

JUDICIARY.

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A BILL INTITULED

Title.	AN ACT to alter the Constitution of the Court of Appeal and of the Supreme Court, and to abolish District Courts. BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—	5
Short Title.	1. (1.) This Act may be cited as the Judiciary Act, 1908, and shall be read together with and deemed part of the Judicature Act, 1908 (hereinafter referred to as the principal Act).	
Commencement.	(2.) This Act shall come into operation on the first day of 10 January, nineteen hundred and <i>nine</i> .	

PART I.

COURT OF APPEAL.

Constitution of Court of Appeal.	2. On and after the commencement of this Act the Court of Appeal of New Zealand as established by the principal Act shall cease to consist of the Judges of the Supreme Court, and shall consist of three Judges, who shall be appointed to the office by the Governor in the name and on behalf of His Majesty, and who shall not be also Judges of the Supreme Court.	15
Chief Justice of New Zealand.	3. One of the three Judges to be so appointed shall hold the office and bear the title of Chief Justice of New Zealand, and shall be the President of the Court of Appeal.	20
Justices of Appeal.	4. The Chief Justice of New Zealand and the other Judges of the Court of Appeal shall be styled Justices of Appeal.	
Court of Appeal hereby constituted to be same Court as Court of Appeal under principal Act.	5. The Court of Appeal as constituted under this Act shall for all purposes be deemed to be the same Court as the Court of Appeal established by the principal Act.	25
Chief Justice of Supreme Court to be Chief Justice of New Zealand.	6. The Judge who on the commencement of this Act holds the office of Chief Justice of the Supreme Court shall thereupon cease to be a Judge of the Supreme Court, and shall thereupon become and be (without further appointment than this Act) the Chief Justice of New Zealand and a Justice of Appeal, and shall be deemed to have been duly appointed as such by the Governor on the commencement of this Act.	30
Abolition of office of Chief Justice of Supreme Court.	7. (1.) The office of Chief Justice of the Supreme Court as established by the principal Act is hereby abolished.	35
Powers and duties to be conferred and imposed on Chief Justice of New Zealand.	(2.) All powers, functions, and duties conferred or imposed by the principal Act or by any other Act on the Chief Justice of the Supreme Court (including the powers and jurisdiction conferred upon him by the Land for Settlements Act, 1908, but not including his judicial functions as a Judge of the Supreme Court) are hereby conferred or imposed upon the Chief Justice of New Zealand appointed by or in pursuance of this Act; and all references in the principal Act or in any other Act to the Chief Justice of the Supreme Court shall be read and construed accordingly as being references to the Chief Justice of New Zealand.	40
	(3.) In the case of the absence of the said Chief Justice from New Zealand, or his inability to perform the functions of his office,	45

all the duties and powers of the Chief Justice shall during his absence or inability devolve upon the senior Justice of Appeal.

(4.) In the case of and during the absence from New Zealand or inability of any Justice of Appeal upon whom the powers and duties of the Chief Justice so devolve, they shall devolve upon the Justice of Appeal who is next in seniority.

(5.) The fact of any Justice of Appeal exercising the powers or duties of the Chief Justice in professed or intended pursuance of this section shall for all purposes be conclusive proof of his authority so to act.

8. The Justices of Appeal other than the Chief Justice shall have seniority according to the date of their appointment as Justices of Appeal, and when two of them have been appointed on the same day, then according to the precedence assigned to them by their commissions, or failing any such assignment, then according to the order in which they take the judicial oath or affirmation.

Order of precedence of Justices of Appeal.

9. So soon as practicable after the commencement of this Act the Governor shall appoint as Justices of Appeal any two of the persons who then hold office as puisne Judges of the Supreme Court, and each Justice of Appeal so appointed shall thereupon cease to be a Judge of the Supreme Court.

Appointment of Justices of Appeal.

10. As often as any vacancy occurs in the office of Chief Justice of New Zealand or in the office of any other Justice of Appeal the Governor may appoint some qualified person to the office so vacated.

Appointment to vacancies.

11. No person shall be qualified for appointment as the Chief Justice of New Zealand or as a Justice of Appeal unless he is or has been a Judge of the Supreme Court, or is qualified to be appointed as a Judge of the Supreme Court in accordance with the principal Act.

Qualifications of Justices of Appeal.

12. Every Judge of the Supreme Court who is appointed as a Justice of Appeal, shall on his appointment cease to be a Judge of the Supreme Court.

Justice of Appeal on appointment to cease to be Judge of Supreme Court.

