

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,
24th August, 1882.*

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 eighteen years may sue and be sued on contracts beneficial to them.</p> <p>13. Defendant may set off any liquidated claim in his own right against plaintiff's claim.</p> <p>14. Service of claim of set-off.</p> | <p>15. 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>16. Judgment on claims for specific chattels by way of set-off to be same as if claims were made by plaintiff.</p> <p>17. When absent defendant can be sued in Resident Magistrate's Court.</p> <p>18. Service of summons, &c., in case of absent defendant.</p> <p>19. Court not to determine any cause, &c., where defendant is absent, unless upon proof of agent being appointed to accept service.</p> <p>20. Resident Magistrate's Court may award costs to the parties in any cause.</p> <p>21. Summonses may be served by the parties or their agents.</p> <p>22. Court not to charge for service of summonses unless served by its officers, &c.</p> <p>23. Court can award reasonable costs of service in all cases.</p> <p>24. One summons to witnesses can include several names.</p> <p>25. Swearing of affidavits.</p> <p>26. Application and deposition on oath.</p> <p>27. Attachment of debts.</p> <p>28. Discontinuance of action.</p> <p>29. Sections 17, 18, and 19 of "Resident Magistrates Act, 1868," deemed unrepealed.</p> <p>30. Examination of judgment debtor.</p> <p>31. Party to suit may appear personally, or by counsel, or by agent.</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 amount of the civil jurisdiction of such Court, 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 amount of the civil jurisdiction of such Court, bequeathed or devised by or under any will or codicil to any will of which probate has been granted, or given, granted, or limited by or under any deed of settlement; or
- (c.) Any personal property not exceeding in amount or value the amount of the civil jurisdiction of such Court, 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 the amount of the civil jurisdiction of such Court, 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

Court can order partnership assets to be realized, and appoint a Receiver.

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 20

Assets of partnership to vest in Receiver.

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. 25

Receiver can demand, sue for, and recover partnership assets in the name of "the Receiver of the assets of the firm of, &c."

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. 30

Receiver shall pay debts of partnership, and costs of realizing assets.

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. 35 40

Balance of assets paid into Court shall be paid out as Court orders.

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.

Receiver not to pay disputed debts of or claims against partnership.

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

Court may order moneys paid in by Receiver not to be paid out for three months where there

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 50

or suits against the partnership firm by such disputed creditors of or claimants against such firm.

are disputed claims against partnership.

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 eighteen 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 or in any case of tort, and judgment may be given in any such suit 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 eighteen 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 liquidated 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 liquidated 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 of set-off.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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, where such service has been effected by the parties to the cause. 15

One summons to witnesses can include several names.

24. It shall be lawful for the officer issuing a summons to witnesses, if he shall think fit, to include in such summons the names of as many witnesses as he shall think fit. 15

Swearing of affidavits.

25. All affidavits to be used in the Courts held under the said Act shall and may be sworn before any solicitor of the Supreme Court of New Zealand, or before any Justice of the Peace. 20

Application and deposition on oath.

26. The application and deposition on oath required by section thirty-four of the said Act shall be deemed sufficient if made by the agent or clerk of the plaintiff. 20

Attachment of debts.

27. Every Resident Magistrate shall have power, upon such proceeding as he may from time to time prescribe, to order the attachment of debts not exceeding in amount the sum of *fifty* pounds. 25

Discontinuance of action.

28. Any plaintiff may at any time before the hearing discontinue his action either as to the whole or any part thereof, by filing in the office of the Court wherein such cause is to be heard a memorandum of such discontinuance, of which a copy shall be served on the defendant or his solicitor a reasonable time before the hearing; and the plaintiff shall pay the defendant all costs up to such discontinuance, which shall not be a defence in any subsequent proceedings in respect of the same cause of action. 30

Sections 17, 18, and 19 of "Resident Magistrates Act, 1868," deemed unrepealed. Examination of judgment debtor.

29. Sections seventeen, eighteen, and nineteen of "The Resident Magistrates Act, 1868," shall be deemed to be unrepealed by section three of "The Imprisonment for Debt Abolition Act, 1874," or otherwise. 35

30. Whenever in any case under "The Imprisonment for Debt Abolition Act, 1874," or under any Act amending the same, or under any Act relating to the abolition of imprisonment for debt, a judgment creditor in any Resident Magistrate's Court desires to examine the judgment debtor as to his means or ability to pay his judgment debt, and such debtor resides or is staying at a distance of more than twenty miles from the Court in which such judgment was obtained, then such judgment creditor may summon the said judgment debtor to the Resident Magistrate's Court nearest to where such judgment debtor is residing or staying, to be examined touching his means or ability to pay such debt, and the Magistrate presiding at such Court shall cause and permit such debtor to be examined by the said creditor, or by his agent lawfully authorized for that purpose, and shall, at the request of such creditor or his agent, reduce such examination to writing, and shall compel such debtor to answer all questions whatsoever that may pertain or be relevant to such examination, and may and shall exercise all the powers, authorities, and functions in respect of such examination, and of making 40 45 50

orders and of dealing with regard to such debtor or his imprisonment or property that are exercisable by any Magistrate or Justice under the provisions of the said Act.

5 31. Clause thirty of "The Resident Magistrates Act, 1867," is hereby repealed, and the following substituted in lieu thereof:—

Party to suit may appear personally, or by counsel, or by agent.

10 It shall be lawful for the party to any suit or proceeding to be taken under "The Resident Magistrates Act, 1867," or any Act amending the same, to appear and act personally, or by a barrister or solicitor of the Supreme Court, or by an agent specially authorized in writing; but such agent shall not be entitled to receive any fee or reward for so appearing or acting.