



ANALYSIS

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1958, No. 40

An Act to amend the Judicature Act 1908

[25 September 1958]

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

1. Short Title—This Act may be cited as the Judicature Amendment Act 1958, and shall be read together with and deemed part of the Judicature Act 1908 (hereinafter referred to as the principal Act).

2. New sections inserted—The principal Act is hereby amended by inserting in Part III, after section ninety-four, the following sections:

“94A. Recovery of payments made under mistake of law—
(1) Subject to the provisions of this section, where relief in respect of any payment that has been made under mistake is sought in any Court, whether in an action or other proceeding or by way of defence, set off, counterclaim, or otherwise, and that relief could be granted if the mistake was wholly one

of fact, that relief shall not be denied by reason only that the mistake is one of law whether or not it is in any degree also one of fact.

“(2) Nothing in this section shall enable relief to be given in respect of any payment made at a time when the law requires or allows, or is commonly understood to require or allow, the payment to be made or enforced, by reason only that the law is subsequently changed or shown not to have been as it was commonly understood to be at the time of the payment.

“94B. **Payments made under mistake of law or fact not always recoverable**—Relief, whether under section ninety-four A of this Act or in equity or otherwise, in respect of any payment made under mistake, whether of law or of fact, shall be denied wholly or in part if the person from whom relief is sought received the payment in good faith and has so altered his position in reliance on the validity of the payment that in the opinion of the Court, having regard to all possible implications in respect of other persons, it is inequitable to grant relief, or to grant relief in full, as the case may be.”
