

**Reprint  
as at 1 October 2012**



**District Courts Act 1947**

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Commencement    see section 1(2)

**Contents**

	Page
Title	9
1 Short Title and commencement	9
2 Interpretation	9
<b>Part 1</b>	
<b>Constitution and administration</b>	
<i>District Courts</i>	
3 Courts constituted	12
4 Appointment of places for holding of courts	12
4A Sittings of court at other places	13
4B Disputes Tribunals	14
<i>District Court Judges</i>	
5 Appointment and qualifications	14
5AA Judges act on full-time basis but may be authorised to act part-time	15
5A Chief District Court Judge	16
6 Salaries and allowances	17

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**Note**

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

**This Act is administered by the Ministry of Justice.**

7	Tenure of office	18
8	<i>Ex officio</i> functions of Judges	19
9	Assignment and rostering of District Court Judges	19
10	Acting Judges	20
10A	Retired Judges may act	21
11	Jurisdiction of Judge in Chatham Islands	22
<i>Community Magistrates</i>		
11A	Appointment of Community Magistrates	23
11B	Right to hold other office and to engage in other employment	23
11C	Functions and powers of Community Magistrates	24
11D	Chief Community Magistrate	25
11E	Functions of Chief Community Magistrate	26
11F	Tenure of office	26
11G	Remuneration and allowances of Community Magistrates	27
11H	Retired Community Magistrates	28
<i>Registrars</i>		
12	Appointment of Registrar	29
13	Record of proceedings to be kept by Registrar	29
14	Deputy Registrars	30
<i>Bailiffs</i>		
15	Appointment of bailiffs	30
16	Deputy bailiffs	31
17	Powers and duties of bailiffs	31
17A	Sections 121, 128, and 129 of Search and Surveillance Act 2012 inapplicable to bailiffs	33
<i>Miscellaneous provisions as to officers</i>		
18	Penalty for assaulting officers	33
19	Misconduct of officers	33
20	Officers of court not to act as solicitors therein	34
<i>Sittings</i>		
21	Place of sittings	35
22	Times of sittings	35
23	Adjourned sittings	36
<b>Part 2</b>		
<b>Criminal jurisdiction</b>		
<i>[Repealed]</i>		
24	Criminal jurisdiction <i>[Repealed]</i>	36
25	Jurisdiction as to fugitive offenders <i>[Repealed]</i>	37

26	Informations and complaints to be filed in nearest court <i>[Repealed]</i>	37
27	Place of hearing of informations and complaints <i>[Repealed]</i>	37
28	Criminal Record Book <i>[Repealed]</i>	37

**Part 2A**

**Criminal jurisdiction in respect of indictable offences**

28A	Extent of jurisdiction under Part 2A	37
28B	Appointment of trial Judges	39
28C	Trial Judge not to act in certain cases <i>[Repealed]</i>	39
28D	Constitution and procedure of court	39
28E	Powers of court	39
28F	Maximum sentences	41
28G	Judge may decline to sentence	42
28H	Appeal against sentence	42
28I	Enforcement of fines	43
28J	Transfer of proceedings	44

**Part 3**

**Civil jurisdiction and transfer of proceedings**

*Claims founded on contract or tort*

*[Repealed]*

29	General jurisdiction in respect of proceedings	45
30	Money recoverable by statute	45
31	Extending jurisdiction in actions for recovery of land	46
32	Landlord's right where rent is in arrear or premises deserted <i>[Repealed]</i>	47
33	Jurisdiction as to building societies	47

*Equity proceedings*

34	Equity jurisdiction	47
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*Miscellaneous provisions as to jurisdiction*

35	Jurisdiction where title in question	48
36	Abandonment of part of claim to give court jurisdiction	49
37	Extension of jurisdiction in admiralty by agreement between the parties	49
38	Division of cause of action not allowed	49
39	Proceedings against absent defendant	50

*Exercise of jurisdiction and ancillary jurisdiction*

40	Persons who exercise jurisdiction of court	50
41	General ancillary jurisdiction	50

42	Ancillary powers of Judge	51
42A	Jurisdiction exclusive of interest awarded	51
	<i>Transfer of proceeding</i>	
43	Transfer to High Court of proceeding within jurisdiction	51
44	Transfer of proceedings beyond jurisdiction	53
45	Transfer of proceedings where there is a counterclaim	53
45A	Removal of summary judgment application from District Court to High Court	55
	<i>Removal of question of law into High Court</i>	
45B	Removal of question of law into High Court	55
46	Transfer of proceeding from High Court to District Court	55
47	Procedure on transfer of proceeding from High Court to District Court	56
48	Costs in cases transferred or removed	57
	<b>Part 4</b>	
	<b>Procedure</b>	
	<i>Parties</i>	
49	Trustees, executors, and administrators	58
50	Amount of wages, etc, for which minor may sue	58
51	Persons jointly liable	59
52	Bankruptcy of plaintiff	60
	<i>Witnesses and evidence</i>	
53	Witness entitled to expenses	60
54	Penalty for neglecting witness summons	60
55	Examination of witnesses and service of process abroad	61
56	Persons who may take affidavits, etc	61
	<i>Discovery</i>	
56A	Powers of court exercisable before commencement of proceeding	62
56B	Power of court to order particular discovery against non-party after proceeding commenced	62
	<i>Hearing</i>	
57	Right of audience	63
58	Trial by Judge	63
59	Equity and good conscience	64
60	Judge to take notes	64
61	Power of Judge to refer to arbitration	65
62	Power of Judge to refer to Registrar or referee	66

62A	Reference by consent	66
	<i>Judgments and orders</i>	
62B	Power of court to award interest on debts and damages	67
63	Finality of judgments and orders	68
64	Want of form	68
65	Payment of judgments and orders	68
65A	Interest on judgment debts	69
	<i>Removal of judgments</i>	
66	Removal of judgment of District Court into High Court	70
67	Proceeding in High Court on judgment or order of District Court	71
68	Removal of judgment or order of High Court into District Court	72
69	Removal of judgment from one court to another	73
70	Removal of judgment of abolished court	74
	<i>Determination of questions concerning rules</i>	
70A	Application of rules	75
	<b>Part 5</b>	
	<b>Appeals</b>	
71	Interpretation	76
71A	Right to appeal [ <i>Repealed</i> ]	76
72	General right of appeal	76
73	Agreements that decision would be binding	76
74	Security for appeal	77
75	Appeals to be by way of rehearing	77
76	Powers of High Court on appeal	77
77	Repayment of judgment sum and interest	78
78	Enforcement proceedings	78
78A	Right of appeal in respect of contempt of court	79
	<b>Part 6</b>	
	<b>Enforcement of judgments</b>	
	<i>Enforcement generally</i>	
79	Nature of proceedings for enforcement of judgment	79
80	Enforcement of judgments more than 6 years old	81
81	Enforcement of order for payment by instalments	81
82	Proceedings on cross-judgments	81
83	Power to stay proceedings for enforcement	82
84	Stay of proceedings on appeal	82

<i>Discovery in aid of execution</i>		
84A	Notice to judgment debtor to complete financial statement	82
84B	Order for examination of judgment debtor	83
84C	Where judgment debtor does not appear at examination or order cannot be served	84
84D	Conduct of examination	85
84E	Orders by court	85
<i>Attachment orders</i>		
84F	Interpretation	86
84G	Attachment orders	87
84H	Attachment order to be served on employer	89
84I	Effect of attachment orders	89
84J	Liability of employer	90
84K	Wrongful treatment of employee	91
84L	Extent to which attachment orders bind the Crown	92
84M	Variation, suspension, and discharge of attachment orders	94
<i>Review of Registrar's decision</i>		
84N	Review of Registrar's decision	94
<i>Contempt</i>		
84O	Contempt procedures	95
84P	Application of Part 1 of Legal Services Act 1991 [ <i>Repealed</i> ]	97
84Q	Judgment debtor doing community work to be discharged on payment	97
<i>Warrant of distress</i>		
85	Warrant of distress	98
85A	Immobilisation of motor vehicles	98
86	Disposal of bills of exchange, etc, seized	99
87	Penalty for rescue of goods seized	99
<i>Sale of goods seized</i>		
88	Period to elapse before sale	100
89	Sale of goods by public auction unless otherwise ordered	100
90	Protection of bailiff selling goods under execution without notice of claim by third party	100
91	Procedure when goods seized are secured under bill of sale	101
<i>Claims in respect of goods seized</i>		
92	Priority of High Court and District Court executions	101

93	Sale of goods where claim made thereto	102
94	Bailiff's interpleader	103
95	Claims for rent where goods seized under execution [ <i>Repealed</i> ]	104
	<i>Garnishee proceedings</i>	
96	Garnishee proceedings	104
	<i>Charging orders</i>	
96A	Charging orders	105
	<i>Committals</i>	
97	Issue and execution of orders or warrants of committal	107
98	Power of Judge to order discharge	108
	<i>Warrant for the recovery of land</i>	
99	Warrant for the recovery of land	108
100	Irregularity in execution of warrant can only be sued for as special damage	109
101	Person illegally obtaining warrant liable for trespass	109
102	Execution of warrant may be stayed on giving bond	110
	<i>Recovery of chattels</i>	
103	Warrant for the recovery of chattels	111
104	Further proceedings if chattels not recovered	111
	<i>Liability and protection of officers</i>	
105	Neglect by bailiffs	112
106	Irregularity in executing warrants	112
107	Actions against bailiffs acting under warrants	113
108	Action to be brought within 6 months, and 1 month's notice to be given	114
	<b>Part 7</b>	
	<b>Miscellaneous and general</b>	
	<i>Writs of arrest</i>	
109	Absconding debtors may be held to bail	114
110	Successful plaintiff entitled to execution, successful defendant entitled to compensation	116
	<i>Interpleader</i>	
111	Interpleader	116
	<i>Contempt</i>	
112	Penalty for contempt of court	117

<i>Financial provisions</i>		
113	Payment and recovery of fees	117
114	Enforcement of fines	118
115	Fines and fees to be paid to Crown Bank Account	118
<i>Miscellaneous</i>		
116	Prescribed documents to be sealed	119
116A	Proof of service of documents by officer or constable	119
117	Subtenant to give notice of proceeding to subtenant's immediate landlord	120
118	Actions on lost instruments	120
119	Immunity of Judges	120
120	No privilege to solicitors	121
121	Constables, etc, to assist	121
122	District Courts Rules	121
123	Regulations	125
123A	Reviews of decisions of Registrars concerning fees	127
124	Application of Act	127
125	Repeals and savings	128
<b>Schedule 1</b>		129
<b>Criminal Record Book</b>		
<i>[Repealed]</i>		
<b>Schedule 1A</b>		130
<b>Offences triable in either District Court or High Court and offences triable only in High Court</b>		
<b>Schedule 2</b>		138
<b>Enactments (repealed by this Act) formerly regulating or providing for matters which can be regulated or provided for by rules</b>		
<b>Schedule 3</b>		139
<b>Enactments repealed</b>		

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**An Act to consolidate and amend certain enactments of the Parliament of New Zealand relating to District Courts and the jurisdiction of District Court Judges in civil proceedings, and to make provision for the exercise of criminal jurisdiction under the Summary Proceedings Act 1957 in District Courts**

Title: amended, on 1 January 1987, pursuant to section 29(2) of the Constitution Act 1986 (1986 No 114).

Title: amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Title: amended, on 1 April 1958, pursuant to section 214(1) of the Summary Proceedings Act 1957 (1957 No 87).

## **1 Short Title and commencement**

- (1) This Act may be cited as the District Courts Act 1947.
- (2) This Act shall come into force on a date to be appointed for the commencement thereof by the Governor-General by Proclamation.

Section 1(1): amended, on 1 April 1980, by section 2(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 1(2): District Courts Act 1947 brought into force, on 1 January 1949, by clause 2 of the District Courts Act Commencement Order 1948 (SR 1948/196).

## **2 Interpretation**

- (1) In this Act, unless the context otherwise requires,—

**bailiff** means a bailiff of a court, and includes any deputy bailiff and any person acting as bailiff pursuant to section 15

**Community Magistrate** means a Community Magistrate appointed under section 11A; and includes the Chief Community Magistrate

**court** or **District Court** means a court constituted under this Act

**High Court Rules** means the rules from time to time set out in Schedule 2 of the Judicature Act 1908

**interlocutory application**—

- (a) means any application to the court in any proceeding or intended proceeding for an order or a direction relating to a matter of procedure or for some relief ancillary to that claimed in a pleading; and

- (b) includes—

- (i) an application for a new trial; and

- (ii) an application to review an order made, or a direction given, on any interlocutory application

**Judge** means a District Court Judge appointed under this Act; and includes the Chief District Court Judge

**landlord**, in relation to any land, means the person entitled to the immediate reversion of that land, or, if the land is held in

joint tenancy or tenancy in common, includes any one of the persons entitled to the immediate reversion

**officer**, in relation to a court, includes any Registrar of that court, and any clerk, bailiff, usher, or messenger in the service of that court

**party** means any person who is a plaintiff or defendant in any proceeding; and includes any person added to the proceeding

**prescribed** means prescribed by the rules for the time being in force

**proceeding** means any application to the court for the exercise of the civil jurisdiction of the court other than an interlocutory application

**Registrar** means the Registrar of a court, and includes any Deputy Registrar

**rules** means the District Courts Rules made under section 122

**trial Judge** means a Judge appointed under section 28B to exercise the criminal jurisdiction of the courts under Part 2A.

- (2) Except as expressly provided in this Act, nothing in this Act shall be deemed to relate to any court in respect of the exercise of the criminal jurisdiction referred to in the Summary Proceedings Act 1957 and every reference to a court shall be deemed to relate to a court in which civil proceedings may be taken.

Compare: 1928 No 14 s 2; County Courts Act 1934 s 191 (UK)

Section 2(1) **action**: repealed, on 1 July 1992, by section 2(1) of the District Courts Amendment Act 1991 (1991 No 61).

Section 2(1) **Community Magistrate**: inserted, on 30 June 1998, by section 2 of the District Courts Amendment Act 1998 (1998 No 76).

Section 2(1) **court** and **Magistrate's Court**: repealed, on 1 April 1980, by section 3(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 2(1) **court** or **District Court**: inserted, on 1 April 1980, by section 3(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 2(1) **High Court Rules**: inserted, on 1 July 1992, by section 2(2) of the District Courts Amendment Act 1991 (1991 No 61).

Section 2(1) **interlocutory application**: inserted, on 1 July 1992, by section 2(2) of the District Courts Amendment Act 1991 (1991 No 61).

Section 2(1) **Judge**: inserted, on 1 April 1980, by section 3(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 2(1) **Magistrate**: repealed, on 1 April 1980, by section 3(2) of the District Courts Amendment Act 1979 (1979 No 125).

Section 2(1) **matter**: repealed, on 1 July 1992, by section 2(3) of the District Courts Amendment Act 1991 (1991 No 61).

Section 2(1) **party**: substituted, on 1 July 1992, by section 2(4) of the District Courts Amendment Act 1991 (1991 No 61).

Section 2(1) **proceeding**: inserted, on 1 July 1992, by section 2(5) of the District Courts Amendment Act 1991 (1991 No 61).

Section 2(1) **proceedings**: repealed, on 1 July 1992, by section 2(5) of the District Courts Amendment Act 1991 (1991 No 61).

Section 2(1) **rules**: amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 2(1) **trial Judge**: added, on 1 October 1991, by section 2(6) of the District Courts Amendment Act 1991 (1991 No 61).

Section 2(2): amended, on 1 April 1958, pursuant to section 214(1) of the Summary Proceedings Act 1957 (1957 No 87).

## **Part 1**

### **Constitution and administration**

#### *District Courts*

Heading: substituted, on 1 April 1980, by section 4 of the District Courts Amendment Act 1979 (1979 No 125).

#### **3 Courts constituted**

- (1) There shall continue to be within New Zealand courts of record, possessing civil and criminal jurisdiction, henceforth to be called District Courts.
- (2) Each court shall have a seal, which shall be kept by the Registrar.

Section 3: substituted, on 1 April 1980, by section 4 of the District Courts Amendment Act 1979 (1979 No 125).

#### **4 Appointment of places for holding of courts**

- (1) The Governor-General may from time to time appoint cities, boroughs, or other places in which courts may be held for the exercise of civil jurisdiction.
- (2) The Governor-General may from time to time appoint cities, boroughs, or other places in which courts may be held for the exercise of summary criminal jurisdiction under the Summary Proceedings Act 1957.
- (2A) The Governor-General may from time to time appoint cities, boroughs, or other places in which courts may be held for the exercise of criminal jurisdiction in respect of indictable offences under Part 2A.
- (3) The Governor-General may from time to time authorize any court held in any city, borough, or other place appointed under the last preceding subsection to deal with any specified class of matters not within the criminal jurisdiction of the court.
- (4) Notwithstanding anything in the foregoing provisions of this section a Judge may hold or direct the holding of a particular sitting of a court at any place he deems convenient.
- (5) The Governor-General may at any time in like manner amend or revoke any appointment or authorization made under the provisions of this section.

Compare: 1928 No 14 s 6(1)

Section 4 heading: substituted, on 1 May 1981, by section 2 of the District Courts Amendment Act 1980 (1980 No 83).

Section 4(2): amended, on 1 May 1981, by section 2(1) of the District Courts Amendment Act 1980 (1980 No 83).

Section 4(2A): inserted, on 1 May 1981, by section 2(2) of the District Courts Amendment Act 1980 (1980 No 83).

Section 4(4): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

#### **4A Sittings of court at other places**

- (1) Where any civil or summary criminal proceedings are pending in any court the party issuing the proceedings may, or if the proceedings are to be defended, or if a Judge has directed either generally or specifically that the attendance of a party is required, then any party may, apply to the court for the proceedings to be heard at any other convenient place. A further application may, from time to time, be made for the hearing to be continued or completed in any other place.
- (2) If a Judge is satisfied that in all the circumstances as between the parties the proceedings could be more conveniently or fairly heard or continued to be heard at some place, other than in a court appointed under this Act, and that suitable accommodation for a hearing at such place is available the Judge shall, unless for special reasons relating to the particular proceedings he directs otherwise, make an order, upon such terms and conditions as he thinks fit, that the proceedings be heard or be continued to be heard at a sitting of the court held at that other place and may at that time, or at any subsequent time, fix a date and time for any such hearing.
- (3) With the consent of all parties an order under this provision may be made by the Registrar.
- (4) At all times any such proceedings shall be heard and determined as proceedings of the court and at the conclusion of any such hearing the papers shall be returned and the result and any necessary minutes recorded in the books of the court.
- (5) This section shall have effect notwithstanding the provisions of section 4, but nothing in this section shall limit the power of the court to transfer proceedings to another court.

Section 4A: inserted, on 29 June 1974, by section 2(1) of the District Courts Amendment Act 1974 (1974 No 20).

Section 4A(1): amended, on 1 May 1981, by section 3 of the District Courts Amendment Act 1980 (1980 No 83).

Section 4A(1): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 4A(2): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

#### **4B Disputes Tribunals**

- (1) A court constituted under section 4 shall have a division for the hearing and determination of claims within the meaning of the Disputes Tribunals Act 1988 where, under section 4(4) of that Act, the notice establishing a Disputes Tribunal so provides.
- (2) Notwithstanding subsection (1), the jurisdiction of a Disputes Tribunal shall be limited to such as is conferred on it by the Disputes Tribunals Act 1988, or by any other enactment, and except as provided in that Act, or in any other enactment, no provision of this Act or of any rules or regulations made under this Act shall apply to a Disputes Tribunal.

Section 4B: substituted, on 1 March 1989, by section 82(2) of the Disputes Tribunals Act 1988 (1988 No 110).

#### *District Court Judges*

Heading: substituted, on 1 April 1980, by section 6(1) of the District Courts Amendment Act 1979 (1979 No 125).

#### **5 Appointment and qualifications**

- (1) The Governor-General may from time to time, by warrant under his hand, appoint fit and proper persons to be District Court Judges to exercise civil and criminal jurisdiction within New Zealand.
- (2) The maximum number of Judges is 156.
- (2A) For the purposes of subsection (2),—
  - (a) a Judge who is acting on a full-time basis counts as 1:
  - (b) a Judge who is acting on a part-time basis counts as an appropriate fraction of 1:
  - (c) the aggregate number (for example, 139.5) must not exceed the maximum number of Judges that is for the time being permitted.
- (2B) Subsection (2) is subject to sections 10 and 10A.

- (3) No person shall be appointed a Judge unless—
- (a) he has held a practising certificate as a barrister or solicitor for at least 7 years; or
  - (b) he has been continuously employed as an officer of the responsible department or Ministry of Justice for a period of at least 10 years, and during that period has been employed for not less than 7 years as the Clerk or Registrar of a court, and is a barrister or solicitor who has been qualified for admission, or admitted, as such for not less than 7 years.
- (4) A Judge must not undertake any other paid employment or hold any other office (whether paid or not) unless the Chief District Court Judge is satisfied that the employment or other office is compatible with judicial office.
- (5) No Judge shall practise as a barrister or solicitor.

Section 5: substituted, on 1 April 1980, by section 6(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 5(2): substituted, on 20 May 2004, by section 3(1) of the District Courts Amendment Act 2004 (2004 No 42).

Section 5(2): amended, on 23 March 2010, by section 4 of the District Courts (District Court Judges) Amendment Act 2010 (2010 No 6).

Section 5(2A): inserted, on 20 May 2004, by section 3(1) of the District Courts Amendment Act 2004 (2004 No 42).

Section 5(2B): inserted, on 20 May 2004, by section 3(1) of the District Courts Amendment Act 2004 (2004 No 42).

Section 5(3)(b): amended, on 1 October 2003, pursuant to section 14(1) of the State Sector Amendment Act 2003 (2003 No 41).

Section 5(3)(b): amended, on 1 July 1995, by section 3(1)(c) of the Department of Justice (Restructuring) Act 1995 (1995 No 39).

Section 5(4): substituted, on 20 May 2004, by section 3(2) of the District Courts Amendment Act 2004 (2004 No 42).

**5AA Judges act on full-time basis but may be authorised to act part-time**

- (1) A person acts as a Judge on a full-time basis unless he or she is authorised by the Attorney-General to act on a part-time basis.
- (2) The Attorney-General may, in accordance with subsection (4), authorise a Judge appointed under section 5 or section 5A to act on a part-time basis for any specified period.

- (3) To avoid doubt, an authorisation under subsection (2) may take effect as from a Judge's appointment or at any other time, and may be given more than once in respect of the same Judge.
- (4) The Attorney-General may authorise a Judge to act on a part-time basis only—
  - (a) on the request of the Judge; and
  - (b) with the concurrence of the Chief District Court Judge (after consultation with the Principal Environment Judge if the request is from an Environment Judge).
- (5) In considering whether to concur under subsection (4)(b), the Chief District Court Judge must have regard to the ability of the court to discharge its obligations in an orderly and expeditious way.
- (6) A Judge who is authorised to act on a part-time basis must resume acting on a full-time basis at the end of the authorised part-time period.
- (7) The basis on which a Judge acts must not be altered during the term of the Judge's appointment without the Judge's consent, but consent under this subsection is not necessary if the alteration is required by subsection (6).
- (8) This section applies to persons who hold office as District Court Judges regardless of whether they act as District Court Judges, as Environment Judges, or in any other judicial office.

Section 5AA: inserted, on 20 May 2004, by section 4 of the District Courts Amendment Act 2004 (2004 No 42).

#### **5A Chief District Court Judge**

- (1) The Governor-General shall from time to time, by warrant under his hand, appoint a Chief District Court Judge.
- (2) Subject to subsection (3), the Chief District Court Judge shall hold that office so long as he holds office as a Judge.
- (3) With the prior approval of the Governor-General, the Chief District Court Judge may resign that office without resigning his office as a Judge.
- (4) Whenever by reason of illness, absence from New Zealand, or any other cause the Chief District Court Judge is prevented from exercising the duties of his office, the Governor-General may, by writing under his hand, appoint 1 of the other Judges to

act as Chief District Court Judge until the Chief District Court Judge resumes his duties, and during that period to execute the duties of that office and to exercise all powers that may be lawfully exercised by the Chief District Court Judge.

Section 5A: inserted, on 1 April 1980, by section 7 of the District Courts Amendment Act 1979 (1979 No 125).

Section 5A(4): amended, on 1 May 1981, by section 5 of the District Courts Amendment Act 1980 (1980 No 83).

## **6 Salaries and allowances**

- (1) There must be paid to the Chief District Court Judge, to the Principal Environment Judge, to the Principal Family Court Judge, to the Principal Youth Court Judge, and to the other Judges, out of public money, without further appropriation than this section,—
  - (a) salaries at the rates from time to time determined by the Remuneration Authority; and
  - (b) the allowances from time to time determined by the Remuneration Authority; and
  - (c) the additional allowances, being travelling allowances or incidental or minor allowances, from time to time determined by the Governor-General.
- (2) The salary of a Judge shall not be diminished during the continuance of the Judge's appointment.
- (2A) The salary and allowances payable for a period during which a Judge acts on a part-time basis must be calculated and paid as a pro-rata proportion of the salary and allowances for a full-time equivalent position.
- (2B) If a principal Judge ceases to hold the position of principal Judge but continues to hold office as a Judge, the salary and allowances of the Judge may be reduced by the amount of any salary or allowances that the person received solely because of being the principal Judge.
- (2C) For the purpose of subsection (2), the payment of salary and allowances on a pro-rata basis under subsection (2A) or the payment of reduced salary and allowances under subsection (2B) is not a diminution of salary.
- (3) Subject to the Remuneration Authority Act 1977, any determination made under subsection (1) of this section, and any

provision of any such determination, may be made so as to come into force on a date to be specified in that behalf in the determination, being the date of the making of the determination or any other date, whether before or after the date of the making of the determination or the date of the commencement of this section.

- (4) Every such determination, and every provision of any such determination, in respect of which no date is specified as aforesaid shall come into force on the date of the making of the determination.

Section 6: substituted, on 1 April 1985, by section 2 of the District Courts Amendment Act (No 3) 1985 (1985 No 137).

Section 6(1): substituted, on 20 May 2004, by section 5(1) of the District Courts Amendment Act 2004 (2004 No 42).

Section 6(2A): inserted, on 20 May 2004, by section 5(2) of the District Courts Amendment Act 2004 (2004 No 42).

Section 6(2B): inserted, on 20 May 2004, by section 5(2) of the District Courts Amendment Act 2004 (2004 No 42).

Section 6(2C): inserted, on 20 May 2004, by section 5(2) of the District Courts Amendment Act 2004 (2004 No 42).

Section 6(3): amended, on 1 April 2003, by section 4(1) of the Remuneration Authority (Members of Parliament) Amendment Act 2002 (2002 No 54).

## **7 Tenure of office**

- (1) The Governor-General may, if he thinks fit, remove a Judge for inability or misbehaviour.
- (1A) To avoid doubt, a Judge may be removed under subsection (1) for inability or misbehaviour related to the exercise, contemplated by section 8(d), of the judicial authority conferred on a coroner by the Coroners Act 2006.
- (2) Every Judge shall retire from office on attaining the age of 70 years.

Compare: 1928 No 14 ss 7(2), 9

Section 7(1): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 7(1A): inserted, on 1 July 2007, by section 146 of the Coroners Act 2006 (2006 No 38).

Section 7(2): amended, on 6 March 2007, by section 4 of the District Courts Amendment Act 2007 (2007 No 1).

Section 7(2): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

## **8 Ex officio functions of Judges**

Every Judge, by virtue of his office,—

- (a) shall be a Justice of the Peace for New Zealand:
- (b) shall, though sitting alone, have all such powers, functions, and discretions, unless otherwise specially provided, as now are or hereafter may be exercised by 2 Justices:
- (c) shall have full power to do alone whatever is authorized to be done by 2 Justices under the Summary Proceedings Act 1957, or under any other Act now or hereafter in force in New Zealand:
- (d) shall be a Coroner for New Zealand.

