

District Courts Amendment.

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A BILL INTITULED

AN ACT to amend the Acts relating to District Courts. Title.

WHEREAS it is expedient that the various Acts relating to District Courts be amended: Preamble.

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

1 The Short Title of this Act shall be "The District Courts Acts Amendment Act 1871" and it shall come into operation on the first day of October one thousand eight hundred and seventy-one. Section 10 of "The District Courts Act Amendment Act 1865" repealed.

2 The tenth section of "The District Courts Act Amendment Act 1865" is hereby repealed and in lieu thereof it is enacted that it shall be lawful for the Governor in Council to frame general rules and orders for regulating the practice of the said Courts and the form of proceedings therein and for fixing regulating and assessing the amount of costs payable to solicitors in respect of all civil proceedings in any District Court and from time to time to rescind suspend alter or amend all rules orders and forms now framed or hereafter to be framed or any Governor in Council to make rules.

of them or any part thereof and such rules orders and forms or any rules rescinding suspending altering or amending the same shall come into force on a day to be fixed by the said Governor in Council.

3 The proviso contained in the fourth section of "The District Courts Act 1858" shall be and the same is hereby repealed: Provided that such repeal shall not in any wise affect persons heretofore appointed Judges of District Courts under and by virtue of such proviso.

4 It shall be lawful for the Judge of any District Court to hear and determine every case of felony or misdemeanour brought under the cognizance of the Court in manner provided by the one hundred and forty-fifth section of "The District Courts Act 1858" in respect to which jurisdiction shall have been conferred upon it by virtue of section four of "The District Courts Criminal Jurisdiction Extension Act 1870" whether such felony or misdemeanour was or was not committed within the boundaries of the district of such District Court.

5 The defendant in any action commenced in any Resident Magistrate's Court where the debt or damage claimed or tenement or chattel sought to be recovered exceeds in value the sum of twenty pounds may obtain on application to the Clerk of the District Court having jurisdiction over the district wherein such Resident Magistrate's Court shall be held an order removing such action into the District Court which order shall operate as a stay of proceedings in the said Resident Magistrate's Court if the party applying for such order shall give security to be approved of by the said Clerk of the District Court for the amount of the claim and the costs not exceeding ten pounds of the trial and shall further assent to such terms if any as the Judge of the said District Court shall see fit to impose.

6. Every District Court shall have a concurrent jurisdiction with the Supreme Court under sections one hundred and one hundred and one of "The Resident Magistrates Act 1867" to hear and determine appeals from any Resident Magistrate's Court held within the limits of the district of such District Court: Provided always that the costs of such appeal (if awarded to the party succeeding) shall in no case exceed the sum of ten guineas: Provided also that whenever any Judge of a District Court shall be also a Resident Magistrate or Justice of the Peace the Supreme Court alone shall have jurisdiction to hear and determine appeals against decisions by such Resident Magistrate or Justice.

7. On any civil proceeding before a Resident Magistrate or Justices of the Peace it shall be lawful for such Resident Magistrate or Justices on such terms as to costs or otherwise as he or they shall think fit to reserve any question in the form of a special case for the opinion of the District Court having jurisdiction over the district within which such Resident Magistrate or Justices shall be in session and on such opinion being given the said Resident Magistrate or Justices shall give judgment in accordance therewith.

8. The plaintiff in any action brought in any District Court on any bill of exchange promissory note or cheque on banker if such action be commenced within six months after such bill note or cheque shall have become due and payable may on filing an affidavit of personal service of special summons to be framed under power hereinbefore given in case the defendant shall not have obtained leave to appear and have appeared to such summons as thereby required at once require the Clerk of the District Court to enter up final judgment under the seal of the Court for the amount claimed together with interest at the rate specified in the summons and if no rate be specified then at the rate of eight pounds per centum per annum and a sum for costs to be fixed under the power hereinbefore given and the plaintiff may upon such judgment issue execution forthwith.

proviso in section 4 "The District Courts Act 1858" repealed.

Judge may hear and determine criminal cases not arising within limits of district.

Defendant in action commenced in Resident Magistrate's Court may remove same to District Court.

District Court to hear appeals from Resident Magistrate's Court.

Resident Magistrate may reserve cases for opinion of District Court.

Summary procedure actions on bill or cheque.

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9. Any Judge or Clerk of the said Court shall upon application within the period of seven days from such service give leave to appear to such summons and to defend the action on the defendant paying into Court the sum claimed in such summons or giving security for such sum and costs of action to the satisfaction of the Judge or Clerk and any Judge of the said Court may upon such application give such leave upon affidavits which disclose to his satisfaction a legal or equitable defence or such facts as would make it incumbent on the plaintiff to prove consideration or such other facts as the Judge may deem sufficient and on such terms as to security or otherwise as to the Judge may seem fit.

