

MAGISTRATES' COURTS AMENDMENT BILL

EXPLANATORY NOTE

By section 76 of the principal Act a new procedure was laid down for appeals from a Magistrate's Court to the Supreme Court. The effect of the section is that in an appeal on a question of fact, unless the parties agree to the Magistrate's notes of evidence being produced, the appeal takes the form of a retrial of the action, involving the bringing of the witnesses before the Supreme Court and the establishing by the plaintiff of his case for the second time.

Clause 2 of the Bill restores the procedure followed, on an appeal on a question of fact, before the 1947 Act was passed. Such an appeal will, under the proposed new section, be heard on the Magistrate's notes of evidence unless the Supreme Court, in its discretion, decides to rehear the whole or part of the evidence. The proposed new clause is identical with clause 76 of the Magistrates' Courts Bill as originally introduced in 1947.

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,

17th August, 1950.

[AS AMENDED BY THE LEGISLATIVE COUNCIL]

31st August, 1950

Words inserted by the Legislative Council are shown with rule down side, figures in black.

Hon. Mr. Webb

MAGISTRATES' COURTS AMENDMENT

ANALYSIS

Title.

1. Short Title and commencement.
2. Procedure on appeal.

A BILL INTITULED

AN ACT to Amend the Magistrates' Courts Act, 1947. Title.

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

1. (1) This Act may be cited as the Magistrates' Courts Amendment Act, 1950, and shall be read together with and deemed part of the Magistrates' Courts Act, 1947 (hereinafter referred to as the principal Act). Short Title and commencement. 1947, No. 16

10 (2) This Act shall come into force on the first day of December, nineteen hundred and fifty.

2. (1) The principal Act is hereby amended by repealing section seventy-six, and substituting the
15 following section:—

“ 76. (1) All appeals shall be by way of rehearing. Procedure on appeal.

“(2) Where any question of fact is involved in any appeal, the evidence taken in the Magistrate’s Court bearing on the question shall, subject to any special order, be brought before the Supreme Court as follows:—

“(a) As to any evidence given orally, by the production of a copy of the Magistrate’s note or such other materials as the Supreme Court may deem expedient: 5

“(b) As to any evidence taken by affidavit and as to any exhibits, by the production of the affidavits and such of the exhibits as may have been forwarded by the Registrar of the Court appealed from and by the production by the parties to the appeal of such exhibits as are in their custody: 10 15

“Provided that the Supreme Court may in its discretion rehear the whole or any part of the evidence.

“(3) The Supreme Court shall have all the powers and duties as to amendment and otherwise of the Magistrate’s Court, and shall have full discretionary power to receive further evidence upon questions of fact, either by oral evidence or by affidavit or by evidence taken before a Commissioner or Examiner.” 20

New

Saving.

(2) Notwithstanding anything contained in this section, where any notice of motion on appeal is lodged with the Registrar of the Supreme Court, pursuant to the principal Act, before the date of the commencement of this Act, and the appeal is not finally determined before that date, the provisions of the principal Act shall continue to apply to that appeal in all respects as if this section had not been passed. 25 30