# THE CREATION, FLOURISHING, EVOLUTIONARY DECLINE AND STRANGE DEATH OF THE DISTRICT COURT OF NEW ZEALAND 1858–1909

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## Abstract

*This article investigates the history of the District Court in New Zealand between its creation in 1858 and its closure in 1909, a history that has hitherto been largely neglected by historians. It argues that the creation of the District Court was largely a response to the problems of providing an adequate but cheap court structure for the widespread colonist settlements away from the major cities. It later acquired both a most important bankruptcy jurisdiction and a supervisory jurisdiction over the goldfields' courts, features which prolonged its existence despite the increased jurisdiction of the different Magistrates' Courts. The history of the Court, and its judges, is reflected in accounts of cases heard by the courts and by an analysis of the shift from part-time judges who continued to practice as barristers to judges who also served as Resident Magistrates, many of the latter being very inexperienced as lawyers. The article concludes with an examination of the relative volumes of litigation in the Magistrates' and the District Court which shows that litigants increasingly preferred to take their disputes to the former court. The District Court was then closed on the grounds of economy, ironically reflecting the main reason for its creation.*

## I. Introduction

Little has been written on the history of the District Courts created by the District Courts Act 1858. This is in part because primary material is dispersed through newspapers and, more rarely, government archives, and in part because historians of the period have generally concentrated on the longer-lived, and more heavily utilised, Supreme Court and Resident Magistrates' Court.[1] This is unfortunate, as there is much to be learned about the way New Zealand governments and legislators sought to balance access to courts with suitable ranges of jurisdiction with minimising the costs of the court system. As will be seen, there was no settled policy and changes in court jurisdictions were often reactions to changes in social and economic

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1 A few District Court cases were reported in the New Zealand Jurist in the mid-1870s. Unfortunately, little relevant material has, as yet, been collected in the NZ Lost Cases project, available at <www.victoria.ac.nz>.

conditions which led to de facto competition between courts rather than the creation and operation of a well-organised curial structure.

Even the genesis of the District Court is a little obscure, as neither the volumes of Hansard for 1858 nor contemporary newspapers reported the substance of the debate upon the founding statute. One newspaper did refer to the Act as being a little more than an elaboration of the District Courts Bill 1856,[2] a measure which passed the House of Representatives but was thrown out in the Legislative Council.[3] This is true in relation to much of the substantive procedural and jurisdictional elements of the Act, but it fails to recognise some very significant differences. A key feature is that, in the 1856 Bill, District Courts would be set up only in those of the six[4] provinces of New Zealand which specifically requested the establishment of a District Court, and the costs of the Court would fall on the provincial government (though these would be offset by fines and fees imposed by the Court). This perhaps reflects the very strong provincialist tendencies of many of the colonists of the time, something attributable to the poor state of transport and communication between the different areas of European settlement and to the different organisations which had promoted particular settlements.

The debates on the 1856 Bill are only partially reported but a newspaper account of the second reading of the Bill in the House of Representatives gives what appears to be a verbatim report of a speech by Charles Dudley Robert Ward, a barrister and a Wellington Member of the House of Representatives, moving that second reading.[5] There is an interesting historical resonance here, as Ward was to become by far the longest serving district judge of the Court established in 1858. Ward was quick to point out that, although he had assembled the Bill, most of his work had been "the compiling and adapting the suggestions of more experienced men". The key issue was how to deal satisfactorily with cases involving substantial monetary sums and mid-level criminal offending in those settlements which did not have resident Supreme

2 "The Administration of Justice" *Wellington Independent* (New Zealand, 18 September 1858) at 2.

3 The Legislative Council majority ignored a plea that the Bill was of particular interest to members from the Canterbury and Otago regions "where sessions of the Supreme Court were rare, and where there were great arrears of causes to be settled". The words quoted are by Dr Richardson [1856] NZPD 309 (28 July 1856).

4 Under the Constitution Act 1852, a large range of government functions were conferred on the six provinces, Auckland, Wellington, New Plymouth/Taranaki, Nelson, Canterbury and Otago. Each province had its own Provincial Council with limited legislative powers and an elected executive head, the Superintendent. However provincial use of its powers could be overridden by the central government or legislature. For a thorough, if dated, coverage of the period see W P Morrell *The Provincial System in New Zealand 1852–1876* (2nd ed 1964, Christchurch, Whitcombe & Tombs).

5 "General Assembly" *Lyttelton Times* (New Zealand, 26 July 1856) at 2.

Court judges or were not regularly visited by a Supreme Court.[6] Ward outlined three options. Appointing a sufficient number of Supreme Court judges to cover all the provinces would be financially impossible. An alternative was to extend the jurisdiction of the resident magistrates which already sat in many smaller centres. This option Ward rejected, on the grounds that litigation on matters of substantial importance could not be left to a Magistracy of whom most had little or no legal experience or knowledge.[7] Further, many of the resident magistrates in the North Island were predominantly concerned with administration of government policies toward Māori and, as such, were not used to administering the precise letter of the law.[8] All resident magistrates were appointed by the central government and Ward considered "the Provinces should have a voice in the appointment of the presiding officers of Courts of such local importance."

