



DISTRICT COURTS BILL, 1856.

As passed by the House of Representatives, and transmitted to the Legislative Council.

IN THE

YEAR OF THE REIGN OF HER MAJESTY, QUEEN
VICTORIA,

No.

ANALYSIS.

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Title. *AN ACT to establish District Courts within the several Provinces of New Zealand.*

Preamble.

WHEREAS an Ordinance was enacted by the Governor of New Zealand, with the advice and consent of the Legislative Council thereof, Session 7, No. 20, intituled "An Ordinance for establishing Courts of Sessions of the Peace." And whereas another Ordinance was passed by the said Legislative Council, Session III. No. 8, intituled "An Ordinance to establish Courts of Requests for the more easy and speedy recovery of small debts." And whereas another Ordinance was passed by the said Legislative Council, Session I. No. 4, intituled "An Ordinance for instituting and regulating Courts of General and Quarter Sessions in the Colony of New Zealand, and to authorise the holding of Petty Sessions within the same and for defining their respective powers, and determining the places at which the same shall be holden ; and for repealing within the Colony of New Zealand certain Acts of the Governor and Council of New South Wales adopted and now in force within the said Colony of New Zealand. And whereas it is expedient that the said recited Ordinances should be repealed, and that further provision should be made for the more easy and speedy administration of justice in civil and criminal cases :

BE IT ENACTED by the General Assembly of New Zealand as follows :

Recited Ordinances repealed.

1. The said recited Ordinances are hereby repealed, except in so far as any other Laws or Ordinances are repealed by the said recited Ordinances.

Governor may appoint and annul districts for the purposes of this Act on the recommendation of Superintendent.

2. On the recommendation of the Superintendent and Provincial Council of any of the Provinces of New Zealand it shall be lawful for the Governor from time to time by Proclamation published in the "Government Gazette" to appoint that such Province or any part or parts thereof shall be a district or districts for the purposes of this Act, and in like manner and on the like recommendation to alter the boundaries of any such district, or to revoke and annul the appointment of any such district.

Superintendent thereupon may establish District Courts, consisting of Recorder, Resident Magistrate, and Justices of the Peace.

3. In every such district there shall be forthwith established by proclamation issued by the Superintendent in the "Government Gazette" of the Province wherein such district shall be situated, a District Court consisting of a Recorder, who shall preside at the sittings of the Court ; of the Resident Magistrate (if any) having jurisdiction within the district where such Court shall be holden, and of the Justices of the Peace resident within the District.

In absence of Recorder Superintendent may appoint person to act as Recorder.

4. In case of the unavoidable absence from illness or other substantial reason of the Recorder, it shall be lawful for the Superintendent to appoint any other person to be Recorder during such absence as may to him seem fit ; and every such appointment shall be forthwith reported to the Governor who may allow or disallow the same.

Appointment of Recorder.

5. The Recorder of every such Court shall be appointed and removeable by the Governor, and shall hold office during good behaviour. Provided always that no person shall be so appointed who shall not previously have been recommended for such appointment by the Superintendent of the Province.

Removal of Recorder.

6. In case of misbehaviour on the part of the said Recorder the Superintendent of the Province wherein such Recorder shall hold office shall forthwith refer the question of the removal of the said Recorder to the decision of the Governor.

