



ANALYSIS

<p>Title</p> <p>1. Short Title and commencement</p> <p>2. Extending general civil jurisdiction of Magistrates' Courts</p> <p>3. Extending jurisdiction in actions for recovery of land</p> <p>4. Transfer to Supreme Court of proceedings within jurisdiction</p> <p>5. Amount of wages, etc., for which minor may sue</p>	<p>6. Equity and good conscience</p> <p>7. Removal of judgment or order of Supreme Court into Magistrate's Court</p> <p>8. Right of appeal</p> <p>9. Security for appeal</p> <p>10. Garnishee proceedings</p> <p>11. Absconding debtors may be held to bail</p> <p>12. Consequential repeals</p>
--	--

1971, No. 56

An Act to amend the Magistrates' Courts Act 1947

[12 November 1971]

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 and commencement—(1) This Act may be cited as the Magistrates' Courts Amendment Act 1971, and shall be read together with and deemed part of the Magistrates' Courts Act 1947 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the 1st day of January 1972.

2. Extending general civil jurisdiction of Magistrates' Courts—The principal Act (as amended by section 7 (1) of the Decimal Currency Act 1964) is hereby amended—

(a) By omitting from section 29 (as amended by section 2 (a) of the Magistrates' Courts Amendment Act 1961) the words "two thousand dollars" wherever they occur, and substituting in each case the expression "\$3,000":

- (b) By omitting from paragraph (b) of section 30 (as amended by section 2 (b) of the Magistrates' Courts Amendment Act 1961) the words "two thousand dollars", and substituting the expression "\$3,000":
- (c) By omitting from section 33 (as amended by section 2 (c) of the Magistrates' Courts Amendment Act 1961) the words "two thousand dollars" wherever they occur, and substituting in each case the expression "\$3,000":
- (d) By omitting from section 34 (as amended by section 2 (d) of the Magistrates' Courts Amendment Act 1961) the words "two thousand dollars" wherever they occur, and substituting in each case the expression "\$3,000":
- (e) By omitting from section 36 (as amended by section 2 (e) of the Magistrates' Courts Amendment Act 1961) the words "two thousand dollars" wherever they occur, and substituting in each case the expression "\$3,000":
- (f) By omitting from section 111 (as amended by section 3 of the Magistrates' Courts Amendment Act 1963) the words "two thousand dollars", and substituting the expression "\$3,000".

3. Extending jurisdiction in actions for recovery of land—

Section 31 of the principal Act (as amended by section 3 of the Magistrates' Courts Amendment Act 1961 and section 7 (1) of the Decimal Currency Act 1964) is hereby amended—

- (a) By omitting from subsection (1) the words "eleven hundred dollars", and substituting the expression "\$2,000":
- (b) By omitting from subsection (1) the words "fourteen thousand dollars", and substituting the expression "\$25,000".

4. Transfer to Supreme Court of proceedings within jurisdiction—Section 43 of the principal Act (as amended by section 4 of the Magistrates' Courts Amendment Act 1961 and section 7 (1) of the Decimal Currency Act 1964) is hereby amended by omitting from subsection (1), and also from subsection (2), the words "four hundred dollars", and substituting in each case the expression "\$600".

5. Amount of wages, etc., for which minor may sue—Section 50 of the principal Act (as amended by section 5 of the Magistrates' Courts Amendment Act 1961 and section 7 (1) of the Decimal Currency Act 1964) is hereby amended by omitting from subsection (1) the words "two thousand dollars", and substituting the expression "\$3,000".

6. Equity and good conscience—Section 59 of the principal Act (as amended by section 7 (1) of the Decimal Currency Act 1964) is hereby amended by omitting the words "one hundred dollars", and substituting the expression "\$200".

7. Removal of judgment or order of Supreme Court into Magistrate's Court—The principal Act is hereby amended by repealing section 68, and substituting the following section:

"68. (1) In any action or proceeding in the Supreme Court in which execution may be issued upon a judgment, order, or decree of the Supreme Court for the payment of a sum of money, a certificate under the seal of the Supreme Court setting forth the particulars of the judgment, order, or decree may be obtained from the Supreme Court and filed in a Magistrate's Court.

"(2) Upon the filing of the certificate all proceedings may be taken and enforced in and by that Magistrate's Court for—

"(a) The amount recoverable under the judgment, order, or decree, and any interest thereon, if the Magistrate's Court has jurisdiction to that amount; or

"(b) The unpaid balance of the amount recoverable under the judgment, order, or decree, and any such interest, if the Magistrate's Court has jurisdiction to the amount of that balance; or

"(c) A part of the amount recoverable under the judgment, order, or decree, and any such interest, or of the unpaid balance of that amount, and any such interest, if—

"(i) The Magistrate's Court has jurisdiction in respect of the amount of that part; and

"(ii) The judgment creditor has abandoned any amount in excess of the amount of that part,—

and for any fees and costs paid or allowed in connection with the obtaining and filing of the certificate, as fully and

effectually as, if the judgment, order, or decree had been a judgment of the Magistrate's Court signed and entered up at the time of filing the certificate.