Compare: 1928 No 14 s 14

Section 8 heading: amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 8: amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 8(c): amended, on 1 April 1958, pursuant to section 214(1) of the Summary Proceedings Act 1957 (1957 No 87).

## **9 Assignment and rostering of District Court Judges**

- (1) The Chief District Court Judge shall be responsible for ensuring the orderly and expeditious discharge of the business of District Courts throughout New Zealand, and accordingly may, after consultation with the Principal Family Court Judge and the Principal Youth Court Judge, give all such directions as are contemplated by subsection (2).
- (2) Each Judge shall sit in such jurisdictions at such times as the Chief District Court Judge may from time to time direct.
- (3) The fact that a Judge sits in any particular court shall be conclusive evidence of his or her authority so to do, and no exercise of any jurisdiction or power by a Judge shall be questioned on the ground that he or she was not authorised to sit in the court where the jurisdiction or power was so exercised.
- (4) The reference in subsection (2) to **jurisdictions** means—
  - (a) the ordinary civil and criminal jurisdiction of District Courts, including common law and equitable jurisdiction and admiralty jurisdiction:

- (b) the specialist jurisdiction of District Courts by virtue of the constitution of Family Courts and Youth Courts as divisions of District Courts.
- (5) For the avoidance of doubt, it is hereby declared that the power conferred by this section on the Chief District Court Judge does not include the power to give directions in relation to any District Court Judge who for the time being presides over, or holds office as a member of, or holds office as, a tribunal.

Section 9: substituted, on 2 September 1996, by section 3(1) of the District Courts Amendment Act 1996 (1996 No 119).

## **10 Acting Judges**

- (1) The Governor-General may at any time during the illness or absence of any Judge, or for any other temporary purpose, by warrant under his hand appoint 1 or more Judges to hold office for such time as is specified in the said warrant. Every such Judge shall be paid such salary, not exceeding the amount payable by law to Judges, as may be appropriated by Parliament for the purpose.
- (2) No person shall be appointed as a Judge under this section unless he is eligible for appointment as a Judge pursuant to section 5, save that a person otherwise qualified who has attained the age of 70 years (including a Judge who has retired after attaining that age) may be appointed as a Judge under this section for a period not exceeding 12 months, or for 2 or more periods not exceeding 4 years in the aggregate.

Compare: 1928 No 14 s 12

Section 10 heading: amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 10(1): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 10(2): amended, on 6 March 2007, by section 5 of the District Courts Amendment Act 2007 (2007 No 1).

Section 10(2): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 10(2): amended, on 18 November 1964, by section 3 of the District Courts Amendment Act 1964 (1964 No 99).

**10A Retired Judges may act**

- (1) Any person who has retired from office as a Judge on attaining the age of 70 years, or who has sooner resigned, may be appointed from time to time as an acting Judge by the Governor-General by warrant under his hand.
- (1A) Notwithstanding section 28B, any person so appointed may, at the same time or at any subsequent time during the term of his appointment, be appointed to exercise the criminal jurisdiction of the courts under Part 2A; and any such appointment shall take effect during any period when, and in any place where, that person is entitled under subsection (4) to act as a Judge.
- (2) Notwithstanding the provisions of section 435 of the Children, Young Persons, and Their Families Act 1989, any person so appointed may at the same time or at any subsequent time during the term of that person's appointment be designated as a Youth Court Judge, and any such designation shall take effect during any period when and in any place where pursuant to subsection (4) that person is entitled to act as a Judge.
- (3) Each such appointment shall be for a term not exceeding 2 years or, if the person has attained the age of 72 years, not exceeding 12 months.
- (4) During the term of the warrant, the person so appointed may act as a District Court Judge during such period or periods only and in such place or places only as the Chief District Court Judge may fix.
- (5) Every acting Judge so appointed shall, during the period when he acts as a Judge, but not otherwise, be paid a salary at the rate for the time being prescribed for Judges under section 6 and during that period he shall have all the jurisdiction, powers, protections, privileges, and immunities of a Judge.

Section 10A: inserted, on 29 June 1974, by section 4 of the District Courts Amendment Act 1974 (1974 No 20).

Section 10A heading: amended, on 1 May 1981, by section 6 of the District Courts Amendment Act 1980 (1980 No 83).

Section 10A(1): amended, on 6 March 2007, by section 6 of the District Courts Amendment Act 2007 (2007 No 1).

Section 10A(1): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 10A(1A): inserted, on 1 May 1981, by section 6 of the District Courts Amendment Act 1980 (1980 No 83).

Section 10A(2): substituted, on 1 November 1989, by section 449 of the Children, Young Persons, and Their Families Act 1989 (1989 No 24).

Section 10A(4): substituted, on 1 April 1980, by section 8(2) of the District Courts Amendment Act 1979 (1979 No 125).

Section 10A(5): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

## **11 Jurisdiction of Judge in Chatham Islands**

- (1) The Governor-General may from time to time by warrant under his hand appoint a fit person to be a Judge to exercise criminal and civil jurisdiction, other than the jurisdiction conferred by Part 2A, in the Chatham Islands.
- (2) A Judge so appointed shall hold office during the pleasure of the Governor-General, and shall receive in each and every year such salary as is from time to time appropriated for the purpose by Parliament.
- (3) Subsections (1) to (5) of section 5 and sections 6 and 7 shall not apply to a Judge appointed under this section, but except as aforesaid this Act shall apply to such a Judge.

Compare: 1928 No 14 s 11

Section 11 heading: amended, on 1 May 1981, by section 7 of the District Courts Amendment Act 1980 (1980 No 83).

Section 11(1): amended, on 1 May 1981, by section 7 of the District Courts Amendment Act 1980 (1980 No 83).

Section 11(1): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 11(2): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 11(3): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

### *Community Magistrates*

Heading: inserted, on 30 June 1998, by section 3 of the District Courts Amendment Act 1998 (1998 No 76).

#### **11A Appointment of Community Magistrates**

- (1) The Governor-General may from time to time, by warrant under the Governor-General's hand and on the advice of the Minister of Justice, appoint to be Community Magistrates such of the persons qualified for appointment as the Governor-General, on the advice of the Minister, thinks fit.
- (2) A person is qualified for appointment as a Community Magistrate only if that person—
  - (a) is capable, by reason of that person's personal qualities, experience, and skills, of performing the functions of a Community Magistrate; and
  - (b) has been designated, in accordance with a selection process prescribed by regulations made under section 123, as a person qualified for appointment as a Community Magistrate.
- (3) The Minister must, before giving advice in relation to any appointment under subsection (1), consult with such persons as the Minister considers appropriate.

Compare: 1988 No 110 s 7(1), (2)

Section 11A: inserted, on 30 June 1998, by section 3 of the District Courts Amendment Act 1998 (1998 No 76).

#### **11B Right to hold other office and to engage in other employment**

- (1) Subject to subsection (2), a Community Magistrate may—
  - (a) hold any other office; and
  - (b) engage in any other employment or calling—  
that, in the opinion of the Governor-General, will not impair the proper discharge of the functions of a Community Magistrate.
- (2) No Community Magistrate may—
  - (a) hold a current practising certificate under the Law Practitioners Act 1982; or
  - (b) hold office as a constable or as a traffic officer; or

- (c) hold office as an employee of the Public Service who is employed—
  - (i) in the Ministry of Justice; or
  - (ii) in the Department of Corrections; or
  - (iii) *[Repealed]*
  - (iv) as an officer of the High Court or of a District Court; or
- (d) be a party to a prison management contract entered into under section 198(1) of the Corrections Act 2004 or to a security contract entered into under section 166 of the Corrections Act 2004; or
- (e) be a security officer within the meaning of section 3(1) of the Corrections Act 2004; or
- (f) be a social worker within the meaning of section 2(1) of the Children, Young Persons, and Their Families Act 1989.

Compare: 1988 No 110 s 7(5)

Section 11B: inserted, on 30 June 1998, by section 3 of the District Courts Amendment Act 1998 (1998 No 76).

Section 11B(2)(b): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 11B(2)(c)(iii): repealed, on 1 October 2003, by section 12(2) of the State Sector Amendment Act 2003 (2003 No 41).

Section 11B(2)(d): amended, on 8 December 2009, by section 8(2) of the Corrections (Contract Management of Prisons) Amendment Act 2009 (2009 No 59).

Section 11B(2)(d): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 11B(2)(e): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

### **11C Functions and powers of Community Magistrates**

- (1) The functions and powers of Community Magistrates are to carry out such functions and powers as are conferred on Community Magistrates—
  - (a) by the Summary Proceedings Act 1957; or
  - (b) by the Summary Offences Act 1981; or
  - (c) by any other enactment.
- (2) Each Community Magistrate is to sit in such courts at such times as the Chief District Court Judge may from time to time direct after consultation with—

- (a) the Chief Community Magistrate; or
  - (b) if the office of Chief Community Magistrate is vacant, such other Community Magistrate as the Chief District Court Judge thinks fit.
- (3) The fact that a Community Magistrate sits in any particular court is conclusive evidence of his or her authority to do so.

Section 11C: inserted, on 30 June 1998, by section 3 of the District Courts Amendment Act 1998 (1998 No 76).

#### **11D Chief Community Magistrate**

- (1) The Governor-General may from time to time, by warrant under the Governor-General's hand and on the advice of the Minister of Justice, appoint a Chief Community Magistrate.
- (2) No person may be appointed as Chief Community Magistrate unless that person has held a practising certificate as a barrister or solicitor for at least 5 years.
- (3) The criteria and procedures for appointment of a person as Chief Community Magistrate may be prescribed by regulations made under section 123; but the failure to make any such regulations does not preclude the appointment of a person as Chief Community Magistrate.
- (4) Subject to subsection (5), the Chief Community Magistrate holds office so long as he or she holds office as a Community Magistrate.
- (5) With the prior approval of the Governor-General, the Chief Community Magistrate may resign that office without resigning his or her office as a Community Magistrate.
- (6) Whenever by reason of illness, absence from New Zealand, or any other cause the Chief Community Magistrate is prevented from exercising the duties of his or her office, the Governor-General may, by writing under his or her hand, appoint 1 of the other Community Magistrates to act as Chief Community Magistrate until the Chief Community Magistrate resumes his or her duties and, during that period, to execute the duties of that office and to exercise all powers that may be lawfully exercised by the Chief Community Magistrate.

Section 11D: inserted, on 30 June 1998, by section 3 of the District Courts Amendment Act 1998 (1998 No 76).

**11E Functions of Chief Community Magistrate**

- (1) The functions of the Chief Community Magistrate include—
  - (a) the undertaking of appropriate measures to ensure that the integrity of the office of Community Magistrate is maintained and that the Community Magistrates operate effectively and efficiently within the framework of the District Courts:
  - (b) such other functions as are conferred on the Chief Community Magistrate by regulations made under section 123 or by any other enactment.
- (2) Without limiting the generality of subsection (1), the Chief Community Magistrate—
  - (a) may sit as a Community Magistrate and exercise the jurisdiction specified in this Act:
  - (b) is to be consulted by the Chief District Court Judge, in accordance with section 11C(2), with regard to the rostering of Community Magistrates:
  - (c) may be involved in the design and implementation of training programmes for Community Magistrates in consultation with the Ministry of Justice and the Chief District Court Judge:
  - (d) may, where appropriate, liaise with interested persons on matters affecting the office of Community Magistrate.

Section 11E: inserted, on 30 June 1998, by section 3 of the District Courts Amendment Act 1998 (1998 No 76).

Section 11E(2)(c): amended, on 1 October 2003, pursuant to section 14(1) of the State Sector Amendment Act 2003 (2003 No 41).

**11F Tenure of office**

- (1) Every Community Magistrate must retire from office on attaining the age of 70 years.
- (2) The Governor-General may remove a Community Magistrate from office for neglect of duty, inability, disability affecting performance of duty, bankruptcy, or misconduct, proved to the satisfaction of the Governor-General.
- (3) Any Community Magistrate may at any time resign the office of Community Magistrate by notice in writing addressed to the Minister of Justice.

Section 11F: inserted, on 30 June 1998, by section 3 of the District Courts Amendment Act 1998 (1998 No 76).

Section 11F(1): amended, on 6 March 2007, by section 7 of the District Courts Amendment Act 2007 (2007 No 1).

**11G Remuneration and allowances of Community Magistrates**

- (1) There is to be paid to the Chief Community Magistrate, out of public money,—
  - (a) remuneration by way of salary, fees, or allowances at such rate as is determined from time to time by the Remuneration Authority in accordance with the Remuneration Authority Act 1977; and
  - (b) such additional allowances, being travelling allowances or other incidental or minor allowances, as may be determined from time to time by the Governor-General by Order in Council.
- (2) There is to be paid to each Community Magistrate (other than the Chief Community Magistrate), out of public money,—
  - (a) remuneration by way of fees, salary, or allowances at such rates as are determined from time to time by the Governor-General by Order in Council; and
  - (b) such additional allowances, being travelling allowances or incidental or minor allowances, as may be determined from time to time by the Governor-General by Order in Council.
- (3) The remuneration of a Community Magistrate is not to be diminished during the continuance of the Community Magistrate's appointment.
- (4) Any Order in Council made under subsection (1)(b) or subsection (2), and any provision of any such order, may be made so as to come into force on a date to be specified in that behalf in the order, being the date of the making of the order or any other date, whether before or after the date of the making of the order.
- (5) Every such Order in Council, and any provision of any such order, in respect of which no date is specified as aforesaid, comes into force on the date of the making of the order.
- (6) Every Order in Council made under subsection (1)(b) or subsection (2) is deemed to be a regulation for the purposes of

the Acts and Regulations Publication Act 1989 but not for the purposes of the Regulations (Disallowance) Act 1989.

Section 11G: inserted, on 30 June 1998, by section 3 of the District Courts Amendment Act 1998 (1998 No 76).

Section 11G(1)(a): amended, on 1 April 2003, by section 4(1) of the Remuneration Authority (Members of Parliament) Amendment Act 2002 (2002 No 54).

### **11H Retired Community Magistrates**

- (1) Any person who has retired from office as a Community Magistrate on attaining the age of 70 years, or who has sooner resigned, may be appointed as an acting Community Magistrate by the Governor-General on the advice of the Minister of Justice.
- (2) Each acting Community Magistrate must be appointed for a stated term that—
  - (a) is not more than the time until the Community Magistrate will reach the age of 73 years;
  - (b) in any case, is not more than 24 months.
- (3) During the term of the warrant, the person appointed may act as a Community Magistrate only during the period or periods that the Chief District Court Judge may direct after consultation with—
  - (a) the Chief Community Magistrate; or
  - (b) if the office of Chief Community Magistrate is vacant, any other Community Magistrate that the Chief District Court Judge thinks fit.
- (4) An acting Community Magistrate must, in respect of any period during which he or she acts as a Community Magistrate, but not otherwise, be paid remuneration and allowances at the rate for the time being prescribed for Community Magistrates under section 11G.
- (5) While an acting Community Magistrate appointed under this section acts as a Community Magistrate, but not otherwise, he or she has all the jurisdiction, powers, protections, privileges, and immunities of a Community Magistrate.

Section 11H: inserted, on 20 May 2004, by section 6 of the District Courts Amendment Act 2004 (2004 No 42).

Section 11H(1): amended, on 6 March 2007, by section 8 of the District Courts Amendment Act 2007 (2007 No 1).

### *Registrars*

#### **12 Appointment of Registrar**

- (1) There shall from time to time be appointed for each court a Registrar.
- (2) One person may be appointed Registrar for 2 or more courts.
- (2A) A person who is appointed as a Registrar may exercise the powers and perform the functions and duties of the Registrar of any District Court.
- (3) Each person who on the commencement of this Act holds office as the Clerk of any court shall without further appointment be deemed to have been appointed Registrar of that court.
- (4) All references to a Clerk of any court in any Act, rule, regulation, or other enactment, or in any judgment, order, contract, agreement, or other document whatsoever, shall, unless inconsistent with the context, be hereafter read as references to the Registrar of that court.

Compare: 1928 No 14 s 15

Section 12(2A): inserted, on 23 July 2011, by section 5 of the District Courts Amendment Act 2011 (2011 No 30).

#### **13 Record of proceedings to be kept by Registrar**

- (1) The Registrar of each court shall keep or cause to be kept such records of and in relation to proceedings in the court as may be prescribed by the chief executive of the Ministry of Justice.
- (2) Any entry in a book or other document required by the rules to be kept by the Registrar, or a copy thereof or extract therefrom sealed with the seal of the court and purporting to be signed and certified as a true copy or correct extract by the Registrar, shall at all times without further proof be admitted in all courts and places whatsoever as evidence of the entry and of the proceeding referred to thereby and of the regularity of that proceeding.
- (3) If the existence of a record of the court is in dispute the existence of such record shall be determined by the court.

Compare: 1928 No 14 ss 17, 18, 93

Section 13(1): amended, on 1 October 2003, pursuant to section 14(1) of the State Sector Amendment Act 2003 (2003 No 41).

Section 13(1): amended, on 1 July 1995, by section 10(1) of the Department of Justice (Restructuring) Act 1995 (1995 No 39).

**14 Deputy Registrars**

- (1) There may be from time to time appointed in respect of any court 1 or more Deputy Registrars of the court. Each person who on the commencement of this Act holds office as an Assistant Clerk of any court shall without further appointment be deemed to have been appointed Deputy Registrar of that court.
- (1A) A person who is appointed as a Deputy Registrar may exercise the powers and perform the functions and duties of a Deputy Registrar of any District Court.
- (2) In any case where the Registrar or Deputy Registrar has died or is prevented by illness or other cause from acting in his office, a Judge may appoint a Deputy Registrar to act for such period as the Judge thinks fit. A Judge may at his pleasure remove any such Deputy Registrar.
- (3) Except as may be provided by the rules, each Deputy Registrar shall, both under this Act and under any other Act, have the same powers and privileges, perform the same duties, and be subject to the same provisions and penalties as if he were the Registrar for the time being, whether those powers, privileges, duties, provisions, or penalties are conferred, imposed, or enacted under this Act or that other Act, or not.

Compare: 1928 No 14 ss 19, 21

Section 14(1A): inserted, on 23 July 2011, by section 6 of the District Courts Amendment Act 2011 (2011 No 30).

Section 14(2): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 14(3): amended, on 1 July 1992, by section 3 of the District Courts Amendment Act 1992 (1992 No 17).

*Bailiffs***15 Appointment of bailiffs**

- (1) There shall be a bailiff or such bailiffs for each court as may be necessary, who shall be appointed from time to time.
- (1A) A person who is appointed as a bailiff may exercise the powers and perform the functions and duties of a bailiff of any District Court.
- (2) A Judge may appoint a constable or other person to act for a particular occasion as bailiff at any court or place.

- (3) Whenever any summons, writ, warrant, or other process issued under the authority of this Act is received by any constable for service or execution, the constable in the service or execution of the process shall for all the purposes of this Act be deemed to be a bailiff duly appointed under the provisions of this section.

Compare: 1928 No 14 s 20(1), (3)

Section 15(1A): inserted, on 23 July 2011, by section 7 of the District Courts Amendment Act 2011 (2011 No 30).

Section 15(2): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

## **16 Deputy bailiffs**

- (1) A Judge may from time to time appoint a deputy to act for a bailiff, when he is prevented by illness or other cause from acting in his office, and in the case of the death of a bailiff may appoint a deputy to act in the place of the bailiff until another appointment is made, and may remove any such deputy at his pleasure.
- (1A) A person who is appointed as a deputy bailiff may exercise the powers and perform the functions and duties of a deputy bailiff of any District Court.
- (2) Any deputy appointed as aforesaid, while acting under such appointment, shall, both under this Act and under any other Act, have the same powers and privileges, perform the same duties, and be subject to the same provisions and penalties as if he were the bailiff for the time being, whether those powers, privileges, duties, provisions, or penalties are conferred, imposed, or enacted under this Act or that other Act, or not.

Compare: 1928 No 14 s 21

Section 16(1): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 16(1A): inserted, on 23 July 2011, by section 8 of the District Courts Amendment Act 2011 (2011 No 30).

## **17 Powers and duties of bailiffs**

- (1) Every bailiff shall—
- (a) have the powers of a constable and take the oath in either of the forms set out in subsection (3) before any Justice:

- (b) attend each sitting of the court to which he is appointed for such time as is required, unless his presence is excused by the court:
  - (c) serve all summonses and orders and execute all warrants issued out of any court and coming to his hands for the purpose of service or execution, or may authorize any person to act for him in effecting any such service or execution:
  - (d) conform to all rules and regulations affecting the execution of his office, and in other respects be subject to the directions of the Judge or Registrar:
  - (e) be answerable for all acts and defaults of himself and those acting under him and by his authority, in like manner as any Sheriff in New Zealand is responsible for the acts and defaults of himself and his officers.
- (2) In executing any process of the court the bailiff shall have such powers and be subject to such liabilities as a Sheriff has or is subject to in like cases in executing the process of the High Court.
- (3) The oath referred to in subsection (1)(a) is as follows:
- “English form*
- “I, [name], swear that I will faithfully and diligently serve Her (or His) Majesty [specify the name of the reigning Sovereign, as in: Queen Elizabeth the Second], Queen (or King) of New Zealand, her (or his) heirs and successors, as a bailiff at [place], without favour or affection, malice or ill-will. While I hold this office I will, to the best of my power, keep the peace and prevent offences against the peace and will, to the best of my skill and knowledge, perform all the duties of the office of bailiff according to law. So help me God.
- “Māori form*
- “Tēnei au, a [ingoa], e kī taurangi nei, ka rato pirihonga, urupū hoki ahau i Ia Arikinui [tohua te ingoa o te Arikinui kei runga i te torona, pērā ki a Kuini Irahāpeti te Tuarua], Kuini (Kīngi rānei) o Niu Tīreni, me ōna uri whakaheke, hei kaituku hāmene ki [wāhi] i roto i te kore tautoko, kore aroha rānei, kore mahi kino, kore whakaaro kino rānei. I te wā ke tēnei tūranga ahau ka pōkaikaha ahau ki te hohou i te rongo

me te kaupare atu i nga mahi kotikoti i te rongō, ā, i roto i ōku tino pūkenga me ōku mōhio, ka whakatutuki i ngā mahi kua whakaritea hei mahi mā te kaituku hāmene, e ai ki te ture. Nō reira, āwhina mai i ahau e te Atua.”

Compare: 1928 No 14 s 22

Section 17(1)(a): substituted, on 1 October 2008, by section 118(2) of the Policing Act 2008 (2008 No 72).

Section 17(1)(d): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 17(2): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Section 17(3): added, on 1 October 2008, by section 118(3) of the Policing Act 2008 (2008 No 72).

**17A Sections 121, 128, and 129 of Search and Surveillance Act 2012 inapplicable to bailiffs**

Sections 121, 128, and 129 of the Search and Surveillance Act 2012 (which relate to a general power to stop vehicles) do not apply to any bailiff.

Section 17A: replaced, on 1 October 2012, by section 329 of the Search and Surveillance Act 2012 (2012 No 24).

*Miscellaneous provisions as to officers*

**18 Penalty for assaulting officers**

If any person assaults an officer of a court while in the execution of his duty, that person shall be liable, on an order made by a Judge in that behalf, to a fine not exceeding \$300, and the bailiff or any constable may take him into custody, with or without warrant, and bring him before a Judge:

provided that nothing in this section shall be deemed to prevent proceedings in respect of that assault being taken against that person under some other Act instead of under this section.

Compare: 1928 No 14 s 23; County Courts Act 1934 s 31 (UK)

Section 18: amended, on 1 May 1981, by section 16 of the District Courts Amendment Act 1980 (1980 No 83).

Section 18: amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

**19 Misconduct of officers**

(1) If any officer of a court is charged—

- (a) with extortion or misconduct while acting under colour or pretence of the process of the court; or
- (b) with not duly paying or accounting for any money levied or received by him under the authority of this Act,—

it shall be lawful for a Judge to inquire into the matter in a summary way.

- (2) For the purpose of any such inquiry as aforesaid, the Judge may summon and enforce the attendance of all necessary parties in like manner as the attendance of witnesses in any action may be enforced.
- (3) On the inquiry the Judge may make such order as he thinks just for the repayment of any money extorted or the due payment of any money levied, and for the payment of damages and costs, and also, if he thinks fit, may impose such fine upon the officer, not exceeding \$300 for each offence, as appears to him to be adequate.

Compare: 1928 No 14 ss 25, 26; County Courts Act 1934 s 32 (UK)

Section 19(1): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 19(2): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 19(3): amended, on 1 May 1981, by section 16 of the District Courts Amendment Act 1980 (1980 No 83).

Section 19(3): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

## **20 Officers of court not to act as solicitors therein**

- (1) Except as provided by this Act or the rules or by any other enactment, no officer of a court shall be directly or indirectly engaged as solicitor or agent for any party in any proceedings in any court.
- (2) Every person who contravenes the provisions of this section shall, for each offence, be liable on summary conviction to a fine not exceeding \$150.

Compare: County Courts Act 1934 s 30 (UK)

Section 20(2): amended, on 1 May 1981, by section 16 of the District Courts Amendment Act 1980 (1980 No 83).

### *Sittings*

#### **21 Place of sittings**

- (1) Regular sittings of the courts for the despatch of civil business may be held in the courthouse in any city, borough, or other place appointed under subsection (1) of section 4.
- (2) Special or adjourned sittings for the despatch of civil business may be held in any such courthouse as aforesaid or in any other place wheresoever which the Judge deems convenient.
- (3) Sittings for the despatch of summary criminal business by the courts may be held in the courthouse in any city, borough, or place appointed under subsection (2) of section 4, or in any other place wheresoever which the Judge or the Justice or Justices or the Community Magistrate or Community Magistrates constituting the court deem convenient.
- (4) Sittings for the conduct of trials on indictment may be held in a courthouse in any city, borough, or place appointed for the purpose under section 4(2A).

Section 21(2): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 21(3): amended, on 30 June 1998, by section 4 of the District Courts Amendment Act 1998 (1998 No 76).

Section 21(3): amended, on 1 May 1981, by section 8(1) of the District Courts Amendment Act 1980 (1980 No 83).

Section 21(3): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 21(4): added, on 1 May 1981, by section 8(2) of the District Courts Amendment Act 1980 (1980 No 83).

#### **22 Times of sittings**

- (1) Sittings for the despatch of civil business and sittings for the despatch of criminal business shall be held on such days and at such times as may be appointed by the Judge exercising jurisdiction at the place in which the sittings are held:  
provided that the days appointed for regular sittings shall be subject to the approval of the Chief District Court Judge.
- (2) Nothing in this section shall derogate from the power of the Judge or any Justices or any Community Magistrate or Com-

munity Magistrates to hold sittings on any day or at any time for the disposal of criminal business.

Compare: 1928 No 14 s 6(1)

Section 22(1): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 22(1) proviso: amended, on 1 April 1980, by section 8(3) of the District Courts Amendment Act 1979 (1979 No 125).

Section 22(2): amended, on 30 June 1998, by section 5 of the District Courts Amendment Act 1998 (1998 No 76).

Section 22(2): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

### **23 Adjourned sittings**

- (1) A Judge may from time to time adjourn any court held by him.
- (2) If for any cause a sitting of the court in the exercise of its civil or criminal jurisdiction cannot be held upon a day appointed by reason of the absence of the Judge or otherwise, the Registrar, after exercising any powers which he is authorized to exercise by or under this Act or any other enactment, may adjourn the court to such day as he thinks convenient.

Compare: 1928 No 14 s 43; County Courts Act 1934 s 36 (UK)

Section 23(1): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 23(2): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

## **Part 2 Criminal jurisdiction**

*[Repealed]*

Part 2: repealed, on 1 April 1958, by section 214(1) of the Summary Proceedings Act 1957 (1957 No 87).