The Bill provided for a hybrid court which would consist of a "Recorder" (an English term denoting a barrister who exercised judicial authority within a particular town or region but otherwise practised his profession in other locations), the local resident magistrate and some of the local Justices of the Peace, on a rotational basis. The recorder would be appointed by, and paid by, the provincial government. Despite this packed judicial bench, litigants in civil cases and defendants in criminal trials would have the option of the facts being decided by a jury of four, an innovation stated to be based on Australian practice. Ward expected that, as in the Australian colonies, this would be the dominant mode of trial. The civil jurisdiction of the court was limited to claims of £100 or less, and the criminal jurisdiction included all offences punishable by not more than two years imprisonment. The proposed District Court would have taken over a great deal of the caseload then being carried by resident magistrates and by the Justices of the Peace. However, as noted, the bill was thrown out by the Legislative Council without discussion of its merits.

Deference to provincial sensitivity can also be seen in the Resident Magistrates' Courts Extension of Jurisdiction Act 1856, a measure perhaps prompted by the failure of the District Courts Bill, which allowed Superintendents of provinces to request the Governor to confer on one or more magistrates an extended jurisdiction to hear civil cases up to a £100 maximum (five times the normal limit) with matters of fact being determined

6 There were then four Supreme Court judges; William Martin CJ, Sydney Stephen, Daniel Wakefield and Henry Barnes Gresson JJ. Martin sat in Auckland, the then capital, Wakefield in Wellington, Gresson in Canterbury and Stephen sat at various times in Dunedin, Nelson and Wellington.

7 "General Assembly" *Lyttelton Times* (New Zealand, 26 July 1856) at 2.

8 For extended discussion of resident magistrates acting in this role see Shaunnagh Dorsett *Juridical Encounters: Māori and the Colonial Courts* (Auckland University Press, Auckland, 2017) and Alan Ward *A Show of Justice* (2nd ed 1995, Auckland, Auckland University Press).

by a jury of four.[9] To counterbalance that, the Act stipulated that neither resident magistrates nor justices of the peace were to hear cases as to the validity of wills, malicious prosecution, libel, slander, seduction, breach of promise of marriage, criminal conversation or – most importantly – title to land.[10] Limiting the resident magistrates' jurisdiction may have strengthened the argument for an intermediate court as more cases were perforce directed to the Supreme Court.

## II. The Creation of the District Court in 1858

The problems identified in 1856 were not resolved, and indeed became more acute. One of the environmental factors favouring the District Court in its early years was the sheer difficulty of travel around New Zealand. In the 1850s and 1860s, communication between main centres was primarily by sailing ship – and later steamers – with overland travel generally involving either riding horseback or in horse-drawn coaches over bad roads. Postal communications were naturally limited and slow. Little wonder that the government chose to decentralise the administration of justice by having a network of magistrates and district judges across the colony.

The District Courts Act 1858 differed significantly from the 1856 Bill in several important ways. There was to be no element of provincial assent or control. The governor could define districts in which a District Court was to be set up, and could appoint "a fit and proper person being a barrister or a solicitor of the Supreme Court"[11] to act as district judge in that area.[12] The government could abolish districts or change their boundaries as it saw fit. That power was to be widely used in later years. The administrative structure for the court was a matter for the central government, as was paying for it.

A less significant difference was that the District Courts Act 1858 barred judges of the Court from practice as solicitors or conveyancers – and thus by implication allowed judges who were barristers to practice as such in the Supreme Court.[13] Permitting continued legal practice recognised the

9 That act was given qualified approval and support by a local newspaper: untitled editorial *The Southern Cross* (New Zealand, 12 September 1856) at 3.

10 For a discussion of the Resident Magistrates' Court in operation see Jeremy Finn "Debt, drunkenness, dishonesty and desertion: The Resident Magistrate's Court in Early Canterbury: 1851–1861" (2005) 21 NZULR 452.

11 District Courts Act 1858, s 4.

12 The initial districts were Wellington, Hawke's Bay, Wanganui, Taranaki, Nelson, Otago and Auckland. Four of these areas had no resident Supreme Court judge; Wellington and Auckland being the exceptions. However, Thomas Beckham, in Auckland, had only a limited jurisdiction in his first years, see below.

13 District Courts Act 1858 s 7. The Judiciary Bill 1856, cl 9, would have barred district judges and resident magistrates from any form of legal practice except as a conveyancer – the exception being the result of an amendment at committee stage: [1856] NZPD 263 (8 July 1863).

practical reality that the District Courts, at least initially, would operate very much on a part-time basis – the initial arrangements in several districts were for sittings only once a month.[14] The colony could not afford to support full-time judges for a part-time court, so judges would need to also be in receipt of other income.

At least three of the early district judges – Robert Hart (Wellington, Wanganui and Hawke's Bay), William Locke Travers (Nelson) and John Hyde Harris (Otago) – continued to practice as barristers while on the District Court Bench. It is not clear how common the practice was in later years. The provisions in the Act allowing barristers to continue in practice drew some comment in the newspapers. The *Lyttelton Times*, an influential Canterbury paper, considered that only lawyers should be judges, but noted that the barristers' right to practice provisions indicated solicitors and conveyancers would not take up judgeships because that side of the legal business paid well so that "good men" would not accept a position for the salaries offered.[15] The *Nelson Examiner* regretted the barristers' practice provision but took it to be driven by financial constraints on the salaries that could be offered.[16]

An obvious alternative was to combine a district judgeship with other salaried governmental positions. The Act of 1858 specifically allowed district judges to hold other offices "which the Governor shall not deem incompatible" with the judicial role.[17] Hyde Harris was also appointed as resident magistrate in Otago, Thomas Beckham already held the post of resident magistrate in Auckland and the fifth judge, William Halse in Taranaki, was Commissioner of Crown Lands in that province.