7. The offices of Recorder and Resident Magistrate may be held conjointly by one and the same person. Recorder may be Resident Magistrate.
8. The same person may be appointed as Recorder to two or more District Courts. One Recorder may reside at two or more Courts.
9. No Recorder of any such District Court shall practise as a barrister-at-law, conveyancer, attorney, or solicitor, within the Province wherein such District Court shall be established during the time of his holding such appointment of Recorder, under a penalty of two hundred pounds for each offence to be recovered by action in the Supreme Court by any person who shall sue for the same. No Recorder or Resident Magistrate may practise as Barrister-at-law, Conveyancer, Attorney, or Solicitor.
10. There shall be for every such Court a clerk, and a bailiff or bailiffs who shall be appointed and removeable by the Recorder. Appointment of Clerks and Bailiffs.
11. The Superintendent and Provincial Council of every Province wherein such Courts shall be established shall settle by permanent Act the salary to be paid to the Recorder or Recorders, and every Act altering such salary shall be reserved for the assent of the Governor. Provincial Councils may settle salaries.
12. Such Courts respectively may from time to time settle the tables of fees to be paid by suitors, and of expenses of witnesses and jurymen, and may frame forms of procedure and rules, and may from time to time alter such tables, forms of procedure, and rules. Courts to fix tables of fees and expenses, and to make rules.
13. All such tables of fees, rules and forms of procedure shall be forthwith submitted to the Chief Justice of the Supreme Court of New Zealand, who may allow or disallow or alter the same. Provided that all such tables, rules, and forms shall be in force until the decision of the Chief Justice shall be received by the Court. Such tables of fees, rules, and forms of procedure shall be submitted to the Chief Justice.
14. Such tables of fees and expenses and all forms of procedure and rules from time to time fixed and established as aforesaid shall be published in the Government Gazette of the Province wherein the Court in relation to which the same shall be so fixed and established shall be held: and such tables of fees and expenses shall be posted in a conspicuous part of the Court to which the same shall apply. Tables of fees, expenses, and rules, to be published, &c.
15. All fines and fees accruing to any such District Court shall be paid into the Treasury of the Province wherein the same shall respectively arise for the use of the Province and support of the Government thereof. Fines and Fees to be paid to Provinces.
16. The said Court shall have jurisdiction over all cases of claim or demand of a civil nature, whether legal or equitable in which the amount claimed or demanded shall not exceed one hundred pounds, except as hereinafter provided. Jurisdiction of Courts.
17. The said Court shall not have cognizance of any action in which the title to real estate, the validity of any devise, bequest or limitation under any will or settlement may be disputed, or for any malicious prosecution, or for any libel or slander, or for criminal conversation, or for seduction, or breach of promise of marriage. Restrictions to jurisdiction.
18. It shall not be lawful for any plaintiff to divide any cause of action for the purpose of bringing two or more suits in any of the said District Courts; but any plaintiff having a cause of action for more than one hundred pounds. Division of causes of action.

for which an action might be brought if not for more than one hundred pounds, may abandon the excess, and thereupon the said plaintiff shall, on proving his case, recover to an amount not exceeding one hundred pounds, and the judgment of the Court shall be in full discharge of all demands in respect of such cause of action.

Minor may sue for wages, &c.

19. It shall be lawful for any person under the age of twenty-one years to prosecute a suit for wages or piece work, or for work as a servant, in any such Court in the same manner as if such person were of full age.

Criminal jurisdiction of Court.

20. The said Courts shall have power and authority to enquire of and to hear and determine all felonies and indictable misdemeanors committed within their respective districts, except treason, murder, or other capital felony, or any felony which, when committed by a person not previously convicted of felony is punishable by penal servitude for the term of life, and except any of the following offences (that is to say):

1. Misprision of treason.
2. Offences against the Queen's title, prerogative, person or government.
3. Offences subject to the penalties of premunire.
4. Blasphemy and offences against religion.
5. Administering or taking unlawful oaths.
6. Perjury and subornation of perjury.
7. Making or suborning any other person to make a false oath, affirmation, or declaration, punishable as perjury or as a misdemeanor.
8. Forgery.
9. Unlawfully or maliciously setting fire to crops of corn, grain, or pulse, or to any part of a wood, coppice, or plantation of trees, gorse, or furze.
10. Bigamy, and offences against the laws relating to marriage.
11. Abduction of women and girls.
12. Endeavouring to conceal the birth of a child.
13. Offences against any provisions of the laws relating to bankrupts and insolvents.
14. Composing, printing, or publishing, blasphemous, seditious, or defamatory libels.
15. Bribery.
16. Unlawful combinations, and conspiracies, except conspiracies or combinations to commit any offence which such Courts have jurisdiction to try when committed by one person.
17. Stealing or fraudulent injuring, or destroying records or documents belonging to any Court of law or Equity or relating to any proceeding therein.
18. Stealing or fraudulently destroying or concealing wills or testamentary papers, or any document or written instrument, being, or containing evidence of the title to any real estate, or any interest in lands, tenements, or hereditaments.