### **24 Criminal jurisdiction**

*[Repealed]*

Section 24: repealed, on 1 April 1958, by section 214(1) of the Summary Proceedings Act 1957 (1957 No 87).

**25 Jurisdiction as to fugitive offenders**

*[Repealed]*

Section 25: repealed, on 1 April 1958, by section 214(1) of the Summary Proceedings Act 1957 (1957 No 87).

**26 Informations and complaints to be filed in nearest court**

*[Repealed]*

Section 26: repealed, on 1 April 1958, by section 214(1) of the Summary Proceedings Act 1957 (1957 No 87).

**27 Place of hearing of informations and complaints**

*[Repealed]*

Section 27: repealed, on 1 April 1958, by section 214(1) of the Summary Proceedings Act 1957 (1957 No 87).

**28 Criminal Record Book**

*[Repealed]*

Section 28: repealed, on 1 April 1958, by section 214(1) of the Summary Proceedings Act 1957 (1957 No 87).

**Part 2A**  
**Criminal jurisdiction in respect of**  
**indictable offences**

Part 2A: inserted, on 1 May 1981, by section 9 of the District Courts Amendment Act 1980 (1980 No 83).

**28A Extent of jurisdiction under Part 2A**

- (1) A court that is sitting at a place appointed under section 4(2A) and is presided over by a trial Judge has jurisdiction under this Part in respect of the following offences:
- (a) any offence for which the accused elects under section 66 of the Summary Proceedings Act 1957 to be tried by a jury:
  - (b) all indictable offences under any enactment (other than the offences referred to in Parts 1 and 2 of Schedule 1A):
  - (c) the indictable offences referred to in Part 1 of Schedule 1A, in any case where—

- (i) the proceedings are transferred to the court under section 184Q of the Summary Proceedings Act 1957; or
  - (ii) a person pleads guilty under section 160 or 184J of the Summary Proceedings Act 1957, before he or she is committed for trial or sentence for any such offence:
- (d) conspiring to commit an indictable offence to which paragraph (b) or (c) applies:
  - (e) attempting to commit an indictable offence to which paragraph (b) or (c) applies, or inciting or counselling or attempting to procure any person to commit any such offence, which is not committed:
  - (f) being an accessory after the fact to any indictable offence to which paragraph (b) or (c) applies.
- (2) Notwithstanding anything in any of paragraphs (c) to (f) of subsection (1), a court shall not have jurisdiction under this Part to try a person charged with an offence against any of sections 109, 113, 115, 116, and 117 of the Crimes Act 1961 if the charge relates to proceedings that were held in the High Court.
- (3) Despite subsection (1), a court does not have jurisdiction to try a person charged with a stage-3 offence (within the meaning of section 86A of the Sentencing Act 2002).

Section 28A: substituted, on 1 October 1991, by section 4 of the District Courts Amendment Act 1991 (1991 No 61).

Section 28A(1): substituted, on 26 June 2008, by section 4(1) of the District Courts Amendment Act (No 2) 2008 (2008 No 39).

Section 28A(1)(c)(i): amended, on 29 June 2009, by section 18 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Section 28A(1)(c)(ii): amended, on 29 June 2009, by section 18 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Section 28A(2): amended, on 26 June 2008, by section 4(2) of the District Courts Amendment Act (No 2) 2008 (2008 No 39).

Section 28A(2): amended, on 1 March 1996, by section 2(2) of the District Courts Amendment Act 1995 (1995 No 65).

Section 28A(3): added, on 1 June 2010, by section 13 of the Sentencing and Parole Reform Act 2010 (2010 No 33).

**28B Appointment of trial Judges**

- (1) The Governor-General shall from time to time, by warrant under his hand, appoint sufficient trial Judges to exercise the criminal jurisdiction of the courts under this Part.
- (2) Nothing in this Part shall limit or affect the power of a trial Judge to exercise any of the other jurisdictions of the courts or the powers of a Judge.

Section 28B: inserted, on 1 May 1981, by section 9 of the District Courts Amendment Act 1980 (1980 No 83).

Section 28B(2): amended, on 29 June 2009, by section 18 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

**28C Trial Judge not to act in certain cases**

*[Repealed]*

Section 28C: repealed, on 29 June 2009, by section 16 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

**28D Constitution and procedure of court**

- (1) Subject to sections 361B to 361E of the Crimes Act 1961, every trial upon indictment under this Part shall be held before a trial Judge and a jury of 12 persons.
- (2) The provisions of the Juries Act 1981, so far as they are applicable and with the necessary modifications, shall apply to every such trial.
- (3) Where any person is committed to a District Court for trial, the provisions of Parts 12 and 13 of the Crimes Act 1961, so far as they are applicable and with the necessary modifications, shall apply until the matter is finally disposed of.

Section 28D: inserted, on 1 May 1981, by section 9 of the District Courts Amendment Act 1980 (1980 No 83).

Section 28D(1): amended, on 25 December 2008, by section 4(5)(a) of the Crimes Amendment Act (No 2) 2008 (2008 No 37).

Section 28D(1): amended, on 1 March 1996, by section 4(2) of the Crimes Amendment Act (No 2) 1995 (1995 No 68).

Section 28D(2): amended, on 25 December 2008, by section 4(5)(b) of the Crimes Amendment Act (No 2) 2008 (2008 No 37).

**28E Powers of court**

- (1) Any court exercising jurisdiction under this Part may summons witnesses; and sections 20 and 26 to 29 of the Summary

Proceedings Act 1957, with any necessary modifications, shall apply.

- (2) Any court exercising jurisdiction under this Part may adjourn any trial and grant the accused person bail; and section 46 of the Summary Proceedings Act 1957 and sections 28 to 34 of the Bail Act 2000, with any necessary modifications, shall apply.
- (2A) Where, by virtue of subsection (2) or of any of the provisions applied by that subsection, an accused person is granted or refused bail, or any District Court Judge varies or revokes or substitutes or imposes any condition of bail, or refuses to vary or revoke or substitute or impose any condition of bail, the provisions of sections 41 and 42 of the Bail Act 2000, as far as they are applicable and with all necessary modifications, shall apply accordingly.
- (2B) Where a court makes an order under section 200, 202, or 205 of the Criminal Procedure Act 2011 or refuses to make any such order, either the prosecutor or the applicant may appeal to the High Court against the making of that order or refusal; and the provisions of section 115C of the Summary Proceedings Act 1957, as far as they are applicable and with all necessary modifications, shall apply accordingly.
- (3) Any court exercising jurisdiction under this Part may grant leave to the defendant to withdraw a plea of guilty at any time before he has been sentenced or otherwise dealt with.

Section 28E: inserted, on 1 May 1981, by section 9 of the District Courts Amendment Act 1980 (1980 No 83).

Section 28E(2): substituted, on 1 December 1991, by section 2 of the District Courts Amendment Act (No 2) 1991 (1991 No 107).

Section 28E(2): amended, on 1 January 2001, by section 74(2) of the Bail Act 2000 (2000 No 38).

Section 28E(2A): inserted, on 1 December 1991, by section 2 of the District Courts Amendment Act (No 2) 1991 (1991 No 107).

Section 28E(2A): amended, on 1 January 2001, by section 74(2) of the Bail Act 2000 (2000 No 38).

Section 28E(2B): inserted, on 1 September 1993, by section 5(1) of the Crimes Amendment Act (No 2) 1993 (1993 No 46).

Section 28E(2B): amended, on 5 March 2012 (applying in relation to a proceeding for an offence that was committed before that date in accordance with the provisions of sections 397 and 399–401 of the Criminal Procedure Act 2011), by section 393 of the Criminal Procedure Act 2011 (2011 No 81).

**28F Maximum sentences**

- (1) This subsection applies to any case where—
  - (a) a person is found guilty on indictment in a District Court; or
  - (b) a person who has been committed to a District Court for trial, or whose trial has been transferred to a District Court by order made under section 184Q of the Summary Proceedings Act 1957, pleads guilty—
    - (i) under section 321 of the Crimes Act 1961, at any time before the commencement of the trial; or
    - (ii) under section 356 of that Act, either when called upon to plead or subsequently during the trial.
- (2) In any case to which subsection (1) applies, the court may sentence the person to imprisonment or a fine or both, not exceeding,—
  - (a) in the case of imprisonment, the maximum term prescribed by law; or
  - (b) in the case of a fine, the maximum amount prescribed by law or, if no maximum amount is so prescribed, \$10,000.
- (3) This subsection applies to any case where—
  - (a) a person pleads guilty under section 160 or 184J of the Summary Proceedings Act 1957, to—
    - (i) any offence for which the accused elects trial by jury under section 66 of the Summary Proceedings Act 1957; or
    - (ii) any indictable offence under any enactment (other than the offences referred to in Part 2 of Schedule 1A); or
    - (iii) any offence to which section 28A(1)(d), (e), or (f) applies; and
  - (b) the court accepts jurisdiction.
- (4) In any case to which subsection (3) applies,—
  - (a) any trial Judge may sentence the person to imprisonment or a fine or both, not exceeding,—
    - (i) in the case of imprisonment, the maximum term prescribed by law; or

- (ii) in the case of a fine, the maximum amount prescribed by law or, if no maximum amount is so prescribed, \$10,000:
  - (b) any Judge who is not a trial Judge may sentence the person to imprisonment or a fine or both, not exceeding the maximum term or amount prescribed by section 7 of the Summary Proceedings Act 1957.
- (5) Despite subsections (1) to (4), a court does not have jurisdiction to impose a sentence in respect of a stage-3 offence (within the meaning of section 86A of the Sentencing Act 2002).

Section 28F: substituted, on 1 October 1991, by section 5 of the District Courts Amendment Act 1991 (1991 No 61).

Section 28F(1)(b): amended, on 29 June 2009, by section 18 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Section 28F(3): substituted, on 2 September 1996, by section 5 of the District Courts Amendment Act 1996 (1996 No 119).

Section 28F(3)(a): substituted, on 26 June 2008, by section 5 of the District Courts Amendment Act (No 2) 2008 (2008 No 39).

Section 28F(3)(a): amended, on 29 June 2009, by section 18 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Section 28F(4): substituted, on 2 September 1996, by section 5 of the District Courts Amendment Act 1996 (1996 No 119).

Section 28F(5): added, on 1 June 2010, by section 13 of the Sentencing and Parole Reform Act 2010 (2010 No 33).

### **28G Judge may decline to sentence**

Notwithstanding section 28F, in any case to which that section would otherwise apply, the Judge may decline to sentence the offender under that section and instead commit him to the High Court for sentence; and sections 184K, 184L, and 184T of the Summary Proceedings Act 1957, with any necessary modifications, shall apply.

Section 28G: inserted, on 1 May 1981, by section 9 of the District Courts Amendment Act 1980 (1980 No 83).

Section 28G: amended, on 29 June 2009, by section 18 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

### **28H Appeal against sentence**

- (1) This section applies in any case where a sentence is imposed under section 28F(4).
- (2) If this section applies, then,—

- (a) in any case where the sentence imposed exceeds the maximum term of imprisonment or the maximum fine that may be imposed by a District Court Judge under section 7 of the Summary Proceedings Act 1957 (which is a term of imprisonment not exceeding 5 years or a fine not exceeding \$10,000 or both),—
  - (i) the person sentenced may appeal to the Court of Appeal under section 383(1A) of the Crimes Act 1961; and
  - (ii) the Solicitor-General may appeal, with the leave of the Court of Appeal, to the Court of Appeal under section 383(2A) of the Crimes Act 1961; and
- (b) in any other case,—
  - (i) the person sentenced may appeal to the High Court under section 115(2A) of the Summary Proceedings Act 1957; and
  - (ii) the informant, with the consent of the Solicitor-General given under section 115A(2) of the Summary Proceedings Act 1957, may appeal against the sentence to the High Court under section 115A(1A) of the Summary Proceedings Act 1957.

(2A) This section is subject to section 384A of the Crimes Act 1961.

Section 28H: substituted, on 2 September 1996, by section 6(1) of the District Courts Amendment Act 1996 (1996 No 119).

Section 28H(2): substituted, on 26 June 2008, by section 6 of the District Courts Amendment Act (No 2) 2008 (2008 No 39).

Section 28H(2A): added, on 26 June 2008, by section 6 of the District Courts Amendment Act (No 2) 2008 (2008 No 39).

## **28I Enforcement of fines**

- (1) If a court exercising jurisdiction under this Part imposes 1 or more fines, Part 3 of the Summary Proceedings Act 1957 applies subject to any necessary modifications and subject to the modification in subsection (2).
- (2) Despite section 90 of the Summary Proceedings Act 1957, the period of imprisonment that the court may impose on the offender for the non-payment of the fine or fines must not exceed, for each fine, the lesser of—

- (a) the maximum term of imprisonment to which the offender was liable on conviction; or
  - (b) a period of 2 years.
- (3) In this section, **fine** has the meaning given to it in section 79 of the Summary Proceedings Act 1957.

Section 28I: replaced, on 13 February 2012, by section 9 of the District Courts Amendment Act 2011 (2011 No 30).

### **28J Transfer of proceedings**

- (1) Where any person is committed under section 184N of the Summary Proceedings Act 1957 to a District Court for trial, or where proceedings have been transferred to a District Court for trial by order made under section 184Q of that Act, the accused person or the prosecutor may, either before or after an indictment is presented, apply to a Judge of the High Court for an order directing that the person be tried in the High Court.
- (2) If it appears to the Judge, after giving the accused person and the prosecutor reasonable opportunity to be heard on the matter, that the accused person should be tried in the High Court, he may order that the proceedings be transferred to the High Court for the trial of the accused person at the place specified in the order.
- (3) Notwithstanding subsections (1) and (2), if a Judge of the High Court is satisfied that an indictment pending in a District Court in any city, borough, or other place is ready for trial and that it may be more expeditiously dealt with at a sitting of the High Court at that city, borough, or place, he may, with the consent of the accused person and the prosecutor, order that the proceedings be transferred to the High Court for the trial of the accused person at the place specified in the order.
- (4) Where an order is made under this section, sections 322 to 326 of the Crimes Act 1961, with any necessary modifications, shall apply as if the District Court were the court of committal and the High Court were the substituted court.

Section 28J: inserted, on 1 May 1981, by section 9 of the District Courts Amendment Act 1980 (1980 No 83).

Section 28J(1): amended, on 29 June 2009, by section 18 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Section 28J(1): amended, on 1 October 1991, by section 8(2) of the Summary Proceedings Amendment Act 1991 (1991 No 62).

### **Part 3**

## **Civil jurisdiction and transfer of proceedings**

### *Claims founded on contract or tort* *[Repealed]*

Heading: repealed, on 1 July 1992, by section 2 of the District Courts Amendment Act (No 2) 1992 (1992 No 53).

#### **29 General jurisdiction in respect of proceedings**

- (1) The courts shall have jurisdiction to hear and determine any proceeding where the debt, demand, or damages, or the value of the chattels claimed, is not more than \$200,000, whether on balance of account or otherwise:

provided that the courts shall not, except as in this Act provided, have jurisdiction to hear and determine—

- (a) any proceeding for the recovery of land; or
- (b) any proceeding in which the title to any franchise is in question.

- (2) The courts shall have jurisdiction to hear and determine any proceeding where the debt or demand claimed consists of a balance not exceeding \$200,000, after a set-off of any debt or demand claimed or recoverable by the defendant from the plaintiff, being a set-off admitted by the plaintiff in the particulars of the plaintiff's claim or demand.

Section 29: substituted, on 1 July 1992, by section 2 of the District Courts Amendment Act (No 2) 1992 (1992 No 53).

#### **30 Money recoverable by statute**

- (1) The courts shall have jurisdiction to hear and determine any proceeding for the recovery of any penalty, expenses, contribution, or other like demand which is recoverable by virtue of any enactment for the time being in force, if—
- (a) it is not expressly provided by that or any other enactment that the demand shall be recoverable only in some other court; and

- (b) the amount claimed in the proceeding does not exceed the sum of \$200,000.
- (2) For the purposes of this section the expression **penalty** shall not include a fine to which any person is liable on conviction on indictment or on summary conviction.

Section 30: substituted, on 1 July 1992, by section 6(1) of the District Courts Amendment Act 1991 (1991 No 61).

### **31 Extending jurisdiction in actions for recovery of land**

- (1) The courts shall have jurisdiction to hear and determine any proceeding for the recovery of land where the rent (if any) payable in respect thereof does not exceed the rate of \$62,500 a year or where the value of the land in question does not exceed \$500,000 in the following cases:
  - (a) where the term and interest of the tenant of any land held by him at will, or for any term, whether the tenant is or is not liable for the payment of any rent has ended or been determined, either by the landlord or by the tenant, by a legal notice to quit or demand of possession, and the tenant, or (if the tenant does not actually occupy the land, or occupies only a part thereof) any person by whom the same or any part thereof is then actually occupied, has neglected or refused to quit and deliver up possession of the land or of such part thereof respectively:
  - (b) where any tenant holding any land under any demise or agreement, either written or verbal, is in arrear in payment of rent for such period that the landlord is entitled to exercise a right of re-entry under the terms of the demise or agreement:
  - (c) in the circumstances referred to in the next succeeding section:
  - (d) where any person without right, title, or licence is in possession of any land.
- (2) *[Repealed]*
- (3) Where the capital value of any land appears in the district valuation roll for the time being in force that value shall be taken to be the value of the land for the purposes of this section.

Compare: 1928 No 14 ss 27(f), 180–183; County Courts Act 1934 s 48 (UK)

Section 31 heading: amended, on 13 November 1989, by section 3 of the District Courts Amendment Act 1989 (1989 No 107).

Section 31(1): amended, on 1 July 1992, by section 7(1)(a) of the District Courts Amendment Act 1991 (1991 No 61).

Section 31(1): amended, on 1 July 1992, by section 7(1)(b) of the District Courts Amendment Act 1991 (1991 No 61).

Section 31(2): repealed, on 21 October 1949, by section 48(2)(a) of the Statutes Amendment Act 1949 (1949 No 51).

**32 Landlord's right where rent is in arrear or premises deserted**

*[Repealed]*

Section 32: repealed, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

**33 Jurisdiction as to building societies**

The courts shall have jurisdiction in relation to—

- (a) the settlement of disputes between any building society and its members where the amount involved does not exceed \$200,000:
- (b) the recovery of money and enforcement of claims by or against any building society not exceeding in amount or value the sum of \$200,000:
- (c) all other matters arising under the Building Societies Act 1965 not exceeding in amount or value the sum of \$200,000.

Compare: 1928 No 14 s 27(j)

Section 33(a): amended, on 1 July 1992, by section 8(1) of the District Courts Amendment Act 1991 (1991 No 61).

Section 33(b): amended, on 1 July 1992, by section 8(1) of the District Courts Amendment Act 1991 (1991 No 61).

Section 33(c): amended, on 1 July 1992, by section 8(1) of the District Courts Amendment Act 1991 (1991 No 61).

Section 33(c): amended, on 1 January 1966, pursuant to section 139(1) of the Building Societies Act 1965 (1965 No 22).

*Equity proceedings*

**34 Equity jurisdiction**

- (1) Subject to the provisions of this Act, the courts shall have—

- (a) the same equitable jurisdiction as the High Court to hear and determine any proceeding (other than a proceeding in which the amount claimed or the value of the property claimed or in issue is more than \$200,000):
  - (b) jurisdiction to hear and determine any proceeding for the dissolution or winding up of any partnership (whether or not the existence of the partnership is in dispute), where the whole assets of the partnership do not exceed in amount or value the sum of \$200,000.
- (2) Where jurisdiction in respect of any proceeding or class of proceeding is, by virtue of any provision of any Act (not being section 16 of the Judicature Act 1908) that relates expressly to that proceeding or class of proceeding, exercisable by the High Court or any other court (not being a District Court), District Courts shall not by virtue of subsection (1)(a) or section 29(1) have the equitable jurisdiction of the High Court in respect of that proceeding or class of proceeding.
- (2A) Notwithstanding subsection (2), the District Courts shall have the power to make orders pursuant to section 49 of the Administration Act 1969.
- (3) No proceeding for the dissolution or winding up of a partnership or order thereon shall prevent any creditor from petitioning for an adjudication of bankruptcy against any member or members thereof.

Section 34: substituted, on 1 July 1992, by section 3 of the District Courts Amendment Act (No 2) 1992 (1992 No 53).

Section 34(2A): inserted, on 2 September 1996, by section 7 of the District Courts Amendment Act 1996 (1996 No 119).

#### *Miscellaneous provisions as to jurisdiction*

### **35 Jurisdiction where title in question**

- (1) No court shall have cognizance of any proceedings in which the validity of any devise or bequest is in question or the limitations under any will or settlement are in dispute.
- (2) A court shall have jurisdiction to hear and determine any proceedings in which the title to any corporeal or incorporeal hereditament comes in question if the proceedings would otherwise be within the jurisdiction of the court.

Compare: 1928 No 14 ss 30, 31

**36 Abandonment of part of claim to give court jurisdiction**

- (1) Where a plaintiff has a cause of action for more than \$200,000 in respect of which the court would have had jurisdiction had the amount been not more than \$200,000, the plaintiff may abandon the excess, and thereupon the court shall have jurisdiction to hear and determine the proceeding.
- (2) Where any proceeding, in which the plaintiff has abandoned part of the plaintiff's claim under this section, is heard in a court, the plaintiff shall not recover an amount exceeding \$200,000 together with costs thereon, and the judgment of the court in the proceeding shall be in full discharge of all demands in respect of the cause of action, and entry of the judgment shall be made accordingly.

Section 36: substituted, on 1 July 1992, by section 10(1) of the Districts Courts Amendment Act 1991 (1991 No 61).

**37 Extension of jurisdiction in admiralty by agreement between the parties**

If, but for the amount or value of the subject-matter claimed or in issue, a court would have had jurisdiction in admiralty or under sections 29 to 34 or section 111 and the parties, by memorandum signed by them or by their respective solicitors or agents, agree that a court shall have jurisdiction to hear and determine the proceedings, that court shall, notwithstanding anything in any enactment, have jurisdiction to hear and determine the proceedings.

Compare: 1928 No 14 s 27(h); County Courts Act 1934 ss 43, 53 (UK)

Section 37 heading: amended, on 9 October 1975, by section 2 of the District Courts Amendment Act 1975 (1975 No 87).

Section 37: amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 37: amended, on 9 October 1975, by section 2 of the District Courts Amendment Act 1975 (1975 No 87).

Section 37: amended, on 23 October 1963, by section 2 of the District Courts Amendment Act 1963 (1963 No 100).

**38 Division of cause of action not allowed**

A cause of action may not be divided for the purpose of bringing 2 or more proceedings or any counterclaim.

Compare: 1928 No 14 s 32

Section 38: amended, on 1 July 1992, by section 21(1) of the District Courts Amendment Act 1991 (1991 No 61).

### **39 Proceedings against absent defendant**

The court shall not determine any proceedings against a defendant absent from New Zealand unless it is satisfied either—

- (a) that service has been effected on the defendant in accordance with the rules; or
- (b) that the defendant has a duly appointed agent in New Zealand authorized to sue and be sued on his behalf and service has been effected on the agent in accordance with the rules.

Compare: 1928 No 14 s 37

### *Exercise of jurisdiction and ancillary jurisdiction*

### **40 Persons who exercise jurisdiction of court**

Any jurisdiction and powers conferred on courts by this or any other Act may be exercised by any Judge or, to the extent authorized by this or any other Act or by the rules, by the Registrar of the court or by any person authorized to discharge the functions of the Registrar.

Compare: 1928 No 14 s 5(2); County Courts Act 1934 s 70 (UK)

Section 40: amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

### **41 General ancillary jurisdiction**

Every court, as regards any cause of action for the time being within its jurisdiction, shall (subject to the provisions of section 59) in any proceedings before it—

- (a) grant such relief, redress, or remedy, or combination of remedies, either absolute or conditional; and
- (b) give such and the like effect to every ground of defence or counterclaim equitable or legal,—

as ought to be granted or given in the like case by the High Court and in as full and as ample a manner.

Compare: County Courts Act 1934 s 71 (UK)

Section 41: amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 41: amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

#### **42 Ancillary powers of Judge**

- (1) A Judge shall have jurisdiction in any proceeding pending to make any order or to exercise any authority or jurisdiction which, if it related to a proceeding pending in the High Court, might be made or exercised by a Judge of the High Court in Chambers.
- (2) Notwithstanding subsection (1), an interlocutory injunction restraining a party to a proceeding (whether domiciled, resident or present in New Zealand) from removing from New Zealand, or otherwise dealing with, assets in New Zealand is the only interlocutory injunction in the nature of a Mareva injunction that a Judge may grant.
- (3) Without limiting the power to make an order for the detention, custody, or preservation of any property, it is hereby declared that nothing in this Act authorises a Judge to make an Anton Piller order.

Section 42: substituted, on 1 July 1992, by section 4 of the District Courts Amendment Act (No 2) 1992 (1992 No 53).

#### **42A Jurisdiction exclusive of interest awarded**

Where a court has power to award interest under section 62B, the court may exercise that power notwithstanding that the inclusion of the interest in the sum for which judgment is given will cause that sum to exceed a monetary amount that, under this Act, applies in relation to the court's jurisdiction in respect of that proceeding.

Section 42A: inserted, on 1 July 1992, by section 5 of the District Courts Amendment Act (No 2) 1992 (1992 No 53).

#### *Transfer of proceeding*

Heading: substituted, on 1 July 1992, by section 11(1) of the District Courts Amendment Act 1991 (1991 No 61).

#### **43 Transfer to High Court of proceeding within jurisdiction**

- (1) Where there is commenced in a court any proceeding in which the amount of the claim or the value of the property or relief

claimed or in issue exceeds \$50,000, the defendant in the proceeding may, within such time as may be prescribed or at any time thereafter by leave of the Judge, give notice that the defendant objects to the proceeding being tried in the court, and, where notice is so given, the Judge shall order that the proceeding be transferred to the High Court.

- (2) Where there is commenced in a court any proceeding in which the amount of the claim or the value of the property or relief claimed or in issue does not exceed \$50,000, the defendant may, within such time as may be prescribed or at any time thereafter by leave of the Judge, give notice that the defendant objects to the proceeding being tried in the court, and, where notice is so given, the Judge may order that the proceeding be transferred to the High Court if, in the opinion of the Judge, some important question of law or fact is likely to arise or a question of title to any hereditament is likely to arise otherwise than incidentally.
- (3) Any order for the transfer of a proceeding to the High Court made pursuant to the foregoing provisions of this section may be made subject to such conditions as the Judge thinks fit requiring that the defendant give security for the costs of the proceedings in the High Court.
- (4) The foregoing provisions of this section, shall with the necessary modifications, apply to a counterclaim as if it were a proceeding and as if the defendant in the counterclaim were the defendant in the proceeding. On the transfer of a claim where there is a counterclaim, or of a counterclaim, all proceedings in the proceeding, including both the claim and the counterclaim, shall be transferred.
- (5) The provisions of this section do not apply to any proceeding for the recovery of land except where the Judge certifies that in the Judge's opinion an important question of law is likely to arise or a question of title to any hereditament is likely to arise otherwise than incidentally.
- (6) Notwithstanding the foregoing provisions of this section, the High Court or a Judge thereof on the application of any party to the proceeding may order the removal into the High Court, by order for certiorari or otherwise, of any proceeding commenced in a District Court, if the High Court or Judge thereof

thinks it desirable that the proceeding should be heard and determined in the High Court. Any such removal shall be on such terms as to payment of costs, giving security, or otherwise as the High Court or a Judge thereof thinks fit to impose.

Section 43: substituted, on 1 July 1992, by section 11(1) of the District Courts Amendment Act 1991 (1991 No 61).