13. (1.) A salary of two thousand pounds per annum shall be payable to the Chief Justice of New Zealand, and a salary of one thousand eight hundred pounds per annum shall be payable to each Justice of Appeal other than the Chief Justice.

Remuneration of Justices of Appeal.

(2.) The said salaries shall be payable without further appropriation than this Act.

14. (1.) When any Judge of the Supreme Court becomes a Justice of Appeal (whether by the operation of this Act or by virtue of an appointment made by the Governor in pursuance of this Act) he shall not by reason of his resulting retirement from the Supreme Court be entitled to any superannuation allowance under the principal Act, but the period of his service as a Judge of the Supreme Court shall be counted in computing any superannuation allowance to which he may thereafter become entitled on his retirement from the Court of Appeal.

Judge of Supreme Court on appointment as Justice of Appeal not entitled to superannuation allowance.

(2.) When a Judge of the Supreme Court has retired from the Supreme Court, whether before or after the commencement of this Act, and is thereafter appointed as a Justice of Appeal while in receipt of a superannuation allowance under the principal Act, the said allowance shall thereupon cease to be payable, and on his

subsequent retirement from the Court of Appeal the period of his former service as a Judge of the Supreme Court shall be counted in computing any superannuation allowance to which he may be then entitled under the principal Act in respect of his service as a Justice of Appeal.

Justices of Appeal exempt from certain statutory provisions in same way as Judges.

Judgment may be given by Supreme Court Judges in matters already completely heard by Court of Appeal under principal Act.

15. No enactment which is in force at the passing of this Act and which does not apply to the Judges of the Supreme Court shall have any application to the Justices of Appeal.

16. (1.) If on the commencement of this Act any appeal or other matter has been completely heard before the Court of Appeal as constituted by the principal Act and stands for judgment, the Judges of the Supreme Court before whom the appeal or matter was so heard may give judgment therein in the same manner as if this Act had not passed, and at such time and place as the Chief Justice of New Zealand directs, and the judgment so given shall be deemed to be the judgment of the Court of Appeal.

(2.) All subsequent proceedings in that appeal or matter shall be had and taken in the same manner as if the judgment had been given by the Court of Appeal as constituted under this Act.

Governor may appoint to Court of Appeal during absence, &c., of Justice of Appeal.

17. (1.) At any time and from time to time during the illness, incapacity, or absence from New Zealand of any Justice of Appeal the Governor may by warrant under his hand appoint any Judge of the Supreme Court to hold office as a Justice of Appeal during the Governor's pleasure, and the Judge so appointed may, until his warrant of appointment is revoked, sit and act as a Justice of Appeal accordingly, anything to the contrary in this Act or the principal Act notwithstanding.

(2.) No such warrant shall be questioned or invalidated on the ground that a lawful occasion for the issue or continuance thereof has not arisen or has ceased to exist.

(3.) No Judge of the Supreme Court appointed as a Justice of Appeal under this section shall thereby vacate his office as a Judge of the Supreme Court, and he may exercise his functions as a Judge of the Supreme Court concurrently with his functions as a Justice of Appeal.

(4.) No Judge of the Supreme Court appointed under this section as a Justice of Appeal shall receive any salary in respect of his office as a Justice of Appeal.

(5.) No Judge of the Supreme Court appointed under this section as a Justice of Appeal shall sit in the Court of Appeal to hear and determine an appeal from any judgment, order, direction, conviction, or other determination given or made by himself, or any application for the new trial of any action or criminal prosecution heard by himself.

In certain cases Governor may authorise Judges of Supreme Court to sit with Justices of Appeal.

18. (1.) On the recommendation of any two Justices of Appeal, of whom the Chief Justice or the Judge for the time being exercising the powers of the Chief Justice shall be one, the Governor may at any time by Order in Council authorise and empower the Judges of the Supreme Court to sit together with the Justices of Appeal on the hearing and determination of any specified appeal or other matter in the Court of Appeal.

(2.) On the issue of any such Order in Council every Judge of the Supreme Court shall have in respect of the appeal or matter

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so specified therein all the powers, functions, and jurisdiction of a Justice of Appeal, but no such Judge shall exercise any such power, function, or jurisdiction except at a sitting of the Court of Appeal at which not less than two Justices of Appeal are present.

5 19. The Court of Appeal shall be deemed to be duly constituted during and notwithstanding any vacancy in the office of any Justice of Appeal. Vacancy not to affect constitution of Court of Appeal.

20. Any two or more Justices of Appeal shall have power to act as the Court of Appeal, but two Justices of Appeal at least shall 10 concur in every decision of that Court. Two Justices to concur in decision of Court.

