

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.  
18th October, 1922.

[AS REPORTED FROM THE STATUTES REVISION COMMITTEE.]  
Legislative Council, 24th October, 1922.

Hon. Mr. Lee.

MAGISTRATES' COURTS AMENDMENT.

ANALYSIS.

<p>Title.</p> <p>1. Short Title.</p> <p>2. Security for costs where plaintiff out of New Zealand.</p> <p>3. Extension of time for filing counterclaim.</p> <p>4. As to expenses of witnesses.</p> <p>5. Statement of defence on payment into Court.</p>	<p>6. As to qualification of persons eligible for appointment as Magistrates.</p> <p>7. Clerk of Court may exercise certain jurisdiction.</p> <p>8. Provision for appointment of Assistant Clerk.</p> <p>9. Provision for appointment of Acting Magistrates.</p>
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A BILL INTITULED

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:—

5 1. This Act may be cited as the Magistrates' Courts Amendment Act, 1922, and shall be read together with and deemed part of the Magistrates' Courts Act, 1908 (hereinafter referred to as the principal Act).

Short Title.

10 2. If the sole plaintiff or all the plaintiffs in an action are resident out of New Zealand, the Court, on the application of the defendant, may order security to be given for the costs of the action, and may order proceedings in the action to be stayed until such security has been given.

Security for costs where plaintiff out of New Zealand.

15 3. Section seventy of the principal Act is hereby amended by adding to subsection four the following proviso:—

Extension of time for filing counterclaim.

“Provided that the defendant may, by leave of the Court, and on such terms as the Court thinks fit, file a counterclaim at any time after the expiration of the time limited by this section and serve a copy of such counterclaim at any time before the hearing.”

20 4. Section eighty-one of the principal Act is hereby amended by inserting, after the word “summons,” the words “and every other person giving evidence at the hearing”; and by adding the following proviso to the section:—

As to expenses of witnesses.

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

Statement of defence  
on payment into  
Court.

5. A defendant paying a sum of money into Court pursuant to section one hundred and three of the principal Act, may file a statement of defence in respect of the cause of action in satisfaction of which such payment is made, and in such case the following provisions shall apply :—

- (a.) The plaintiff may accept the money paid into Court in satisfaction of his claim (together with the costs incurred by the plaintiff up to the time of payment), notwithstanding the defendant's denial of his liability. 5
- (b.) If the plaintiff does not accept the sum so paid in in satisfaction of the cause of action in respect of which the payment into Court has been made, but proceeds with the action in respect of the cause of action or any part thereof, the money shall remain in Court and be subject to the order of the Court, and shall not be paid out of Court except in pursuance of an order. 10
- (c.) If the plaintiff proceeds with the action in respect of the cause of action or any part thereof, and recovers less than the amount paid into Court, the amount paid in shall be applied, so far as is necessary, in satisfaction of the plaintiff's claim and costs, and the balance (if any) shall, under an order of the Court in that behalf, be paid to the defendant. 20
- (d.) If the defendant succeeds in respect of the cause of action, the whole amount shall under a like order be repaid to him. 25

As to qualification  
of persons eligible  
for appointment  
as Magistrates.

6. Section two of the Magistrates' Courts Amendment Act, 1913, is hereby amended by omitting paragraph (b) and substituting the following :— 25

“(b.) He has been continuously employed as an officer of the Justice Department for a period of at least ten years, and during such period employed for not less than five years as a Clerk of a Magistrate's Court, and is a barrister or solicitor.” 30

Clerk of Court may  
exercise certain  
jurisdiction.

7. The Clerk of any Court may, if authorized so to do by Warrant under the hand of the Governor-General, exercise all or any of the jurisdiction of the Court under the following provisions, namely :—

- (a.) Section ninety-five of the principal Act (relating to procedure when plaintiff fails to appear at hearing) : 35
- (b.) Section ninety-six of the principal Act, in so far as it relates to judgment for a liquidated demand :
- (c.) Section one hundred and four of the principal Act (relating to costs of plaintiff where defendant pays money into Court) : 40
- (d.) Section one hundred and six of the principal Act (relating to costs of defendant where plaintiff discontinues action) :
- (e.) Section four of the Magistrates' Courts Amendment Act, 1909 (relating to procedure where defendant fails to file notice of intention to defend an action). 45

Provision for  
appointment of  
Assistant Clerk.

8. (1.) There may from time to time be appointed in respect of any Court an officer of the Public Service to be called the Assistant Clerk of the Court. The Assistant Clerk shall have the same powers and privileges and be subject to the same provisions and penalties as the Clerk of the Court. 50

(2.) Section two of the principal Act is hereby amended by adding to the definition of the term "Clerk" the words "and includes an Assistant Clerk."

5 9. (1.) It shall be lawful for the Governor-General, at any time during the illness or absence of any Magistrate, or for any other temporary purpose, by Warrant under his hand, to 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  
10 lawfully appointed in that behalf.

Provision for  
appointment of  
Acting Magistrates.

(2.) No person shall be appointed as a Magistrate under this section unless he is eligible for appointment as a Magistrate pursuant to section two of the Magistrates' Courts Amendment Act, 1913, save that a person otherwise qualified who has attained the age of sixty-five  
15 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 twelve months in the aggregate.