“(3) After the issue of the certificate no further proceedings shall be had in the Supreme Court upon such judgment, order, or decree.

“(4) Save as aforesaid, no action shall be brought in a Magistrate's Court on a judgment of the Supreme Court.”

8. Right of appeal—(1) Section 71 of the principal Act (as amended by section 6 of the Magistrates' Courts Amendment Act 1961 and section 7 (1) of the Decimal Currency Act 1964) is hereby amended by omitting from paragraph (a), and also from paragraph (b), the words “one hundred dollars”, and substituting in each case the expression “\$200”.

(2) Section 71 (as so amended) is hereby further amended by adding the following proviso:

“Provided further that, if the Magistrate's Court refuses to grant leave to appeal, the Supreme Court may grant special leave to appeal.”

9. Security for appeal—Section 73 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsection:

“(2) Except where the appellant is granted legal aid under the Legal Aid Act 1969, the appellant shall give security to the satisfaction of the Registrar of the Court appealed from to abide the event of the appeal. The security shall be for such amount as may be prescribed in the rules.”

10. Garnishee proceedings—Section 96 of the principal Act is hereby amended by adding, as subsections (2) to (4), the following subsections:

“(2) For the purposes of this section a sum which stands to the credit of a judgment debtor with any person (including a bank or savings bank) and which is on deposit with that person or is held by him in a current or other account (including a deposit account) shall be deemed to be a sum due or accruing to that judgment debtor and, subject to the rules, shall be attachable accordingly, notwithstanding that any of the following conditions applicable to the deposit or account, that is to say—

“(a) Any condition that notice is required before any money is withdrawn:

“(b) Any condition that a demand for payment must be made:

“(c) Any condition that a personal application must be made before any money is withdrawn:

“(d) Any other condition (other than a condition that a deposit book, receipt for money deposited, or other like document must be produced before any money is withdrawn)—

has not been satisfied.

“(3) The rules may require any person who has in his possession or knows the whereabouts of any deposit book, receipt for money deposited, or other like document relating to the deposit or account of any judgment debtor to deliver that book, receipt, or document to the Court or to disclose its whereabouts to the Court, as the case may require.

“(4) In this section the term ‘savings bank’ includes the Post Office Savings Bank, a trustee savings bank established under the Trustee Savings Banks Act 1948, and a private savings bank established under the Private Savings Banks Act 1964.”

11. Absconding debtors may be held to bail—(1) The principal Act is hereby amended by repealing section 109, and substituting the following section:

“109. (1) Where it appears to the satisfaction of any Magistrate by affidavit of the plaintiff or his authorised agent that the plaintiff has a good cause of action against a defendant for a sum within the jurisdiction of a Magistrate’s Court for which action has been commenced under this Act, and that there is probable cause (the grounds of which shall be stated in the affidavit) for believing that the defendant is about to leave New Zealand with the intention of evading the payment of that sum, the Magistrate may issue a writ of arrest under his hand returnable immediately; and, if payment of that sum is not made before execution of the writ, the defendant shall be brought before a Magistrate who, upon investigation of the case, may either discharge the defendant or hold him to bail, with or without sureties at the discretion of the Magistrate, for any sum not exceeding the amount sworn to in the affidavit, with costs:

“Provided that the Magistrate may, before issuing the writ, require the person asking for the issue thereof to lodge in the

Court any sum of money not exceeding \$500, or to give security therefor to the satisfaction of the Court, to abide the decision of the Court under paragraph (b) of section 110 of this Act.

“(2) In default of bail being so given, or the amount with costs being deposited with the Registrar, as hereinafter provided, the Magistrate may order the defendant to be detained in some penal institution or lock-up, and to be brought from there to a Magistrate's Court at a time to be stated in the order, being not more than 4 clear days from the date of the order, unless he sooner gives the prescribed security or makes the required deposit.

“(3) A defendant against whom a writ has issued for any amount may deposit that amount with the officer executing the writ or the Registrar, in lieu of bail, together with such amount for costs as may be shown on the writ; and the sum so deposited shall be paid, applied, and disposed of according to the final judgment of the Court.

“(4) A Magistrate before whom a defendant is brought under the authority of any writ issued as aforesaid may, with the consent in writing of the defendant, summarily hear and finally adjudicate upon the claim of the plaintiff, or may fix the time mentioned in the summons issued in the action as the time for hearing the claim by the Court or, in the case of a default action, order that the action be set down for hearing and fix the time thereof.

“(5) Where a Magistrate is not available through absence, illness, or any other cause, a Registrar may exercise any of the powers conferred on a Magistrate by subsections (1) and (2) of this section, other than the power to discharge the defendant.”

(2) Section 110 of the principal Act (as amended by section 7 (1) of the Decimal Currency Act 1964) is hereby consequentially amended by omitting from paragraph (b) the words “forty dollars”, and substituting the expression “\$500”.

12. Consequential repeals—The Magistrates' Courts Amendment Act 1961 and section 3 of the Magistrates' Courts Amendment Act 1963 are hereby consequentially repealed.