While Supreme Court judges had their salaries set by statute, those of district court judges were set individually and they varied substantially. In 1874, Thomas Beckham received £750 for the combined offices of resident magistrate and district judge. In the same year, Henry Eyre Kenny in New Plymouth was on a total package of £425 – made up of £250 as district judge, £50 as registrar of the Supreme Court, £25 for registration and returning officer and £100 as examiner of titles – but without salary for his additional role as resident magistrate. By way of comparison, puisne Supreme Court judges in the 1870s were paid £1,500 per annum with the Chief Justice receiving £200 per year more. District judges' salaries did become much more consistent by about 1905.

14 For example, the Otago District Court was to hold sessions on the first Tuesday in every month, other than January and July, when the sessions were held in Invercargill. "The Pre-emption Claims" *The Southern Cross*, (New Zealand, 20 May 1859) at 3, while the Nelson court was to sit on the 15th of every month except where this was a Sunday or a holiday: *New Zealand Government Gazette* (New Zealand, 12 June 1859).

15 *Lyttelton Times* (New Zealand, 22 May 1858) at 4.

16 *Nelson Examiner* (New Zealand, 27 October 1858), at 2.

17 District Courts Act 1858, s 6.

## III. The Jurisdiction of the District Court

### *A. Jurisdiction as First Conferred*

The frequency to which civil or criminal litigation would come before the District Court was, of course, highly influenced by its statutory jurisdiction and powers. The District Courts Act 1858 conferred on the District Court a substantial but restricted civil jurisdiction to decide "all Cases of a Civil nature, whether legal or equitable in which the claim or demand shall exceed £20, and not exceed £100", as long as the cause of action arose in the relevant district, or the defendant lived in or carried on business in the district or was served with the process of the court in the district.[18] That broad statement was then immediately limited by another section which prima facie deprived the District Court of jurisdiction over:[19]

> … any action in which the Title to Real Estate or the validity of any Devise or Bequest, shall be in question, or the limitations under any Will or Settlement shall be disputed, or any action for a malicious prosecution or for any libel, or slander or for criminal conversation, or for seduction, or for breach of promise of marriage.

The qualification is necessary because the Act allowed the parties to agree in a memorandum signed by the parties personally or by their solicitors that a District Court could try any of the listed kinds of case.[20] It seems unlikely that this provision was frequently used as no cases involving it have been sighted in extensive, but not exhaustive, reading of newspaper reports of District Court sittings. There were three other significant features of the civil jurisdiction, all of which had appeared in the 1856 Bill. The Act allowed a minor to bring a claim for wages or piece-work or work as a servant in the same manner as if the plaintiff was of full age.[21] It also conferred on district judges in districts where there was no resident Supreme Court judge, or where the resident Supreme Court judge was temporarily absent, "the same power as the Supreme Court to grant and dissolve any injunctions to prevent irreparable injury to property", though the Supreme Court could dissolve such an injunction.[22] In the same vein, a district judge could, in the absence of a

18 Section 15. There does not appear to have been any widespread problem with establishing jurisdiction on these geographical bases. Section 18 of the Act prohibited the splitting of a claim to bring the total amount sought under the £100 limit but did allow a plaintiff to claim only £100 of a larger amount and abandon the excess.

19 Section 16.

20 Section 17.

21 Section 20.

22 Section 24.

Supreme Court judge, "grant Probates of Wills and Letters of Administration of the estates and effects" of persons who had died in the district.[23]

The effect of this jurisdictional breadth can be illustrated from a very early date. On 15 August 1859, its first day, the District Court at Nelson dealt with seven cases.[24] Three were cases where the defendant consented to judgment being given against them. The others were more diverse. A plaintiff seeking to recover possession of premises was non-suited because it intersected with a dispute between mortgagor and mortgagee. The other plaintiffs were more successful, in two debt cases, in one of which the plaintiff had abandoned a small part of the debt to bring the case within the jurisdiction of the Court, and the last being a defended case of a claim for unpaid doctor's fees.

On the criminal side, the Court had jurisdiction over all crimes and offences (except perjury) committed in the district punishable by a fine or imprisonment, or both, or transportation for a term of up to seven years or penal servitude for a period not greater than four years.[25] That jurisdiction essentially encompassed the criminal jurisdiction of the Resident Magistrates' Court. In practice, it appears that the District Court's criminal jurisdiction was not fully exploited. In November 1887, the District Court was occupied for much of one day with issues of bail for two criminal defendants who were committed to the Supreme Court for trial as, although the current charges were within the District Court jurisdiction, more serious charges were pending.[26]

Last, but not least, the District Court had concurrent jurisdiction to hear appeals against summary conviction before Justices of the Peace or a resident magistrate – unless the district judge was also a resident magistrate or Justice of the Peace, in which case appeals from decisions to which he was a party had to go to the Supreme Court.[27] That jurisdiction was to be extended in a most important way within a few weeks with the passage of the Goldfields Act 1858 which – borrowing heavily from Victorian legislation – set the basic model for regulation of the three major goldfield areas of colonial New Zealand: Otago, the West Coast and Thames/Coromandel. The statute created Warden's Courts to hear a wide range of disputes between miners[28] and conferred appellate jurisdiction from such courts on the District Courts.[29] That appellate jurisdiction brought considerable business before the District Courts in the goldfields regions for decades to come.

23 Section 27.

24 "District Court" *Colonist* (New Zealand, 16 August 1859) at 2.

