

627

Mr. Holmes.

RESIDENT MAGISTRATES ACT 1867 AMENDMENT.

ANALYSIS.

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| <p>Title.</p> <p>1. Short Title.</p> <p>2. Jurisdiction of Resident Magistrates' Courts extended to cases of false imprisonment, malicious prosecution, defamation, seduction, bequests, partnerships, and trusts.</p> <p>3. Court can order partnership assets to be realized, and appoint a Receiver.</p> <p>4. Assets of partnership to vest in Receiver.</p> <p>5. Receiver can demand, sue for, and recover partnership assets in the name of "the Receiver of the assets of the firm of, &c."</p> <p>6. Receiver shall pay debts of partnership, and costs of realizing assets.</p> <p>7. Balance of assets paid into Court shall be paid out as Court orders.</p> <p>8. Receiver not to pay disputed debts of or claims against partnership.</p> <p>9. Court may order moneys paid in by Receiver not to be paid out for three months where there are disputed claims against partnership.</p> <p>10. If disputed claims, &c., against partnership be not enforced by judgment and execution within time limited for detention of moneys, Court to order moneys to be distributed.</p> <p>11. Jurisdiction given to Resident Magistrate's Court to determine cases of contract by married women to bind their separate estate.</p> <p>12. Minors over sixteen years may sue and be sued on contracts beneficial to them.</p> | <p>13. Defendant may set off any claim in his own right against plaintiff's claim.</p> <p>14. Service of claim by set-off.</p> <p>15. Court may adjourn case where notice of claim by set-off not long enough.</p> <p>16. Court to give judgment for excess of defendant's set-off over plaintiff's claim. Court shall award costs as it shall deem just.</p> <p>17. Judgment on claims for specific chattels by way of set-off to be same as if claims were made by plaintiff.</p> <p>18. When absent defendant can be sued in Resident Magistrate's Court.</p> <p>19. Service of summons, &c., in case of absent defendant.</p> <p>20. Court not to determine any cause, &c., where defendant is absent, unless upon proof of agent being appointed to accept service.</p> <p>21. Resident Magistrate's Court may award costs to the parties in any cause.</p> <p>22. Summonses may be served by the parties or their agents.</p> <p>23. Court not to charge for service of summonses unless served by its officers, &c.</p> <p>24. Court can award reasonable costs of service in all cases.</p> <p>25. One summons to witnesses can include several names.</p> |
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A BILL INTITULED

AN ACT to amend "The Resident Magistrates Act, 1867."

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. The Short Title of this Act is "The Resident Magistrates Act 1867 Amendment Act, 1882," and shall be read with, and construed as part of, "The Resident Magistrates Act 1867" (hereinafter called "the said Act").

Short Title.

10 2. Notwithstanding anything contained in the said Act, the Resident Magistrate's Court having extended jurisdiction in any district shall have jurisdiction to entertain, hear, and determine any cause, matter, or proceeding brought in such Court, whereby or wherein the plaintiff claims to recover from any other person or any corporation—

Jurisdiction of Resident Magistrates' Courts extended to cases of false imprisonment, malicious prosecution, defamation, seduction, bequests, partnerships, and trusts.

15 (a.) Any pecuniary compensation not exceeding the sum of *fifty* pounds sterling, for false imprisonment, or illegal arrest, or malicious prosecution, or for libel or slander, or for seduction; or

