

MAGISTRATES' COURTS AMENDMENT BILL.

MEMORANDUM.

THIS Bill provides that, if the defendant in an action in a Magistrate's Court desires to defend the action, he must file in the Court a notice of his intention within three days after the service of the summons upon him. If he fails to do so, he will not be allowed to defend without the special leave of the Court, and the action will be disposed of as undefended. Except in the special cases referred to in clause 5 (which substantially re-enacts the existing law), it is not necessary in any such notice to state the nature of the intended defence. To give time for the filing of the notice, clause 6 provides for the service of the summons in all cases seven days before the day of hearing.

The requirement of a notice of intention to defend already exists in the case of actions for penalties under the Industrial Conciliation and Arbitration Amendment Act, 1908. The provisions of that Act which deal with this matter are therefore repealed as being superseded by the general provisions of this Bill.

The Bill also provides a short form of statement of claim in actions for goods sold and delivered. The present practice requires a full statement of all dates and particulars, even though accounts have already been duly rendered by the plaintiff to the defendant. In the case of current accounts this involves a considerable amount of unnecessary trouble. The procedure proposed by the Bill is in accordance with English law. (See *Annual Practice*, 1908, Vol. II, p. 56.)

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Counsel to the Law Drafting Office.

No. 86—4.

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

*Legislative Council,*

*8th December, 1909.*

[AS AMENDED BY THE HOUSE OF REPRESENTATIVES.]

*21st December, 1909.*

*Hon. Dr. Findlay.*

## MAGISTRATES' COURTS AMENDMENT.

### ANALYSIS.

Title.	
1. Short Title.	6. Section 67 of the principal Act amended.
2. Commencement.	7. Section 15 and subsection (7) of section 14 of Industrial Conciliation and Arbitration Amendment Act, 1908, repealed.
3. Notice of intention to defend to be filed by defendant.	8. Particulars required in statement of claim for goods sold and delivered.
4. If no notice filed, defendant cannot defend without leave of Court.	9. Saving.
5. Notice required of the nature of certain defences. Repeal.	Schedule.

### A BILL INTITLED

AN ACT to amend the Magistrates' Courts 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 Magistrates' Courts Amendment Act, 1909, and shall be read together with and deemed part of the Magistrates' Courts Act, 1908 (hereinafter referred to as the principal Act). Short Title.
2. This Act shall come into operation on the first day of April, nineteen hundred and ten. Commencement.
3. (1.) In any action for the recovery of debt, damages, or other moneys, if the defendant desires to defend the action, he shall ~~within three clear days after the service of the summons upon him~~ *not later than three clear days before the day fixed for the hearing of the summons* file in the Court a notice, signed by him or on his behalf, stating that he intends to defend the action. Notice of intention to defend to be filed by defendant.
- (2.) No Court fees shall be payable in respect of the filing of any such notice.
4. If the defendant fails to file in accordance with the *last preceding* section a notice of his intention to defend the action, he shall not be allowed to defend the same except by the leave of the Court granted on special grounds, and on such terms as to costs and otherwise as the Court thinks fit; and the Court may, at the time and place appointed for the hearing or at any continuation or adjournment of the Court or action, if the plaintiff has appeared, give judgment in the action in the same manner as if it was undefended. If no notice filed, defendant cannot defend without leave of Court.
5. (1.) If, in any action for the recovery of debt, damages, or other moneys, the defendant desires to set up a defence of infancy, coverture, the Statute of Limitations, or a discharge in bankruptcy, he shall in the notice aforesaid set out the nature of the defence which he so desires to set up; and if he fails to do so he shall not be permitted, without the leave of the Court granted on special grounds, Notice required of the nature of certain defences.

and on such terms as to costs and otherwise as the Court thinks fit, to set up that defence, and the Court may give judgment in the action in the same manner as if no such defence was available.

Repeal.

Section 67 of the principal Act amended.

(2.) Section seventy-one of the principal Act is hereby repealed.

6. Section sixty-seven of the principal Act is hereby amended by omitting therefrom the words "three clear days in a case within an ordinary jurisdiction, and seven clear days in all other cases," and substituting the words "seven clear days."

*Struck out.*

Section 15 and subsection (7) of section 14 of Industrial Conciliation and Arbitration Amendment Act, 1908, repealed.

Particulars required in statement of claim for goods sold and delivered.

7. Section fifteen and subsection seven of section fourteen of the Industrial Conciliation and Arbitration Amendment Act, 1908 (relating to the procedure in Magistrates' Courts), are hereby repealed.

8. (1.) In an action for the recovery of the price of goods sold and delivered, whereof particulars have been already delivered in writing by the plaintiff to the defendant, whether the claim is for a balance of account or otherwise, it shall be a sufficient compliance with the requirements of section sixty-five of the principal Act, as to the particulars to be contained in the statement of claim, if that statement is in the form set out in the Schedule hereto or in such similar form as is appropriate to the case.

(2.) This section shall extend and apply, with the necessary modifications, to the requirements of section seventy of the principal Act with respect to the particulars to be contained in a statement of counterclaim.

(3.) Where a statement of claim or counterclaim is in the form set out in the Schedule hereto, the Court may, on such terms as to costs and otherwise as the Court thinks fit, order that further particulars shall be given.

Saving.

9. When an action has been commenced in a Magistrate's Court before the commencement of this Act, all subsequent proceedings in that action (including appeals from any judgment or other determination therein) shall be taken in the same manner as if this Act had not been passed.

Schedule.

SCHEDULE.

FORM OF STATEMENT OF CLAIM OR COUNTERCLAIM.

1909. December 31.				
Balance of account for groceries [or, as the case may be, describing the goods] supplied to this date, full particulars of which have been delivered ...	...	...	...	£ s. d. 5 3 6
1909. January 1 to March 31.				
Groceries [or, as the case may be, describing the goods] supplied, full particulars of which have been delivered ...	...	...	...	15 4 4
				20 7 10
1909. February 1.				
Paid ...	...	...	...	3 0 0
				£17 7 10
	Balance due ...	...	...	