25 District Courts Act 1858, s 29.

26 District Court" *Wanganui Chronicle* (New Zealand, 24 November 1887) at 3.

27 District Courts Act 1858, s 30.

28 Section 15 onwards. The New Zealand Act was prompted by the passage of a Nelson provincial ordinance following the Aorere rush of 1858.

29 Section 25.

However, the benefits of this extra jurisdiction were, in hindsight, more than offset by statutes extending the civil jurisdiction of the Resident Magistrates' Court in a way which eventually meant that Court had essentially co-ordinate jurisdiction with the District Court over a wide range of smaller civil claims. The Resident Magistrates' Jurisdiction Extension Act 1862 raised the permissible maximum claim from £20 to £100 and gave the Governor power to raise the limit for individual resident magistrate's courts to £100. The District Court was given jurisdiction in 1858 over actions for recovery of tenements (that is landlords seeking to expel tenants whose lease had expired or had been breached).[30] However, in 1867 this jurisdiction was also conferred on the Resident Magistrates' Court.[31]

### *B. The Extension of the District Court and Magistrates' Court Jurisdictions Over Time*

The jurisdiction of the District Court was altered in detail by a large number of statutes over the following four decades in ways which occasionally enhanced the position of the District Court, but more commonly pushed litigants toward the resident magistrates' courts. The civil jurisdiction of the district courts was increased to £200 in 1866,[32] eliminating the overlap between its powers and those of the resident magistrates' court. Further, a plaintiff who sued in the Supreme Court but recovered less than £200 in a matter that could have been pursued in the District Court was to be deprived of costs.[33] This was clearly an attempt to divert lower-level civil claims into the District Court. A few years later the maximum criminal jurisdiction was also increased, as the Governor could confer on specific District Courts jurisdiction to hear "all felonies and indictable misdemeanours" punishable by up to seven years' penal servitude except treason, murder or other capital felonies and an eclectic range of lesser offences.[34] The District Courts so empowered could try a defendant arrested or found in the District Court, even if the offence had not been committed there.[35]

Matters largely rested there until the District Courts Acts Amendment Act 1888 again tweaked the civil jurisdiction by adding an express power to deal with claims arising from disputes between business partners.[36] It also increased the access of minors to the Court. Not only could all minors sue for

30 District Courts Act 1858, s 28.

31 Resident Magistrates' Court Act 1867, s 82.

32 District Courts Jurisdiction Extension Act 1866, s 2.

33 Section 3.

34 District Courts Criminal Jurisdiction Extension Act 1870, s 4. The excluded offences included a number of potentially serious quasi-political offences such as "composing printing or publishing blasphemous seditious or defamatory libels" and "blasphemy and offences against religion" as well as the much more arcane "offences subject to the penalties of Praemunire".

35 District Courts Criminal Jurisdiction Extension Act 1870, s 5.

36 Sections 3 and 19.

wages or piece work, but those over 18 could sue (and be sued) on any contract which the Court considered had been or would be beneficial to the minor, as well as allowing tort actions by or against 18-year-olds, but such proceedings were dependent on the Court admitting a person as a "next friend" who would be liable to pay any costs or damages awarded by the Court against the minor.[37] The 1888 Act also made some significant procedural changes, such as allowing the taking of evidence on commission[38] and allowing the Court to stay proceedings in a civil dispute if there had been an agreement to submit the matter to arbitration which had not yet occurred.[39]

The effects of these changes over time are illustrated by newspaper reports of cases in the Wanganui District Court. In May 1868, Judge Ward heard six civil cases coming before the Court.[40] In every case, plaintiff and defendant were legally represented, with two local lawyers appearing in almost all the cases, with a third appearing in only one action. Two of the cases were adjourned to later days, or sittings, and in one case judgment was given for the plaintiff after defence counsel said the defendant had become insolvent. The remaining three cases apparently occupied most of the day. One was a successful action for £200 for goods (in this case firewood), notable for the plaintiff stating that he "threw off £25 to get it into this Court", that is, he had foregone that sum to avoid having to sue in the Supreme Court.[41] A second was an action for ejectment where a landowner unsuccessfully argued the defendant was occupying the land "on sufferance", not under a lease for a fixed term.[42] The third was, to modern eyes, more unusual as it was a claim by a travelling merchant against a local resident for £40 for goods, including jewellery supplied to his wife.[43] Judge Ward held that the vendor could only recover £7, the costs of some dresses supplied, as these were the only "necessities" supplied, and the husband was not liable for anything but necessities – but the jewellery was to be returned.

For much of the next decade the District Court did not sit in Wanganui but, from 1877, the court resumed with quarterly sittings by Judge Henry Eyre Kenny. In November 1877, one case, a dispute between the trustees of a bankrupt jeweller and the latter's landlord as to who had priority rights to some of the stock in trade apparently occupied much of the day, [44] although

37 District Courts Acts Amendment Act 1888, s 4.

38 Section 10.

39 Section 12.

40 "District Court" *Wanganui Herald* (New Zealand, 26 October 1867) at 2.

41 *Paterson v Atkinson* District Court Wanganui, 2 May 1868, reported at "District Court" *Wanganui Herald* (New Zealand, 26 October 1867) at 2.

42 *Lethbridge v Robertson* District Court Wanganui, 2 May 1868, reported at "District Court" *Wanganui Herald* (New Zealand, 26 October 1867) at 2.

43 *Meyer v Day* District Court Wanganui, 2 May 1868, reported at "District Court" *Wanganui Herald* (New Zealand, 26 October 1867) at 2.

