

JUDICATURE AMENDMENT BILL (NO. 2)

EXPLANATORY NOTE

THE main purpose of this Bill is to enable certain civil proceedings to be tried before a Judge alone, unless one of the parties to the proceedings requires trial before a Judge and a jury.

The Bill also extends the term of office of the Honourable Mr Justice Stanton.

Clause 2: This clause applies to actions in which the only relief claimed is payment of a debt or pecuniary damages or the recovery of chattels. Under the present law (contained in section 2 of the Judicature Amendment Act 1936), where the value of the claim in any such action exceeds £50 and does not exceed £500, the action may be set down for trial before a Judge alone, but either party may require trial before a Judge and a jury of four. If the value exceeds £500 there must always be a trial before a Judge and a jury of twelve, unless both parties consent to a jury of four or to trial without a jury. The effect of *subclauses (2) and (3)* of this clause is that any such action, where the claim exceeds £50, may be set down before a Judge alone, but either party may require trial before a Judge and jury. Where a jury is so required, it will be a jury of four if the claim does not exceed £500, and a jury of twelve (or four with the consent of both parties) if the claim exceeds £500. *Subclause (4)* provides that where a jury is required on the trial of a counterclaim made by the defendant, and the jury will be of a number different from that which may be required for the action, the parties may agree as to the number of the jury for both the action and the counterclaim, or may agree to both being tried without a jury. If they do not agree, and the Court orders that the action and the counterclaim be tried together, the trial will be before a jury of twelve or four, depending on the amount of the claim or counterclaim.

Clause 3 re-enacts section 3 of the Judicature Amendment Act 1936, and provides that every action to which *clause 2* does not apply shall be tried before a Judge alone, unless the Court directs trial before a jury of four or twelve.

Clause 4 repeals the Judicature Amendment Act 1936.

Clause 5 applies the provisions of the Bill to actions set down for trial at any sitting of the Supreme Court commencing on or after 1 February 1956. In other cases, the existing law will apply.

Clause 6 extends the term of office of the Honourable Mr Justice Stanton to 31 October 1957. Under the provisions of the principal Act, he would retire in May 1956.

Hon. Mr Marshall

JUDICATURE AMENDMENT (No. 2)

ANALYSIS

Title.

1. Short Title.

2. Certain actions may be tried by jury.

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

4. Repeal.

5. Application of sections 2 to 4 of this Act.

6. Extension of term of office of Mr Justice Stanton.

A BILL INTITULED

AN ACT to amend the Judicature Act 1908.

Title.

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

1. This Act may be cited as the Judicature Amendment Act (No. 2) 1955, and shall be read together with and deemed part of the Judicature Act 1908 (hereinafter referred to as the principal Act).

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

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 may 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, either party may have the action tried before a Judge and a jury 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 to be tried before a jury. A copy of the notice shall be served on the other party at least four days before the commencement of the sittings. 5

(3) Where any notice is delivered and served pursuant to subsection *two* of this section, the action shall be tried— 10

(a) Before a Judge and a jury of four persons if the debt or damages or the value of the chattels claimed does not exceed five hundred pounds: 15

(b) Before a Judge and a jury of twelve persons if the debt or damages or the value of the chattels claimed exceeds five hundred pounds, unless both parties consent in writing to trial before a Judge with a jury of four. 20

(4) If in any action to which this section applies the defendant sets up a counterclaim, then, unless pursuant to this section the action and the counterclaim are to be tried before a Judge without a jury or with a jury of the same number, the following provisions shall apply: 25

(a) On the application of either party made with the consent in writing of the other party, both the action and the counterclaim shall be tried before a Judge without a jury or with a jury of such number, to be specified in the application, as could otherwise be required for the action or for the counterclaim: 30

(b) If no such application is made, the action and the counterclaim shall, subject to any direction of the Court or a Judge under section *three* of this Act, be tried in accordance with the foregoing provisions of this section: 35

Provided that if the Court or a Judge orders that the action and the counterclaim be tried together, they shall be tried before a Judge with a jury of twelve if the debt or the amount of the damages or the value of the chattels claimed in either the action or the counterclaim exceeds five hundred pounds, or with a jury of four if it does not exceed five hundred pounds. 40 45

3. Except as provided in section *two* of this Act, every action shall be tried before a Judge without a jury:

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

5 Provided that if it appears to the Court at the trial, or to a Judge before 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 or Judge may direct that the action or issue be so tried.

4. The Judicature Amendment Act 1936 is hereby repealed.

Repeal.
1936, No. 22

10 5. Sections *two* to *four* of this Act shall apply with respect to actions that are set down for trial at any sitting of the Supreme Court that commences on or after the *first* day of *February*, nineteen hundred and fifty-six. All other actions shall be tried as if this Act had not been
15 passed.

Application of sections 2 to 4 of this Act.

6. Notwithstanding the provisions of section thirteen of the principal Act, the Honourable Joseph Stanton may continue to hold office as a Judge of the Supreme Court for a period expiring not later than the thirty-first day of
20 October, nineteen hundred and fifty-seven.

Extension of term of office of Mr Justice Stanton.