**44 Transfer of proceedings beyond jurisdiction**

Where any proceedings are commenced in a court in which the court has no jurisdiction, the court may, unless it is given jurisdiction by an agreement under the provisions of section 37, order that the proceedings be transferred to the High Court or to such other court as appears to the court to have jurisdiction: provided that where it appears to the court that the plaintiff or one of the plaintiffs knew or ought to have known that the court had no jurisdiction in the proceedings, the court may, if it thinks fit, instead of ordering that the proceedings be transferred as aforesaid, order that they be struck out, and, in such event may award costs to the same extent and recoverable in the same manner as if the court had jurisdiction and the claim had not been established.

Compare: 1928 No 14 s 175; County Courts Act 1934 s 64 (UK)

Section 44: amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 44: amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

**45 Transfer of proceedings where there is a counterclaim**

- (1) Where, in any proceeding commenced in a court, any counterclaim or set-off and counterclaim which involves matter beyond the jurisdiction of a court has been filed by any defendant, any party to the proceeding may, within such time as may be prescribed by the High Court Rules, apply to the High Court or a Judge thereof for an order that the whole proceedings, or the proceedings on the counterclaim or set-off and counterclaim, be transferred to the High Court.
- (2) On any such application the High Court or Judge may, as it or he thinks fit, order either—

- (a) that the whole proceedings be transferred to the High Court; or
- (b) that the whole proceedings be heard and determined in the court; or
- (c) that the proceedings on the counterclaim or set-off and counterclaim be transferred to the High Court and that the proceedings on the plaintiff's claim and the defence thereto other than the set-off (if any) be heard and determined in the court:

provided that, where an order is made under paragraph (c), and judgment on the claim is given for the plaintiff, execution thereon shall, unless the High Court or a Judge thereof at any time otherwise orders, be stayed until the proceedings transferred to the High Court have been determined.

- (3) If no application is made under this section within the time prescribed as aforesaid, or if on such an application it is ordered that the whole proceedings be heard and determined in the court, the court shall have jurisdiction to hear and determine the whole proceedings, notwithstanding any enactment to the contrary.
- (4) Where the High Court makes any order under the provisions of this section, the Registrar of the High Court shall send to the Registrar of the court a copy of the order so made.

Compare: County Courts Act 1934 s 63 (UK)

Section 45(1): substituted, on 1 July 1992, by section 21(1) of the Districts Courts Amendment Act 1991 (1991 No 61).

Section 45(2): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Section 45(2)(a): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Section 45(2)(b): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 45(2)(c): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 45(2)(c): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Section 45(2) proviso: amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Section 45(3): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 45(4): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 45(4): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

**45A Removal of summary judgment application from District Court to High Court**

- (1) Where a summary judgment application is made in a court, a Judge may, on the application of either party or of his or her own motion, remove into the High Court—
  - (a) that summary judgment application; or
  - (b) any matter arising in that summary judgment application.
- (2) On any such removal, the High Court may—
  - (a) determine the application or matter; or
  - (b) refer the application or matter back to the District Court with such directions as the High Court thinks fit.

Section 45A: inserted, on 1 July 1992, by section 4 of the District Courts Amendment Act 1992 (1992 No 17).

*Removal of question of law into High Court*

Heading: inserted, on 1 July 1992, by section 4 of the District Courts Amendment Act 1992 (1992 No 17).

**45B Removal of question of law into High Court**

A District Court may order the removal into the High Court of any question of law ordered to be argued, and, on removal, the High Court shall have the same power to decide the question as the District Court had.

Section 45B: inserted, on 1 July 1992, by section 4 of the District Courts Amendment Act 1992 (1992 No 17).

**46 Transfer of proceeding from High Court to District Court**

- (1) If, where a proceeding has been commenced in the High Court,—
  - (a) an agreement is made under the provisions of section 37 that a District Court shall have jurisdiction; or
  - (b) the subject-matter of the proceeding is within the jurisdiction of District Courts,—

the High Court or a Judge of that court may, on the application of any party to the proceeding, order that the proceeding be transferred to a District Court.

- (2) Where the subject-matter of a proceeding that has been commenced in the High Court is within the jurisdiction of District Courts, the High Court or a Judge of that court may, of its or the Judge's own motion, order that the proceeding be transferred to a District Court unless, in the opinion of the High Court or the Judge, some important question of law or fact is likely to arise in the proceeding.

Section 46: substituted, on 1 July 1992, by section 12(1) of the District Courts Amendment Act 1991 (1991 No 61).

#### **47 Procedure on transfer of proceeding from High Court to District Court**

- (1) Where any proceeding is ordered to be transferred under the provisions of section 46 from the High Court to a District Court, the proper officer of the High Court shall, on the sealing of the order, send to the Registrar of the District Court a copy of the order, the document by which the proceeding was commenced or a copy thereof, all pleadings, affidavits, and other documents filed in the High Court relating to the proceeding and such other documents (if any) as the High Court or a Judge may direct.
- (2) On the documents aforesaid being so sent, the proceeding shall be transferred to the said District Court, and, subject to the District Courts Rules, all further proceedings therein shall be heard as if the proceeding had been originally commenced in that District Court, and the District Court shall have jurisdiction to deal therewith, notwithstanding any enactment to the contrary:

provided that the transfer shall not affect any right of appeal in the High Court or to the Court of Appeal from the order directing the transfer, or the right to enforce in the High Court any judgment signed, or order made, in that court before the transfer.

Section 47: substituted, on 1 July 1992, by section 12(1) of the District Courts Amendment Act 1991 (1991 No 61).

**48 Costs in cases transferred or removed**

(1) Where a proceeding or counterclaim is ordered to be transferred or removed—

- (a) from the High Court to a District Court; or
- (b) from a District Court to the High Court; or
- (c) from one District Court to another District Court—

the costs of the whole proceedings both before and after the transfer shall, subject to any order made by the court which ordered the transfer, be in the discretion of the court to which the proceeding or counterclaim is transferred, and that court shall have power to make orders with respect thereto:

provided that, as regards so much of the proceedings in any proceeding transferred from the High Court to the District Court as take place in the High Court before the transfer,—

- (d) the costs thereof shall be subject to the provisions of the High Court Rules; and
- (e) the powers of a Judge to make an order allowing costs on the High Court scale shall, subject to any order of the High Court or of the Judge by whom the transfer was ordered, be exercisable by the District Court Judge.

(2) Where—

- (a) a summary judgment application or any matter arising in a summary judgment application is, after having been removed into the High Court under section 45A, referred back to a District Court; or
- (b) a proceeding is continued in a District Court, after a question of law in that proceeding has, under section 45B, been decided in the High Court,—

the costs in the District Court of that application, matter, or proceeding, both before and after the removal into the High Court under section 45A or section 45B, shall be determined by the District Court:

provided that any costs incurred in the High Court in relation to the removal shall be determined by the High Court and shall be subject to the provisions of the High Court Rules; but may be included in any judgment or order made by the District Court as if they were costs determined by the District Court.

Section 48: substituted, on 1 July 1992, by section 12(1) of the District Courts Amendment Act 1991 (1991 No 61).

Section 48(2): added, on 1 July 1992, by section 5 of the District Courts Amendment Act 1992 (1992 No 17).

## Part 4 Procedure

### *Parties*

#### **49 Trustees, executors, and administrators**

(1) Any trustee, executor, or administrator may sue and be sued in a court in like manner as if he were a party in his own right, without joining any of the parties beneficially interested in the trust or estate, and shall be considered as representing such parties in the proceeding.

(2) The court may at any stage of the proceedings order any of such parties to be made parties to the proceeding, either in addition to or in lieu of the previously existing parties thereto.

Compare: 1928 No 14 s 48; County Courts Act 1934 s 76 (UK)

Section 49(1): amended, on 1 July 1992, by section 21(1) of the District Courts Amendment Act 1991 (1991 No 61).

Section 49(1): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 49(2): amended, on 1 July 1992, by section 21(1) of the District Courts Amendment Act 1991 (1991 No 61).

#### **50 Amount of wages, etc, for which minor may sue**

(1) Any person under the age of 20 years may sue in a court for any sum of money not exceeding \$200,000 which may be due to him for wages or piecework, or for work as a servant, in the same manner as if he were of full age.

(2) Any minor who is or has been married or in a civil union or is above the age of 18 years may sue or be sued without a next friend or guardian *ad litem* upon any cause of action arising out of contract or tort in respect of which he might sue or be sued by a next friend or guardian; and judgment may be given in the proceeding, and such proceedings may be had and taken to enforce the judgment as if the minor were of full age.

(3) Any minor who is or has been married or in a civil union or is above the age of 18 years may make or be a party to an application under section 8 of the Domestic Actions Act 1975 without a next friend or guardian *ad litem*; and orders may be

made on the application, and such proceedings may be had and taken to enforce any such order, as if the minor were of full age.

Compare: 1928 No 14 s 47; County Courts Act 1934 s 77 (UK)

Section 50 heading: substituted, on 1 January 1972, by section 5 of the District Courts Amendment Act 1971 (1971 No 56).

Section 50(1): amended, on 1 July 1992, by section 13(1) of the District Courts Amendment Act 1991 (1991 No 61).

Section 50(1): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 50(1): amended, on 1 January 1971, by section 6 of the Age of Majority Act 1970 (1970 No 137).

Section 50(2): amended, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Section 50(2): amended, on 1 July 1992, by section 13(2) of the District Courts Amendment Act 1991 (1991 No 61).

Section 50(2): amended, on 1 January 1970, by section 18 of the Minors' Contracts Act 1969 (1969 No 41).

Section 50(3): added, on 3 October 1975, by section 9(3) of the Domestic Actions Act 1975 (1975 No 53).

Section 50(3): amended, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

## **51 Persons jointly liable**

- (1) Where a plaintiff has a claim recoverable under this Act against 2 or more persons jointly liable, it shall be sufficient to serve any of those persons with process, and judgment may be obtained and execution issued against any person so served, notwithstanding that others jointly liable may not have been served or sued or may not be within the jurisdiction of the court.
- (2) Where judgment is obtained against any person as aforesaid and is satisfied either in part or for the whole amount by that person, he shall be entitled to recover in a court contribution from any other person jointly liable with him.

Compare: 1928 No 14 s 56; County Courts Act 1934 s 78 (UK)

Section 51(2): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

**52 Bankruptcy of plaintiff**

- (1) The bankruptcy of the plaintiff in any proceeding in a court which the Official Assignee might maintain for the benefit of the creditors shall not cause the proceeding to abate if, within such reasonable time as the court orders, the Official Assignee elects to continue the proceeding.
- (2) The hearing of the proceeding may be adjourned until such an election is made.
- (3) Where the Official Assignee does not elect to continue the proceeding within the time limited by the order, the defendant may avail himself of the bankruptcy as a defence to the proceeding.

Compare: 1928 No 14 s 63; County Courts Act 1934 s 76 (UK)

Section 52(1): amended, on 1 July 1992, by section 21(1) of the District Courts Amendment Act 1991 (1991 No 61).

Section 52(1): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 52(2): amended, on 1 July 1992, by section 21(1) of the District Courts Amendment Act 1991 (1991 No 61).

Section 52(3): amended, on 1 July 1992, by section 21(1) of the District Courts Amendment Act 1991 (1991 No 61).

*Witnesses and evidence***53 Witness entitled to expenses**

Every witness attending a court upon a witness summons, and every other person giving evidence in the course of proceedings, shall be entitled as against the party calling him to a sum for his expenses and loss of time according to the prescribed scale:

provided that the court may disallow the whole or any part of such sum.

Compare: 1928 No 14 s 89

**54 Penalty for neglecting witness summons**

- (1) Any person summoned in pursuance of the rules as a witness in any court who—
  - (a) refuses or neglects, without sufficient cause, to appear or to produce any documents required by the summons to be produced; or

(b) refuses to be sworn or to give evidence,—  
is liable to a fine not exceeding \$300:

provided that no person so summoned shall be liable to such penalty as aforesaid unless there has been paid or tendered to him at the time of the service of the summons, or at some other reasonable time before the hearing, such sum in respect of his expenses as may be prescribed.

- (2) Any person present in court who is required to give evidence but refuses to be sworn or give evidence is liable to a like penalty.
- (3) The payment of such fine or the undergoing of a term of imprisonment for non-payment of such fine shall not exempt any person from any action for disobeying a summons or refusing to be sworn or give evidence.

Compare: 1928 No 14 s 90; County Courts Act 1934 s 81 (UK)

Section 54(1): amended, on 1 May 1981, by section 16 of the District Courts Amendment Act 1980 (1980 No 83).

## **55 Examination of witnesses and service of process abroad**

- (1) The District Court may, on application made in accordance with the rules, issue a commission, request, or order to examine witnesses abroad for the purpose of any proceedings.
- (2) The District Court may, on application in accordance with the rules, direct and supervise the service abroad of any process of the court.

Section 55: substituted, on 1 July 1992, by section 6 of the District Courts Amendment Act 1989 (1989 No 107).

## **56 Persons who may take affidavits, etc**

An affidavit or affirmation to be used in a court may be sworn or made before any Judge or Registrar, or before any Justice, or before any Community Magistrate, or before any solicitor of the High Court, but no such affidavit or affirmation, except one sworn or made in respect of an *ex parte* application in non-contentious proceedings, shall be used if it was taken before a solicitor who, at the time of taking it, was engaged in the proceedings.

Section 56: substituted, on 19 October 1966, by section 3 of the District Courts Amendment Act 1966 (1966 No 69).

Section 56: amended, on 30 June 1998, by section 6 of the District Courts Amendment Act 1998 (1998 No 76).

Section 56: amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 56: amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

### *Discovery*

Heading: inserted, on 1 July 1992, by section 6 of the District Courts Amendment Act 1992 (1992 No 17).

#### **56A Powers of court exercisable before commencement of proceeding**

On the application, in accordance with the rules, of a person who it appears to the court is or may be entitled to claim in the court relief against another person, the court shall, in such circumstances as may be prescribed, have power to order any person who appears to be likely to have or to have had in that person's possession, custody, or power any document or class of documents, which are relevant to an issue arising or likely to arise out of that claim,—

- (a) to disclose to the court and to any other prescribed person whether the document or documents are in his or her possession, custody, or power; and
- (b) if a document has been but is no longer in that person's possession, custody, or power, to disclose to the court and to any other prescribed person when he or she parted with it and what has become of it; and
- (c) to produce such of those documents as are in that person's possession, custody, or power to the court or any other prescribed person.

Compare: County Courts Act 1984 s 52 (UK)

Section 56A: inserted, on 1 July 1992, by section 6 of the District Courts Amendment Act 1992 (1992 No 17).

#### **56B Power of court to order particular discovery against non-party after proceeding commenced**

Where at any stage of a proceeding, it appears to the court, in such circumstances as may be prescribed, that a document or class of documents may be or may have been in the posses-

sion, custody, or power of a person who is not a party to the proceeding, the court may order that person—

- (a) to disclose to the court and to any other prescribed person whether the document or documents are in his or her possession, custody, or power; and
- (b) if a document has been but is no longer in that person's possession, custody, or power, to disclose to the court and to any other prescribed person when he or she parted with it and what has become of it; and
- (c) to produce such of those documents as are in that person's possession, custody, or power to the court or any other prescribed person.

Section 56B: inserted, on 1 July 1992, by section 6 of the District Courts Amendment Act 1992 (1992 No 17).

### *Hearing*

#### **57 Right of audience**

- (1) A party to any proceedings may appear and act personally or by a barrister or solicitor of the High Court, and not otherwise: provided that under special circumstances the court may permit any party to appear by an agent authorized in writing by the party himself, if in New Zealand, or, if absent therefrom, by any person holding a power of attorney from the party authorizing such person to sue and be sued for and in the name of the party; but any agent, unless he is a barrister or solicitor, shall not be entitled to receive any fee or reward for so appearing or acting.
- (2) A corporation may appear by any officer, attorney, or agent of the corporation.

Compare: 1928 No 14 s 67

Section 57(1): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

#### **58 Trial by Judge**

The Judge shall be the sole judge in all proceedings brought in a court, and shall determine all questions of fact as well as of law:

provided that nothing in this section shall affect the power to make rules authorizing the Registrar to exercise jurisdiction and powers conferred on the court by this or any other Act.

Compare: 1928 No 14 s 99; County Courts Act 1934 s 87 (UK)

Section 58 heading: amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 58: amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

## **59 Equity and good conscience**

Where the amount claimed or the value of the property claimed or in issue does not exceed \$3,000, a court may receive any such evidence as it thinks fit, whether the same be legal evidence or not, and may give such judgment between the parties as it finds to stand with equity and good conscience.

Compare: 1928 No 14 s 100(2)

Section 59: amended, on 13 November 1989, by section 7(1) of the District Courts Amendment Act 1989 (1989 No 107).

## **60 Judge to take notes**

- (1) At the hearing of any proceedings in a court in which there is a right of appeal without leave, the Judge shall, unless the parties have agreed not to appeal, make or cause to be made a note—
  - (a) of the facts in evidence; and
  - (b) of any question of law or equity raised at the hearing; and
  - (c) of his decision thereon and of his determination of the proceedings.
- (2) Where such a note has been taken, the Judge (whether notice of appeal has been served or not) shall, on the application of any party to the proceedings, and on payment by that party of such fee as may be prescribed, cause him to be furnished with a copy of the note.

Compare: County Courts Act 1934 s 108 (UK)

Section 60 heading: amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 60(1): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 60(2): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

**61 Power of Judge to refer to arbitration**

- (1) A Judge may, with the consent of the parties to any proceedings, order the proceedings to be referred to arbitration (whether with or without other matters within the jurisdiction of the court in dispute between the parties) to such person or persons and in such manner and on such terms and subject to such costs as he thinks just and reasonable.
- (2) No such reference shall be revocable by any party except with the consent of a Judge.
- (3) If the award of the arbitrators or their umpire is not given within 1 month of the date of the order of reference, either party may apply to the court to revoke the order of reference.
- (4) On any such reference, the award of the arbitrator, arbitrators, or umpire shall be entered as the judgment in the proceedings and shall be as binding and effectual to all intents as if given by a Judge:  
provided that the court may, if it thinks fit, on application made at the first sitting of the court held after the expiration of 10 days after the entry of the award, set aside the award, or may, with the consent of the parties, revoke the reference or order another reference to be made in the manner aforesaid.
- (5) Execution of a judgment so entered shall not issue until after such first sitting has been held.
- (6) On the hearing of an application to set aside or vary an award and judgment entered thereupon the court shall take evidence if offered, or may of its own accord call for evidence; and the decision of the court given after hearing the application shall be entered as a judgment of the court.

Compare: 1928 No 14 ss 154, 155; County Courts Act 1934 s 89 (UK)

Section 61 heading: amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 61(1): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 61(2): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 61(4): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

## **62 Power of Judge to refer to Registrar or referee**

- (1) Subject to the rules, a Judge may refer to the Registrar or a referee for inquiry and report—
  - (a) any proceedings which require any prolonged examination of documents or any scientific or local investigation which cannot, in the opinion of the Judge, conveniently be made before him:
  - (b) any proceedings where the question in dispute consists wholly or in part of matters of account:
  - (c) with the consent of the parties, any other proceedings:
  - (d) any question arising in any proceedings.
- (2) Where any proceedings or question are referred as aforesaid, a Judge may direct how the reference shall be conducted, and may remit any report for further inquiry and report, and on consideration of any report or further report may give such judgment or make such order in the proceedings as may be just.
- (3) A Judge may, after deciding or reserving any question of liability, refer to the Registrar or to the Registrar and an accountant any mere matter of account which is in dispute between the parties, and after deciding the question of liability, may give judgment on the Registrar's report.

Compare: County Courts Act 1934 s 90 (UK)

Section 62 heading: amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 62(1): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 62(1)(a): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 62(2): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 62(3): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

## **62A Reference by consent**

- (1) Notwithstanding anything to the contrary in this Act, a Judge may, with the consent of the parties, refer any question in any

proceedings which requires any scientific, technical, business, or professional investigation to the Registrar or a named referee for inquiry and report under this section.

- (2) Where any question is referred under this section, a Judge may direct how the reference shall be conducted and may, with the consent of the parties, direct that the Registrar or referee may make his inquiry and may report without being required to hear the parties or to act judicially.
- (3) The report of the Registrar or referee on any question referred to him under this section shall be binding on the parties unless the Judge has otherwise directed.

Section 62A: inserted, on 25 October 1960, by section 3 of the District Courts Amendment Act 1960 (1960 No 112).

Section 62A(1): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 62A(2): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 62A(3): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

### *Judgments and orders*

#### **62B Power of court to award interest on debts and damages**

- (1) Subject to subsection (2), in a proceeding for the recovery of any debt or damages, the court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate, not exceeding the prescribed rate, as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment.
- (2) Subsection (1) shall not—
  - (a) authorise the giving of interest upon interest; or
  - (b) apply in relation to any debt upon which interest is payable as of right, whether by virtue of any agreement, enactment, or rule of law, or otherwise; or
  - (c) affect the damages recoverable for the dishonour of a bill of exchange.
- (3) In any proceedings for the recovery of any debt upon which interest is payable as of right, and in respect of which the rate of interest is not agreed upon, prescribed, or ascertained under

any agreement, enactment, or rule of law, or otherwise, there shall be included in the sum for which judgment is given interest at such rate, not exceeding the prescribed rate, as the court thinks fit for the period between the date as from which the interest became payable and the date of the judgment.

- (4) In this section the term **the prescribed rate** means the rate of 11% per annum, or such other rate as may from time to time be prescribed for the purposes of this section by the Governor-General by Order in Council.

Section 62B: inserted, on 13 January 1983, by section 4(1) of the District Courts Amendment Act (No 2) 1982 (1982 No 130).

Section 62B(1): amended, on 1 July 1992, by section 21(1) of the District Courts Amendment Act 1991 (1991 No 61).

Section 62B(4): 5.0% per year prescribed as the rate for the purposes of section 62B, on 1 July 2011, by clause 4 of the District Courts (Prescribed Rate of Interest) Order 2011 (SR 2011/176).

### **63 Finality of judgments and orders**

Every judgment and order of a court shall, except as provided by this or any other Act or by the rules, be final and conclusive between the parties.

Compare: 1928 No 14 s 116; County Courts Act 1934 s 95 (UK)

Section 63: amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

### **64 Want of form**

No judgment, order, or other proceeding in a court shall be quashed or vacated for want of form.

Compare: 1928 No 14 s 117

### **65 Payment of judgments and orders**

- (1) Where a judgment is given or an order is made by a court under which a sum of money of any amount is payable, whether by way of satisfaction of the claim or counterclaim in the proceedings or by way of costs or otherwise, the court may, as it thinks fit, order the money to be paid either—

- (a) in 1 sum, whether forthwith or within such period as the court may fix; or
- (b) by such instalments payable at such times as the court may fix.

- (2) Except where an express order for payment is made under the last preceding subsection, every judgment or order for the payment of a sum of money shall be deemed to include an order for the payment forthwith of the whole amount payable thereunder.
- (3) If at any time it appears to the satisfaction of a Judge that any party to any proceedings is unable from any cause to pay any sum recoverable against him (whether by way of satisfaction of the claim or counterclaim) or any instalment thereof, the Judge may, in his discretion, suspend or stay or vary any judgment or order given or made in the proceedings for such time and on such terms as the Judge thinks fit, and so from time to time until it appears that the cause of inability has ceased.

Compare: 1928 No 14 ss 100(1), 124; County Courts Act 1934 s 96 (UK)

Section 65(3): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

#### **65A Interest on judgment debts**

- (1) In this section—  
**enforcement process**, in relation to a judgment debt, means any summons, warrant, or order issued or made in any proceedings of a kind referred to in section 79(1) for the enforcement of that debt  
**judgment debt** means the amount for which judgment is entered or for which an order of a court is made in any civil proceedings.
- (2) Every judgment debt of an amount exceeding \$3,000, or such other amount as may be fixed from time to time for the purposes of this section by the Governor-General by Order in Council, shall carry interest from the date of the judgment or order on the amount for the time being remaining unpaid.
- (3) Such interest shall be at the rate for the time being prescribed by or under section 62B, and shall accrue from month to month.
- (4) No interest shall be payable on costs incurred after the date of the judgment or order.
- (5) Notwithstanding subsection (2) or subsection (3), where any enforcement process is issued in respect of the judgment debt,

no interest shall be payable in excess of the amount specified in the process unless a further such process is issued.

Section 65A: inserted, on 13 January 1983, by section 5 of the District Courts Amendment Act (No 2) 1982 (1982 No 130).

### *Removal of judgments*

#### **66 Removal of judgment of District Court into High Court**

- (1) Where any final judgment or order for the payment of any sum of money is obtained in any one proceeding in a District Court, that judgment or order may be removed into the High Court, and for that purpose the Registrar, upon the application of the judgment creditor or of any person on his behalf, shall issue a certificate thereof in the prescribed form. Every such certificate shall bear on the face thereof a statement to the effect that it has been issued for the purposes of this section, and it shall not be available for any other purpose.
- (2) No such certificate shall be issued before the expiration of the time allowed for giving notice of appeal or before the time at which execution could be issued out of the District Court, and if any proceedings for enforcement of the judgment or order have been issued out of that court no such certificate shall be issued until after the withdrawal or completion of those proceedings.
- (3) After the certificate has been filed in the High Court pursuant to the next succeeding subsection, no further proceedings shall be had or taken in the proceeding in the District Court.
- (4) The person obtaining the certificate may file the same in the High Court by delivering it for that purpose at the office of the Registrar of the High Court nearest to that District Court by the most convenient route or any such other office as may be prescribed; and thereupon, without any previous process, may sign final judgment in the High Court in the prescribed form or to the effect thereof (against which judgment no appeal shall lie) for the sum mentioned in the certificate to be unpaid, together with such fees and costs as may be paid or allowed in connection with such removal and entry of judgment.

- (5) Upon such final judgment as aforesaid execution may be forthwith issued, and all other remedies had thereon in the same manner as on any other judgment of the High Court.
- (6) Notwithstanding anything in this section, any certificate or final judgment signed under the provisions of this section may be set aside or amended by a Judge of the High Court upon such terms as to costs or otherwise as he deems just.

Compare: 1928 No 14 s 156

Section 66 heading: amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 66 heading: amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Section 66(1): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 66(1): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Section 66(2): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 66(3): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 66(3): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Section 66(4): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 66(4): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Section 66(4): amended, on 1 April 1973, by section 18(3) of the Judicature Amendment Act 1972 (1972 No 130).

Section 66(5): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Section 66(6): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

## **67 Proceeding in High Court on judgment or order of District Court**

A proceeding may be brought in the High Court on a judgment or order of a District Court, but no costs shall be allowed in such proceeding to the plaintiff unless the Judge of the High Court certifies that the proceeding was necessary and proper for the enforcement of the judgment of the District Court against the person or property of the defendant.

Section 67: substituted, on 1 July 1992, by section 21(1) of the District Courts Amendment Act 1991 (1991 No 61).

**68 Removal of judgment or order of High Court into District Court**

- (1) In any proceeding in the High Court in which execution may be issued upon a judgment, order, or decree of the High Court for the payment of a sum of money, a certificate under the seal of the High Court setting forth the particulars of the judgment, order, or decree may be obtained from the High Court and filed in a District Court.
- (2) Upon the filing of the certificate all proceedings may be taken and enforced in and by that District Court for—
  - (a) the amount recoverable under the judgment, order, or decree, and any interest thereon, if the District 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 District 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 District 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 District 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 High Court upon such judgment, order, or decree.
- (4) Save as aforesaid, no proceeding shall be brought in a District Court on a judgment of the High Court.

Section 68: substituted, on 1 January 1972, by section 7 of the District Courts Amendment Act 1971 (1971 No 56).

Section 68 heading: amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 68 heading: amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Section 68(1): amended, on 1 July 1992, by section 21(1) of the District Courts Amendment Act 1991 (1991 No 61).

Section 68(1): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 68(1): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Section 68(2): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 68(2)(a): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 68(2)(b): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 68(2)(c)(i): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 68(3): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Section 68(4): amended, on 1 July 1992, by section 21(1) of the District Courts Amendment Act 1991 (1991 No 61).