Power to refer cases to Supreme Court.

21. If it shall appear to any such Court that any crime or misdemeanour which may at any time be brought before it, ought, from its nature or magnitude, or any legal difficulty which it may present, to be tried before the Supreme Court, it shall be lawful for such Court to leave the case for trial before the Supreme Court, and to take recognizances with or without sureties, for the appearance of the parties and witnesses thereat, which recognizances, shall as soon as may be, be returned to the Supreme Court.

22. The Superintendent of each Province wherein such Courts shall be established shall, by Proclamation in the "Government Gazette" of such Province, fix the days and place of sitting of each such Court. Superintendent to fix days and place of sitting.
23. All the Justices of the Peace resident within the district in which any such Court shall be held, shall be summoned to attend the sittings of each such Court, in alphabetical rotation. Justices of the Peace to be summoned in rotation.
24. Not less than four Justices of the Peace shall be summoned to attend each sitting of such Court; and the summons requiring their attendance shall be served at least seven days before the day of sitting. Not less than four Justices to attend.
25. Any Justice of the Peace failing to attend the sittings of any such Court when duly summoned, shall forfeit and pay a sum not exceeding twenty pounds, to be recovered in the same manner as other fines imposed by the said Court, unless he shall show such excuse to the Court for his non-attendance as shall to the Court appear sufficient. Penalty for non-attendance.
26. The Recorder, and two such Justices of the Peace as aforesaid, shall form a quorum, all cases cognizable by the said Court to be decided by the majority of votes, the Recorder to have an original vote, and in case of an equality of votes to have a casting vote. Quorum.
27. Such Recorder and Justices of the Peace as aforesaid shall be sole Judges in all actions brought in the said Courts, and shall determine all questions as well of fact as of law, unless a jury be summoned as hereinafter mentioned. Sole Judges.
28. All criminal cases which may from time to time be brought before the Court shall be tried by a jury in the manner hereinafter directed. Jury in Criminal cases.
29. In all civil actions it shall be lawful for the plaintiff or defendant to require a jury to be summoned to try the said action. Jury in Civil cases.
30. The party requiring a jury to be summoned shall give to the Clerk of the Court or leave at his office such notice as shall be directed by the rules to be framed for regulating the practice of the Court as hereinbefore mentioned; and the Clerk shall thereupon summon twelve jurors chosen by ballot and residing within the district wherein such Court shall be held. Notice to be given when a Jury is required.
31. Whenever there are any jury trials, four jurymen shall be impannelled and sworn to give their verdicts in the causes which shall be brought before them in the said Court, and either of the parties to any such cause shall be entitled to his lawful challenge against any of the said jurors in the following manner: If twelve jurors shall be in attendance each party may challenge four; if ten each party may challenge three; if eight each party may challenge two; if six each party may challenge one; if eleven, nine, or seven, each party having challenged an equal number, the clerk of the Court may then strike off the supernumerary juror remaining. Impannelling of Jury.
32. In every trial where the jury shall have remained six hours in deliberation, if all of them shall not agree as to the verdict to be given, the decision of three out of four in number of them shall be taken and entered as the verdict of all. Decision of Jury.
33. Any jurymen failing to attend when summoned shall forfeit and pay a sum not exceeding two pounds and in default of payment shall be liable to Penalty for non-attendance of Juror.

be imprisoned for a term not exceeding fourteen days, unless the said jurymen shall show such excuse for his non-attendance as shall to the Court appear sufficient.

Parties may obtain summons.