44 *Beaver v Sherwood* 12 November 1877, reported at "District Court", *Wanganui Chronicle* (New Zealand,13 November 1877) at 2.

five apparently straightforward bankruptcy matters were also dealt with.[45] At the next sitting, in March 1878, the Court heard two substantial criminal cases[46] but no civil matters are recorded in the contemporary press. One major point of difference between the circumstances of 1867 and those of 1877 is that Judge Ward in 1867 had to travel from Wellington by horse-drawn coach, while Judge Kenny enjoyed the greater comfort and speed of the railway for a part of his trip.

The last significant change to the civil jurisdiction of the District Court came in 1893, when the limit in civil cases was raised to a maximum of £500.[47] That figure was substantially higher than the normal maximum for civil claims in the Magistrates' Courts Act of the same year. The latter Act divided the civil jurisdiction of Stipendiary Magistrates (as they were now titled) into three categories ("ordinary", "extended" and "special") with the Governor determining whether a particular magistrate could exercise only the ordinary jurisdiction, or any two of the categories, or indeed all three.[48] The "ordinary" jurisdiction covered most civil claims to a maximum of £100, with the usual exclusion of cases involving title to land, malicious prosecution, libel or slander, seduction, breach of promise of marriage and a few like matters.[49] The parties could, as under the District Court statutes and the Resident Magistrates' Act 1867, agree to confer jurisdiction to hear a dispute of a greater amount (here up to £200).[50] The "extended" jurisdiction lifted the maximum to £200, with identical exclusions, and with the parties being able to agree to confer jurisdiction to a maximum of £500.[51] That, of course, was the upper limit of the District Court's civil jurisdiction. The "special" jurisdiction did not increase the maximum claim, but rather allowed the relevant Stipendiary Magistrate to adjudicate civil claims of the kinds excluded from the "ordinary" and "extended" jurisdiction, except for title to land which was still outside the Court's jurisdiction, and also to "grant and dissolve injunctions to prevent irreparable injury to property" not exceeding £500 in value – essentially a co-ordinate jurisdiction with the District Court – and to issue warrants for the arrest of debtors attempting to leave the colony, a power otherwise conferred only on Supreme Court judges.[52] There was therefore little difference between the effective civil jurisdiction of

45 Untitled column *Wanganui Chronicle* (New Zealand, 13 November 1877) at 2.

46 "District Court" *Wanganui Chronicle* (New Zealand, 12 March 1878) at 2; and "District Court" *Wanganui Chronicle* (New Zealand, 13 March 1878) at 2.

47 District Courts Jurisdiction Extension Act 1893, s 3. Section 6 of that Act also gave power to hear cases of receiving stolen property, although the statutory maximum penalty for that offence was double the seven-year limit, however, district judges were restricted in sentencing to a seven-year maximum.

48 Magistrates' Courts Act 1893, s 13.

49 Section 29.

50 Section 29(2)(h).

51 Section 30.

52 Section 31.

the District Court and that of the Magistrates' Court, where the Magistrate could exercise both the extended and special jurisdictions.

## IV. Bankruptcy

For much of its lifetime, the District Court also had an important role as a court for settling bankruptcy matters. Indeed, it seems likely that without that jurisdiction, the District Court would have been terminated much sooner than it was. While bankruptcy was not included in the 1858 statute, jurisdiction was conferred on the District Court in 1865, when s 5 of the Debtors and Creditors Act Amendment Act 1865 authorised the Governor to "direct and declare" that a district judge acting in his district could exercise the powers conferred on a Supreme Court judge under the Act. When the law was revised significantly by the Bankruptcy Act 1867,[53] the District Court and Supreme Court were given co-ordinate jurisdiction so debtors or creditors could file bankruptcy proceedings in either court as they chose. In practice, the choice was that of the debtor, as only a small fraction of bankruptcy proceedings were initiated by creditors.[54]

While official records of the number of bankruptcy cases do not allow the District Court workload to be separated from that of the Supreme Court, it is clear from newspaper accounts of District Court proceedings that many bankruptcy matters were dealt with in that court. The convenience of bringing the matter before a local court must have been a key influence. Cost may also have been significant, as the normal court fees applied in bankruptcy cases,[55] so the District Court would have been cheaper. During the first twelve months of its operation (spanning the years 1879–1880), the District Court in Napier reportedly decided about 50 normal civil cases and 52 cases in bankruptcy.[56] A Wanganui newspaper, citing that data, urged the importance of the bankruptcy jurisdiction being available in the smaller centres, commenting also that the "crop of bankruptcies has been exceptionally heavy during the year 1879–80".[57] Seven years later, one of the two days of the November 1887 sittings was occupied solely with bankruptcy matters.[58]

53 Section 9.

54 Official data indicates all but 68 of the 1534 petitions under the Debtors and Creditors Act 1862 and the Debtors and Creditors Act Amendment Act 1865 were initiated by debtors, see *NZ Official Yearbook 1867*, table 53, available at <www3.stats.govt.nz>. In 1895 creditors filed 45 petitions and debtors 440: *New Zealand Official Yearbook 1897* <www3.stats.govt.nz>.

55 "Supreme Court —Fees in Bankruptcy" *Daily Southern Cross* (New Zealand, 28 January 1868) at 3.

56 "District Courts and Bankruptcy" *Wanganui Herald* (New Zealand, 20 May 1880) at 2.

57 At 2.

58 "Local and General" *Wanganui Chronicle* (New Zealand, 26 November 1887) at 2.

