disposed of according to the final judgment of the Court.

(4) A Magistrate before whom a defendant is brought under the authority of any writ issued as aforesaid may, with the consent in writing of the defendant, summarily hear and finally adjudicate upon the claim of the plaintiff, or may fix the time mentioned in the summons issued in the action as the time for hearing the claim by the Court.

110. Where a Magistrate hears and finally adjudicates upon the claim of a plaintiff under the power contained in the last preceding section the following provisions shall apply:—

(a) If judgment is given for the plaintiff, the Magistrate may make an order for the immediate payment of the amount of the judgment, with costs, and execution may at once be issued and such other proceedings may be had thereon as if the judgment were a judgment obtained in the ordinary course of procedure:

(b) If judgment is given for the defendant, the Magistrate may, in his discretion, award to the defendant by way of compensation any sum not exceeding twenty pounds, and such award shall be deemed to be a judgment of the Court, and execution may issue thereon.

Successful plaintiff entitled to execution, successful defendant entitled to compensation.
Cf. 1928, No. 14, s. 15~~2~~

Interpleader

111. Where a person is under a liability for any debt or other cause of action, money, or chattels for or in respect of which he is or expects to be sued by two or more persons making adverse claims thereto, he may, if the subject-matter does not exceed in value the sum of five hundred pounds, apply to a Court in manner prescribed for relief by way of interpleader in accordance with the rules.

Interpleader.
Cf. *ibid.*, s. 27 (g).

Contempt

112. If any person—

(a) Wilfully insults a Magistrate or any witness or any officer of the Court during his sitting or attendance in Court, or in going to or returning from the Court; or

(b) Wilfully interrupts the proceedings of a Court or otherwise misbehaves in Court; or

(c) Wilfully and without lawful excuse disobeys any order or direction of the Court in the course of the hearing of any proceedings,—

any officer of the Court, with or without the assistance of any constable or other person, may, by order of the Magistrate, take the offender into custody and detain

Power to commit for contempt.
Cf. *ibid.*, ss. 196, 197

him until the rising of the Court, and the Magistrate may, if he thinks fit, by warrant under his hand, commit the offender to prison for any period not exceeding ten days or impose upon the offender a fine not exceeding ten pounds for each offence.

Financial Provisions

Payment and recovery of fees.

Cf. 1928, No. 14, s. 176 (1), (2), (3)
Cf. County Courts Act, 1934, s. 168 (Imp.)

113. (1) All fees, except such as may be payable in respect of keeping possession, or for storing, removing, or selling goods seized under a warrant, shall be paid in the first instance by the party on whose behalf any proceedings are taken.

(2) No Magistrate or officer of the Court shall do any act for which a fee is payable unless the fee is first paid; but no such act, if done, shall be invalid by reason only of the non-payment of the fee:

Provided that in any proceedings in which His Majesty, or any officer of His Majesty's Government in New Zealand on his behalf or on behalf of the said Government, is a party, no fees of Court need be pre-paid on behalf of His Majesty or the said officer, but such fees may nevertheless be recoverable from the opposite party with costs, if judgment is given against him.

(3) In default of the payment of any fees, payment thereof shall be enforced, by order of the Court, in like manner as payment of any debt adjudged by the Court to be paid.

(4) A table of all fees payable shall be posted in a conspicuous place in every Registrar's office.

Enforcement of fines.

Cf. 1928, No. 14, s. 201

See Reprint of Statutes, Vol. II, p. 351

114. The payment of any fine imposed by a Court under this Act may be enforced, upon the order of a Magistrate, in like manner as the payment of any fine imposed on summary conviction may be enforced under the provisions of the Justices of the Peace Act, 1927.

Fines and fees to be paid to Public Account.

Cf. 1928, No. 14, s. 178

115. All fees and fines payable in respect of proceedings in Magistrates' Courts or before Magistrates shall form part of the Consolidated Fund:

Provided that fees in respect of keeping possession, and of storing, removing, and selling goods seized under a warrant shall be paid to the bailiff or person charged with the execution of the warrant, to be paid by him to the person entitled thereto.

Miscellaneous

116. (1) All summonses issuing out of a Magistrate's Court, and all such other documents so issuing as may be prescribed, shall be sealed with the seal of the Court.

Summonses and other documents to be under seal.

Cf. 1928, No. 14, s. 39

(2) All such summonses and other documents purporting to be sealed as aforesaid shall, in New Zealand, be received in evidence without further proof thereof.

Cf. County Courts Act, 1934, s. 176 (Imp.)

