

JUDICATURE AMENDMENT BILL.

EXPLANATORY MEMORANDUM.

PRIOR to the 1st February, 1925, the rights of parties to have civil actions in the Supreme Court tried before a jury were defined in Rules 254–258 of the Code of Civil Procedure set out in the Second Schedule to the Judicature Act, 1908. Under these rules (in actions where the relief claimed was payment of a debt or pecuniary damages exceeding £50, or the recovery of chattels of a value exceeding £50), either party had a right to trial of the action before a jury; in actions not exceeding £500, the right was to trial before a jury of four; in actions in excess of £500, the right was to trial before a jury of twelve unless the parties agreed to a jury of four or to trial without a jury. These rules were revoked on the 1st February, 1925 (by Order in Council of the 8th December, 1924, made under the authority of section 51 of the Judicature Act, 1908), and new rules were substituted. The new rules deprived the parties of their right to require trial by jury in actions based on breach of contract and in actions for the recovery of chattels, and, in effect, limited the right of the parties to require trial before a jury to actions arising exclusively out of tort.

The purpose of the present Bill is, in the first place, to restore to the parties their former rights to require trial before a jury, and, in the second place (by expressly enacting the new provisions as rules of law and not merely as rules of procedure), to avoid the possibility of their being altered except by the Legislature.

This PUBLIC BILL originated in the HOUSE OF REPRESENTATIVES, and, having this day passed as now printed, is transmitted to the LEGISLATIVE COUNCIL for its concurrence.

House of Representatives,

31st July, 1936.

Hon. Mr. Mason.

JUDICATURE AMENDMENT.

ANALYSIS.

Title. 1. Short Title and commencement. 2. Certain actions to be tried by jury.	3. All other actions to be tried by a Judge alone, unless the Court orders trial by jury. 4. Special jury may be ordered in certain cases. 5. Consequential repeal.
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A BILL INTITULED

AN ACT to make Special Provisions with respect to the Trial of Civil Actions in the Supreme Court. Title.

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 Judicature Amendment Act, 1936, and shall be read together with and deemed part of the Judicature Act, 1908 (hereinafter referred to as the principal Act). Short Title and commencement.

(2) This Act shall apply with respect to actions that are set down for trial at any sitting of the Supreme Court that is commenced on or after the first day of July, nineteen hundred and thirty-six. All other actions shall be tried as if this Act had not been passed.

2. (1) This section applies to actions in which the only relief claimed is payment of a debt or pecuniary damages or the recovery of chattels. Certain actions to be tried by jury.

(2) If the debt or damages or the value of the chattels claimed in any action to which this section applies exceeds fifty pounds but does not exceed five hundred pounds, either party may have the action tried before a Judge and a jury of four persons on delivering to the proper officer of the Court, at least eight days before the commencement of the sittings at which the action is to be tried, a notice that he requires the action shall be served on the other party at least four days before the commencement of the sittings. 5 10

(3) If the debt or damages or the value of the chattels claimed in any action to which this section applies exceeds five hundred pounds, the action shall be tried before a Judge and a jury of twelve persons, unless both parties consent in writing to trial before a Judge with a jury of four or without a jury. 15

(4) If the defendant in any action to which this section applies sets up a counterclaim which, pursuant to the *last preceding* subsection, is to be tried before a Judge and a jury of twelve persons, the action shall, on the application of the plaintiff, also be tried before a Judge and a jury of twelve. If no such application is made the action shall, subject to any direction of the Court under the *next succeeding* section, be tried as it would be tried irrespective of the counterclaim. 20 25

All other actions to be tried by a Judge alone, unless the Court orders trial by jury.

3. Except as provided in the *last preceding* section, every action shall be tried before a Judge without a jury:

Provided that if it appears to the Court, either before or at the trial, that the action or any issue therein can be more conveniently tried before a Judge with a jury of four or with a jury of twelve the Court may direct that the action or issue be so tried. 30

Special jury may be ordered in certain cases.

4. Any action or issue that may be tried before a Judge with a jury of twelve or of four as hereinbefore provided may, on the application of either party, at the discretion of the Judge, be tried before a Judge with a special jury of twelve or of four respectively: 35

Provided that, except with the consent of all the parties, no application for trial before a Judge with a special jury shall be granted unless in the opinion of the Judge a knowledge of mercantile or banking transactions is required on the part of the jury. 40

5. The Second Schedule to the principal Act (as amended by an Order in Council made under the authority of section fifty-one of the principal Act on the eighth day of December, nineteen hundred and 5 twenty-four, and published in the *Gazette* of the eleventh day of the same month) is hereby further amended by repealing the rules numbered 254 to 259 in the Code of Civil Procedure in the Supreme Court.

Consequential
repeal.