Unfortunately, there are no official statistics available which document the number of bankruptcy cases which the courts dealt with between 1873 and 1886. Given the long financial depression of the 1880s and 1890s which followed an economic crisis in 1880, it may be expected that the peak numbers may have been experienced between 1880 and 1885. In 1886, there were 1,089 petitions in bankruptcy and 1,036 in the following year. The number steadily lowered to 605 in 1891,[59] with a small increase to 626 in 1894, another decline to 485 in 1896,[60] further declining to a low point of just over 200 in each of 1902 and 1903,[61] then rebounding to 354 in 1908.[62] This massive overall decline in bankruptcy work makes it very probable that the total workload of the District Court was significantly reduced.

## V. The Rise and Fall of the District Court Viewed Through a Statistical Lens

The following court data must be read in the context of the very high growth in the settler population of New Zealand over the latter half of the 19th century. At the time the District Courts began operation in 1859, the population of "European descent" (to use the terminology of the Government handbooks) was just under 60,000.[63] By the end of 1861, that population had increased rapidly to just under 100,000. A decade later, under the stimulus of the goldrushes, the European descent population had more than doubled to over 256,000 and it nearly doubled again by the end of 1881 to just under 490,000, boosted by massive government-sponsored immigration and public works schemes and the expansion of the agricultural sector. The 1880s and 1890s saw a much less buoyant economy, and population growth slowed. By December 1891, the European descent population had topped 625,000, and it increased to over 700,000 by 1901. There followed a return to strong economic growth and increased migration which pushed the total to nearly 890,000 by 1906.

Official data[64] shows there were 467 civil cases heard[65] by the District Court in 1860, a little over half the number of cases (809) filed in that court in that year. The overwhelming majority of the cases were tried by judge alone – only 13 went to jury trial. While 467 cases may seem a significant number for a small colony, it was only about 1/12th of the number of civil cases heard

59 Data drawn from *New Zealand Official Yearbook for 1893* <www3.stats.govt.nz>.
60 Data drawn from *New Zealand Official Yearbook for 1897* <www3.stats.govt.nz>.
61 Data drawn from *New Zealand Official Yearbook for 1906* <www3.stats.govt.nz>.
62 Data drawn from *New Zealand Official Yearbook for 1911* <www3.stats.govt.nz>.
63 The population data is taken from a table of census returns at <www3.stats.govt.nz>.
64 Data drawn from *NZ Official Yearbook for 1860* <www3.stats.govt.nz>.
65 In this context the use of "tried" or "heard" refers to cases which were determined by the court after a trial. The figures exclude cases which were not brought to trial or discontinued at trial.

in the Magistrates' Court. The number of cases heard in the Supreme Court that year is not given in official data. One feature of the 1860 data is that almost a third of the cases were decided by judgment by default in favour of the plaintiff (162 of 467) and plaintiffs were successful in more than 90 per cent of the cases heard. Why this should be is not clear.

In 1867, a year when all three of New Zealand's main goldfields areas were thriving, the District Court heard a total of 364 civil cases, of which only 12 were decided by judge and jury. Of those 364 filings, 107 were filed in Greymouth or Hokitika – the major centres of the West Coast gold mining areas – and 63 were filed in the Otago goldfields area. It seems likely that filings in the Thames/Coromandel goldfields would have pushed the "goldfields" component above 50 per cent. The statistics also indicate that the Resident Magistrates' Court "disposed of" 30,329 civil cases, but no further breakdown is available.

There is an unfortunate hiatus in the official record from 1873 to the late 1880s. The picture emerging from the data in this later period is very different from that of the 1860s and early 1870s. In 1889, there were 195 civil cases tried in the Supreme Court, down from 206 in 1888. Of the 1889 cases, 111 were tried by judge alone. Judgments awarded a total of more than £147,000 to successful plaintiffs. In the same year, the District Court tried 50 civil cases, and successful plaintiffs were awarded a total of £2,532, almost exactly one-third of the £7,654 sought. By contrast, the official record states 18,822 civil cases were "commenced" in the Resident Magistrates' Courts, with claims totalling £291,493.[66] It is not known how many of those cases were resolved before or without trial.[67]

In 1891 there were 184 civil cases tried in the Supreme Court (74 with either a special or an ordinary jury and 110 by judge without a jury). In total, successful plaintiffs were awarded £57,356. The District Court was much less busy with only 53 civil cases being tried, but with a majority (30 of 53) being heard before a jury. The total amount awarded to successful plaintiffs was £1,588, barely 20 per cent of the amount sued for.[68] As we may expect, the Resident Magistrates' Court carried a far greater load, as 18,217 cases were tried. The total recovered by plaintiffs was more than 50 per cent of the total amounts sued for (£131,774 as against £253,982).

Five years later, in 1896, the Supreme Court heard 153 civil cases.[69] Of these, 106 were tried by a judge without a jury, 23 were tried before common juries and 24 by a special jury. The total of judgments given for the plaintiff

66 Data drawn from *NZ Official Handbook for 1889* <www3.stats.govt.nz>.

67 In 1890, 17,790 civil cases were tried in the Resident Magistrates' Court, and the total claimed was £275,283, see *NZ Official Handbook for 1890* <www3.stats.govt.nz>. This suggests the number of cases tried in 1889 may have been quite close to the number of those "commenced" in that year, as given above.