117. Every subtenant to whom there is delivered any summons issued from a Court for the recovery of any land demised to or held by him, or to whose knowledge it comes, shall forthwith give notice thereof to his immediate landlord, and if he fails so to do he shall be liable to forfeit to his immediate landlord an amount equal to not more than three years' improved or rack-rent of the land, to be recovered by action in any Magistrate's Court or other Court having jurisdiction in respect of claims for such an amount.

Subtenant to give notice of action to his immediate landlord.

Cf. 1928, No. 14, s. 184 (1)

Cf. County Courts Act, 1934, s. 179 (Imp.)

118. In any action founded on a promissory note, bill of exchange, or other negotiable instrument declared on the affidavit of the plaintiff to be lost, if an indemnity is given by the plaintiff to the satisfaction of the Court against the claims of any other person upon the instrument the Court may give judgment therefor as if the same were produced.

Actions on lost instruments.

Cf. 1928, No. 14, s. 44

119. It is hereby declared that Division IV of the Justices of the Peace Act, 1927, relating to the protection of Justices, so far as not repugnant to this Act and as far as the nature of the case will allow, shall extend to Magistrates acting in their civil jurisdiction.

Protection of Magistrates.

Cf. *ibid.*, s. 195

See Reprint of Statutes, Vol. II, p. 455

120. No privilege shall be allowed to any solicitor to exempt him from the jurisdiction of a Court.

No privilege to solicitors.

Cf. 1928, No. 14, s. 35

121. (1) All constables shall aid and assist any Court or Magistrate in the execution of all and any of the duties imposed upon the Court or Magistrate by this or any other Act; and if any constable neglects or refuses so to do he shall be liable on summary conviction, where no other penalty is provided, to a fine not exceeding five pounds.

Constables, &c., to assist.

Cf. *ibid.*, s. 199

(2) It shall be the duty of the keeper of every prison or lock-up on the request of the bailiff or constable to whom a warrant of committal or a writ of arrest has been issued to hold the prisoner or defendant in the custody of the bailiff or constable until the prisoner or defendant may, by the most convenient means of transport, be conducted to the place of imprisonment named in the warrant or brought before the Court named in the writ, as the case may be.

Magistrates'
Courts rules.
Cf. 1928,
No. 14, ss. 3,
16, 18, 69, 81

122. (1) The Governor-General may, from time to time, by Order in Council, make rules regulating the practice and procedure of the Court and forms of proceedings therein, both under this Act and in relation to the exercise of any jurisdiction conferred on Magistrates' Courts by any other Act.

(2) The power of making rules shall extend to all matters of practice or procedure and matters relating to or concerning the effect or operation in law of any practice or procedure in any case within the cognizance of the Courts as to which rules of the Supreme Court may be or might lawfully be made for cases within the cognizance of the Supreme Court.

(3) Without prejudice to the generality of the foregoing provisions of this section, the power of making rules shall extend to—

- (a) Prescribing the Court in which proceedings are to be commenced and the procedure to be adopted where proceedings are commenced in one Court which should, under the Act or the rules, have been commenced in another Court:
- (b) Prescribing the circumstances in which proceedings may be transferred from one Court to another, and the procedure consequent on any such transfer:
- (c) Prescribing the procedure in Magistrates' Courts consequent on transfers of proceedings from the Supreme Court to Magistrates' Courts, or from Magistrates' Courts to the Supreme Court:
- (d) Prescribing the procedure in Magistrates' Courts consequent on the removal of judgments of the Supreme Court into Magistrates' Courts and on the removal of judgments of Magistrates' Courts into the Supreme Court:

- (e) Prescribing the form of the records of the Court and providing for the custody of the said records, and for the receipt of and accounts for all moneys paid into or out of Court:
 - (f) Authorizing the Registrar to hear and determine any proceedings other than actions, and any actions in which the defendant fails to appear at the hearing or admits the claim:
 - (g) Prescribing, according to the nature of the proceedings and the amount involved therein, the costs and charges to be paid by one party or the parties in the proceedings to the other party or parties, in addition to the moneys paid out of pocket:
 - (h) Prescribing the fees to be paid in respect of any proceedings taken or for service of any summons or other process under this Act:
 - (i) Prescribing fees payable to persons giving evidence in any proceedings and to referees and arbitrators under this Act:
 - (j) Regulating and providing for any other matters which were regulated or provided for by the Magistrates' Courts rules in force on the date of the passing of this Act:
 - (k) Regulating or providing for any other matters which immediately prior to the coming into force of this Act were regulated or provided for by the enactments (repealed by this Act) which are referred to in the Second Schedule to this Act:
 - (l) Providing for any other matters in respect of which rules are contemplated or specially authorized by this Act.
- (4) Rules made under this Act shall take effect on or from a day to be fixed in the Order in Council making the same.