Section 68(4): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 68(4): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

## **69 Removal of judgment from one court to another**

- (1) Where any final judgment or order for the payment of any sum of money is obtained in any one proceeding in a court, the judgment or order may be removed into any other court, and for that purpose the Registrar, upon the application of the judgment creditor or of any person on his behalf, shall issue a certificate thereof in the prescribed form. Every such certificate shall bear on the face thereof a statement that it has been issued for the purposes of this section, and it shall not be available for any other purpose.
- (2) No such certificate shall be issued before the expiration of the time allowed for giving notice of appeal or before the time at which execution could be issued out of the court first aforesaid, and if proceedings for enforcement of the judgment or order have been issued out of that court no such certificate shall be

issued until after the withdrawal or completion of those proceedings.

- (3) The person obtaining the certificate may file the same in any other court by delivering it at the office of the Registrar; and thereupon all proceedings may be taken and enforced in and by that other court for the amount recoverable under the judgment or order, and any fees and costs paid or payable in connection with the obtaining and filing of the certificate, as fully and effectually as if the judgment or order had been a judgment of that other court signed and entered up at the time of filing the certificate, and no further proceedings shall be had or taken in the court from which the judgment or order has been removed as aforesaid.

Section 69 heading: amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 69(1): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 69(3): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

## **70 Removal of judgment of abolished court**

- (1) Where any court established under this or any former Act relating to courts is or has been abolished or is no longer a court appointed for the exercise of civil jurisdiction, the Minister of the Crown who is responsible for the Ministry of Justice may direct that the records of the court be delivered to the Registrar of some other court. In any such case all proceedings may be continued or completed, and all judgments and orders of the first-mentioned court may be enforced, in and by the last-mentioned court as fully and effectually as if the judgments and orders had been judgments and orders of that court.
- (2) Where any court established under this or any former Act relating to courts is or has been abolished or is no longer a court appointed for the exercise of civil jurisdiction and no such direction as aforesaid has been given, a certificate of any judgment or order of that court may be obtained from the Registrar or Clerk of that court, or from the Registrar or officer having custody of the records of that court, and such certificate may be filed in any court.

- (3) On the filing of such certificate all proceedings may be taken and enforced in and by the last-mentioned court for the amount recoverable under the judgment or order, and 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 or order had been a judgment or order of that court signed and entered up at the time of filing the certificate.

Compare: 1928 No 14 s 158

Section 70(1): amended, on 1 October 2003, pursuant to section 14(1) of the State Sector Amendment Act 2003 (2003 No 41).

Section 70(1): amended, on 1 July 1995, by section 10(1) of the Department of Justice (Restructuring) Act 1995 (1995 No 39).

Section 70(1): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 70(2): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 70(3): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

#### *Determination of questions concerning rules*

Heading: inserted, on 1 February 2009, by section 10(2) of the Judicature (High Court Rules) Amendment Act 2008 (2008 No 90).

#### **70A Application of rules**

If, in any civil proceeding, any question arises as to the application of any provision of rules made under section 122 or the High Court Rules, the Court may, either on the application of a party or on its own initiative, determine the question and give any directions it thinks fit in the interests of justice.

Section 70A: inserted, on 1 February 2009, by section 10(2) of the Judicature (High Court Rules) Amendment Act 2008 (2008 No 90).

## Part 5 Appeals

Part 5: substituted, on 24 November 2003, by section 3 of the District Courts Amendment Act 2002 (2002 No 63).

### 71 Interpretation

In this Part,—

**decision** includes a judgment and an interim or final order (other than an order under section 112)

**make** includes give.

Section 71: substituted, on 24 November 2003, by section 3 of the District Courts Amendment Act 2002 (2002 No 63).

### 71A Right to appeal

*[Repealed]*

Section 71A: repealed, on 24 November 2003, by section 3 of the District Courts Amendment Act 2002 (2002 No 63).

### 72 General right of appeal

(1) This subsection applies to every decision made by a District Court other than a decision of a kind in respect of which an enactment other than this Act—

- (a) expressly confers a right of appeal; or
- (b) provides expressly that there is no right of appeal.

(2) A party to proceedings in a District Court may appeal to the High Court against the whole or any part of any decision to which subsection (1) applies made by the District Court in or in relation to the proceedings.

Section 72: substituted, on 24 November 2003, by section 3 of the District Courts Amendment Act 2002 (2002 No 63).

### 73 Agreements that decision would be binding

(1) An appeal may not be brought under section 72 if, before the decision was made, all parties to the proceedings agreed in writing that it would be binding on them.

(2) Subsection (1) overrides section 72.

Section 73: substituted, on 24 November 2003, by section 3 of the District Courts Amendment Act 2002 (2002 No 63).

**74 Security for appeal**

- (1) Unless granted legal aid under the Legal Services Act 2000, an appellant under section 72 may be required by the High Court Rules to give the Registrar of the High Court security for costs.
- (2) If any security required is not given within the time required by the High Court Rules, the appellant's appeal must be treated as having been abandoned.

Section 74: substituted, on 24 November 2003, by section 3 of the District Courts Amendment Act 2002 (2002 No 63).

**75 Appeals to be by way of rehearing**

All appeals under section 72 must be by way of rehearing.

Section 75: substituted, on 24 November 2003, by section 3 of the District Courts Amendment Act 2002 (2002 No 63).

**76 Powers of High Court on appeal**

- (1) Having heard an appeal under section 72, the High Court may—
  - (a) make any decision or decisions it thinks should have been made;
  - (b) direct the District Court in which the decision appealed against was made—
    - (i) to rehear the proceedings concerned; or
    - (ii) to consider or determine (whether for the first time or again) any matters the High Court directs; or
    - (iii) to enter judgment for any party to the proceedings concerned the High Court directs;
  - (c) make any further or other orders it thinks fit (including any orders as to costs).
- (2) The High Court must state its reasons for giving a direction under subsection (1)(b).
- (3) The High Court may give the District Court any direction it thinks fit relating to—
  - (a) rehearing any proceedings directed to be reheard; or
  - (b) considering or determining any matter directed to be considered or determined.
- (4) The High Court may act under subsection (1) in respect of a whole decision, even if the appeal is against only part of it.

- (5) Even if an interlocutory decision made in the proceedings concerned has not been appealed against, the High Court—
- (a) may act under subsection (1); and
  - (b) may set the interlocutory decision aside; and
  - (c) if it sets the interlocutory decision aside, may make in its place any interlocutory decision or decisions the District Court could have made.
- (6) The powers given by this section may be exercised in favour of any respondent or party to the proceedings concerned, even if the respondent or party did not appeal against the decision concerned.

Section 76: substituted, on 24 November 2003, by section 3 of the District Courts Amendment Act 2002 (2002 No 63).

#### **77 Repayment of judgment sum and interest**

- (1) This subsection applies if—
- (a) a party to proceedings in a District Court (**party A**) has, in accordance with any judgment or order of the court, paid an amount to another party to the proceedings (**party B**); and
  - (b) on appeal under section 72, the effect of the High Court's determination is that some or all of the amount did not need to be paid.
- (2) If subsection (1) applies, the High Court—
- (a) may order party B to repay to party A some or all of the amount paid by party A; and
  - (b) may also order party B to pay to party A interest at a rate not greater than the prescribed rate (within the meaning of section 87(3) of the Judicature Act 1908) on the sum ordered to be repaid.

Section 77: substituted, on 24 November 2003, by section 3 of the District Courts Amendment Act 2002 (2002 No 63).

#### **78 Enforcement proceedings**

For the purposes of enforcement proceedings, a judgment or order of the High Court under paragraph (a) or paragraph (c) of section 76(1), or section 77(2), must be treated as if it were a judgment or order of the District Court in which the decision appealed against was made.

Section 78: substituted, on 24 November 2003, by section 3 of the District Courts Amendment Act 2002 (2002 No 63).

**78A Right of appeal in respect of contempt of court**

- (1) This subsection applies to any order under section 112 other than an order to the effect only that a person be taken into custody and detained until the rising of the court.
- (2) A person against whom an order to which subsection (1) applies has been made may appeal to the High Court against it.
- (3) Sections 116 to 144 of the Summary Proceedings Act 1957 apply to the appeal (as far as they are applicable, and with all necessary modifications) as if the person were a defendant who had been convicted on an information and sentenced.

Section 78A: substituted, as section 79, on 24 November 2003, by section 3 of the District Courts Amendment Act 2002 (2002 No 63).

Section 78A section number: substituted, on 15 December 2005, by section 3 of the District Courts Amendment Act 2005 (2005 No 101).

**Part 6**  
**Enforcement of judgments**

*Enforcement generally*

**79 Nature of proceedings for enforcement of judgment**

- (1) Any judgment or order of any court or of any District Court Judge for the payment of a sum of money may be enforced in District Courts by any 1 or more of the proceedings following, that is to say,—
  - (a) execution against the goods and chattels of the judgment debtor under a distress warrant:
  - (b) garnishee proceedings for the attachment of money due to the judgment debtor:
  - (ba) proceedings for a charging order in respect of any property held by the judgment debtor and specified in section 96A(1A):
  - (c) proceedings for an attachment order against the salary or wages of the judgment debtor.
- (2) Any judgment or order in the nature of an injunction, and any judgment or order within the competence of a District Court which, if it were given or made in the High Court, could in that

court be enforced by writ of arrest, may be enforced, by order or warrant of a District Court Judge, by committal for a term not exceeding 3 months:

provided that an order for the recovery of land shall not be enforceable by committal.

- (2A) Any order of the court made under section 56A or section 56B may be enforced, by order or warrant of a District Court Judge,—
- (a) by committal for a term not exceeding 3 months; or
  - (b) by a fine not exceeding \$1,000.
- (3) A judgment or order for the recovery of land may be enforced under a warrant for the recovery of land.
- (4) A judgment or order for the delivery of specific chattels may be enforced, by order of the District Court Judge, either under a warrant for the recovery of chattels or by committal.
- (5) Except by leave of a District Court Judge, no proceedings for the enforcement of a judgment or order shall be commenced in any court until after the expiry of 48 hours from the time of the entering of the judgment or the making of the order:  
provided that if the judgment or order is one which may be appealed against without the leave of the court, any District Court Judge may order a stay of any proceedings for the enforcement of the judgment or order until after the time allowed for giving notice of appeal has expired.
- (6) It is hereby declared that 2 or more proceedings for the enforcement of a judgment or order may be taken concurrently, but the judgment creditor shall not be entitled to recover a greater sum than the amount owing under the judgment or order and the costs and fees of any proceedings for enforcement.

Compare: 1928 No 14 ss 121, 200

Section 79(1): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 79(1)(ba): inserted, on 30 March 1987, by section 3(1) of the District Courts Amendment Act 1987 (1987 No 26).

Section 79(1)(c): substituted, on 13 November 1989, by section 8 of the District Courts Amendment Act 1989 (1989 No 107).

Section 79(2): amended, on 1 January 1986, by section 11(2) of the Judicature Amendment Act (No 2) 1985 (1985 No 112).

Section 79(2): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 79(2): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Section 79(2A): inserted, on 1 July 1992, by section 7 of the District Courts Amendment Act 1992 (1992 No 17).

Section 79(4): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 79(5): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 79(5) proviso: amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

## **80 Enforcement of judgments more than 6 years old**

- (1) No judgment or order of the court more than 6 years old shall be enforced without the leave of the court unless some payment has been made into court by or on behalf of the party liable therefor within the 12 months immediately before the issue of the proceedings for enforcement.
- (2) The court may, if it thinks fit, grant such leave on an *ex parte* application.

Compare: 1928 No 14 s 119

## **81 Enforcement of order for payment by instalments**

- (1) Where the court has made an order for the payment of any sum of money by instalments, proceedings for the enforcement of the order shall not be taken or issued until after default in the payment of some instalment according to the order.
- (2) On any such default, proceedings or successive proceedings may be taken or issued for the whole of the said sum of money and costs then remaining unpaid unless the court on the application of the party liable otherwise orders.

Compare: 1928 No 14 s 125; County Courts Act 1934 s 117 (UK)

## **82 Proceedings on cross-judgments**

If there are cross-judgments between the parties, proceedings for enforcement may be taken out only by that party who has obtained judgment for the larger sum, and then only for so much as remains after deducting the smaller sum. Satisfaction for the remainder shall be entered as well as satisfaction on

the judgment for the smaller sum, and if both sums are equal satisfaction shall be entered upon both.

Compare: 1928 No 14 s 126

### **83 Power to stay proceedings for enforcement**

If at any time it appears to the satisfaction of a Judge exercising jurisdiction in the court in which proceedings have been taken or issued for the enforcement of any judgment or order that any party to the proceedings is unable from any cause to pay any sum recoverable against him (whether by way of satisfaction of the claim or counterclaim in the proceedings or by way of costs or otherwise) or any instalment thereof, the Judge may, in his discretion, stay the proceedings for such time and on such terms as he may think fit, and so from time to time until it appears that the cause of inability has ceased.

Compare: 1928 No 14 s 124; County Courts Act 1934 s 119 (UK)

Section 83: amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

### **84 Stay of proceedings on appeal**

Notice of appeal shall not operate as a stay of proceedings under the decision appealed from unless the court or a Judge so orders or the amount of the judgment or order appealed against and its cost is deposited with the Registrar to abide the event of the appeal, or security is given to the satisfaction of the Registrar for that amount.

Compare: 1938 No 20 s 38

Section 84: amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

### *Discovery in aid of execution*

Heading: inserted, on 1 January 1990, by section 9 of the District Courts Amendment Act 1989 (1989 No 107).

### **84A Notice to judgment debtor to complete financial statement**

- (1) Any person who has obtained a judgment or order for the payment of money may serve on the judgment debtor a notice in the prescribed form requiring him or her to complete and return to that person, within 14 days after the date on which the

notice is served on the judgment debtor, a statement in the prescribed form of—

- (a) the judgment debtor's income and expenditure for the preceding 52 weeks; and
  - (b) the judgment debtor's assets and liabilities.
- (2) An additional copy of the prescribed form, for the judgment debtor's own use, shall be served with the notice.

Compare: 1908 No 89 Schedule 2 r 620

Section 84A: inserted, on 1 January 1990, by section 9 of the District Courts Amendment Act 1989 (1989 No 107).

#### **84B Order for examination of judgment debtor**

- (1) Whether or not a notice has been served pursuant to section 84A, any person who has obtained a judgment or order for the payment of a sum of money may apply to the court *ex parte* for an order that the judgment debtor or, if the judgment debtor is a corporation, an officer of the judgment debtor, do attend before the court and be orally examined as to the judgment debtor's income, expenditure, assets, liabilities, and generally as to the judgment debtor's means for satisfying the judgment debt.
- (2) Whether or not a notice has been served pursuant to section 84A, any judgment debtor may apply to the court *ex parte* for an order under subsection (1).
- (3) Upon granting the application, the court may order the production at the examination of any books or other documents, and may impose such terms and conditions as it shall think proper in respect of the conduct of the examination or otherwise.
- (4) Where the order has been made on the application of the judgment creditor, a copy of the order in the prescribed form shall be served personally upon the judgment debtor at least 3 days before the date of the examination, and, if requested by the judgment debtor, the person effecting the service shall at the time of service pay or tender to the judgment debtor the travel expenses estimated to be payable under the Witnesses and Interpreters Fees Regulations 1974.
- (5) Where the order has been made on the application of the judgment debtor, a copy of the order in the prescribed form shall

be served personally upon the judgment creditor at least 3 days before the date of the examination.

- (6) The jurisdiction of the District Court under this section may be exercised by the Registrar.

Compare: 1908 No 89 Schedule 2 r 621; SR 1981/259 r 236

Section 84B: inserted, on 1 January 1990, by section 9 of the District Courts Amendment Act 1989 (1989 No 107).

Section 84B(4): amended, on 5 March 1999, by section 2 of the District Courts Amendment Act 1999 (1999 No 4).

Section 84B(6): added, on 1 July 1994, by section 2 of the District Courts Amendment Act 1994 (1994 No 29).

#### **84C Where judgment debtor does not appear at examination or order cannot be served**

- (1) If—

- (a) any order made under section 84B cannot be served on the judgment debtor; or
- (b) the judgment debtor fails to appear before the District Court at the time and place specified in any order made under that section, or at any subsequent time and place to which the examination is adjourned,—

the order shall not be enforced by committal, but a Judge or a Registrar may issue a warrant to arrest the debtor.

- (2) Where the judgment debtor is arrested pursuant to this section, the following provisions shall apply:

- (a) the judgment debtor shall be brought before a Judge or a Registrar as soon as possible for the purpose of commencing or continuing the examination;
- (b) the judgment debtor shall be bailable as of right;
- (c) section 46 of the Summary Proceedings Act 1957 and Parts 1 to 3 of the Bail Act 2000 shall apply with any necessary modifications as if any such appearance at the examination before a Judge or Registrar constituted part of the hearing of a charge, and as if references in those provisions to a court included references to a Judge or Registrar;
- (d) if the judgment debtor cannot practicably be brought immediately before a Judge or a Registrar, any constable or any bailiff may take the bail bond of the judgment debtor, and Parts 1 to 3 of the Bail Act 2000 apply

with any necessary modifications as if the bail bond were taken by a constable under section 21(1) of that Act.

Compare: 1957 No 87 s 88; 1987 No 165 s 14

Section 84C: inserted, on 1 January 1990, by section 9 of the District Courts Amendment Act 1989 (1989 No 107).

Section 84C(1): amended, on 10 April 2006, by section 4(1) of the District Courts Amendment Act 2006 (2006 No 8).

Section 84C(2)(c): amended, on 1 January 2001, by section 74(2) of the Bail Act 2000 (2000 No 38).

Section 84C(2)(d): substituted, on 10 April 2006, by section 4(2) of the District Courts Amendment Act 2006 (2006 No 8).

Section 84C(2)(d): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

#### **84D Conduct of examination**

- (1) An examination under section 84B shall be made orally on oath before a District Court Judge or Registrar.
- (2) The judgment debtor shall appear personally, and may be represented by a barrister or solicitor who may examine the judgment debtor and be heard on the matter of the judgment debtor's means for satisfying the judgment.
- (3) The judgment debtor may be cross-examined by or on behalf of the judgment creditor.
- (4) Any witness may be cross-examined by or on behalf of the judgment debtor or judgment creditor.
- (5) Any examination under section 84B may from time to time be adjourned by the court to a time and place to be appointed.

Compare: 1980 No 94 s 128

Section 84D: inserted, on 1 January 1990, by section 9 of the District Courts Amendment Act 1989 (1989 No 107).

#### **84E Orders by court**

- (1) Upon completion of an examination under section 84B, the District Court may, after giving the judgment creditor and judgment debtor an opportunity to be heard, do any 1 or more of the following:
  - (a) direct that 1 or more of the proceedings referred to in section 79(1) be commenced or continued, as the case may be, and also direct any steps to be taken in such

- proceedings, and, for any such purpose, issue any warrant or summons or make any order:
- (b) make an order that the money owing under the judgment be paid by such instalments payable at such times as the court may fix:
  - (c) stay any proceedings for the enforcement of the judgment:
  - (d) make an order varying any order relating to the enforcement of the judgment made under this Act.
- (2) The court may do any 1 or more of the things referred to in subsection (1) as it considers appropriate, notwithstanding—
- (a) that no application was made for the direction, order, or stay in question; or
  - (b) that application was made for a different direction, order, or stay.
- (3) The jurisdiction of the District Court under this section may be exercised by the Registrar.

Compare: 1980 No 94 s 129

Section 84E: inserted, on 1 January 1990, by section 9 of the District Courts Amendment Act 1989 (1989 No 107).

#### *Attachment orders*

Heading: inserted, on 1 January 1990, by section 9 of the District Courts Amendment Act 1989 (1989 No 107).

#### **84F Interpretation**

In sections 84G to 84M, unless the context otherwise requires,—

**employer**, in relation to a judgment debtor, includes,—

- (a) a person by whom a retiring allowance or pension or other payment of a similar nature is payable to the judgment debtor:
- (b) the Accident Compensation Corporation in respect of weekly compensation payable to the judgment debtor under the Injury Prevention, Rehabilitation, and Compensation Act 2001:
- (c) the chief executive of the department for the time being responsible for the administration of the Social Security

Act 1964 in respect of a benefit payable to the judgment debtor

**salary or wages** includes—

- (a) a retiring allowance or pension or other payment of a similar nature:
- (ab) a bonus or an incentive payment:
- (ac) a payment of commission:
- (ad) a payment in consideration of work performed under a contract for services:
- (b) all payments of weekly compensation made under the Injury Prevention, Rehabilitation, and Compensation Act 2001 by the Accident Compensation Corporation:
- (c) a benefit within the meaning of the Social Security Act 1964.

Compare: 1957 No 87 s 79; 1980 No 94 s 2; 1986 No 88 s 2; 1987 No 165 s 14  
Section 84F: inserted, on 1 January 1990, by section 9 of the District Courts Amendment Act 1989 (1989 No 107).

Section 84F **employer** paragraph (b): substituted, on 1 April 2002, by section 337(1) of the Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49).

Section 84F **employer** paragraph (c): amended, on 1 October 1998, by section 11 of the Employment Services and Income Support (Integrated Administration) Act 1998 (1998 No 96).

Section 84F **salary or wages** paragraph (ab): inserted, on 10 April 2006, by section 5 of the District Courts Amendment Act 2006 (2006 No 8).

Section 84F **salary or wages** paragraph (ac): inserted, on 10 April 2006, by section 5 of the District Courts Amendment Act 2006 (2006 No 8).

Section 84F **salary or wages** paragraph (ad): inserted, on 10 April 2006, by section 5 of the District Courts Amendment Act 2006 (2006 No 8).

Section 84F **salary or wages** paragraph (b): substituted, on 1 April 2002, by section 337(1) of the Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49).

Section 84F **salary or wages** paragraph (c): amended, on 1 October 1998, by section 57 of the Social Security Amendment Act 1998 (1998 No 19).

#### **84G Attachment orders**

- (1) The court may, on the application of the judgment creditor at any time after judgment has been entered, make an attachment order under this section.
- (2) No attachment order shall be made unless the judgment debtor has been examined under section 84B.

- (3) An attachment order may be made against a person who is proved to the satisfaction of the court to be an employer of the judgment debtor.
- (4) The attachment order shall specify the person to whom the amounts to be deducted are to be paid.
- (5) Every attachment order may be made for a fixed period or so as to remain in force until the judgment debt has been paid in full.
- (6) Every attachment order shall specify an amount (known as the protected earnings rate) below which the net earnings or benefit paid to the judgment debtor shall not be reduced by reason of compliance with the order.
- (7) No attachment order under this Act shall operate so that, together with—
  - (a) any attachment order under any other Act; and
  - (b) any deduction notice made under the Family Proceedings Act 1980 or issued under section 27Y of the Social Security Act 1964; and
  - (c) in the case of a benefit within the meaning of the Social Security Act 1964, any adjustment to or deduction from benefit under section 27X or section 86 of that Act,—the net earnings or any benefit of the judgment debtor are reduced below the protected earnings rate, and, where necessary, the specified amount to be deducted in any attachment order under this Act shall be reduced or cancelled accordingly.
- (8) *[Repealed]*
- (9) Nothing in section 84 of the Social Security Act 1964 shall apply to an attachment order under this section.
- (10) The jurisdiction of the District Court under this section may be exercised by the Registrar.

Compare: 1957 No 87 s 103; 1980 No 94 s 105; 1987 No 165 s 14

Section 84G: inserted, on 1 January 1990, by section 9 of the District Courts Amendment Act 1989 (1989 No 107).

Section 84G(7)(c): amended, 1 October 1998, by section 57 of the Social Security Amendment Act 1998 (1998 No 19).

Section 84G(8): repealed, on 1 March 1996, by section 6 of the District Courts Amendment Act 1995 (1995 No 65).

**84H Attachment order to be served on employer**

- (1) Where an attachment order is made, a copy of the order shall be served on the employer to whom it relates, either personally or by leaving it at the employer's place of residence or business, or by sending it by letter addressed to the employer at the employer's place of residence or business.
- (2) Where service of an attachment order is effected by letter, then, in the absence of proof to the contrary, the order shall be deemed to have been served on the fourth working day after the day on which it was posted, and in proving service it shall be sufficient to prove that the letter was properly addressed and posted.
- (3) Every attachment order shall take effect when a copy of the order is served on the employer in accordance with this section.

Compare: 1957 No 87 s 104; 1980 No 94 s 106; 1987 No 165 s 14

Section 84H: inserted, on 1 January 1990, by section 9 of the District Courts Amendment Act 1989 (1989 No 107).

**84I Effect of attachment orders**

- (1) An attachment order shall direct that the money due and payable under the judgment shall, by way of weekly payments of such amount as is specified in the attachment order, be a charge on any salary or wages that from time to time while the attachment order remains in force become due and payable by the employer to the judgment debtor.
- (2) The charge so created—
  - (a) shall accrue from week to week, and on such day of the week as is specified in the attachment order; and
  - (b) shall attach to all salary or wages that become due by the employer to the judgment debtor at any time while the attachment order is in force, whether or not the contract of employment in respect of which the salary or wages so become due existed at the date of the attachment order; and
  - (c) shall be subject to—
    - (i) any charge created by any attachment order or deduction notice made under the Family Proceedings Act 1980:

- (ii) any charge created by any attachment order made under the Summary Proceedings Act 1957:
- (iii) any deduction notice issued under the Child Support Act 1991:
- (iiia) any deduction notice issued under section 157 of the Tax Administration Act 1994 (as applied by section 193 of the Student Loan Scheme Act 2011):
- (iv) in the case of an attachment order against a benefit within the meaning of the Social Security Act 1964, any deduction from or adjustment to that benefit under section 86 of that Act,—  
(whether the charge was created or the adjustment or deduction was authorised before or after the making of the attachment order under this Act); but
- (d) shall prevail over and have priority to any assignment or charge created by the judgment debtor (whether before or after the making of the attachment order under this Act), and so that the attachment order shall have the same effect as if no such assignment or charge had been made or created by the judgment debtor.

Compare: 1980 No 94 s 107

Section 84I: inserted, on 1 January 1990, by section 9 of the District Courts Amendment Act 1989 (1989 No 107).

Section 84I(2)(c)(iii): substituted, on 1 July 1992, by section 246(1) of the Child Support Act 1991 (1991 No 142).

Section 84I(2)(c)(iiia): inserted, on 21 December 1992, by section 88 of the Student Loan Scheme Act 1992 (1992 No 141).

Section 84I(2)(c)(iiia): amended, on 1 April 2012, by section 223 of the Student Loan Scheme Act 2011 (2011 No 62).

Section 84I(2)(c)(iiia): amended, on 1 April 1995, by section YB 1 of the Income Tax Act 1994 (1994 No 164).

Section 84I(2)(c)(iv): amended, on 1 October 1998, by section 57 of the Social Security Amendment Act 1998 (1998 No 19).

Section 84I(2)(c)(iv): amended, on 1 July 1992, by section 246(2) of the Child Support Act 1991 (1991 No 142).

#### **84J Liability of employer**

- (1) Subject to section 84G(7), as long as an attachment order remains in force, the employer to whom it relates shall from time

to time, whenever any money becomes due and payable by the employer to the judgment debtor by way of salary or wages,—

- (a) deduct from that money such sum as is sufficient to satisfy the charge on the money so far as the same has accrued before the day on which the salary or wages becomes due and payable; and
  - (b) not later than the 20th day of the month next after the month in which the deduction is made, pay the amount so deducted to the person specified in the attachment order.
- (2) All sums so deducted and paid shall be deemed to have been paid by the employer in satisfaction of the salary or wages payable by the employer to the judgment debtor.
  - (3) All sums so deducted shall be deemed to have been paid by the judgment debtor in satisfaction of the judgment debtor's liability to pay the judgment debt.
  - (4) Where a judgment debtor in respect of whom an attachment order is in force leaves or is dismissed from the employment of the employer, the employer shall within 7 days notify the Registrar of the court in which the attachment order was issued.
  - (5) Where the employer makes default in the payment of any money in satisfaction of any such charge, that money shall become a debt due by the employer to the judgment creditor, and may be recovered by the judgment creditor by action in any court of competent jurisdiction.
  - (6) Every employer commits an offence and is liable on summary conviction to a fine not exceeding \$1,000 who fails without reasonable excuse to comply with paragraph (a) or paragraph (b) of subsection (1).