34. Either of the parties to any suit or proceeding under this Court may obtain at the office of the Clerk of the Court summonses to witnesses with or without a clause requiring the production of books, deeds, papers, and writings in their possession or control.

Penalty for non-attendance of witnesses.

35. Every person on whom any such summons shall have been served, either personally or in such other manner as shall be directed by the Rules of the Court, who shall refuse or neglect, without sufficient cause, to appear, or to produce any books, papers, or writings required by such summons to be produced; and also every person present in Court who shall be required to give evidence and shall refuse to do so, shall forfeit and pay such fine, not exceeding twenty pounds, as the Court shall impose upon him, and in default of payment shall be liable to be imprisoned for a term not exceeding one calendar month.

Service of summons.

36. Any summons which shall be required to be served out of the district of the Court from which the same shall have issued, may be served by the bailiff of any Court holden under this Act in any part of New Zealand wherein the party summoned shall be residing at the time of the issuing of such summons; and such service shall be as valid as if the same had been made by the bailiff of the Court out of which such summons shall have issued, within the jurisdiction of the Court for which he acts.

Proof of service.

37. Service of any summons of the Court may be proved by affidavit purporting to be sworn by the bailiff who shall have served such summons before any Justice of the Peace; and such affidavit shall be forthwith forwarded by such bailiff to the Clerk of the District Court from which such summons shall have issued.

Who may be evidence.

38. On the hearing or trial of any action or any other proceeding under this Act, the parties thereto, their wives, and all other persons may be examined, either on behalf of the plaintiff or defendant, upon oath or solemn affirmation in those cases in which persons are by law allowed to make affirmation instead of taking an oath to be administered by the proper officer of the Court.

Plaintiffs recovering in the Supreme Court sums not exceeding £100 in actions over which the District Courts have jurisdiction to have no costs unless upon Judge's certificate.

39. If after a District Court shall be established in any district under the authority of this Act, any action may be commenced in the Supreme Court for any cause of action arising within such district for which proceedings might have been taken in any Court holden under this Act, and a verdict be found for the plaintiff for a sum less than one hundred pounds, the said plaintiff shall have judgment to recover such sum only, and no costs; and if a verdict shall not be found for the plaintiff the defendant shall be entitled to his costs as between attorney and client, unless in either case the judge who shall try the cause shall certify on the back of the record that the action was fit to be brought in the Supreme Court.

Appeal to Supreme Court.

40. When the sum claimed or awarded shall exceed twenty pounds, or where the fine imposed shall exceed twenty pounds, or where the imprisonment adjudged shall exceed four months, the party aggrieved may appeal to the Supreme Court, and the appeal shall be made as follows: The plaintiff and defendant, or the prosecutor and the party against whom such fine or imprisonment may have been adjudged, shall each state his own case in writing to the Recorder; and it shall be the duty of the Recorder to settle the same according

to the facts of the case as proved at the hearing, and to forward the same, together with the case as stated in writing by the plaintiff and the defendant, without delay to the Registrar of the Supreme Court having jurisdiction over the Province where the trial took place; and the Judge of the said Supreme Court shall finally decide the matter at issue within fourteen days after the case shall have been laid before him, either by affirming or disaffirming the judgment of the District Court; and in all cases where such appeal shall be demanded, notice thereof shall be given in writing to the Recorder within three days after the judgment appealed from shall have been delivered.

41. Before any such appeal shall be allowed in civil cases, if the plaintiff be the party appealing he shall give security for such sum to meet the costs of such appeal as may seem reasonable to the Court; and if the defendant be the party appealing, he shall give security for the amount awarded, and also for such sum to meet the costs of such appeal as may seem reasonable to the Court: all such securities to be approved by the Recorder and taken by the Clerk of the said District Court.

Appeal in Civil cases

42. Before any such appeal shall be allowed in criminal cases, the party appealing shall enter into such recognizances with or without sureties to abide the event of such appeal as shall seem reasonable to the Court.

Appeal in Criminal cases.

