

Resident Magistrates' Evidence.

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A BILL INTITULED

AN ACT to facilitate the taking of Evidence in Resident Magistrates' Courts and certain other Courts. Title.

WHEREAS a failure of justice is often caused by reason of parties and witnesses in actions in Resident Magistrates' Courts being resident at a distance from the place where the hearing of such actions is had and by reason of such parties and witnesses been unwilling or unable to incur the expense of attending to give evidence at such hearing Preamble.

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

1. The Short Title of this Act shall be "The Resident Magistrates' Evidence Act 1869." Short Title.

2. Whenever a civil action shall have been commenced in a Resident Magistrate's Court and any person whether a party to such action or not shall be resident more than twenty miles from the Court House where the trial of the action is appointed to be had or shall be about to go beyond such distance and to remain beyond such distance at the hearing of such action it shall be lawful for the party desiring to use the evidence of himself or of such person at the hearing to give notice of such desire to the Resident Magistrate or Clerk of the Resident Magistrate for the district in which it is intended Where witness more than twenty miles from Court party may apply for examination.

that the examination hereinafter mentioned shall take place and he shall specify in such notice the name or names of the person or persons intended to be examined.

3. Immediately upon receiving such notice the Resident Magistrate or Clerk receiving the same shall appoint a time and place for such examination and shall if the Summons shall not have issued out of his Court transmit a copy of such notice with a memorandum of the time and place appointed for the taking of such examination to the Resident Magistrate or Clerk of the Resident Magistrate out of whose Court the summons has issued and such last-mentioned Magistrate or Clerk shall forthwith give notice of the intention to hold such examination (whether he shall have received notice thereof from another Resident Magistrate or Clerk or shall have appointed such time and place himself) to the party against whom such evidence is intended to be used and shall in such notice state the time and place for holding such examination and the Resident Magistrate receiving such notice shall if the place appointed for the examination be out of his district forthwith after service on such party last-mentioned transmit to the Resident Magistrate having jurisdiction in such place a copy of the last-mentioned notice with an affidavit of service thereof. Summonses to witnesses to attend such examination may issue and the procedure on such examination shall be the same in all respects as if such examination were the hearing of an action except as herein provided.

4. At the time and place appointed for the examination the Resident Magistrate having jurisdiction in such place or any other Resident Magistrate or two Justices sitting in his stead shall receive the evidence given on oath in open Court by the person or persons named in the original notice. The party against whom such evidence is to be used may cross-examine every such person and may if he think fit call witnesses to contradict such evidence who may be cross-examined in like manner. All evidence given at such examination shall be reduced into writing and signed by the Resident Magistrate or Justices or by two of the Justices taking the same and by the persons giving such evidence respectively. Either party may appear at such examination in person or by his solicitor or if the Resident Magistrate or Justices holding the same last-named think fit by his agent appointed for that purpose. If the party applying for such examination shall not appear or produce his witnesses for examination at the appointed time and place or at any adjournment he shall be deemed to have abandoned his intention to give such evidence but the examination may be adjourned to enable a party or witness to appear. If the opposite party shall not appear the Resident Magistrate or Justices shall proceed *ex parte*. Such examination may be adjourned from time to time at the discretion of the Resident Magistrate or Justices holding the same and every adjourned examination shall be conducted as if it were the original examination but it shall not be necessary for the Resident Magistrate or Justices attending at an adjourned examination to be the same as those who attended at the original examination or any other adjournment thereof.

5. The evidence so reduced into writing and signed as aforesaid together with the documents if any produced in evidence at such examinations or notice of such non-appearance of the party applying for the same or copies of such documents certified by the Resident Magistrate or one of the Justices transmitting the same shall be transmitted to the Resident Magistrate out of whose Court the summons shall have issued if not taken in such Court. Either party shall be entitled to a copy of all or any part of such evidence and of all or any part of such documents or copies on payment at the rate of fourpence for every folio of seventy-two words on application at the Court where the hearing of the action is to take place.

Time and place for examination to be appointed and notices to be given.

Procedure at examination.

Transmission of evidence to place of hearing.