21. The Chief Justice or, in his absence, the senior Justice of Appeal who is present shall preside at every sitting of the Court of Appeal. Chief Justice or senior Justice present to preside at sittings of Court.

15 22. Subsections two, three, and four of section fifty-seven of the principal Act are hereby repealed. Repeal.

23. Sections seven to ten, and sections twelve to fifteen of the principal Act shall extend and apply to every Justice of Appeal in the same manner as to a Judge of the Supreme Court. Application to Justices of certain provisions of principal Act.

20 24. (1.) Subsection two of section seventy-one of the principal Act is hereby amended by omitting the words "three or more of the Judges," and substituting therefor the words "two or more of the Justices of Appeal." Sections 71 and 75 of principal Act amended.

25 (2.) Section seventy-five of the principal Act is hereby amended by omitting the words "three or more of the Judges," and substituting therefor the words "two or more of the Justices of Appeal."

30 25. All the provisions of the Promissory Oaths Act, 1908, so far as they relate to the judicial oath or affirmation to be taken or made by a Judge of the Supreme Court shall extend and apply to every person who is appointed by or in pursuance of this Act as a Justice of Appeal. Justices of Appeal to take judicial oath, &c.

26. Section twenty-eight of the Législature Act, 1908, is hereby amended by inserting, after the words "Judge of the Supreme Court," the words "or Justice of Appeal." Section 28 of Législature Act amended.

PART II.

35 SUPREME COURT.

27. After the commencement of this Act the Supreme Court as established by the principal Act shall consist of four Judges, who shall be appointed by the Governor in the name and on behalf of His Majesty, and who shall in all respects have equal power, authority, 40 jurisdiction, and precedence. Constitution of Supreme Court.

28. A salary of one thousand eight hundred pounds per annum shall be payable to each of the Judges of the Supreme Court without further appropriation than this Act. Remuneration of Judges.

45 29. (1.) Notwithstanding anything hereinbefore contained, all persons, other than the Chief Justice of the Supreme Court, who at the commencement of this Act hold office as Judges of the Supreme Court under the principal Act shall continue to hold office as Judges of the Supreme Court under this Act, and to receive the salaries attached to their offices by the Civil List Act, 1908, and to exercise Present Judges to continue in office until appointment of Justices of Appeal.

the jurisdiction of the Supreme Court accordingly, until two of the said Judges have been appointed as Justices of Appeal under the provisions hereinbefore contained.

Remaining Judges deemed appointed under this Act.

(2.) When two of the said Judges have been so appointed as Justices of Appeal the others of the said Judges shall, without further appointment than this Act, become and be Judges of the Supreme Court as constituted by this Act, and shall for all purposes be deemed to have been continuously in office as Judges of the Supreme Court notwithstanding the passing of this Act. 5

Appointment of additional Judge.

(3.) So soon as practicable after the appointment of Justices of Appeal in pursuance of this Act the Governor shall appoint a qualified person to be a Judge of the Supreme Court in addition to the Judges so continuing to hold office as Judges of the Supreme Court under this Act. 10

Supreme Court under this Act deemed Supreme Court under principal Act.

30. (1.) The Supreme Court as constituted by this Act shall for all purposes be deemed to be the same Court as the Supreme Court established by the principal Act. 15

(2.) The Supreme Court shall be deemed to be duly constituted during and notwithstanding any vacancy in the office of any Judge of the said Court. 20

Appointment to vacancies.

31. As often as any vacancy occurs in the office of a Judge of the Supreme Court the Governor may appoint some qualified person to the office so vacated.

Power of Governor to appoint under section 11 of principal Act not affected.

32. Nothing in this Act shall take away or affect the power of the Governor in Council to appoint a Judge of the Supreme Court under section eleven of the principal Act. 25

Repeal.

33. Sections four and five of the principal Act are hereby repealed.

Amendments of principal Act.

34. The principal Act is hereby amended—

(a.) As to section seven thereof, by omitting the words “said Chief Justice and other” : 30

(b.) As to section eleven thereof, by omitting the words “other than the Chief Justice” : 35

(c.) As to section fifty-two thereof, by omitting the words “of whom the Chief Justice shall be one.”

Civil List Act amended.

35. The Civil List Act, 1908, is hereby amended by omitting from the Second Schedule thereto the reference to the salaries of Judges.

PART III.

DISTRICT COURTS.

No future action in District Court for recovery of debt, &c.

