

## DECLARATORY JUDGMENTS BILL.

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### MEMORANDUM.

THIS Bill confers upon the Supreme Court more extensive powers of making declaratory judgments or orders—that is to say, binding declarations of rights, and authoritative interpretations of statutes, regulations, deeds, contracts, and other written documents. At present, except in special cases, there is no means by which a person intending to act under a statute, for example, can obtain by way of anticipation an authoritative judgment from any Court as to the true meaning of a doubtful provision in the statute. The Courts will not interpret a statute until some case actually arises in which it is necessary to enforce or apply it. As the law now stands, any person proposing to lend money to a company or local authority, and doubtful whether such a loan is within the powers of the company or local authority, cannot get a decision on the point until he has actually lent the money and seeks to enforce his contract, when the Court may hold that the loan was *ultra vires* and the money not recoverable.

Under this Bill he can, by application to the Supreme Court, obtain a declaration, binding as between him and the company or local authority, as to the validity or invalidity of the proposed loan.

The Bill provides two alternative methods by which such a declaration may be obtained:—

- (1.) By way of an ordinary action in the Supreme Court; and
- (2.) Summarily, by way of an originating summons—a cheaper and easier procedure applicable to simpler cases.

The first method is already in force in England: Rules of the Supreme Court, Order 25, Rule 5. The second is an extension of provisions already in force in New Zealand with respect to certain matters, such as the interpretation of trusts and wills: Supreme Court Code Rules. Compare the Rules of the Supreme Court of Judicature in England, Order 54A, Rule 1.

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*This PUBLIC BILL originated in the LEGISLATIVE COUNCIL, and, having this day passed as now printed, is transmitted to the HOUSE OF REPRESENTATIVES for its concurrence.*

*Legislative Council,  
17th July, 1908.*

*Hon. Dr. Findlay.*

## DECLARATORY JUDGMENTS.

### ANALYSIS.

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### A BILL INTITULED

AN ACT to enable the Supreme Court to give Declaratory Judgments or Orders. Title.

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

1. This Act may be cited as the Declaratory Judgments Act, 1908. Short Title.

2. No action or proceeding in the Supreme Court shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the said Court may make binding declarations of right, whether any consequential relief is or could be claimed or not. Declaratory judgments.  
Comp. R.S.C. Eng. O. 25, r. 5

3. Where any person has done or desires to do any act the validity, legality, or effect of which depends on the construction or validity of any statute, or any regulation made by the Governor in Council under statutory authority, or any by-law made by a local authority, or any deed, will, or document of title, or any agreement made or evidenced by writing, or any memorandum or articles of association of any company or body corporate, or any instrument prescribing the powers of any company or body corporate; or Declaratory orders on originating summons.  
Comp. R.S.C. Eng., O. 54A, r. 1

Where any person claims to have acquired any right under any such statute, regulation, by-law, deed, will, document of title, agreement, memorandum, articles, or instrument, or to be in any other manner interested in the construction or validity thereof—

Such person may apply to the Supreme Court by originating summons returnable in the said Court for a declaratory order determining any question as to the construction or validity of such statute, regulation, by-law, deed, will, document of title, agreement, memorandum, articles, or instrument, or of any part thereof.

Affect of declaratory orders.

4. Any declaration so made on any such originating summons shall have the same effect as the like declaration in a judgment in an action, and shall be binding on the person making the application and on all persons on whom the summons has been served, and on all other persons who would have been bound by the said declaration if the proceedings wherein the declaration is made had been an action. 5

Service of originating summons.

5. The Supreme Court or a Judge thereof may direct that any such originating summons shall be served on such persons as the said Court or Judge thinks fit, and such direction may be given at the time when the summons is issued or subsequently. 10

Such summons to be subject to Rules of Court.

6. Subject to the provisions of this Act and to any Rules of Court hereafter made in accordance with the Judicature Act, 1908, any such originating summons shall be subject to the Rules of Court which are for the time being in force with respect to an originating summons taken out by trustees for the interpretation of a deed or instrument creating a trust. 15

Removal of summons into Court of Appeal. 1882, No. 30, secs. 13, 14

7. Any such originating summons may be removed into the Court of Appeal in the same manner as the matters specified in section sixty-four of the Judicature Act, 1908, are removable, and the provisions of sections sixty-four and sixty-five of the said Act shall apply to any originating summons so removed accordingly. 20

Appeal to Court of Appeal.

8. An appeal shall lie to the Court of Appeal from any judgment or order given or made in pursuance of this Act, in the same manner as in the case of a final judgment of the Supreme Court. 25

Judgment or order in anticipation of any act or event.

9. Any declaratory judgment or order given or made in pursuance of this Act may be given or made by way of anticipation with respect to any act not yet done or any event which has not yet happened, and in such case the said judgment or order shall have the same binding effect with respect to that future act or event, and the rights or liabilities to arise therefrom, as if that act or event had already been done or had already happened before the said judgment or order was given or made. 30

Jurisdiction discretionary.

10. The jurisdiction hereby conferred upon the Supreme Court to give or make a declaratory judgment or order shall be discretionary, and the said Court may, on any grounds which it deems sufficient, refuse to give or make any such judgment or order. 35

Declaratory judgments or orders in cases where Court cannot give relief.

11. The jurisdiction hereby conferred upon the Supreme Court to give or make any declaratory judgment or order shall not be excluded by the fact that the said Court has no power to give relief in the matter to which the judgment or order relates, or that such matter would, independently of this Act, be within the exclusive jurisdiction of any other Court. 40

Decisions of Court of Appeal to bind all other Courts.

12. Any decision of the Court of Appeal under this Act shall be binding as a precedent in all other Courts in New Zealand. 45