43. No proceedings shall be allowed to be removed into any superior Court by *certiorari* or otherwise than by such appeal, and no proceedings be quashed for want of form.

No proceedings to be removed except by such appeal, nor to be quashed for want of form.

44. On the decision of each case the Court may award to the successful party such costs as to them shall seem reasonable and just.

Court may award costs.

45. The said Court may make orders concerning the time or times and by what instalments any debt or damage or costs, for which judgment shall be obtained shall be paid; and all monies shall be paid into Court, unless the said Court shall otherwise direct.

Instalments.

46. All penalties and sums of money which shall be obtained to be paid by the said Court, and all sums of money which any person shall be bound to pay under any recognizances taken before the said Court, in case of non-payment thereof either immediately or within such period as such Court may appoint, may be levied, with the costs of all proceedings rendered necessary by such non-payment, by distress and sale of the goods and chattels of the person liable to pay the same.

Levies by Distress.

47. Every writ of execution and every warrant of commitment shall be signed by the Recorder of the said Court, and shall be directed to the Bailiff of the said Court except as hereinafter directed.

Writs and Warrants to be signed by Recorder or Resident Magistrate.

48. In case the party against whom such writ or execution or warrant of commitment shall issue shall not have any or sufficient goods and chattels within the jurisdiction of such Court, or shall not be found within the same, it shall be the duty of the said Clerk to transmit the said writ of execution or warrant of commitment, together with an affidavit of the said Bailiff, stating that he cannot find any or sufficient goods to satisfy the said writ; and if any, then stating the amount that he has levied under the said writ, or that he cannot find the person named in the said warrant within his district, and that he has good reason for believing that goods may be found belonging to the said party against whom such writ of execution has issued; or that the

Proviso for endorsement.

person against whom such warrant of commitment has issued is then within a particular district, to the Clerk of the District Court of such other district, who shall then procure from the Recorder of such other District where such goods and chattels or person may be supposed to be, an endorsement to be written on the said writ of execution, or warrant of commitment, as the case may be.

Proviso for execution of endorsed Writ or Warrant.

49. On such endorsement being made, the same shall be given to the Bailiff of the said District Court from which such endorsement shall have issued, who shall execute the endorsed writ or warrant in the same manner as if the original writ of execution or warrant of imprisonment had been directed to him in the first instance.

Disposal of proceeds of levy.

50. Every Bailiff having such writ or warrant to execute, shall as soon as the same shall have been executed, return the same to the Clerk of the District Court from which the same shall have issued, together with an affidavit setting forth the particulars of every levy made by him under the said writ, and the amount realised by him thereunder; and the said Bailiff shall thereupon pay over to the said Clerk the amount so levied, whereupon the said Clerk shall pay thereout to the said Bailiff his reasonable charges on making such levy or levies, and shall pay to the execution creditor his debt and costs, so far as such amount levied shall extend, and shall pay the residue, if any to the party against whom such writ shall have issued.

Imprisonment of debtor.

51. When sufficient goods shall not have been found to satisfy such execution creditor, and the amount remaining due shall exceed the sum of twenty pounds, on a return to that effect made by the Bailiff to the Clerk of the District Court, verified by the affidavit of such Bailiff, which affidavit shall state whether any and what sum has been realised by him under the writ, the Recorder of the District Court, shall and may commit the person against whom such writ shall have issued to the custody of the Sheriff of the Province wherein such district shall be situate, until the said writ shall be satisfied by payment of the amount directed to be levied thereunder; or, in default thereof, until the person against whom the same shall have issued, shall have remained in gaol for a period not exceeding four calendar months.

Directions to Sheriff.

52. On receipt of any such warrant of commitment, together with the person against whom the same shall have issued, the Sheriff shall receive such person into his custody, and shall forthwith lodge him in any gaol or house of correction of the Province, and there keep him for such time as in any such warrant shall be specified.

Imprisonment not to satisfy debt.