Compare: 1957 No 87 s 106; 1980 No 94 s 116; 1987 No 165 s 14

Section 84J: inserted, on 1 January 1990, by section 9 of the District Courts Amendment Act 1989 (1989 No 107).

#### **84K Wrongful treatment of employee**

- (1) Every employer commits an offence and is liable on summary conviction to a fine not exceeding \$1,000 who dismisses any employee or alters any employee's position in the employer's

business or undertaking to the employee's prejudice by reason of an attachment order having been served on the employer.

- (2) In the prosecution for an offence against subsection (1) in which it is proved that the employer, within 6 months after the serving on the employer of an attachment order in respect of any employee, dismissed the employee or altered the employee's position in the employer's business or undertaking to the employee's prejudice, it shall be deemed to be proved that the action was taken by reason of the order having been served on the employer unless the employer proves to the contrary.
- (3) This section also applies to attachment orders made in the High Court.

Compare: 1957 No 87 s 106; 1980 No 94 s 116; 1987 No 165 s 14

Section 84K: inserted, on 1 January 1990, by section 9 of the District Courts Amendment Act 1989 (1989 No 107).

Section 84K(3): added, on 1 February 2009, by section 10(3) of the Judicature (High Court Rules) Amendment Act 2008 (2008 No 90).

#### **84L Extent to which attachment orders bind the Crown**

- (1) In this section—

**employing department** means—

- (a) a department of State in which a person is employed; and
- (b) in relation to a person to whom any retiring allowance or pension or other payment of a similar nature is payable—
- (i) out of the Government Superannuation Fund, the Government Superannuation Fund Authority;
- (ii) out of the National Provident Fund, the Board of Trustees of the National Provident Fund

**servant of the Crown**—

- (a) means a person in the service of Her Majesty in respect of the Government of New Zealand;
- (b) includes a person in temporary or casual service;
- (c) does not include a person in honorary service;
- (d) includes any person serving in any of the New Zealand Armed Forces;
- (e) includes a person to whom any retiring allowance or pension or other payment of a similar nature is payable

out of the Government Superannuation Fund or the National Provident Fund.

- (2) Sections 84G to 84K and section 84M shall bind the Crown to the extent of and subject to subsections (3) and (4).
- (3) Where the judgment debtor is a servant of the Crown, an attachment order may be made against the Crown as employer, and—
  - (a) the employing department shall be named in the order as the employer; and
  - (b) service of the order shall be effected on the chief executive of the employing department, and also on any officer of the Crown (described by the name of the office, the name of the department, and the place where the officer is stationed) specified in the order; and
  - (c) service of the order shall be effected in accordance with section 84H, and, where service is effected by post, it shall be sufficient if the letter is addressed to the person to be served by that person's official title or any sufficient description without that person's personal name.
- (4) Where the judgment debtor is entitled to a benefit within the meaning of the Social Security Act 1964, an attachment order may be made against the chief executive of the department for the time being responsible for the administration of that Act, and—
  - (a) service of the order must be effected by leaving a copy of the order at, or sending a copy of the order by post to,—
    - (i) the District Office of that department nearest to the judgment debtor's place of residence; or
    - (ii) an address notified by the chief executive of that department to the chief executive of the Ministry of Justice; and
  - (b) section 84K shall not apply.

Compare: 1957 No 87 s 106B; 1980 No 94 s 117; 1987 No 165 s 14

Section 84L: inserted, on 1 January 1990, by section 9 of the District Courts Amendment Act 1989 (1989 No 107).

Section 84L(1) **employing department** paragraph (b): substituted, on 1 October 1995, by section 31 of the Government Superannuation Fund Amendment Act 1995 (1995 No 28).

Section 84L(1) **employing department** paragraph (b)(i): amended, on 2 October 2001, by section 40 of the Government Superannuation Fund Amendment Act 2001 (2001 No 47).

Section 84L(4): amended, on 1 October 1998, by section 11 of the Employment Services and Income Support (Integrated Administration) Act 1998 (1998 No 96).

Section 84L(4): amended, on 1 October 1998, by section 57 of the Social Security Amendment Act 1998 (1998 No 19).

Section 84L(4)(a): substituted, on 10 April 2006, by section 6 of the District Courts Amendment Act 2006 (2006 No 8).

### **84M Variation, suspension, and discharge of attachment orders**

- (1) Any attachment order may at any time be varied, suspended, or discharged by a District Court, on the application on notice of the judgment creditor or judgment debtor, on good cause being shown to the satisfaction of the court why the order should be so varied, suspended, or discharged.
- (2) The variation, suspension, or discharge shall take effect when notice of it is served on the employer in accordance with section 84H.
- (3) The jurisdiction of a District Court under this section may be exercised by the Registrar of the court.

Compare: 1968 No 62 s 99; 1980 No 94 s 109

Section 84M: inserted, on 1 January 1990, by section 9 of the District Courts Amendment Act 1989 (1989 No 107).

#### *Review of Registrar's decision*

Heading: inserted, on 1 January 1990, by section 9 of the District Courts Amendment Act 1989 (1989 No 107).

### **84N Review of Registrar's decision**

- (1) Any person affected by any order or direction made by a Registrar under section 84B or section 84C or section 84E or section 84G or section 84M may apply to a District Court Judge for a review of the order or direction.
- (2) Every such application shall be made within 21 days of the making of the order or direction, or within such further time as a Judge, on application, may allow.

- (3) The Judge may, on receiving any such application, order that any such order or direction shall be suspended pending the review.
- (4) On any such review the Judge may confirm, rescind, or vary the Registrar's order or direction, and the order or direction shall have effect, or cease to have effect, accordingly.

Compare: 1957 No 87 s 106F; 1987 No 165 s 14

Section 84N: inserted, on 1 January 1990, by section 9 of the District Courts Amendment Act 1989 (1989 No 107).

Section 84N(1): amended, on 1 July 1994, by section 3 of the District Courts Amendment Act 1994 (1994 No 29).

### *Contempt*

Heading: inserted, on 1 January 1990, by section 9 of the District Courts Amendment Act 1989 (1989 No 107).

## **84O Contempt procedures**

- (1) Where—
  - (a) a judgment debtor has been examined under section 84B; and
  - (b) the court is satisfied beyond reasonable doubt that—
    - (i) the judgment debtor has sufficient means to pay the judgment debt but refuses to do so; and
    - (ii) all other methods of enforcing the judgment have been considered or tried and are inappropriate or unsuccessful,—

the court may, on the application of the judgment creditor, order the respondent to do community work for a number of hours, not exceeding 200 hours, as the court thinks fit.
- (2) Every application under subsection (1) shall be supported by an affidavit setting out the details of the judgment debtor's alleged disobedience.
- (3) A copy of the application and affidavit referred to in subsection (2) shall be served on the judgment debtor.
- (4) If a copy of that application and affidavit cannot be served on the judgment debtor, or if the judgment debtor fails to appear at the hearing of the application, the Judge may issue a warrant to arrest the judgment debtor and bring the judgment debtor before the court as soon as possible.

- (5) A warrant under subsection (4) shall cease to have effect if the judgment debtor pays, or causes to be paid, the amount due under the judgment debt.
- (6) Where a judgment debtor is arrested under a warrant issued under subsection (4), the following provisions shall apply:
- (a) the judgment debtor shall be bailable as of right:
  - (b) section 46 of the Summary Proceedings Act 1957 and Parts 1 to 3 of the Bail Act 2000 shall apply, with such modifications as may be necessary, as if the application under subsection (1) was the hearing of a charge:
  - (c) if the judgment debtor cannot practicably be brought immediately before a Judge or a Registrar, any constable or any bailiff may take the bail bond of the judgment debtor, and Parts 1 to 3 of the Bail Act 2000 apply with any necessary modifications as if the bail bond were taken by a constable under section 21(1) of that Act.
- (7) An order made under subsection (1) shall have effect as if the judgment debtor, following conviction on an information, had been sentenced to community work, and the relevant provisions of Part 2 of the Sentencing Act 2002, with any necessary modifications, shall apply accordingly.
- (8) Where a District Court, acting under this section, orders a respondent to do community work, the judgment debtor shall have the same right of appeal to the High Court against the order as the judgment debtor would have had if the judgment debtor had been convicted and sentenced by the District Court on an information.
- (9) Detention pursuant to this section shall not operate to extinguish or affect the liability of the judgment debtor to pay the judgment debt.
- (10) Section 30 of the Sentencing Act 2002 applies in relation to this section as if the District Court were imposing a sentence of imprisonment.

Compare: 1980 No 94 s 130

Section 84O: inserted, on 1 January 1990, by section 9 of the District Courts Amendment Act 1989 (1989 No 107).

Section 84O(1): amended, on 30 June 2002, by section 186 of the Sentencing Act 2002 (2002 No 9).

Section 84O(6)(b): amended, on 1 January 2001, by section 74(2) of the Bail Act 2000 (2000 No 38).

Section 84O(6)(c): substituted, on 10 April 2006, by section 7 of the District Courts Amendment Act 2006 (2006 No 8).

Section 84O(6)(c): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 84O(7): amended, on 30 June 2002, by section 186 of the Sentencing Act 2002 (2002 No 9).

Section 84O(8): amended, on 30 June 2002, by section 186 of the Sentencing Act 2002 (2002 No 9).

Section 84O(10): substituted, on 30 June 2002, by section 186 of the Sentencing Act 2002 (2002 No 9).

#### **84P Application of Part 1 of Legal Services Act 1991**

*[Repealed]*

Section 84P: repealed, on 1 February 2001, by section 127(1)(a) of the Legal Services Act 2000 (2000 No 46).

#### **84Q Judgment debtor doing community work to be discharged on payment**

- (1) Where a judgment debtor is doing community work pursuant to an order under section 84O, the judgment debtor may pay, or cause to be paid, the amount due in respect of the judgment debt.
- (2) If the judgment debtor pays, or causes to be paid, the amount due, a probation officer, on being notified by the Registrar of the payment of that sum, must notify the judgment debtor that he or she is no longer required to report to a community work centre, unless there is some other reason for the judgment debtor being required to report.

Compare: 1980 No 94 s 133

Section 84Q: inserted, on 1 January 1990, by section 9 of the District Courts Amendment Act 1989 (1989 No 107).

Section 84Q heading: amended, on 10 April 2006, by section 8 of the District Courts Amendment Act 2006 (2006 No 8).

Section 84Q(1): amended, on 30 June 2002, by section 186 of the Sentencing Act 2002 (2002 No 9).

Section 84Q(2): substituted, on 30 June 2002, by section 186 of the Sentencing Act 2002 (2002 No 9).

*Warrant of distress***85 Warrant of distress**

- (1) A warrant of distress shall require the bailiff or constable to whom it is directed to levy or cause to be levied such sum of money as is adjudged or ordered to be paid, or so much thereof as then remains unpaid, and also the costs of the execution, and of previous proceedings (if any) for the enforcement of the judgment or order, by seizure and sale of the goods and chattels of the person liable under the judgment or order, and the warrant shall authorize the bailiff or constable aforesaid to seize—
- (a) any of the goods and chattels of that person, except his necessary tools of trade to a value not exceeding \$500 and his necessary household furniture and effects, including the wearing apparel of himself and his family to a value not exceeding \$2,000; and
  - (b) any money, bank notes, bills of exchange, promissory notes, bonds, specialties, or other securities for money belonging to that person.
- (2) The Governor-General may from time to time, by Order in Council, amend subsection (1) by increasing any amount specified in that subsection.

Compare: 1928 No 14 ss 121, 129

Section 85(1)(a): substituted, on 15 November 1967, by section 4 of the District Courts Amendment Act 1967 (1967 No 42).

Section 85(1)(a): amended, on 6 November 1986, by section 3(1)(a) of the District Courts Amendment Act 1986 (1986 No 84).

Section 85(1)(a): amended, on 6 November 1986, by section 3(1)(b) of the District Courts Amendment Act 1986 (1986 No 84).

Section 85(2): added, on 6 November 1986, by section 3(2) of the District Courts Amendment Act 1986 (1986 No 84).

**85A Immobilisation of motor vehicles**

- (1) A bailiff or constable executing a distress warrant may, instead of seizing a motor vehicle under a warrant of distress, immobilise the vehicle by attaching to it any device designed for the purpose, pending payment of the unpaid sum.
- (2) No vehicle may be immobilised under subsection (1) unless, at the time of its immobilisation, the vehicle—

- (a) is on private property; or
  - (b) is in a public place and the bailiff or constable is satisfied that immobilising the vehicle will not cause undue inconvenience to other persons.
- (3) If a motor vehicle is immobilised under this section, a bailiff or constable—
- (a) may seize the vehicle at any time;
  - (b) must, on the direction of the Registrar, seize the vehicle.
- (4) A person commits an offence if, without reasonable excuse, he or she tampers with, removes, or attempts to remove a device attached to a vehicle under subsection (1).
- (5) A person who commits an offence under subsection (4) is liable on summary conviction to a fine not exceeding \$1,000.

Section 85A: inserted, on 5 March 1999, by section 3 of the District Courts Amendment Act 1999 (1999 No 4).

#### **86 Disposal of bills of exchange, etc, seized**

- (1) The bailiff shall deliver all bills of exchange, promissory notes, bonds, specialties, or other securities for money which have been seized or taken to the Registrar, for the benefit of the party upon whose application execution has issued, as security or securities for the amount directed to be levied by the execution, or so much thereof as has not been otherwise levied or raised.
- (2) The said party may sue in the name of the person against whom execution has issued, or in the name of any person in whose name the person against whom execution has issued might have sued, for the recovery of the sum or sums secured or made payable thereby when the time of payment thereof arrives.

Compare: 1928 No 14 s 130

#### **87 Penalty for rescue of goods seized**

If any person rescues or attempts to rescue any goods seized in execution under a warrant of distress, he shall be liable, either on an order made by the Judge in that behalf or on summary conviction, to a fine not exceeding \$300, and any bailiff of the court or constable may take him into custody, with or without warrant, and bring him before the Judge.

Compare: 1928 No 14 s 23

Section 87: amended, on 1 May 1981, by section 16 of the District Courts Amendment Act 1980 (1980 No 83).

Section 87: amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

### *Sale of goods seized*

#### **88 Period to elapse before sale**

No goods seized in execution under a distress warrant shall be sold for the purpose of satisfying the warrant until the expiration of a period of at least 5 days next following the day on which the goods have been so seized unless—

- (a) the goods are of a perishable nature; or
- (b) the person whose goods have been seized so requests in writing.

Compare: 1928 No 14 s 123(1)

#### **89 Sale of goods by public auction unless otherwise ordered**

- (1) Goods seized in execution under a warrant of distress shall be sold by public auction unless a court otherwise orders.
- (2) Any bailiff authorized to execute a warrant of distress may, with the prior written authority of the Registrar, sell by auction the goods and chattels seized thereunder without having taken out an auctioneer's licence, anything in the Auctioneers Act 1928 or in any other enactment or rule of law to the contrary notwithstanding.

Compare: 1928 No 14 s 123(3)

#### **90 Protection of bailiff selling goods under execution without notice of claim by third party**

- (1) Where any goods in the possession of an execution debtor at the time of seizure by a bailiff charged with the enforcement of a distress warrant issued from a court are sold by the bailiff without any claim having been made to them—
  - (a) the purchaser of the goods so sold shall acquire a good title to those goods; and
  - (b) no person shall be entitled to recover against the bailiff, or anyone lawfully acting under his authority, for any sale of the goods, or for paying over the proceeds thereof prior to receipt of a claim to the goods, unless it

is proved that the person from whom recovery is sought had notice, or might by making reasonable inquiry have ascertained, that the goods were not the property of the execution debtor.

- (2) Nothing in this section shall affect the right of any claimant, who may prove that at the time of sale he had a title to any goods so seized, to any remedy to which he may be entitled against any person other than the bailiff.
- (3) The provisions of this section shall have effect subject to the sections 108 to 112 of the Insolvency Act 2006 and sections 251 and 252 of the Companies Act 1993.

Compare: County Courts Act 1934 s 130 (UK)

Section 90 heading: amended, on 1 May 1981, by section 11 of the District Courts Amendment Act 1980 (1980 No 83).

Section 90(1): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 90(3): amended, on 3 December 2007, by section 445 of the Insolvency Act 2006 (2006 No 55).

Section 90(3): amended, on 30 June 1997, pursuant to section 2(1) of the Companies Act Repeal Act 1993 (1993 No 126).

Section 90(3): amended, on 1 May 1981, by section 11 of the District Courts Amendment Act 1980 (1980 No 83).

## **91 Procedure when goods seized are secured under bill of sale**

Where goods have been seized under a warrant of distress, and some third person claims under a bill of sale or otherwise to be entitled to the goods by way of security for a debt, a Judge may order a sale of the whole or part of the goods upon such terms as to payment of the whole or part of the secured debt or otherwise as he thinks fit, and may direct the application of the proceeds of the sale in such manner and upon such terms as he deems just.

Compare: 1928 No 14 s 138

Section 91: amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

### *Claims in respect of goods seized*

## **92 Priority of High Court and District Court executions**

- (1) Where a writ or warrant against the goods of a party has issued from the High Court, and a warrant of distress against

the goods of the same party has issued under the provisions of this Act, the right to the goods seized shall be determined, as the case may be, by the priority of the time of the delivery of the writ or warrant to the Sheriff to be executed or of the application to the Registrar for the warrant of distress.

- (2) The Sheriff on demand shall, by writing signed by him, inform the bailiff to whom the warrant of distress is directed of the precise time of the delivery of the writ or warrant, and the bailiff of the District Court to whom the warrant of distress is directed shall on demand show the warrant to any Sheriff's officer, and such writing purporting to be so signed, and any endorsement on the warrant concerning the time of application to the Registrar for the warrant, shall respectively be sufficient justification to any Sheriff or bailiff acting thereon.

Compare: 1928 No 14 s 128

Section 92 heading: amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 92 heading: amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Section 92(1): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Section 92(2): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

### **93 Sale of goods where claim made thereto**

- (1) Where a claim is made to or in respect of any goods seized in execution under a distress warrant issued out of a court, the claimant may—
- (a) deposit with the bailiff either—
    - (i) the amount of the value of the goods claimed; or
    - (ii) the sum which the bailiff is allowed to charge as costs for keeping possession of the goods until the decision of the Judge can be obtained on the claim; or
  - (b) give the bailiff in the prescribed manner security for the value of the goods claimed.
- (2) For the purposes of this section, the amount of the value of the goods claimed shall, in case of dispute, be fixed by appraisal in the prescribed manner, and where the amount is

deposited as aforesaid it shall be paid by the bailiff into court to abide the decision of the Judge upon the claim.

- (3) In default of the claimant complying with the foregoing provisions of this section, the bailiff shall sell the goods as if no such claim had been made, and shall pay into court the proceeds of the sale to abide the decision of the Judge.

Compare: 1928 No 14 s 136; County Courts Act 1934 s 132 (UK)

Section 93(1): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 93(1)(a)(ii): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 93(2): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 93(3): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

#### **94 Bailiff's interpleader**

- (1) If a claim is made to or in respect of any goods or chattels seized in execution under a warrant of distress issued by a court, or in respect of the proceeds or value thereof, the bailiff may, before or after the return of the warrant, and whether an action has been commenced against him for such seizure or not, obtain from the Registrar a summons calling before the court the party at whose instance the process issued and the party making the claim.
- (2) Upon the issue of the summons any action brought in any District Court or other court in respect of the claim or of any damage arising out of the execution of the warrant shall be stayed.
- (3) On the hearing of the summons, the Judge shall adjudicate upon the claim, and shall also adjudicate between the parties or either of them and the bailiff upon any claim to damages arising or capable of arising out of the execution of the warrant by the bailiff, and shall make such order in respect of any such claim and the costs of the proceedings as he thinks fit.

Compare: 1928 No 14 s 137; County Courts Act 1934 s 133 (UK)

Section 94(1): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 94(2): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 94(3): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

## **95 Claims for rent where goods seized under execution**

*[Repealed]*

Section 95: repealed, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

### *Garnishee proceedings*

## **96 Garnishee proceedings**

- (1) Any person who has obtained a judgment or order for the payment of money may take proceedings in accordance with the rules to obtain payment to him of the amount of any debt owing or accruing to the judgment debtor from any other person or so much thereof as may be sufficient to satisfy the judgment or order and the costs of the garnishee proceedings.
- (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 Post Office Bank Limited, a trustee savings bank established under the Trustee Savings Banks Act 1948, and a private savings bank established under the Private Savings Banks Act 1983.

Compare: 1928 No 14 s 27(d)

Section 96(2): added, on 1 January 1972, by section 10 of the District Courts Amendment Act 1971 (1971 No 56).

Section 96(3): added, on 1 January 1972, by section 10 of the District Courts Amendment Act 1971 (1971 No 56).

Section 96(4): added, on 1 January 1972, by section 10 of the District Courts Amendment Act 1971 (1971 No 56).

Section 96(4): amended, on 10 September 1993, pursuant to section 23(1) of the Private Savings (Transfer of Undertakings) Act 1992 (1992 No 21).

Section 96(4): amended, on 1 April 1987, by section 32(1) of the State-Owned Enterprises Act 1986 (1986 No 124).

### *Charging orders*

Heading: inserted, on 1 January 1989, by section 7 of the District Courts Amendment Act 1983 (1983 No 49).

#### **96A Charging orders**

- (1) Any person who has obtained a judgment or order for the payment of money may apply to the court in accordance with the rules for a charging order.
- (1A) A charging order may be made in respect of any of the following property:
- (a) any estate, right, title, or interest in possession, remainder, reversion, or expectancy, and whether vested or contingent, in any land held by the judgment debtor in the judgment debtor's own name:
  - (b) any right or interest of the judgment debtor in any partnership:
  - (c) any shares held by the judgment debtor in any company incorporated in New Zealand, or having an office in New Zealand in which transfers of shares may be registered:
  - (d) any estate, right, or interest in possession, remainder, reversion, or expectancy, and whether vested or con-

- tingent, in any land, or in any money, shares, or other chattels held under or by virtue of any express or implied trust for the judgment debtor.
- (2) Subject, in the case of a charging order made in respect of a registered estate or interest in any land, to registration under subsection (6), a charging order—
- (a) shall charge the estate, right, title, or interest of the judgment debtor in the property described in the order with payment of the amount for which the judgment creditor has obtained judgment:
  - (b) shall restrain the person served with it—
    - (i) from making, or concurring in making or permitting any conveyance, transfer, assignment, or disposition of any estate, right, or interest, or of any share in a partnership or company, of the judgment debtor; or
    - (ii) from paying over any income, interest, dividends, bonus, profits, or other money due or accruing due to the judgment debtor,—except in accordance with the rules or by leave of the court:
  - (c) shall be removable into the High Court pursuant to subsection (8) and be enforceable in the High Court in the same way as if the charging order had been issued by the High Court into which it is removed:
  - (d) in the case of a charging order in respect of land, shall, unless an instrument of transfer or a deed of conveyance or assignment consequent upon a writ of sale of the land affected by the charging order is registered within 2 years after the date of the charging order, cease to bind the land and shall be deemed to have been discharged unless the court extends the effect of the charging order in accordance with the rules.
- (3) A charging order shall specify, in such manner as to identify it, the property on which the charge is imposed.
- (4) A charging order may be varied or discharged at any time by the court.
- (5) Where a charging order is made in respect of the registered estate or interest of the judgment debtor in any land, a duplicate

or copy of the order under the seal of the court may be delivered for registration to the appropriate District Land Registrar if the title to the land is under the Land Transfer Act 1952, or to the appropriate Registrar of Deeds if the title to the land is not under that Act, or, in the case of a mining privilege within the meaning of the Mining Act 1971, may be delivered for recording to the District Land Registrar in whose office the mining privilege is recorded.

- (6) The Registrar to whom the duplicate or copy is delivered shall, without fee, record it in the register against the appropriate folium of the register book and against any relevant instrument of title, or record it and note its particulars on the filed copy of the mining privilege to which it relates, as the case may require.
- (7) An order discharging or varying a charging order may be registered or recorded in the same manner as the charging order.
- (8) Any charging order made under this section may be removed into the High Court in accordance with section 66, and the provisions of that section, with any necessary modifications, shall apply accordingly.

Section 96A: inserted, on 1 January 1989, by section 7 of the District Courts Amendment Act 1983 (1983 No 49).

Section 96A(1): substituted, on 30 March 1987, by section 3(2) of the District Courts Amendment Act 1987 (1987 No 26).

Section 96A(1A): inserted, on 30 March 1987, by section 3(2) of the District Courts Amendment Act 1987 (1987 No 26).

Section 96A(2): substituted, on 30 March 1987, by section 3(2) of the District Courts Amendment Act 1987 (1987 No 26).

### *Committals*

#### **97 Issue and execution of orders or warrants of committal**

- (1) Whenever any order or warrant for the committal of any person to prison is made or issued by a court in pursuance of this Act or the rules the order or warrant shall be directed to a bailiff or constable, who shall thereby be empowered to take the person against whom the order is made or warrant issued, and it shall be the duty of every constable to assist in the execution of every such order or warrant.

- (2) Any person committed to prison by any court in pursuance of this Act or the rules shall be committed to a prison established under or deemed to be established under the Corrections Act 2004, and the prison manager of the prison mentioned in any such order or warrant shall be bound to receive and keep the person therein mentioned until he is lawfully discharged.

Compare: County Courts Act 1934 ss 140, 141 (UK)

Section 97(1): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 97(2): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

## **98 Power of Judge to order discharge**

If at any time it appears to the satisfaction of a Judge that any person confined to prison pursuant to the last preceding section ought for any reason to be discharged, the Judge may order his discharge upon such terms (including liability to rearrest if the terms are not complied with) as the Judge thinks fit.

Compare: 1928 No 14 s 200

Section 98 heading: amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 98: amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

### *Warrant for the recovery of land*

## **99 Warrant for the recovery of land**

- (1) A warrant for the recovery of land shall authorize the bailiff or constable to whom it is directed to give possession of the land referred to therein to the person named in the warrant and shall justify him in entering, by force if necessary, upon the land, with such assistants as he deems necessary, and in giving possession accordingly; but no entry under any such warrant shall be made except between the hours of 9 o'clock in the morning and 4 o'clock in the afternoon. The person to whom possession is given in accordance with the warrant shall hold the land discharged of the tenancy (if any), and the defendant, and all persons claiming by, through, or under him shall, so long as the judgment or order pursuant to which the warrant was issued remains unreversed, be barred from all relief in equity or otherwise.

- (2) For the purpose of executing any warrant to give possession of any premises, it shall not be necessary to remove any goods or chattels from those premises.

Compare: 1928 No 14 ss 181(3), 186; County Courts Act 1934 s 120 (UK)

**100 Irregularity in execution of warrant can only be sued for as special damage**

- (1) Where a person by whom a warrant for the recovery of any land is sued out had, at the time of suing out the same, lawful right to the possession of the land, neither he nor his agent, nor any other person acting in his behalf, shall be deemed to be a trespasser by reason merely of any irregularity or informality in the mode of proceeding for obtaining possession under the authority of this Act; but the party aggrieved may if he thinks fit bring an action in any court of competent jurisdiction and recover for special damage.

- (2) If special damage is not proved the defendant shall be entitled to a verdict; and if proved, but assessed by the last-mentioned court at any sum not exceeding \$5, the plaintiff shall recover no more costs than damages unless the Judge or District Court Judge of the court before whom the trial is held certifies that in his opinion full costs ought to be allowed.