Leave may be given to defend action.

10. After judgment the Court or a Judge may under special circumstances set aside the judgment and if necessary stay or set aside execution and may give leave to appear to the summons and to defend the action if it shall appear to be reasonable to the Court or a Judge so to do and on such terms as to the Court or Judge may seem just.

Judgment may in certain cases be set aside.

11. In any proceedings under the three foregoing sections it shall be competent to the Court or a Judge to order any bill note or cheque sought to be proceeded upon to be forthwith deposited with the Clerk of the Court and further to order that all proceedings shall be stayed until the plaintiff shall have given security for the costs thereof.

Court may order bill &c. to be deposited.

12. The holder of every dishonoured bill of exchange promissory note or cheque drawn out of the Colony shall have the same remedies for the recovery of the expenses incurred in noting the same for non-acceptance or non-payment or otherwise by reason of such dishonour as he has under this Act for the recovery of the amount of such bill note or cheque.

Expenses of noting may be recovered.

13. Whenever a civil action shall have been commenced in any District Court and any person whether a party to such action or not shall be resident more than twenty miles from the Court House where the trial of such action is appointed to be had or shall be about to go beyond such distance and to remain beyond such distance at the hearing of such action it shall be lawful for the party desiring to use the evidence of himself or of such person at the hearing to give notice of such desire to the Judge or Clerk of such District Court.

Where witness more than twenty miles from Court party may apply for examination.

14. Upon receiving such notice the Judge or Clerk if he deem it fitting that the examination hereinafter mentioned shall take place within the district of such District Court shall forthwith appoint a time and place for such examination. But if he shall deem it fitting that such examination take place beyond the district of such District Court then he shall forthwith transmit such notice to the Judge or Clerk of the District Court within the limits of whose district he shall deem it fitting that such examination shall take place and if there be no such District Court then he shall transmit the said notice to the Resident Magistrate or Clerk to the Resident Magistrate of the district in which he shall deem it fitting that such examination shall take place and the Judge or Clerk or Resident Magistrate or Clerk receiving such transmitted notice shall forthwith appoint a time and place for such examination and shall transmit a memorandum of such appointment to the Clerk of the District Court in which such action shall have been commenced.

Time and place for examination to be appointed.

15. The Clerk of the last-mentioned District Court shall give to the parties to the action due notice in writing of the appointment of a time and place for such examination and shall transmit to the Judge or Resident Magistrate before whom such examination is taken copies of such notices with affidavits of service thereof.

Clerk to give notices.

16. Summonses to witnesses to attend such examination may issue on behalf of both parties to the action from the District Court in which the action was commenced.

Witnesses may be summoned.

District Judge may empower Resident Magistrate to take examination.

17. It shall be lawful for any District Judge hereby empowered to preside at any such examination to delegate power to preside thereat or at any adjournment thereof to any Resident Magistrate having jurisdiction in the place appointed for such examination.

Procedure at examination.

18. At the time and place appointed for the examination the District Judge or Resident Magistrate shall forthwith proceed to take on oath in open Court the evidence tendered on either side and shall cause such evidence to be reduced into writing and shall sign the same. Each party shall be entitled to cross-examine the witnesses called by the other and both at such examination and at the trial of the action to take all just exceptions to the reception of any evidence then tendered. Such examination may be adjourned from time to time at the discretion of the District Judge or Resident Magistrate presiding thereat.

Transmission of evidence to place of trial.

19. The evidence reduced into writing and signed as aforesaid together with the documents if any produced in evidence at such examination or copies of such documents certified by the presiding District Judge or Resident Magistrate shall be transmitted to the Clerk of the District Court in which the action was commenced.

Evidence may be used at trial.

20. At the trial of the action and on a new trial thereof if any if it shall appear that due notice of the intention to hold such examination has been given to the parties to the action or that the right to such notice has been waived such evidence may be read and used by either party without proof of any signature thereto as if the same had been given at such trial and such certified copies of documents as aforesaid be admissible in evidence as if the same were the originals of which they purport to be copies: Provided always that if at such trial the District Judge shall be satisfied that any person who has given such evidence is within twenty miles of the Court when the trial takes place or has removed beyond such distance with intent to avoid giving evidence at such trial he may refuse to allow the party by whom or in whose behalf such evidence was given to make use of the same but the opposite party may use it if he think fit.

District Court to have jurisdiction in action for specific chattel.