53. No imprisonment under this Act shall in anywise operate as a satisfaction or extinguishment of the debt or other cause of action on which a judgment has been obtained, or deprive the plaintiff of any right to take out execution against the goods and chattels of the defendant in the same manner as if such imprisonment had not taken place.

Want of form not to invalidate distress.

54. No distress to be made under the authority of this Act shall be deemed unlawful on account of any defect or want of form in the proceedings relating thereto.

Power to demand security from absconding debtor.

55. In every action in the said Court where the debt or damage claimed shall exceed the sum of twenty pounds, if the claimant, on applying for a summons, or at any time previous to the hearing of the case, shall make an affidavit before the Recorder of the said Court, or the Resident Magistrate of the District wherein the said Court shall be holden, or in case of the absence of the said Recorder and Resident Magistrate, then before two Justices of the

Peace residing within the said district, stating that, to the best of his knowledge and belief, the person against whom his claim is made is about to leave the district over which the said Court shall have jurisdiction, and shall in such affidavit show reasonable cause for such belief, it shall be lawful for the said Recorder or Resident Magistrate or Justices of the Peace to order the person against whom the said claim shall be made to enter into such recognizances, either with or without sureties, to abide the judgment of the Court at its next sitting as to them shall appear reasonable and just, and in default of his entering into such recognizances, to commit him by warrant under his or their hands to any common gaol or house of correction until the next sitting of the Court.

56. No action shall be sustained against any Recorder or any Justice of the Peace, or any of the officers of the said Court for anything done by them under the provisions of this Act without alleging and proving that the same was done maliciously and without reasonable and probable cause; and if the plaintiff in such action shall fail to make such proof as aforesaid, he shall pay to the defendant three times the costs incurred in defending such action.

Protection to officers.

57. If any person shall in any manner be guilty of any wilful contempt in the face of the said District Court it shall be lawful for such Court by warrant under the hand of the Recorder to commit the person so offending to any common gaol or house of correction for any term not exceeding two calendar months, or to impose on any such person a fine not exceeding twenty pounds.

Power of committal for contempt.

58. Whenever a District Court shall be established in any district under this Act, the 6th clause of the Resident Magistrates' Courts Ordinance (10th Vict., Sess. 7, No. 16) shall cease to be in force within such district: and whereas by the above mentioned Ordinance the Resident Magistrate has power to hear and determine in a summary way every case of any claim or demand where the debt or damage claimed shall not exceed twenty pounds, in every case where the debt or damage awarded shall exceed five pounds, if either party be dissatisfied with the decision of the Resident Magistrate, such party may appeal from such decision to the nearest District Court within the Province.

Proviso for appeal from Resident Magistrates' Court.

59. Notice of such appeal shall be given by the party appealing, in writing, to the Resident Magistrate within three days after his decision, and before any such appeal shall be allowed if the plaintiff be the party appealing he shall give security for such sum to meet the costs of such appeal as may seem reasonable to the Court; and if the defendant be the party appealing he shall give security for the amount awarded, and also for such sum to meet the costs of such appeal as may seem reasonable to the Court.

Notice of such appeal.

60. Nothing contained in this Act shall be construed to disturb or in any way alter the jurisdiction of the said Resident Magistrates in Native cases, or cases between Natives and Europeans: and in no such case shall there be any appeal.

Native jurisdiction of Resident Magistrates to remain as at present.

61. This Act shall come into operation on the thirtieth day of September, one thousand eight hundred and fifty-six.

Time of coming into operation.

62. In the interpretation of this Act the term "Governor" shall include the Officer administering the Government.

Interpretation.

Short title.

63. This Act shall be intituled and may be cited as "The District Courts' Act 1856."

CHARLES CLIFFORD,
Speaker.

Passed the House of Representatives this
twenty-seventh day of June, one thousand
eight hundred and fifty-six.

F. E. CAMPBELL,
Clerk of House of Representatives.

I certify that this amended Bill is in accordance
with the Bill as reported.

HUGH CARLETON,
Chairman of Committees.