36. (1.) After the coming into operation of this Act no action for the recovery of any debt or damages shall be commenced in a District Court. 40

Pending actions to be continued in District Court.

(2.) All such actions which at the time of the coming into operation of this Act are pending in a District Court shall be continued and prosecuted in that Court in the same manner as if this Part of this Act had not been passed. 45

No future committal for trial before a District Court.

37. (1.) After the coming into operation of this Act no person accused of any offence shall be committed for trial before a District Court. 50

(2.) All persons who before the coming into operation of this Act have been committed for trial before a District Court shall be tried and dealt with as if this Part of this Act had not been passed.

5 38. (1.) No appeal from any order or conviction made by a Magistrate or Justice of the Peace after the coming into operation of this Act shall be heard by a District Court under the provisions of the Justices of the Peace Act, 1908.

No future appeal from order of Magistrate, &c., to be heard by District Court.

(2.) Every appeal from an order or conviction so made as aforesaid after the coming into operation of this Act shall be made to the Supreme Court in the same manner as if there were no District Court within the judicial district in which that order or conviction is made.

(3.) Every appeal from an order or conviction made before the coming into operation of this Act shall be heard and determined in the same manner as if this Part of this Act had not been passed.

Such appeals to be to Supreme Court.

15 39. After the coming into operation of this Act no probate of any will, and no letters of administration of any estate, shall be granted by a District Court or by any Judge thereof.

No future probate or administration to be granted by District Court.

40. (1.) After the coming into operation of this Act no petition for an adjudication of bankruptcy shall be filed in a District Court.

No future bankruptcy petitions to be filed in District Court.

20 (2.) With respect to all such petitions already filed in a District Court before the coming into operation of this Act, and with respect to all adjudications of bankruptcy theretofore already made by a District Court, the District Court shall continue to exercise the same jurisdiction, and the same proceedings may be continued or taken, as if this Part of this Act had not been passed.

District Court to exercise jurisdiction with respect to petitions already filed.

(3.) After the coming into operation of this Act the Supreme Court shall have the same jurisdiction in bankruptcy as if no jurisdiction in bankruptcy had been conferred upon any District Court in pursuance of the provisions of the Bankruptcy Act, 1908.

Supreme Court to have jurisdiction in bankruptcy heretofore exercised by District Court.

30 41. (1.) No appeal from any order, judgment, or other decision of a Warden or of a Warden's Court made or given after the coming into operation of this Act shall be heard by a District Court under the provisions of the Mining Act, 1908.

No future appeal from Warden to be heard by District Court.

(2.) Every appeal from any such order, judgment, or other decision of a Warden or Warden's Court so made or given after the coming into operation of this Act shall be heard and determined by the Supreme Court in the same cases and in the same manner as if there were no District Court having jurisdiction within the place where the order, judgment, or decision was made or given.

Such appeals to be to Supreme Court.

40 42. Sections two hundred and seventeen to two hundred and nineteen of the Companies Act, 1908, are hereby repealed; but this repeal shall not affect any proceedings which at the time of the coming into operation of this Act are already pending in a District Court by virtue of the sections so repealed.

Repeal.

45 43. Section one hundred and fifty-nine of the Magistrates' Courts Act, 1908, is hereby repealed; but all appeals from any determination or direction of a Magistrate's Court made or given before the coming into operation of this Act shall be heard by the same Court and in the same manner as if this Part of this Act had not been passed.

Repeal.

50 44. Section three hundred and fifty of the Companies Act, 1908, is hereby amended by omitting from subsection six thereof the words "or of a District Court."

Section 350 of Companies Act amended.

Section 4 of
Imprisonment for
Debt Limitation
Act amended.

45. Section four of the Imprisonment for Debt Limitation Act, 1908, is hereby amended—

(a.) By repealing paragraph (c) thereof :

(b.) By omitting from paragraph (d) thereof the words “ by a District Court Judge or his Deputy or.”

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Section 3 of
Extradition Act
amended.

46. Section three of the Extradition Act, 1908, is hereby amended by omitting the words “ Judges of District Courts or.”

Section 2 of
Building Societies
Act amended.

47. Section two of the Building Societies Act, 1908, is hereby amended—

(a.) By omitting from paragraph (a) thereof the words “ The District Court of the district,” and substituting therefor the words “ The Supreme Court within the Supreme Court district ” :

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(b.) By repealing paragraph (b) thereof.

Section 15 of
Infants Act
amended.

48. Section fifteen of the Infants Act, 1908, is hereby amended—

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(a.) By omitting from the definition of “ Clerk of the Court ” the words “ District Court or,” and also the words “ as the case may be ” :

(b.) By omitting from the definition of “ Judge ” the words “ a Judge of any District Court or.”