21. Every District Court shall have jurisdiction in all actions where the plaintiff seeks to enforce a claim upon some specific moveable property and to be put in possession thereof provided the value of such property does not exceed the limit of jurisdiction of such District Court. Provided also that the cause of action has arisen either wholly or in some material point within the district in which the action is brought or that the party sought to be charged is residing or carrying on business or is served with the process of the Court within such district.

Procedure on judgment in such action.

22. On judgment being recovered in any such action the Clerk of the District Court on the application of the plaintiff shall issue under the seal of the Court a warrant to the bailiff requiring him to demand and seize the specific goods claimed if they can be found by him and if the bailiff shall not find and seize the said goods it shall be lawful for the District Judge on the application of the plaintiff to order the actual return thereof and if such order be not obeyed to commit the defendant to some convenient gaol there to be imprisoned for any time not exceeding two calendar months unless he shall in the meantime cause the goods so detained to be returned to the plaintiff and if such application be refused or such order be not obeyed the Clerk of the District Court may on application of the plaintiff issue under the seal of the Court a writ of *fiery facias* as a warrant of execution for the value of the goods without prejudice to the plaintiff's right to obtain execution either before or after or concurrently therewith for his costs of suit and the damages awarded for the detention of the goods.

23 It shall be lawful for any person against whom an action for malicious prosecution illegal arrest illegal distress assault false imprisonment libel slander seduction or other action of tort may be brought in the Supreme Court to make an affidavit that the plaintiff
 5 has no visible means of paying the costs of the defendant should a verdict be not found for the plaintiff and thereupon a Judge of the Court in which the action is brought shall have power to make an order that unless the plaintiff shall within a time to be therein mentioned give full security for the defendant's costs to the satisfaction of one of the Registrars of the said Court or satisfy the Judge
 10 that he has a cause of action fit to be prosecuted in the Supreme Court all proceedings in the action shall be stayed or in the event of the plaintiff being unable or unwilling to give such security or failing to satisfy the Judge as aforesaid that the cause be remitted for trial
 15 before a District Court to be therein named and thereupon the plaintiff shall lodge the original writ and the order with the Clerk of such District Court who shall appoint a day for the hearing of the cause notice whereof shall be sent by post or otherwise by the Clerk to both parties or their attorneys and the District Court so named
 20 shall have all the same powers and jurisdiction with respect to the cause as if both parties had agreed by a memorandum signed by them that the said District Court should have power to try the said action and the same had been commenced by plaint in the said District Court and the costs of the parties in respect of the proceedings
 25 subsequent to the order of the Judge of the Supreme Court shall be allowed according to the scale of costs in use in the District Courts and the costs of the proceedings in the Supreme Court shall be allowed according to the scale in use in such latter Court.

Actions for malicious prosecution &c. brought in Supreme Court may be remitted to District Court by Judge.

24 And whereas a certain equitable jurisdiction was conferred on
 30 District Courts by "The District Courts Act 1858" and it is expedient further to define the same:

District Courts in certain cases to have power of Supreme Court.

Be it further enacted as follows:—

All District Courts exercising the full jurisdiction conferred
 by the said "District Courts Act 1859" shall also have and exercise
 35 all the power and authority of the Supreme Court in the suits or matters hereinafter mentioned (that is to say)—

- (1.) In all suits by creditors legatees (whether specific pecuniary or residuary) devisees (whether in trust or otherwise) heirs at law or next of kin in which the
 40 personal or real or personal and real estate against or for an account or administration of which the demand may be made shall not exceed in amount or value the sum of five hundred pounds.
- (2.) In all suits for the execution of trusts in which the trust estate or fund shall not exceed in amount or value the
 45 sum of five hundred pounds.
- (3.) In all suits for foreclosure or redemption or for enforcing any charge or lien where the mortgage charge or lien shall not exceed in amount the sum of five hundred
 50 pounds.
- (4.) In all suits for specific performance or for the delivering up or cancelling any agreement for the sale or purchase of any property where the purchase money shall not exceed the sum of five hundred pounds.
- (5.) In all proceedings under the Trustees Relief Acts or under the Trustee Acts or under any of such Acts in which the trust estate or fund to which the proceeding relates shall not exceed in amount or value the sum of five hundred
 55 pounds.
- (6.) In all proceedings relating to the maintenance or advance-

ment of infants in which the property of the infant shall not exceed in amount or value the sum of five hundred pounds.