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6. Upon the hearing of the action and upon the rehearing (if any) if it shall appear that the party against whom such evidence is to be used had due notice of the intention to hold such examination as aforesaid or has waived his right to such notice by appearing at such examination or otherwise such evidence may be read and used by either party without proof of any signature thereto as if the same had been given at such hearing and such certified copies of documents as aforesaid be admissible in evidence without further proof in the same manner as if the same were the originals of which they purport to be copies. Provided always that if the Resident Magistrate or Justices sitting in his stead at such hearing shall be satisfied that any person who has given such evidence is within twenty miles of the Court where the hearing takes place and not incapacitated by illness or has removed beyond such distance with intent to avoid giving evidence at the hearing he or they may refuse to allow the party by whom or in whose behalf such evidence was given to make use of the same but the opposite party may use it if he think fit. Provided also that if the party applying for such examination shall have failed to appear in manner aforesaid or if such Resident Magistrate or Justices shall be satisfied that such evidence is immaterial or that such examination was obtained merely for the purpose of delay or vexation he or they may whatever the event of the hearing order that the party who applied for such examination shall pay to the other party all or any part of his costs of attending such examination and of calling witnesses thereat and his costs of appearing by solicitor (if any) not exceeding in the last case. Provided also that the costs of such examination may in all cases be dealt with by such last-named Resident Magistrate or Justices as if the same were incurred in and about the hearing of the said action and that the same allowances for witnesses may be made as if such examination as aforesaid had been the hearing of an action.

Use of evidence at hearing.

Magistrate may refuse to receive the evidence in certain cases.

Costs of examination in discretion of Magistrate.

7. When a time and place shall have been appointed for such examination as aforesaid the hearing of the action shall if need be and if the Resident Magistrate who ought to hear the action is not satisfied that such examination has been obtained merely for the purpose of delay or vexation be adjourned from time to time to enable the Resident Magistrate before whom such examination is appointed to take place to transmit the written evidence or notice of non-appearance in manner aforesaid.

Adjournment of hearing after examination applied for.

8. Every person giving evidence at any such examination shall be deemed to have given his evidence in such action and in every indictment and information it shall be sufficient to allege that such examination was held under the provisions of this Act and proof of the summons having been issued in such action and of the evidence of any person having been given at such examination shall without proof of any of the notices herein mentioned be sufficient evidence of the authority of the Resident Magistrate or Justices holding such examination to hold the same and of his or their having so held it and the signature of every Resident Magistrate and of all Justices to such written evidence shall be judicially noticed by every Court without any proof thereof.

Evidence given at examination deemed to have been given in the action. Indictment and evidence.

9. The fees mentioned in the Schedule hereto shall be paid for the several proceedings under this Act and the same shall be disposed of in the same manner as if they were fees received in the Court where they are paid in the course of the business of such Court under the Acts now affecting the fees of Resident Magistrate's Courts.

Fees to be paid.

10. In this Act the term "Resident Magistrate" shall be construed to mean a Resident Magistrate and also two or more Justices sitting in the place of a Resident Magistrate and also a quorum of Justices sitting in Petty Sessions. The term "Resident Magistrate's

Interpretation.

Court" shall include a Court of Petty Session The term "civil action" shall include proceedings under "The Resident Magistrates Act 1867" for recovery of possession of tenements.

Schedule.

SCHEDULE.

	Claim under £5.	Claim more than £5 and not more than £10.	Claim more than £10 and not more than £20.	Claim more than £20 and not more than £50.	Where the claim exceeds £50.
On every application for an examination ...	s. 1	s. 2	s. 3	s. 4	s. 5
On every examination other than an adjourned examination ...	3	4	6	8	12
On every adjournment of an examination on application of a party ...	1	2	3	4	5
For every witness sworn at an examination after the first three on each side ...	1	1	2	2	2
For service on a party of notice of intended examination within two miles from the Court whence the same shall be served ...	3	3	3	3	3
For every extra mile one way ...	1	1	1	1	1
For every affidavit of service of such notice ...	1	1	1	1	1
For every summons to a witness to attend such examination and for service thereof to include one name ...	2	2	2	2	2
For service of summons to a <i>witness</i> the same charges as for service of notice on a party.					