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Section 6 of Land
and Income
Assessment Act
amended.

49. Section six of the Land and Income Assessment Act, 1908, is hereby amended by omitting the words “ or a District Court ” from subsection two thereof.

Section 97 of
Judicature Act
amended.

50. Section ninety-seven of the Judicature Act, 1908, is hereby amended by omitting the words “ District Court or ” and “ District or ” wherever those words occur in subsection two thereof.

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Section 62 of
Factories Act
amended.

51. Section sixty-two of the Factories Act, 1908, is hereby amended by omitting therefrom the words “ or to a District Court.”

Section 407 of
Crimes Act
amended.

52. Section four hundred and seven of the Crimes Act, 1908, is hereby amended by omitting therefrom the words “ or the Crown counsel at any District Court.”

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Amendments of
Public Works Act.

53. The Public Works Act, 1908, is hereby amended—

(a.) As to section fifty-three thereof, by omitting the words “ a Judge of a District Court or ” :

(b.) As to section fifty-five thereof, by omitting the words “ a Judge of a District Court or ” wherever those words occur, and also by omitting the words “ as the case may be ” :

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(c.) As to section sixty-one thereof, by omitting from paragraph (b) the words “ Judge of the District Court or,” and also by omitting from the same paragraph the words “ as the case may be.”

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Sections 63 and 64 of
Wages Protection
and Contractors'
Liens Act amended.

54. (1.) Section sixty-three of the Wages Protection and Contractors' Liens Act, 1908, is hereby amended by repealing subsection two thereof.

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(2.) Section sixty-four of the said Act is hereby amended by omitting the words “ to a District Court or the Supreme Court, and from a District Court,” and also the words “ and from a District Court respectively.”

Section 15 of Water-
supply Act
amended.

55. (1.) Section fifteen of the Water-supply Act, 1908, is hereby amended by omitting all the words in subsection one thereof after the words “ appeal against the same,” and substituting therefor

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the words "to any Magistrate's Court in the district or to the Supreme Court at the option of the party appealing."

(2.) Section fifteen of the said Act is hereby further amended by omitting from subsection five thereof the words "District Court or."

5 56. (1.) The District Courts are hereby abolished as from the last day of March, nineteen hundred and *nine*.

Abolition of District Courts.

Records thereof to be transferred to Supreme Court.

(2.) The Governor may by Order in Council direct that the records of the Courts so abolished shall be transferred to the custody of the Supreme Court at such offices of the Supreme Court as are
10 named in the Order.

Savings.

(3.) Notwithstanding such abolition of the District Courts, all judgments, orders, and convictions theretofore made or given by the said Court or by any Judge thereof, and all acts and things theretofore lawfully done by the said Courts or by any Judge thereof, shall
15 remain in full force and effect.

Actions pending in District Court on abolition thereof to be transferred to Supreme Court.

(4.) Notwithstanding anything hereinbefore contained, all actions and other proceedings pending in any District Court at the time of its abolition shall be transferred to the Supreme Court in such manner as is determined by the Governor by Order in Council, and
20 all such actions and proceedings shall be continued in the Supreme Court, in accordance with the procedure thereof, as if they had been originally commenced in that Court.

(5.) All judgments, orders, and determinations of any District Court so abolished or of any Judge thereof may be enforced, varied,
25 reversed, annulled, or otherwise dealt with by the Supreme Court or a Judge thereof in like manner as if they had been given or made by the Supreme Court or a Judge thereof.

Repeal.

(6.) The District Courts Act, 1908, is hereby repealed as from the last day of March, nineteen hundred and *nine*.

30 57. (1.) After the coming into operation of this Act it shall not be necessary on the hearing of any appeal in the Supreme Court, whether on a point of law or on a point of fact, from any judgment, order, conviction, or other determination of a Magistrate, Justice of the Peace, Magistrate's Court, Warden, or Warden's Court, that the
35 parties to the appeal should appear either personally or by counsel, and the hearing of any such appeal may, if the parties so agree, take place by way of written arguments delivered by each party to the other and filed in the Supreme Court.

Procedure in hearing of appeal to Supreme Court.

(2.) The procedure in and preliminary to the hearing of any
40 appeal in manner aforesaid may be determined by rules to be made in manner provided by section fifty-one of the Judicature Act, 1908.

(3.) Nothing in this section shall be so construed as to prevent
45 any appeal from being heard and determined in the same manner as if this section were not in force.