- (7.) In all suits for the dissolution or winding-up of any partnership in which the whole property stock and credits of such partnership shall not exceed in amount or value the sum of five hundred pounds. 5
- (8.) In all proceedings for orders in the nature of injunctions where the same are requisite for granting relief in any matter in which jurisdiction is given by this Act to the District Court or for stay of proceedings at law to recover any debt provable under a decree for the administration of an estate made by the Court to which the application for the order to stay proceedings is made. 10

25 Any Judge of the Supreme Court on the application at Chambers of any party to any suit or matter pending under this Act shall have power then and there or if he shall think fit after hearing a summons served upon the other party or parties to transfer the same to the Supreme Court upon such terms (if any) as to security for costs or otherwise as he may think fit. 15 20

26 For the due execution of any judgment decree or order made under the authority of this Act or of the rules and orders to be framed as hereinbefore provided the Court shall have power to order and the Clerk upon such order shall have authority to seal and issue and the Bailiff to execute any writ or warrant of possession writ or warrant of execution or other process of execution for carrying into effect any judgment decree or order of the said Court and such writs warrants and processes shall be in the form and executed at the time and in the manner to be set forth in the rules and orders to be framed as hereinbefore provided. 25 30

27 With respect to the Court in which proceedings in equity shall be taken—

- (1.) Proceedings under this Act which relate to the recovery or sale of any mortgage charge or lien on lands tenements or hereditaments shall be taken in that District Court within the district of which the lands tenements or hereditaments or any part thereof are situate. 35
- (2.) Proceedings under the Trustee Acts shall be taken in the District Court within the district of which the persons making the application or any of them reside or resides. 40
- (3.) Proceedings for the administration of the assets of a deceased person shall be taken in the District Court within the district of which the deceased person had his last place of abode in England or in which the executors or administrators or any one of them shall have their or his place of abode. 45
- (4.) Proceedings in partnership cases shall be taken in the District Court within the district of which the partnership business was or is carried on.
- (5.) Proceedings for the specific performance or the delivery up or cancelling of agreements shall be taken in the District Court within the district of which the defendants or any one of them reside or resides or carry on or carries on business. 50
- (6.) Proceedings in any suit or other matter under this Act which are not otherwise provided for shall be taken or instituted in the District Court within the district of which the defendants or any or either of them shall reside or carry on business. 55

28 If during the progress of a suit or matter it shall be made

power to a Judge of the Supreme Court to order transfer of suits from District Court to Court of Chancery.

power to enforce judgments of District Courts in equity.

what Courts proceedings shall be taken in.

power to transfer of suit

to appear to the Court that the same could be more conveniently prosecuted in some other District Court it shall be competent for the Court to transfer the same to such other District Court and thereupon the suit or matter shall proceed in such other District Court.

from one District Court to another.

29. Where any suit or proceeding shall be pending upon the equity side of the Supreme Court which suit or proceeding might have been commenced in a District Court it shall be lawful for any of the parties thereto to apply at Chambers to any Judge of the Supreme Court to have the same transferred to the District Court or one of the District Courts in which the same might have been commenced and such Judge shall have power upon such application or without such application if he shall see fit to make an order for such transfer and thereupon such suit or proceeding shall be carried on in the District Court to which the same shall be ordered to be transferred and the parties thereto shall have the same right of appeal that they would have had the suit or proceeding been commenced in a District Court.

Suits in equity may be transferred from Supreme Court to District Courts.

30. In any suit matter or proceeding under the equity jurisdiction of this Act to be taken or instituted in the Supreme Court which could have been taken or instituted in the District Court no greater amount of costs including fees of Court and all expenses shall be allowed to the party or parties taking or instituting such suit matter or proceeding in the said Supreme Court than such party or parties would be allowed for such suit matter or proceeding if the same had been taken or instituted in the District Court and the proper officer of said Supreme Court in the taxing of the costs of such suit matter or proceeding so taken or instituted is hereby directed and required to have regard to the scale of fees payable in the District Court.

Costs in equity suits when not to be greater in Supreme Court than in District Court.

31. If during the progress of any suit or matter it shall be made to appear to the Court that the subject-matter exceeds the limit in point of amount to which the jurisdiction of the district is hereby limited it shall not affect the validity of any order or decree already made but it shall be the duty of the Court to direct the said suit or matter to be transferred to the Supreme Court and thereupon the said suit or matter shall proceed in such Supreme Court as a Judge of the said Supreme Court may by order direct and such Judge shall have power to regulate the whole of the procedure in the said suit or matter when so transferred: Provided always that it shall be lawful for any party to apply to such Judge at Chambers for an order authorizing and directing the suit or matter to be carried on and prosecuted in the District Court notwithstanding such excess in the amount of the limit to which jurisdiction in the matter is hereby given to the District Courts and the Judge if he shall deem it right to summon the other parties or any of them to appear before him for that purpose after hearing such parties or in default of the appearance of all or any of them shall have full power to make such order.

When amount of subject-matter of suit exceeds limits of the jurisdiction of District Court suit may be remitted to the Supreme Court.