Compare: 1928 No 14 s 192

Section 100(2): amended, on 1 May 1981, by section 12 of the District Courts Amendment Act 1980 (1980 No 83).

Section 100(2): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

**101 Person illegally obtaining warrant liable for trespass**

- (1) If any person by whom a warrant for the recovery of any land is sued out in a court had not, at the time of suing out the same, lawful right to the possession of the land, the suing out of the warrant shall be deemed a trespass by him against the tenant or occupier of the land, although no entry is made by virtue of the warrant.

- (2) Nothing herein contained shall be deemed to protect any person on whose application and to whom any such warrant as aforesaid is granted from any proceeding against him by any such tenant or occupier as aforesaid for or in respect of any

entry and taking possession, where that person had not when the warrant was issued lawful right to the possession of the said land; and nothing herein contained shall affect any rights to which any person may be entitled as outgoing tenant by the custom of the country or otherwise.

- (3) No proceeding or prosecution shall be brought against any Judge who has made any order for the issue of, or any Registrar who has issued, any warrant for the recovery of any land, or against any bailiff or constable who has executed any such warrant as aforesaid for ordering, issuing, or executing the warrant, by reason only that the person on whose application the warrant was issued had not lawful right to the possession of the land.

Compare: 1928 No 14 ss 187, 188, 191

Section 101(2): amended, on 1 July 1992, by section 21(1) of the District Courts Amendment Act 1991 (1991 No 61).

Section 101(3): amended, on 1 July 1992, by section 21(1) of the District Courts Amendment Act 1991 (1991 No 61).

Section 101(3): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

## **102 Execution of warrant may be stayed on giving bond**

- (1) If any tenant or occupier becomes bound with 2 sureties as hereinafter provided, to be approved of by the court, in such sum as the court deems reasonable (regard being had to the value of the land and the probable costs of an action), to sue the person to whom such warrant as aforesaid was granted with effect and without delay, and to pay all the costs of the proceeding in case judgment is given for the defendant, or the plaintiff discontinues or does not prosecute the plaintiff's proceeding, or becomes nonsuited therein, execution of the warrant shall be stayed until judgment has been given in the action of trespass.
- (2) If upon the trial of the proceeding judgment is given for the plaintiff, the judgment thereupon shall supersede the warrant so granted, and the plaintiff shall be entitled to his costs in the proceeding.
- (3) Every such bond as aforesaid shall be made to the landlord at the cost of the tenant or occupier and shall be approved of in

writing by a Judge; and if the bond so taken is forfeited, or if on the trial of the proceeding for securing the trial of which the bond was given the Judge by whom it is tried does not endorse upon the record in court that the condition of the bond has been fulfilled, the party to whom the bond has been so made may bring a proceeding and recover thereon; and the court where the last-mentioned proceeding is brought may by order give such relief to the parties upon the bond as may be agreeable to justice, and the order shall have the nature and effect of a defeasance to the bond.

Compare: 1928 No 14 ss 189, 190

Section 102(1): amended, on 1 July 1992, by section 21(1) of the District Courts Amendment Act 1991 (1991 No 61).

Section 102(2): amended, on 1 July 1992, by section 21(1) of the District Courts Amendment Act 1991 (1991 No 61).

Section 102(3): substituted, on 1 July 1992, by section 21(1) of the District Courts Amendment Act 1991 (1991 No 61).

### *Recovery of chattels*

#### **103 Warrant for the recovery of chattels**

- (1) A warrant for the recovery of chattels may be issued at the request of any person who has obtained a judgment or order for the recovery of specific chattels.
- (2) The warrant shall require the bailiff or constable to whom it is directed to demand and seize the specific chattels referred to therein, if they can be found by him, and to deliver them to the person named in the warrant.

Compare: 1928 No 14 s 131(1)

#### **104 Further proceedings if chattels not recovered**

- (1) If the chattels are not recovered under the warrant aforesaid, application may be made to a Judge for an order or warrant of committal. The order or warrant of committal shall direct the committal of the person named therein for such period as the Judge thinks fit not exceeding 1 month.
- (2) If possession of the chattels is not recovered under the warrant referred to in the last preceding section, whether or not an order or warrant of committal is issued, the person entitled to the recovery of the chattels may obtain the issue of a warrant of

distress for the value of the chattels, such value to be assessed in such manner as a Judge may direct.

Compare: 1928 No 14 s 131(2), (3)

Section 104(1): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 104(2): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

### *Liability and protection of officers*

#### **105 Neglect by bailiffs**

- (1) Where a bailiff of any court, or any person acting under his authority, being employed to levy any execution against goods and chattels, loses the opportunity of levying the execution by reason of neglect, connivance, or omission, any party aggrieved thereby may complain to the Judge of that court.
- (2) On any such complaint the Judge, if the neglect, connivance, or omission is proved to his satisfaction, shall order the bailiff to pay such damages as it appears that the complainant has sustained by reason thereof, not exceeding in any case the sum for which the execution issued.

Compare: 1928 No 14 s 24

Section 105(1): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 105(2): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

#### **106 Irregularity in executing warrants**

No officer of a court in executing any warrant of the court, and no person at whose instance any such warrant is executed, shall be deemed a trespasser by reason of any irregularity or informality—

- (a) in any proceeding on the validity of which the warrant depends; or
- (b) in the form of the warrant or in the mode of executing it;

but any person aggrieved may bring a proceeding for any special damage sustained by him by reason of the irregularity or informality against the person guilty thereof:

provided that no costs shall be recovered in any such proceeding unless the damages awarded exceed \$30.

Compare: 1928 No 14 s 193

Section 106: amended, on 1 July 1992, by section 21(1) of the District Courts Amendment Act 1991 (1991 No 61).

Section 106 proviso: amended, on 1 July 1992, by section 21(1) of the District Courts Amendment Act 1991 (1991 No 61).

Section 106 proviso: amended, on 1 May 1981, by section 13 of the District Courts Amendment Act 1980 (1980 No 83).

### **107 Actions against bailiffs acting under warrants**

- (1) No proceeding shall be commenced against any bailiff for anything done pursuant to a warrant issued under this Act, unless—
  - (a) a demand for inspection of the warrant and for a copy thereof is made or left at the office of the court by the party intending to bring the proceeding, or his solicitor or agent, in writing signed by the person making the demand; and
  - (b) the bailiff refuses or neglects to comply with the demand within 6 days after it is made.
- (2) If any proceeding is commenced against a bailiff in a case where such a demand has been made and not complied with, judgment shall be given for the bailiff if the warrant is produced or proved at the trial, notwithstanding any defect of jurisdiction or other irregularity in the warrant; but the officer who issued the warrant may be joined as a defendant in the proceeding, and if the officer is so joined and judgment is given against him the costs to be recovered by the plaintiff against him shall include such costs as the plaintiff is liable to pay to the bailiff.

Compare: County Courts Act 1934 s 147 (UK)

Section 107(1): amended, on 1 July 1992, by section 21(1) of the District Courts Amendment Act 1991 (1991 No 61).

Section 107(1)(a): amended, on 1 July 1992, by section 21(1) of the District Courts Amendment Act 1991 (1991 No 61).

Section 107(2): amended, on 1 July 1992, by section 21(1) of the District Courts Amendment Act 1991 (1991 No 61).

**108 Action to be brought within 6 months, and 1 month's notice to be given**

- (1) *[Repealed]*
- (2) *[Repealed]*
- (3) In any proceeding commenced against a person for anything done in pursuance of this Act, the production of the warrant of the court shall be deemed sufficient proof of the authority of the court previous to the issue of the warrant.

Section 108(1): repealed, on 1 January 1952, by section 35(2) of the Limitation Act 1950 (1950 No 65).

Section 108(2): repealed, on 1 January 1952, by section 35(2) of the Limitation Act 1950 (1950 No 65).

Section 108(3): amended, on 1 July 1992, by section 21(1) of the District Courts Amendment Act 1991 (1991 No 61).

## Part 7 Miscellaneous and general

### *Writs of arrest*

**109 Absconding debtors may be held to bail**

- (1) Where it appears to the satisfaction of any Judge 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 court for which a proceeding 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 Judge 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 Judge 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 Judge, for any sum not exceeding the amount sworn to in the affidavit, with costs:

provided that the Judge may, before issuing the writ, require the person asking for the issue thereof to lodge in the court any sum of money not exceeding \$2,000, or to give security

therefor to the satisfaction of the court, to abide the decision of the court under paragraph (b) of section 110.

- (2) In default of bail being so given, or the amount with costs being deposited with the Registrar, as hereinafter provided, the Judge may order the defendant to be detained in some prison or lock-up, and to be brought from there to a 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 Judge 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 for the hearing of the claim by the court or order that the proceeding be set down for hearing and fix the time thereof.
- (5) Where a Judge is not available through absence, illness, or any other cause, a Registrar may exercise any of the powers conferred on a Judge by subsections (1) and (2), other than the power to discharge the defendant.

Section 109: substituted, on 1 January 1972, by section 11(1) of the District Courts Amendment Act 1971 (1971 No 56).

Section 109(1): amended, on 1 July 1992, by section 21(1) of the District Courts Amendment Act 1991 (1991 No 61).

Section 109(1): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 109(1) proviso: amended, on 1 May 1981, by section 14 of the District Courts Amendment Act 1980 (1980 No 83).

Section 109(1) proviso: amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 109(2): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 109(2): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 109(4): substituted, on 1 July 1992, by section 21(1) of the District Courts Amendment Act 1991 (1991 No 61).

Section 109(5): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

**110 Successful plaintiff entitled to execution, successful defendant entitled to compensation**

Where a Judge hears and finally adjudicates upon the claim of a plaintiff under the power contained in the last preceding section the following provisions shall apply:

- (a) if judgment is given for the plaintiff, the Judge may make an order for the immediate payment of the amount of the judgment, with costs, and execution may at once be issued and such other proceedings may be had thereon as if the judgment were a judgment obtained in the ordinary course of procedure:
- (b) if judgment is given for the defendant, the Judge may, in his discretion, award to the defendant by way of compensation any sum not exceeding \$2,000, and such award shall be deemed to be a judgment of the court, and execution may issue thereon.

Compare: 1928 No 14 s 152

Section 110: amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 110(a): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 110(b): amended, on 1 May 1981, by section 15(1) of the District Courts Amendment Act 1980 (1980 No 83).

Section 110(b): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

*Interpleader*

**111 Interpleader**

Where a person is under a liability for any debt or other cause of action, money, or chattels for or in respect of which he is or expects to be sued by 2 or more persons making adverse claims thereto, he may, if the subject-matter does not exceed in value the sum of \$200,000, apply to a court in manner prescribed for relief by way of interpleader in accordance with the rules.

Compare: 1928 No 14 s 27(g)

Section 111: amended, on 1 July 1992, by section 15(1) of the District Courts Amendment Act 1991 (1991 No 61).

*Contempt*

**112 Penalty for contempt of court**

If any person—

- (a) wilfully insults a Judge or any witness or any officer of the court during his sitting or attendance in court, or in going to or returning from the court; or
- (b) wilfully interrupts the proceedings of a court or otherwise misbehaves in court; or
- (c) wilfully and without lawful excuse disobeys any order or direction of the court in the course of the hearing of any proceedings,—

any officer of the court, with or without the assistance of any constable or other person, may, by order of the Judge, take the offender into custody and detain him until the rising of the court, and the Judge may, if he thinks fit, by warrant under his hand, commit the offender to prison for any period not exceeding 3 months or impose upon the offender a fine not exceeding \$1,000 for each offence.

Compare: 1928 No 14 ss 196, 197

Section 112 heading: substituted, on 13 January 1983, by section 7 of the District Courts Amendment Act (No 2) 1982 (1982 No 130).

Section 112: amended, on 13 January 1983, by section 7(a) of the District Courts Amendment Act (No 2) 1982 (1982 No 130).

Section 112: amended, on 13 January 1983, by section 7(b) of the District Courts Amendment Act (No 2) 1982 (1982 No 130).

Section 112: amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 112(a): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

*Financial provisions*

**113 Payment and recovery of fees**

- (1) All fees, except such as may be payable in respect of keeping possession, or for storing, removing, or selling goods seized under a warrant, shall be paid in the first instance by the party on whose behalf any proceedings are taken.
- (1A) The fact that the party on whose behalf any proceedings are taken is Her Majesty, or any officer of Her Majesty's Government in New Zealand on Her Majesty's behalf or on behalf of

Her Majesty's Government in New Zealand, shall not affect the application of subsection (1).

- (2) No Registrar or Deputy Registrar may do any act for which a fee is payable unless the amount of the fee prescribed or determined under any enactment is paid or unless payment of that amount is waived or postponed.
- (2A) An act for which a fee is payable is not invalid simply because the fee has not been paid.
- (3) In default of the payment of any fees, payment thereof shall be enforced, by order of the court, in like manner as payment of any debt adjudged by the court to be paid.
- (4) A table of all fees payable shall be posted in a conspicuous place in every Registrar's office.

Compare: 1928 No 14 s 176(1), (2), (3); County Courts Act 1934 s 168 (UK)

Section 113(1A): inserted, on 1 July 1994, by section 4 of the District Courts Amendment Act 1994 (1994 No 29).

Section 113(2): substituted, on 9 October 2001, by section 3 of the District Courts Amendment Act 2001 (2001 No 82).

Section 113(2A): inserted, on 9 October 2001, by section 3 of the District Courts Amendment Act 2001 (2001 No 82).

#### **114 Enforcement of fines**

The payment of any fine imposed by a court under this Act may be enforced, upon the order of a Judge, in like manner as the payment of any fine imposed on summary conviction may be enforced under the provisions of the Summary Proceedings Act 1957.

Compare: 1928 No 14 s 201

Section 114: amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 114: amended, on 1 April 1958, pursuant to section 214(1) of the Summary Proceedings Act 1957 (1957 No 87).

#### **115 Fines and fees to be paid to Crown Bank Account**

All fees and fines payable in respect of proceedings in courts or before Judges shall be paid into a Crown Bank Account or a Departmental Bank Account in accordance with the Public Finance Act 1989:

provided that fees in respect of keeping possession, and of storing, removing, and selling goods seized under a warrant shall be paid to the bailiff or person charged with the execution of the warrant, to be paid by him to the person entitled thereto.

Compare: 1928 No 14 s 178

Section 115 heading: amended, on 1 July 1989, pursuant to section 83(7) of the Public Finance Act 1989 (1989 No 44).

Section 115: amended, on 1 July 1989, by section 86(1) of the Public Finance Act 1989 (1989 No 44).

Section 115: amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

### *Miscellaneous*

#### **116 Prescribed documents to be sealed**

- (1) Every document of a prescribed class issuing out of a court shall be sealed with the seal of the court.
- (2) All such summonses and other documents purporting to be sealed as aforesaid shall, in New Zealand, be received in evidence without further proof thereof.

Compare: 1928 No 14 s 39; County Courts Act 1934 s 176 (UK)

Section 116 heading: substituted, on 1 April 1980, by section 17 of the District Courts Amendment Act 1979 (1979 No 125).

Section 116(1): substituted, on 1 April 1980, by section 17 of the District Courts Amendment Act 1979 (1979 No 125).

#### **116A Proof of service of documents by officer or constable**

- (1) Where any summons or any other document is served by any officer of a court or by any constable, the service may be proved either by an endorsement on a copy of the document showing the fact and the time and mode of service or in any other manner prescribed by the rules. Any such endorsement shall be signed by the person who served the summons or document.
- (2) Every officer or constable who wilfully endorses any false statement on a copy of any summons or document commits an offence and is liable on conviction on indictment to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$2,000, or to both.

(3) *[Repealed]*

Compare: County Courts Act 1934 s 175 (UK)

Section 116A: inserted, on 12 May 1955, by section 2 of the District Courts Amendment Act 1955 (1955 No 13).

Section 116A(1): amended, on 1 July 1992, by section 16(1) of the District Courts Amendment Act 1991 (1991 No 61).

Section 116A(2): amended, on 1 May 1981, by section 16 of the District Courts Amendment Act 1980 (1980 No 83).

Section 116A(3): repealed, on 1 April 1958, by section 214(1) of the Summary Proceedings Act 1957 (1957 No 87).

**117 Subtenant to give notice of proceeding to subtenant's immediate landlord**

Every subtenant to whom there is delivered notice of any proceeding taken under this Act for the recovery of any land demised to or held by the subtenant, or to whose knowledge it comes, shall forthwith give notice thereof to the subtenant's immediate landlord, and if the subtenant fails to do so the subtenant shall be liable to forfeit to the subtenant's immediate landlord an amount equal to not more than 3 years' improved or rack rent of the land, to be recovered by a proceeding taken in any District Court or other court having jurisdiction in respect of claims for such an amount.

Section 117: substituted, on 1 July 1992, by section 17(1) of the District Courts Amendment Act 1991 (1991 No 61).

**118 Actions on lost instruments**

In any proceeding founded on a promissory note, bill of exchange, or other negotiable instrument declared on the affidavit of the plaintiff to be lost, if an indemnity is given by the plaintiff to the satisfaction of the court against the claims of any other person upon the instrument the court may give judgment therefor as if the same were produced.

Compare: 1928 No 14 s 44

Section 118: amended, on 1 July 1992, by section 21(1) of the District Courts Amendment Act 1991 (1991 No 61).

**119 Immunity of Judges**

Every District Court Judge has, at all times, the same immunities as a Judge of the High Court.

Section 119: substituted, on 20 May 2004, by section 7 of the District Courts Amendment Act 2004 (2004 No 42).

**120 No privilege to solicitors**

No privilege shall be allowed to any solicitor to exempt him from the jurisdiction of a court.

Compare: 1928 No 14 s 35

**121 Constables, etc, to assist**

(1) All constables shall aid and assist any court or Judge in the execution of all and any of the duties imposed upon the court or Judge by this or any other Act; and if any constable neglects or refuses so to do he shall be liable on summary conviction, where no other penalty is provided, to a fine not exceeding \$75.

(2) It shall be the duty of the keeper of every prison or lock-up on the request of the bailiff or constable to whom a warrant of committal or a writ of arrest has been issued to hold the prisoner or defendant in the custody of the bailiff or constable until the prisoner or defendant may, by the most convenient means of transport, be conducted to the place of imprisonment named in the warrant or brought before the court named in the writ, as the case may be.

Compare: 1928 No 14 s 199

Section 121(1): amended, on 1 May 1981, by section 16 of the District Courts Amendment Act 1980 (1980 No 83).

Section 121(1): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

**122 District Courts Rules**

(1) The Governor-General may from time to time, by Order in Council, with the concurrence of the Chief District Court Judge and 2 or more members of the Rules Committee established under section 51B of the Judicature Act 1908 of whom at least 1 is a District Court Judge, make rules regulating the practice and procedure of the court in the exercise of jurisdiction conferred by this Act.

(1A) The Governor-General may from time to time, by Order in Council, make rules regulating the practice and procedure of

the court in relation to the exercise of jurisdiction conferred by other Acts.

- (2) The power of making rules shall extend to all matters of practice or procedure and matters relating to or concerning the effect or operation in law of any practice or procedure in any case within the cognizance of the courts as to which rules of the High Court may be or might lawfully be made for cases within the cognizance of the High Court.
- (3) Without prejudice to the generality of the foregoing provisions of this section, the power of making rules shall extend to—
  - (a) prescribing the manner and the court in which proceedings are to be commenced and the procedure to be adopted where proceedings are commenced in one court which should, under the Act or the rules, have been commenced in another court:
  - (aa) applying, with or without modifications, provisions of the High Court Rules:
  - (b) prescribing the circumstances in which proceedings may be transferred from one Court to another, and the procedure consequent on any such transfer:
  - (c) prescribing the procedure in District Courts consequent on transfers of proceedings from the High Court to District Courts, or from District Courts to the High Court:
  - (ca) prescribing—
    - (i) the procedure in District Courts in relation to the removal into the High Court, under section 45A, of a summary judgment application or any matter arising in a summary judgment application; and
    - (ii) the procedure in relation to the removal into the High Court, under section 45B, of a question of law:
  - (d) prescribing the procedure in District Courts consequent on the removal of judgments of the High Court into District Courts and on the removal of judgments of District Courts into the High Court:
  - (e) providing for the custody of the records of the court, and for the receipt of and accounts for all money paid into or out of court:

- (f) authorising the Registrar to hear and determine any proceedings taken under this Act (other than proceedings in respect of which a court has jurisdiction under any of the provisions of sections 29 to 34), and any proceedings (including proceedings in respect of which a court has jurisdiction under any of the provisions of sections 29 to 34) in which the defendant fails to appear at the hearing or admits the claim:
- (fa) prescribing circumstances in which the powers, privileges, and duties of the Deputy Registrar of the court are not the same as the powers, privileges, and duties of the Registrar of the court:
- (g) prescribing, according to the nature of the proceedings and the amount involved therein, the costs and charges to be paid by one party or the parties in the proceedings to the other party or parties, in addition to the moneys paid out of pocket:
- (ga) prescribing the circumstances in which the court may appoint an expert witness, and prescribing—
  - (i) the procedure to be followed after the expert witness is appointed; and
  - (ii) the rights of the parties in relation to the evidence given by the expert witness; and
  - (iii) the manner in which the expert witness is to be remunerated:
- (h) *[Repealed]*
- (i) *[Repealed]*
- (ia) prescribing the circumstances in which an order under section 56A or section 56B can be made:
- (ib) providing for documents to be sent in electronic form under section 108A(1)(c), including (without limitation) provisions for the retention of records that evidence the fact that, and the date and time when, such documents were sent to electronic addresses:
- (j) regulating and providing for any other matters which were regulated or provided for by the District Courts Rules in force on the date of the passing of this Act:
- (k) regulating or providing for any other matters which immediately prior to the coming into force of this Act were

- regulated or provided for by the enactments (repealed by this Act) which are referred to in Schedule 2:
- (l) providing for any other matters in respect of which rules are contemplated or specially authorized by this Act.
- (4) Rules made under this Act shall take effect on or from a day to be fixed in the Order in Council making the same.

Compare: 1928 No 14 ss 3, 16, 18, 69, 81

Section 122(1): substituted, on 31 August 1999, by section 2(1) of the District Courts Amendment Act (No 2) 1999 (1999 No 89).

Section 122(1A): inserted, on 31 August 1999, by section 2(1) of the District Courts Amendment Act (No 2) 1999 (1999 No 89).

Section 122(2): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Section 122(3)(a): amended, on 1 October 1991, by section 18(1) of the District Courts Amendment Act 1991 (1991 No 61).

Section 122(3)(aa): inserted, on 1 October 1991, by section 18(2) of the District Courts Amendment Act 1991 (1991 No 61).

Section 122(3)(c): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 122(3)(c): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Section 122(3)(ca): inserted, on 1 July 1992, by section 8(1) of the District Courts Amendment Act 1992 (1992 No 17).

Section 122(3)(d): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

Section 122(3)(d): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Section 122(3)(e): substituted, on 1 October 1991, by section 18(3) of the District Courts Amendment Act 1991 (1991 No 61).

Section 122(3)(f): substituted, on 1 October 1991, by section 18(3) of the District Courts Amendment Act 1991 (1991 No 61).

Section 122(3)(fa): inserted, on 1 July 1992, by section 8(2) of the District Courts Amendment Act 1992 (1992 No 17).

Section 122(3)(ga): inserted, on 1 July 1992, by section 8(3) of the District Courts Amendment Act 1992 (1992 No 17).

Section 122(3)(h): repealed, on 31 August 1999, by section 2(2) of the District Courts Amendment Act (No 2) 1999 (1999 No 89).

Section 122(3)(i): repealed, on 31 August 1999, by section 2(2) of the District Courts Amendment Act (No 2) 1999 (1999 No 89).

Section 122(3)(ia): inserted, on 1 July 1992, by section 8(4) of the District Courts Amendment Act 1992 (1992 No 17).

Section 122(3)(ib): inserted, on 13 February 2012, by section 40 of the District Courts Amendment Act 2011 (2011 No 30).

Section 122(3)(j): amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

### **123 Regulations**

- (1) The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:
- (a) prescribing fees payable in respect of proceedings, including fees for the filing and service of documents, in the District Court pursuant to this Act or other Acts:
  - (b) prescribing fees payable to persons giving evidence and to referees and arbitrators in proceedings in the District Court pursuant to this Act or other Acts:
  - (ba) in order to promote access to justice, empowering Registrars or Deputy Registrars to waive, reduce, or postpone the payment of a fee required in connection with a proceeding or an intended proceeding (including a proceeding in a Disputes Tribunal), or to refund, in whole or in part, such a fee that has already been paid, if satisfied on the basis of criteria specified under paragraph (bb) that—
    - (i) the person otherwise responsible for payment of the fee is unable to pay or absorb the fee in whole or in part; or
    - (ii) unless 1 or more of those powers are exercised in respect of a proceeding that concerns a matter of genuine public interest, the proceeding is unlikely to be commenced or continued:
  - (bb) prescribing, for the purposes of the exercise of a power under paragraph (ba), the criteria—
    - (i) for assessing a person's ability to pay a fee; and
    - (ii) for identifying proceedings that concern matters of genuine public interest:
  - (bc) empowering Registrars or Deputy Registrars to postpone the payment of a fee pending the determination of—
    - (i) an application for the exercise of a power specified in paragraph (ba); or
    - (ii) an application for review under section 123A:

- (bd) making provision in relation to the postponement, under the regulations, of the payment of any fee, which provision may (without limitation) include provision—
    - (i) for the recovery of the fee after the expiry of the period of postponement; and
    - (ii) for restrictions to apply (after the expiry of the period of postponement and so long as the fee remains unpaid) on the steps that may be taken in the proceedings in respect of which the fee is payable:
  - (be) providing for the manner in which an application for the exercise of a power specified in paragraph (ba) or paragraph (bc) is to be made, including, without limitation, requiring such an application to be in a form approved for the purpose by the chief executive of the Ministry of Justice:
  - (bf) amending Schedule 1A by adding offences to, or removing offences from, Part 1 or Part 2 of that schedule:
  - (bg) prescribing transitional arrangements for the trial and sentencing of persons charged with offences that are added to or removed from Part 1 or Part 2 of Schedule 1A:
  - (c) providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration.
- (2) No fee is payable for an application for the exercise of a power specified in subsection (1)(ba) or (bc).

Section 123: substituted, on 31 August 1999, by section 3 of the District Courts Amendment Act (No 2) 1999 (1999 No 89).

Section 123(1)(a): amended, on 13 February 2012, by section 41 of the District Courts Amendment Act 2011 (2011 No 30).

Section 123(1)(ba): inserted, on 9 October 2001, by section 4(1) of the District Courts Amendment Act 2001 (2001 No 82).

Section 123(1)(bb): inserted, on 9 October 2001, by section 4(1) of the District Courts Amendment Act 2001 (2001 No 82).

Section 123(1)(bc): inserted, on 9 October 2001, by section 4(1) of the District Courts Amendment Act 2001 (2001 No 82).

Section 123(1)(bd): inserted, on 9 October 2001, by section 4(1) of the District Courts Amendment Act 2001 (2001 No 82).

Section 123(1)(be): inserted, on 9 October 2001, by section 4(1) of the District Courts Amendment Act 2001 (2001 No 82).

Section 123(1)(be): amended, on 1 October 2003, pursuant to section 14(1) of the State Sector Amendment Act 2003 (2003 No 41).

Section 123(1)(bf): inserted, on 26 June 2008, by section 7 of the District Courts Amendment Act (No 2) 2008 (2008 No 39).

Section 123(1)(bg): inserted, on 26 June 2008, by section 7 of the District Courts Amendment Act (No 2) 2008 (2008 No 39).

Section 123(2): added, on 9 October 2001, by section 4(2) of the District Courts Amendment Act 2001 (2001 No 82).