68 The following is derived from data in the *1893 Official Handbook for 1893* <www3.stats.govt.nz>.

69 Data from *Official Handbook for 1896* <www3.stats.govt.nz>.

was £54,895. In the District Court, only 50 civil cases were tried, 11 with a jury and the remainder by judge alone. The proportion of successful plaintiffs is not given but judgments were recorded for only about 25 per cent of the amounts sued for (£3,853 as against £15,021). By contrast, the Magistrates' Courts tried 19,708 civil cases, with the plaintiffs recovering about 55 per cent of the total amount claimed (£171,344 as against £298,753).

The decline in the number of cases in the superior courts continued. By 1901, the Supreme Court trial caseload had declined to only 116 cases, of which 83 were tried by judge alone.[70] The total of awards made to successful plaintiffs had dropped as well, but not as sharply, to £45,865. The decline in cases was more marked in the District Court, which tried only 26 cases, 19 by judge alone, with successful plaintiffs being awarded a mere £1,035, little more than 10 per cent of the total sued for. By contrast, the Magistrates' Courts tried almost as many cases in 1901 (19,136) as in 1896; with the total recovered by plaintiffs (£175,604) and the aggregate sum sued for (£315,528) both being slightly higher than in 1896. By 1904, the discrepancy between the caseloads of the various courts was even more marked. In the Supreme Court, 222 civil cases were tried and only 26 cases in the District Court, with the total amount sued for in the latter court being £7,832. Judgments were recorded for £2,767. In the Magistrates' Courts, 19,569 cases were tried, with the aggregate sum sued for during 1904 being £335,147, and the total for which judgment was given, £179,829.

In 1907, the last year for which District Court cases were separately reported in the statistics, there were only 229 Supreme Court cases (181 being tried by judge alone). In the District Court, there were 25 civil cases, with judgments recorded for £2,803, about one-third of £8,666 sued for. All the District Court figures are vastly overshadowed by those for the Magistrates' Courts, where 24,435 cases were tried, and plaintiffs recovered £232,306 of the £429,379 sought.[71]

This data demonstrates conclusively the decline of the District Court as a venue for litigation in the last part of the 19th century and the first decade of the 20th. The Magistrates' Court had clearly become by far the preferred court for cases below the Supreme Court's jurisdictional limit. For most litigants, the District Court was almost irrelevant.

## VI. The Judges

The 1858 Act allowed the Governor to appoint "a fit and proper person being a Barrister or Solicitor of the Supreme Court" as a district judge who could exercise the full jurisdiction of the court. No legal experience was necessary, just the fact of admission to the profession. The Governor

70 Data from *New Zealand Official Yearbook* 1903, see <www3.stats.govt.nz>.

71 Data derived from *New Zealand Official Yearbook 1909*, see <www3.stats.govt.nz>.

could also appoint a fit and proper person without legal qualifications who could exercise the civil jurisdiction of the court over claims between £20 and £100 and actions by landlords or tenants for possession of buildings.[72] There appears to have been only one such appointment, the politically active and influential resident magistrate in Auckland, Thomas Beckham,[73] whose service as a magistrate stretched back to 1840. In 1865 there was a short-lived change which allowed the appointment as a district court judge with the full jurisdiction of a person, whether or not a lawyer, who had two years or more experience as a resident magistrate.[74] That seemingly general statute may have been designed to allow Beckham's jurisdiction to be increased; he was the only appointment of that kind made. As is noted below, several later judges had a legal qualification but had no or little legal experience. Throughout the District Court's existence, judges of the District Court held office at the pleasure of the Crown.[75]

The greatest number of district judges sitting at any one time appears to be in the mid-1870s, when there were six sitting – three in the North Island and three in the South.[76] By the end of the century there were only three active judges[77] and by 1906 only two.[78]

While Hart and Travers, two of the initial cohort of judges of the District Court, held only the single office of district judge, neither served for any substantial period. It was more common for new judges to be appointed also as resident magistrates, or for lawyers who were resident magistrates to have the judgeship added. In the former group fall John Hyde Harris, Singleton Rochfort, Thomas Mansford and Henry Eyre Kenny in various North Island

72 District Courts Act 1858, s 5.

73 *Government Gazette* (New Zealand, 18 July 1859).

74 District Courts Act 1858 Amendment Act 1865, s 11.

75 District Courts Act 1858, s 5 and see District Courts Act 1908, s 5. For a discussion of the sporadic public debates as to their tenure and efforts to effect a law change in the 1890s see Jeremy Finn "Judicial Independence – New Zealand Style" (paper presented at Institute of Judicial Studies Challenge and Change seminar, Wellington, 5 and 6 July 2018).

76 The *Government Handbook for 1875* lists the following: Thomas Beckham at Auckland and Grahamstown (now part of the town of Thames); Henry Eyre Kenny at New Plymouth; Thomas Weston at Napier, Waipawa, and Gisborne; George Harvey at Westport, Reefton, Charleston, Ahaura, Hokitika, Greymouth; Dudley Ward at Timaru, Oamaru, Tokomairiro (now Milton) and Invercargill and Wilson Gray in the Otago Gold Fields.

77 Between 1898 and 1903, the three were Charles Kettle at Wairarapa, Wanganui, New Plymouth, Hawera, and Palmerston North; Henry Robinson at Nelson and Dudley Ward covering much of the remainder of the South Island (Ashburton, Timaru, Oamaru, Queenstown, Naseby, Lawrence, Invercargill, Hokitika, Greymouth, Westport and Reefton).