123. The Governor-General from time to time, by Regulations.
Order in Council, may make regulations for any purpose for which regulations are contemplated by this Act, and may make all such other regulations as may in his opinion be necessary or expedient for giving full effect to the provisions of this Act and for the due administration thereof.

Application
of Act.

124. Where under any Act any power, authority, or jurisdiction is given to Magistrates, the proceedings shall be had and determined in a Magistrate's Court in accordance with this Act and the rules unless some other procedure is specially provided or required, and Magistrates in the exercise of that power, authority, or jurisdiction shall have all the powers given under this Act to Magistrates and to Courts, but, except as aforesaid or as expressly provided in this Act or the rules, nothing in this Act or the rules shall derogate from or affect the provisions of any other Act conferring any power, authority, or jurisdiction on Magistrates or on Magistrates' Courts.

Repeals and
savings.

125. (1) The enactments mentioned in the Third Schedule to this Act are hereby repealed.

(2) All Courts, jurisdictions, offices, appointments, Orders in Council, orders, warrants, rules, regulations, seals, forms, books, records, instruments, and generally all acts of authority which originated under any of the said enactments or any enactment thereby repealed, and are subsisting or in force on the coming into operation of this Act, shall enure for the purposes of this Act as fully and effectually as if they had originated under the corresponding provisions of this Act, and accordingly shall, where necessary, be deemed to have so originated.

(3) All actions, matters, and proceedings commenced under any of the said enactments and pending or in progress on the coming into operation of this Act may be continued, completed, and enforced under this Act.

1934, No. 26

(4) The references in section thirty-four of the Mining Amendment Act, 1934, to subsection two of section one hundred and sixty-four, and sections one hundred and sixty-five, and one hundred and sixty-seven of the Magistrates' Courts Act, 1928, shall be construed as references to sections seventy-two, seventy-four, and seventy-five of this Act and, subject to the provisions of section eleven of the Mining Amendment Act, 1941, as to appeals on matter of fact alone or of fact and law, to section seventy-six of this Act. The reference in section eleven of the Mining Amendment Act, 1941, to section one hundred and sixty-six of the Magistrates' Courts Act, 1928, shall be construed as a reference to section seventy-six of this Act.

1941, No. 16

SCHEDULES

Schedules.

Section 28

FIRST SCHEDULE

CRIMINAL RECORD BOOK

Record of Proceedings in Magistrate's Court at

Date 19 .	Number.	Prosecutor	Persons charged.	Offence.	Plea.	Decision.	Date of Issue of Warrant of Distress.	Date of Issue of Warrant of Imprison- ment.	Stamps.

SECOND SCHEDULE

Section 122

(3) (k)

ENACTMENTS (REPEALED BY THIS ACT) FORMERLY REGULATING
OR PROVIDING FOR MATTERS WHICH CAN BE REGULATED OR
PROVIDED FOR BY RULES

The Magistrates' Courts Act, 1928: Sections 4, 34, 41, 45, 46,
49 to 52, 55, 57 to 66, 68, 70 to 80, 82 to 88, 91, 92, 94 to
98, 101 to 115, 118, 120, 122, 123 (2), 127, 129 (b) and (c),
132, 133, 139 to 141, 144, 146 to 150, 159 to 161, 172 to 174,
176 (4), 177, 179, 180 (3), 184 (2), 185, and 198, and the
proviso to section 116.

The Statutes Amendment Act, 1936: Sections 49 to 52.

The Statutes Amendment Act, 1938: Section 36.

THIRD SCHEDULE

Section 125

ENACTMENTS REPEALED

1927, No. 37.—The Justices of the Peace Act, 1927: Sub-
sections (1) and (2) of section 74 and the
Second Schedule (see Reprint of Statutes,
Vol. II, pp. 372, 491).

1928, No. 14.—The Magistrates' Courts Act, 1928: (Ibid.,
p. 98).

1930, No. 16.—The Magistrates' Courts Amendment Act, 1930:
(Ibid., p. 167).

1936, No. 58.—The Statutes Amendment Act, 1936: Sections
49 to 52.

1938, No. 20.—The Statutes Amendment Act, 1938: Sections
35 to 38.

1945, No. 45.—The Finance Act (No. 2), 1945: Section 42.