- (b.) Any personal property not exceeding in value or amount the sum of *fifty* pounds sterling, bequeathed or devised by or under any will or codicil to any will, or given, granted, or limited by or under any deed of settlement; or
- (c.) Any personal property not exceeding in amount or value *fifty* pounds sterling, as being due or payable to, or recoverable by, the plaintiff, or to which he is entitled as a *cestui que* trust under any trust, whether expressed or implied; or 5
- (d.) Any sum of money or property not exceeding in amount or value *fifty* pounds sterling, as being the plaintiff's share of, or interest in, the assets of any partnership firm which has been dissolved, and of which the assets consist of personal property only, and do not exceed in value or amount the sum of two hundred pounds sterling. 10
3. The Court having jurisdiction to hear and determine claims to partnership assets may and can order the partnership assets to be realized and converted into money, and by the same or any other order or orders may and can appoint such person (hereinafter called "the Receiver"), and at such rate of remuneration, to be specified in any of the said orders, as the Court shall deem fit, to take possession of all the partnership assets and property, and of all books, deeds, documents, and papers relating to the partnership. 15
4. All the assets of the partnership, including personal property, rights, privileges, claims, and demands to or in respect of personal property, shall, from the date of the order appointing a Receiver, vest absolutely in the person so appointed Receiver. 20
5. The said Receiver shall, in the name of "the Receiver of the assets of the firm of [*name of firm*], in the Resident Magistrate's Court of [*name of district*]," have full power and authority to ask, demand, sue for, collect, get in, receive, recover, and take possession of all the said assets, and enforce all the said rights, privileges, and claims of the partnership, from and against all persons whomsoever, including the members of the partnership, and to realize and convert into money the said assets: Provided that the said Receiver shall exercise the said powers and authorities subject to, and in accordance with, any orders or directions of the said Court that from time to time may be made or given. 25
6. The said Receiver shall pay and discharge out of the moneys arising from the realization of the said assets all the lawful debts and liabilities of the partnership firm, and all the costs, charges, and expenses in connection with the taking possession, getting in, recovery, sale, realization, and conversion into money of the said assets or relating thereto, including the personal costs, charges, and actual expenses of the said Receiver, and shall pay the balance of such moneys into the Court. 30
7. The said balance so paid into Court shall be paid out of Court in such manner, at such time or times, to such persons, and for such purposes as the Court shall have ordered or shall from time to time order or direct. 40
8. The said Receiver shall not pay or discharge any alleged liabilities of or claims against the partnership that any member of the partnership declares or that the Receiver deems not to be lawful, and shall report to the Court, when paying into Court the said balance, what, if any, outstanding disputed liabilities or claims exist against the partnership. 45
9. The said Court, if it shall deem it just, may and can order that the said balance or any part thereof paid into Court by the said Receiver shall remain in Court for a period not exceeding *three* months, to abide the event of any actions or suits against the partnership firm by such disputed creditors of or claimants against such firm. 50
- Court can order partnership assets to be realized, and appoint a Receiver.
- Assets of partnership to vest in Receiver.
- Receiver can demand, sue for, and recover partnership assets in the name of "the Receiver of the assets of the firm of, &c."
- Receiver shall pay debts of partnership, and costs of realizing assets.
- Balance of assets paid into Court shall be paid out as Court orders.
- Receiver not to pay disputed debts of or claims against partnership.
- Court may order moneys paid in by Receiver not to be paid out for three months where there are disputed claims against partnership.

638

10. If the aforesaid liabilities and claims be not sued upon and enforced by judgment and execution within the time limited by the Court for detaining the said balance, the said Court shall, upon the application of any person entitled to receive the said balance, or a part thereof, order that the moneys so detained shall be paid out of Court.

If disputed claims, &c., against partnership be not enforced by judgment and execution within time limited for detention of moneys, Court to order moneys to be distributed.

11. Any married woman who makes any contract or agreement in writing, binding or purporting to bind her separate estate, may sue or be sued upon such contract or agreement in any Resident Magistrate's Court as if she were a *feme sole*; and, if judgment be given against such married woman upon such contract or agreement, such judgment may be enforced against such married woman and her separate estate as fully and to all intents and purposes as if she were a *feme sole*.

Jurisdiction given to Resident Magistrate's Court to determine cases of contract by married women to bind their separate estate.