### **123A Reviews of decisions of Registrars concerning fees**

- (1) Any person who is aggrieved by a decision of a Registrar or Deputy Registrar under regulations made under section 123(1)(ba) may apply to a Judge for a review of that decision.
- (2) An application under subsection (1) may be made within 20 working days after the date on which the applicant is notified of the decision of the Registrar or Deputy Registrar, or within any further time that the Judge allows on application made for that purpose either before or after the expiration of those 20 working days.
- (3) Applications under this section may be made on an informal basis.
- (4) Reviews under this section are—
  - (a) conducted by way of rehearing of the matter in respect of which the Registrar or Deputy Registrar made the decision; and
  - (b) dealt with on the papers, unless the Judge directs otherwise.
- (5) On dealing with an application for a review of a decision of a Registrar or Deputy Registrar, the Judge may confirm, modify, or reverse the decision of the Registrar or the Deputy Registrar.
- (6) No fee is payable for an application under this section.

Compare: 1991 No 71 s 16

Section 123A: inserted, on 9 October 2001, by section 5 of the District Courts Amendment Act 2001 (2001 No 82).

### **124 Application of Act**

Where under any Act any power, authority, or jurisdiction is given to Judges, the proceedings shall be had and determined in a court in accordance with this Act and the rules unless

some other procedure is specially provided or required, and Judges in the exercise of that power, authority, or jurisdiction shall have all the powers given under this Act to Judges and to courts, but, except as aforesaid or as expressly provided in this Act or the rules, nothing in this Act or the rules shall derogate from or affect the provisions of any other Act conferring any power, authority, or jurisdiction on Judges or on courts.

Section 124: amended, on 1 April 1980, pursuant to section 18(1) of the District Courts Amendment Act 1979 (1979 No 125).

### **125 Repeals and savings**

- (1) The enactments mentioned in Schedule 3 are hereby repealed.
- (2) All courts, jurisdictions, offices, appointments, Orders in Council, orders, warrants, rules, regulations, seals, forms, books, records, instruments, and generally all acts of authority which originated under any of the said enactments or any enactment thereby repealed, and are subsisting or in force on the coming into operation of this Act, shall enure for the purposes of this Act as fully and effectually as if they had originated under the corresponding provisions of this Act, and accordingly shall, where necessary, be deemed to have so originated.
- (3) All actions, matters, and proceedings commenced under any of the said enactments and pending or in progress on the coming into operation of this Act may be continued, completed, and enforced under this Act.
- (4) *[Repealed]*

Section 125(4): repealed, on 23 November 1962, by section 4(3) of the Mining Amendment Act 1962 (1962 No 23).

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**Schedule 1**  
**Criminal Record Book**

s 28

*[Repealed]*

Schedule 1: repealed, on 1 April 1958, by section 214(1) of the Summary Proceedings Act 1957 (1957 No 87).

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ss 28A(1), 28F(3)

**Schedule 1A**  
**Offences triable in either District Court  
or High Court and offences triable only in  
High Court**

Schedule 1A: substituted, on 26 June 2008, by section 8 of the District Courts Amendment Act (No 2) 2008 (2008 No 39).

Part 1

Offences triable in either District Court or  
High Court (middle band offences)

*Part A—Offences against Crimes Act 1961*

<b>Section</b>	<b>Offence</b>
Section 104	Corruption and bribery of law enforcement officer
Section 105	Corruption and bribery of official
Section 105A	Corrupt use of official information
Section 105B	Use or disclosure of personal information disclosed in breach of section 105A
Section 105C	Bribery of foreign public official
Section 105D	Bribery outside New Zealand of foreign public official
Section 128‡	Sexual violation
Section 128*	Rape
Sections 128, 128B	Sexual violation
Section 129‡	Attempt to commit sexual violation
Section 129(1)	Attempted sexual violation
Section 129(2)	Attempted assault with intent to commit sexual violation
Section 129A‡	Inducing sexual connection by coercion
Section 129A(1)	Inducing sexual connection by threat
Section 132(1)‡	Sexual intercourse with girl under 12
Section 132(1)	Sexual connection with child under 12
Section 132(2)	Attempted sexual connection with child under 12
Section 132(3)	Indecent act on child under 12
Section 142‡	Anal intercourse

Part 1—*continued*

<b>Section</b>	<b>Offence</b>
Section 142**	Sodomy
Section 142A	Compelling indecent act with animal
Section 144A	Sexual conduct with children outside New Zealand
Section 144C	Organising or promoting child sex tours
Section 188	Wounding with intent
Section 191	Aggravated wounding or injury
Section 198	Discharging firearm or doing dangerous act with intent
Section 198A(1)	Using firearm against law enforcement officer, etc
Section 199	Acid throwing
Section 200(1)	Poisoning with intent
Section 201	Infecting with disease
Section 203(1)†	Endangering transport
Section 204	Impeding rescue
Section 208‡	Abduction of woman or girl
Section 208	Abduction for purposes of marriage or sexual connection
Section 209	Kidnapping
Section 232(1)	Aggravated burglary
Section 235(1)(a) and (c)†	Aggravated robbery (causing grievous bodily harm)
Section 235	Aggravated robbery
Section 235(1)(b)†	Aggravated robbery (with other person or persons)
Section 236(1)	Assault with intent to rob
Section 239(1)	Demanding with intent to steal, etc
Section 240A†	Aggravated burglary
Section 267(1)	Arson
Section 269(1)	Intentional damage
Section 270	Endangering transport

Part 1—*continued*

<b>Section</b>	<b>Offence</b>
Section 294†	Arson
Section 298(1)†	Wilful damage
*as it read before 1 February 1986	
**as it read before 8 August 1986	
†as it read before 1 October 2003	
‡as it read before 20 May 2005	

*Part B—Offences against Misuse of Drugs Act  
1975*

<b>Section</b>	<b>Offence</b>
Section 6	Dealing with controlled drugs (where the charge relates to a class A or class B controlled drug)
Section 10(1)	Aiding offences against corresponding law of another country
Section 12C	Commission of offences outside New Zealand
Schedule 1A Part 1 Part B section 6: amended, on 18 July 2008, by regulation 3(1)(a) of the District Courts (Categorisation of Offences) Regulations 2008 (SR 2008/211).	
Schedule 1A Part 1 Part B section 10(1): inserted, on 18 July 2008, by regulation 3(1)(b) of the District Courts (Categorisation of Offences) Regulations 2008 (SR 2008/211).	
Schedule 1A Part 1 Part B section 12C: amended, on 18 July 2008, by regulation 3(1)(c) of the District Courts (Categorisation of Offences) Regulations 2008 (SR 2008/211).	

*Part C—Offences against Prostitution Reform  
Act 2003*

<b>Section</b>	<b>Offence</b>
Section 16	Inducing or compelling persons to provide commercial sexual services or earnings from prostitution

*Part D—Offences against Securities Act 1978*

<b>Section</b>	<b>Offence</b>
Section 58	Misstatement in advertisement or registered prospectus

**Part 2**  
**Offences triable only in High Court**  
*Part A—Offences against Crimes Act 1961*

<b>Section</b>	<b>Offence</b>
Section 68(1)	Party to murder outside New Zealand
Section 68(2)	Inciting murder outside New Zealand (not committed)
Section 69(1)	Party to any other crime outside New Zealand
Section 69(2)	Inciting treason outside New Zealand (not committed)
Section 69(3)	Aiding and abetting crime outside New Zealand
Section 73	Treason (or conspiracy to commit treason)
Section 74(3)	Attempted treason
Section 76	Accessory to, or failure to prevent, treason
Section 77	Inciting to mutiny
Section 78	Espionage
Section 79(1)	Sabotage
Section 92(1)	Piracy
Sections 93, 94	Piratical acts
Section 95	Attempts to commit piracy
Section 96	Conspiring to commit piracy
Section 97	Accessory after the fact to piracy
Section 98(1)	Dealing in slaves
Section 98C	Smuggling migrants
Section 98D	Trafficking in people by means of coercion or deception
Section 100	Judicial corruption
Section 101	Bribery of judicial officer, etc
Section 102	Corruption and bribery of Minister of the Crown
Section 103	Corruption and bribery of member of Parliament
Section 172	Murder
Section 173	Attempted murder

Part 2—*continued*

<b>Section</b>	<b>Offence</b>
Section 174	Attempting to procure murder (not committed)
Section 175	Conspiracy to murder
Section 176	Accessory after the fact to murder
Section 177	Manslaughter
Section 178	Infanticide
Section 179	Aiding and abetting suicide
Section 180(2)	Surviving party of suicide pact
Section 182	Killing unborn child
Section 183(1)	Procuring abortion
Section 237	Blackmail
Section 238(1)†	Extortion by certain threats
Section 301†	Wrecking

†as it read before 1 October 2003

*Part B—Offences against Anti-Personnel Mines  
Prohibition Act 1998*

<b>Section</b>	<b>Offence</b>
Section 7	Using, etc, an anti-personnel mine

*Part C—Offences against Aviation Crimes Act  
1972*

<b>Section</b>	<b>Offence</b>
Section 3	Hijacking
Section 5	Other crimes relating to aircraft
Section 5A	Crimes relating to international airports

*Part D—Offences against Chemical Weapons  
(Prohibition) Act 1996*

<b>Section</b>	<b>Offence</b>
Section 6	Chemical weapons
Section 8	Riot control agents

Part 2—*continued*

*Part E—Offences against Crimes  
(Internationally Protected Persons, United  
Nations and Associated Personnel, and  
Hostages) Act 1980*

<b>Section</b>	<b>Offence</b>
Section 3	Crimes against persons
Section 4	Crimes against premises or vehicles
Section 5	Threats against persons
Section 6	Threats against premises or vehicles
Section 8(1)	Hostage-taking

*Part F—Crimes against Crimes of Torture Act  
1989*

<b>Section</b>	<b>Offence</b>
Section 3	Acts of torture

*Part G—Crimes against Geneva Conventions  
Act 1958*

<b>Section</b>	<b>Offence</b>
Section 3(4)	Grave breaches of Conventions or First Protocol

*Part H—Crimes against Judicature Act 1908*

<b>Section</b>	<b>Offence</b>
Section 56C(2)	Contempt of court
Section 56O	Contempt of Federal Court of Australia

*Part I—Offences against Maritime Crimes Act  
1999*

<b>Section</b>	<b>Offence</b>
Section 4(1)(a)–(h)	Crimes relating to ships
Section 4(2)(a), (b)	Crimes relating to ships
Section 4(3)(a), (b)	Crimes relating to ships

Part 2—*continued*

Section 5(1)(a)–(e)	Crimes relating to fixed platforms
Section 5(2)(a), (b)	Crimes relating to fixed platforms
Section 5(3)(a), (b)	Crimes relating to fixed platforms

*Part J—Crimes against Misuse of Drugs Act  
1975  
[Repealed]*

Schedule 1A Part 2 Part J: repealed, on 18 July 2008, by regulation 3(2) of the District Courts (Categorisation of Offences) Regulations 2008 (SR 2008/211).

*Part K—Crimes against New Zealand Nuclear  
Free Zone, Disarmament, and Arms Control Act  
1987*

<b>Section</b>	<b>Offence</b>
Sections 5–8, 14	Offences against Act

*Part L—Crimes against Nuclear-Test-Ban Act  
1999*

<b>Section</b>	<b>Offence</b>
Section 5	Nuclear explosions prohibited

*Part M—Terrorism Suppression Act 2002*

<b>Section</b>	<b>Offence</b>
Section 7(1)	Terrorist bombing
Section 8(1), (2A)	Financing of terrorism
Section 9(1)	Prohibition on dealing with property of, or derived or generated from property of, terrorist and associated entities
Section 10(1)	Prohibition on making property, or financial or related services, available to terrorist and associated entities
Section 12(1)	Recruiting members of terrorist groups
Section 13(1)	Participating in terrorist groups
Section 13A	Harbouring or concealing terrorists

Part 2—*continued*

<b>Section</b>	<b>Offence</b>
Section 13B	Offences involving use and movement of un-marked plastic explosives
Section 13C	Offences involving physical protection of nuclear material
Section 13D	Importation, acquisition, etc, of radioactive material

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**Schedule 2**

s 122(3)(k)

**Enactments (repealed by this Act)  
formerly regulating or providing for  
matters which can be regulated or  
provided for by rules**

**Magistrates' Courts Act 1928**

Sections 4, 34, 41, 45, 46, 49 to 52, 55, 57 to 66, 68, 70 to 80, 82 to 88, 91, 92, 94 to 98, 101 to 115, 118, 120, 122, 123(2), 127, 129(b) and (c), 132, 133, 139 to 141, 144, 146 to 150, 159 to 161, 172 to 174, 176(4), 177, 179, 180(3), 184(2), 185, and 198, and the proviso to section 116.

**Statutes Amendment Act 1936**

Sections 49 to 52.

**Statutes Amendment Act 1938**

Section 36.

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**Schedule 3**  
**Enactments repealed**

s 125

**Finance Act (No 2) 1945 (1945 No 45)**

Section 42.

**Justices of the Peace Act 1927 (1927 No 37) (1931 Reprint,  
Vol II, pp 372, 491)**

Subsections (1) and (2) of section 74 and Schedule 2.

**Magistrates' Courts Act 1928 (1928 No 14) (1931 Reprint,  
Vol II, p 98)**

**Magistrates' Courts Amendment Act 1930 (1930 No 16) (1931  
Reprint, Vol II, p 167)**

**Statutes Amendment Act 1936 (1936 No 58)**

Sections 49 to 52.

**Statutes Amendment Act 1938 (1938 No 20)**

Sections 35 to 38.

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## District Courts Amendment Act (No 2) 2008

Public Act    2008 No 39  
Date of assent    25 June 2008  
Commencement    see section 2

### 1    **Title**

This Act is the District Courts Amendment Act (No 2) 2008.

### 2    **Commencement**

This Act comes into force on the day after the date on which it receives the Royal assent.

### 9    **Transitional provision**

- (1) Subsection (2) applies to any offence that—
- (a) before the commencement of the District Courts Amendment Act (No 2) 2008, could be tried by a court presided over by a trial Judge; but
  - (b) after the commencement of the District Courts Amendment Act (No 2) 2008, cannot be tried by a court presided over by a trial Judge or can only be so tried after transfer to the court by the High Court under the Summary Proceedings Act 1957.
- (2) If a defendant is committed for trial before the commencement of the District Courts Amendment Act (No 2) 2008 in respect of an offence to which this subsection applies, and the committal was to the District Court, that court may try the offence, despite that Act.
- (3) This section does not affect the application of the Interpretation Act 1999 in respect of any transitional matter related to the District Courts Amendment Act (No 2) 2008 not provided for in this section.
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## **District Courts (Categorisation of Offences) Regulations 2008**

(SR 2008/211)

Anand Satyanand, Governor-General

### **Order in Council**

At Wellington this 14th day of July 2008

Present:

His Excellency the Governor-General in Council

Pursuant to section 123 of the District Courts Act 1947, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following regulations.

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### **Regulations**

**1 Title**

These regulations are the District Courts (Categorisation of Offences) Regulations 2008.

**2 Commencement**

These regulations come into force on 18 July 2008.

**4 Transitional provision**

- (1) This regulation applies if a person charged with an offence under section 6(2)(a), 6(2A)(a), 10(1), or 12C(1)(a) of the Misuse of Drugs Act 1975 was, before the commencement of these regulations, committed to the High Court for trial and is awaiting the commencement of that trial.
- (2) Section 168AA(2) (or, when it is in force, section 184Q) of the Summary Proceedings Act 1957 applies in respect of a

defendant in the circumstances referred to in subclause (1) as if at all material times the offence for which the defendant was committed for trial was an offence to which that section applied.

Martin Bell,  
for Clerk of the Executive Council.

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Date of notification in *Gazette*: 17 July 2008.

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## District Courts Amendment Act 2011

Public Act 2011 No 30  
Date of assent 22 July 2011  
Commencement see section 2

### **1 Title**

This Act is the District Courts Amendment Act 2011.

### **2 Commencement**

- (1) Sections 3 and 5 to 8 come into force on the day after the date on which this Act receives the Royal assent.
- (2) The rest of this Act comes into force on a date appointed by the Governor-General by Order in Council, and 1 or more orders may be made bringing different provisions into force on different dates.

Section 2(2): sections 9, 40, 41, and 44(1) brought into force, on 13 February 2012, by the District Courts Amendment Act 2011 Commencement Order 2011 (SR 2011/386).

### **44 Transitional provisions**

- (1) Section 28I of the principal Act, as inserted by section 9 of this Act, does not apply in respect of any fine (as defined in section 79 of the Summary Proceedings Act 1957) that was imposed before the commencement of section 9 by a District Court in the exercise of its jurisdiction under Part 2A of the principal Act.
- (2) A person affected by any order or direction that was made before the commencement of section 22 of this Act by a Registrar under section 84B of the principal Act (as it read immediately before that commencement) may, on and after that commencement, apply to a District Court Judge for a review of the order or direction under section 84N of the principal Act (as it read immediately before that commencement) as if this Act had not been enacted.
- (3) If, before the commencement of section 14 of this Act, the examination of a judgment debtor had commenced under sec-

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tion 84B of the principal Act (as it read immediately before that commencement) as to the judgment debtor's means for satisfying the judgment debt, the District Court may, on and after that commencement, do any 1 or more of the things referred to in section 84E(1) of the principal Act (as it read immediately before that commencement) as if this Act had not been enacted.

- (4) If, before the commencement of section 23 of this Act, a judgment debtor was examined under section 84B of the principal Act (as it read immediately before that commencement) as to the judgment debtor's means for satisfying the judgment debt, a judgment creditor may, on and after that commencement, apply for an order of community work under section 84O(1) of the principal Act (as it read immediately before that commencement) as if this Act had not been enacted.
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## Search and Surveillance Act 2012

Public Act 2012 No 24  
Date of assent 5 April 2012  
Commencement see section 2

### 1 Title

This Act is the Search and Surveillance Act 2012.

### 2 Commencement

- (1) Part 1 and subpart 1 of Part 3 (other than section 49(3) and (4)), and sections 136, 140, 141, 148, 162, 165, 166, 167, 168, 169, 170, 171, 172, 175, 179, 180, 181, 247, 248, 251(3), 325 (other than section 325(4) and (6)), 334(1) and (7), 337(4), 342, 343, 346, 347, 349, 350, 352, 353, 354, 355, and 356 come into force on 18 April 2012.
- (2) The rest of this Act comes into force on a date appointed by the Governor-General by Order in Council, and 1 or more Orders in Council may be made bringing different provisions into force on different dates.
- (3) To the extent that it is not previously brought into force under subsection (2), the rest of this Act comes into force on 1 April 2014.
- (4) In this section, **provision** includes any item, or any part of an item, in the Schedule.

Section 2(2): Part 2, section 49(3), (4), subparts 2–4 of Part 3, Part 4 (except sections 136, 140, 141, 148, 162, 165–172, 175, 179–181), Part 5 (except sections 201(3)–(9), 247, 248, 251(3), 302, 325(1)–(3), (5), (7)–(13), 334(1), (7), 337(4), 342, 343, 346, 347, 349, 350, 352–356) and the Schedule (except the items relating to the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 and the Tax Administration Act 1994) brought into force, on 1 October 2012, by clause 3 of the Search and Surveillance Act Commencement Order 2012 (SR 2012/229).

## Part 1 General provisions

### 5 Purpose

The purpose of this Act is to facilitate the monitoring of compliance with the law and the investigation and prosecution

of offences in a manner that is consistent with human rights values by—

- (a) modernising the law of search, seizure, and surveillance to take into account advances in technologies and to regulate the use of those technologies; and
- (b) providing rules that recognise the importance of the rights and entitlements affirmed in other enactments, including the New Zealand Bill of Rights Act 1990, the Privacy Act 1993, and the Evidence Act 2006; and
- (c) ensuring investigative tools are effective and adequate for law enforcement needs.

## **Part 5**

### **Amendments, repeals, and miscellaneous provisions**

Subpart 4—Regulation-making powers,  
transitional provisions, and review provision

#### *Transitional provisions*

#### **351 Transitional provision relating to provisions brought into force under section 2**

- (1) Despite any amendment in Part 5 of this Act,—
  - (a) where an application has been made under an authorising Act before the relevant commencement, and the application is not finally determined before that date, the provisions of that Act continue to apply to the application and to any matter or obligation relating to the application in all respects as if this Act (other than this section and any provisions in force immediately before the relevant commencement) had not been enacted; and
  - (b) those provisions continue to apply to a continuing warrant and to any matter relating to the warrant in all respects as if this Act (other than this section and any provisions in force immediately before the relevant commencement) had not been enacted; and
  - (c) those provisions continue to apply to any other proceeding, matter, or thing commenced and not completed before the relevant commencement as if this Act (other than this section and any provisions in force immedi-

ately before the relevant commencement) had not been enacted.

(2) Subsection (1)(c) does not limit the provisions of the Interpretation Act 1999.

(3) In this section,—

**authorising Act** means an Act amended by Part 5

**continuing warrant** means a warrant or other authority issued under an authorising Act—

(a) before the relevant commencement; or

(b) on or after that date on an application made before that date

**relevant commencement**, in relation to an authorising Act, means the commencement of a provision in Part 5 that amends an authorising Act.

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**Contents**

- 1 General
  - 2 Status of reprints
  - 3 How reprints are prepared
  - 4 Changes made under section 17C of the Acts and Regulations Publication Act 1989
  - 5 List of amendments incorporated in this reprint (most recent first)
- 

**Notes****1 *General***

This is a reprint of the District Courts Act 1947. The reprint incorporates all the amendments to the Act as at 1 October 2012, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, see <http://www.pco.parliament.govt.nz/reprints/>.

**2 *Status of reprints***

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

**3 *How reprints are prepared***

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and

provisions that are repealed or revoked are omitted. For a detailed list of the editorial conventions, see <http://www.pco.parliament.govt.nz/editorial-conventions/> or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

#### **4 Changes made under section 17C of the Acts and Regulations Publication Act 1989**

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
  - indentation
  - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
  - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
  - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

## **5** *List of amendments incorporated in this reprint (most recent first)*

Search and Surveillance Act 2012 (2012 No 24): section 329

Criminal Procedure Act 2011 (2011 No 81): section 393

Student Loan Scheme Act 2011 (2011 No 62): section 223

District Courts Amendment Act 2011 (2011 No 30)

District Courts (Prescribed Rate of Interest) Order 2011 (SR 2011/176): clause 4

Sentencing and Parole Reform Act 2010 (2010 No 33): section 13

District Courts (District Court Judges) Amendment Act 2010 (2010 No 6)

Corrections (Contract Management of Prisons) Amendment Act 2009 (2009 No 59): section 8(2)

Judicature (High Court Rules) Amendment Act 2008 (2008 No 90): section 10

Policing Act 2008 (2008 No 72): sections 116(a)(ii), 118

District Courts (Categorisation of Offences) Regulations 2008 (SR 2008/211)

Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41): sections 16, 18  
District Courts Amendment Act (No 2) 2008 (2008 No 39)  
Crimes Amendment Act (No 2) 2008 (2008 No 37): section 4(5)  
Property Law Act 2007 (2007 No 91): section 364(1)  
District Courts Amendment Act 2007 (2007 No 1)  
Insolvency Act 2006 (2006 No 55): section 445  
Coroners Act 2006 (2006 No 38): section 146  
District Courts Amendment Act 2006 (2006 No 8)  
District Courts Amendment Act 2005 (2005 No 101)  
Relationships (Statutory References) Act 2005 (2005 No 3): section 7  
Corrections Act 2004 (2004 No 50): section 206  
District Courts Amendment Act 2004 (2004 No 42)  
State Sector Amendment Act 2003 (2003 No 41): sections 12(2), 14(1)  
District Courts Amendment Act 2002 (2002 No 63)  
Remuneration Authority (Members of Parliament) Amendment Act 2002 (2002 No 54): section 4(1)  
Sentencing Act 2002 (2002 No 9): section 186  
District Courts Amendment Act 2001 (2001 No 82)  
Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49): section 337(1)  
Government Superannuation Fund Amendment Act 2001 (2001 No 47): section 40  
Legal Services Act 2000 (2000 No 46): section 127(1)(a)  
Bail Act 2000 (2000 No 38): section 74(2)  
District Courts Amendment Act (No 2) 1999 (1999 No 89)  
District Courts Amendment Act 1999 (1999 No 4)  
Employment Services and Income Support (Integrated Administration) Act 1998 (1998 No 96): section 11  
District Courts Amendment Act 1998 (1998 No 76)  
Social Security Amendment Act 1998 (1998 No 19): section 57  
District Courts Amendment Act 1996 (1996 No 119)  
Crimes Amendment Act (No 2) 1995 (1995 No 68): section 4(2)  
District Courts Amendment Act 1995 (1995 No 65)  
Department of Justice (Restructuring) Act 1995 (1995 No 39): sections 3(1)(c), 10(1)  
Government Superannuation Fund Amendment Act 1995 (1995 No 28): section 31  
Income Tax Act 1994 (1994 No 164): section YB 1  
District Courts Amendment Act 1994 (1994 No 29)  
Companies Act Repeal Act 1993 (1993 No 126): section 2(1)  
Crimes Amendment Act (No 2) 1993 (1993 No 46): section 5(1)  
Student Loan Scheme Act 1992 (1992 No 141): section 88  
District Courts Amendment Act (No 2) 1992 (1992 No 53)

Private Savings (Transfer of Undertakings) Act 1992 (1992 No 21): section 23(1)  
District Courts Amendment Act 1992 (1992 No 17)  
Child Support Act 1991 (1991 No 142): section 246  
District Courts Amendment Act (No 2) 1991 (1991 No 107)  
Summary Proceedings Amendment Act 1991 (1991 No 62): section 8(2)  
District Courts Amendment Act 1991 (1991 No 61)  
District Courts Amendment Act 1989 (1989 No 107)  
Public Finance Act 1989 (1989 No 44): sections 83(7), 86(1)  
Children, Young Persons, and Their Families Act 1989 (1989 No 24): section 449  
Disputes Tribunals Act 1988 (1988 No 110): section 82(2)  
District Courts Amendment Act 1987 (1987 No 26)  
State-Owned Enterprises Act 1986 (1986 No 124): section 32(1)  
Constitution Act 1986 (1986 No 114): section 29(2)  
District Courts Amendment Act 1986 (1986 No 84)  
District Courts Amendment Act (No 3) 1985 (1985 No 137)  
Judicature Amendment Act (No 2) 1985 (1985 No 112): section 11(2)  
District Courts Amendment Act 1983 (1983 No 49)  
District Courts Amendment Act (No 2) 1982 (1982 No 130)  
District Courts Amendment Act 1980 (1980 No 83)  
District Courts Amendment Act 1979 (1979 No 125)  
Judicature Amendment Act 1979 (1979 No 124): section 12  
District Courts Amendment Act 1975 (1975 No 87)  
Domestic Actions Act 1975 (1975 No 53): section 9(3)  
District Courts Amendment Act 1974 (1974 No 20)  
Judicature Amendment Act 1972 (1972 No 130): section 18(3)  
District Courts Amendment Act 1971 (1971 No 56)  
Age of Majority Act 1970 (1970 No 137): section 6  
Minors' Contracts Act 1969 (1969 No 41): section 18  
District Courts Amendment Act 1967 (1967 No 42)  
District Courts Amendment Act 1966 (1966 No 69)  
Building Societies Act 1965 (1965 No 22): section 139(1)  
District Courts Amendment Act 1964 (1964 No 99)  
District Courts Amendment Act 1963 (1963 No 100)  
Mining Amendment Act 1962 (1962 No 23): section 4(3)  
District Courts Amendment Act 1960 (1960 No 112)  
Summary Proceedings Act 1957 (1957 No 87): section 214(1)  
District Courts Amendment Act 1955 (1955 No 13)  
Limitation Act 1950 (1950 No 65): section 35(2)  
Statutes Amendment Act 1949 (1949 No 51): section 48(2)(a)  
District Courts Act Commencement Order 1948 (SR 1948/196)