12. Any minor above the age of sixteen years may sue and be sued in any Resident Magistrate's Court upon any contract or agreement which such Court shall deem to have been or to be beneficial to such minor, and judgment may be given and such proceedings may be had and taken to enforce such judgment as if the minor were of the full age of twenty-one years.

Minors over sixteen years may sue and be sued on contracts beneficial to them.

13. Every defendant in any Resident Magistrate's Court may and can set off by way of defence any claim or demand whatsoever that such defendant may have in his own right against the plaintiff, and which such Court would have jurisdiction to hear and determine if the same were a claim or demand by a plaintiff in such Court.

Defendant may set off any claim in his own right against plaintiff's claim.

14. A copy of such claim or demand, with full particulars thereof, shall be served by the defendant upon the plaintiff in the manner and time provided for service of notice of set-off by section sixty-four of the said Act.

Service of claim by set-off.

15. If at the hearing such Court be of opinion that the plaintiff has not had sufficient time to prepare his defence to such claim or demand by way of set-off, such Court shall, upon the application of the plaintiff, adjourn the hearing of the case to such day and upon such terms and conditions as the Court shall think fit.

Court may adjourn case where notice of claim by set-off not long enough.

16. In any case in which such Court shall adjudge that the amount the defendant is entitled to be paid by the plaintiff under the defendant's claim by way of set-off exceeds the amount that the plaintiff is entitled under his claim to be paid by the defendant, the Court shall give judgment in favour of the defendant for the amount of such excess, and shall award or apportion the costs in such manner as the Court shall deem just.

Court to give judgment for excess of defendant's set-off over plaintiff's claim. Court shall award costs as it shall deem just.

17. Where a claim or demand by way of set-off is for specific goods or a specific chattel, the Court shall give such judgment upon such claim or demand as if the same were a claim or demand by a plaintiff for specific goods or a specific chattel.

Judgment on claims for specific chattels by way of set-off to be same as if claims were made by plaintiff.

18. Any defendant absent from the colony, who has appointed by deed an agent in the colony to act for the defendant, and to sue and accept legal process and be sued on behalf of such defendant, may be sued in any Resident Magistrate's Court of the district in which the cause of action has arisen wholly or in some material part, or in which the said agent resides.

When absent defendant can be sued in Resident Magistrate's Court.

19. Service of summons or other processes upon such agent personally shall be deemed and taken to be legal service upon such absent defendant.

Service of summons, &c., in case of absent defendant.

20. Such Court shall not determine any cause, matter, or proceeding against a defendant absent from the colony unless and until the Court is fully satisfied that such defendant has appointed by deed an agent in the colony to accept service of legal process and to sue and be sued on behalf of such defendant, and that such defendant has been duly summoned by such summons having been served upon such agent in person.

Court not to determine any cause, &c., where defendant is absent, unless upon proof of agent being appointed to accept service.

Resident Magistrate's Court may award costs to the parties in any cause.

21. Every Resident Magistrate's Court may and shall, in any cause, matter, or proceeding in the Court, award to the plaintiff or defendant such costs and expenses, including the costs and expenses of the parties and their witnesses, as to the Court shall seem just.

Summonses may be served by the parties or their agents.

22. Every summons, notice, or legal process issued out of any Resident Magistrate's Court, whether to the parties to a suit or to witnesses, may be served by the party at whose request such summons, notice, or legal process is issued or by his agent. 5

Court not to charge for service of summonses unless served by its officers, &c.

23. When a summons, notice, or legal process is not served by the officers or bailiffs of such Court, the Court or its officers shall not charge for the service of such summons, notice, or legal process. 10

Court can award reasonable costs of service in all cases.

24. Such Court may in giving judgment award to either party reasonable costs of service of summonses, legal processes, or notices in connection with the cause, matter, or proceeding upon which such judgment is given, whether such service has been effected by the officers of the Court or the parties to the cause. 15

One summons to witnesses can include several names.

25. Any party to a suit, matter, or proceeding in such Court may include in one summons to witnesses the names of as many witnesses as he shall think fit.