78 Charles Kettle in Hamilton and Thames and W R Haselden covering Wairarapa, Wanganui, New Plymouth, Stratford, Hawera, Palmerston North, Pahiatua, Nelson, Ashburton, Timaru, Oamaru, Queenstown, Naseby, Lawrence, Invercargill, Gore, Hokitika, Greymouth, Westport, Reefton and Kumara.

districts and John Bathgate in Otago.[79] Thomas Beckham is the first example of the second group, and was joined by Dudley Ward in the Wellington region. It is probably not coincidental that Hyde Harris, Travers, Hart, Bathgate and Ward had all been politically active both at provincial and national level and were effectively part of the social elite of the new colony. Ward was very much a special case among the district judges as he repeatedly held temporary appointments to the Supreme Court.[80] He was also by far the longest-serving judge, serving from 1866 to 1906 and, at various times, in districts all over the South Island and lower North Island.

The pattern was to continue. Charles Edward Rawson was admitted to the profession in 1874 in New Plymouth and practised there until 1880, when he was appointed a resident magistrate – and registrar of the Supreme Court – in that town. In 1881, on the death of the incumbent, he was also appointed as the local district judge. Another "dual appointment" district judge was Charles Cargill Kettle, who has the distinction of being the first New Zealand-born man appointed to the District Court bench. Kettle was admitted as a barrister and solicitor in Dunedin in 1873. He continued his practice in Dunedin until 1890 when he was appointed as a district court judge and resident magistrate, sitting in the lower North Island.

Other combinations of offices can also be found. Two district court judges, Francis Fenton and John Edwin McDonald, were also judges of the Native Land Court; indeed, it seems the latter was the dominant element in their official position with the district judgeships primarily to give them ancillary powers. Both returned to practice after resigning from the bench around 1880.[81] Other judges had more diverse roles. George Boutflower Davy was initially appointed as a deputy district judge but later held a full appointment. However, his primary responsibilities were in government administrative positions, as he was also Registrar-General of Deeds and Registrar-General of Land. William Reeve Haselden, one of the last district judges, had qualified in law while serving as deputy registrar of the Supreme Court at Hokitika between 1868 and 1872 and for some years practised in the Buller region and then in Wellington until 1897, when he was appointed a Stipendiary Magistrate. In January 1905, Haselden was also made a permanent district court judge, something a local newspaper referred to as a "promotion".[82]

79 In Bathgate's case, the political career was resumed after he left the bench. There is a very sympathetic biography of Bathgate by Geoffrey F. Vine in G Schofield (ed) *Dictionary of New Zealand Biography* (Wellington, Government Printer, 1966).

80 For an informative but rather uncritical account of Ward's life and milieu see Geoff Adams, *Judge Ward* (self-published, Dunedin, 2011) at 241–251.

81 For Fenton's life and career see William Renwick <teara.govt.nz>. For McDonald's later career see S W Grant *The Law Society of Hawkes Bay* (Centennial Publication for the Hawke's Bay District Law Society, 1986) at 11.

82 "Judge and Bar" *Wairarapa Daily Times* (New Zealand, 23 February1905) at 5. See also "Welcome to Judge Haselden" *Greymouth Evening Star* (New Zealand, 17 January 1905) at 2.

### *A. The Goldfields Quartet*

While multiple appointments were frequent, there were four judges who held no other position. In each case the judge was appointed to one of the South Island goldfields area. Moses Wilson Gray was an Irish barrister who had also practised in the United States before leaving Ireland for Victoria where he gained a reputation as an expert in mining law. He later migrated to Otago and, after a brief spell in practice, was appointed in 1864 as the district judge for the Otago goldfields area, where again he was widely respected for his expertise in mining law. He died in 1875 while on circuit around his judicial district. His contemporary, Edward Clarke, was an English barrister who had also practised in Victoria and was knowledgeable about mining law. Clarke was appointed to the district judgeship for the West Coast goldfields in 1867, the only district judge to be appointed directly from overseas. Clarke was not particularly successful on the bench and his conduct off it incurred such public comment that commissioners were appointed to enquire into his behaviour. He resigned rather than be dismissed for drunkenness in public.[83]

Both judges were succeeded by full-time appointments: Clarke by Thomas Shailer Weston, an Auckland lawyer and Gray by George William Harvey who had been in practice on the West Coast. Both were later to be dismissed from the bench during a government economy drive in 1880.[84] Both returned to practice, with Weston also serving for some years in the House of Representatives almost immediately after his dismissal.

### *B. The Legally Inexperienced Cohort*

Many of the district judges appointed in the 1870s or later had either brief periods of professional practice or none at all, but rather had previous employment in administrative roles in the judicial system and/or service as a resident magistrate. Thus, Henry Eyre Kenny had only a few months experience of practice before he was appointed as Registrar of the Supreme Court at New Plymouth in August 1867, adding the offices of resident magistrate in 1869 and district judge in 1870. Eyre Kenny quit government for a second spell in private practice from 1882 to 1890 before re-appointment to the magistracy and District Court bench, where he remained until his retirement in 1906.

Two other district judges appear never to have practised law, and a third only did so after retiring from the bench. The former pair are Edward Hardcastle and Lowther Broad. Hardcastle served as sheriff of the Supreme Court and resident magistrate at Wanganui before being appointed to the District Court bench in August 1879, three months after admission as a barrister and solicitor. He did not serve long on the bench, resigning on health grounds in 1884, dying on 10 January 1886 at the age of 49.[85] Lowther Broad also

83 For further discussion see Finn, above n 75.

84 For full discussion of this see Finn, above n 75.

85 "Death of Judge Hardcastle", *Feilding Star* (New Zealand, 12 January 1886) at 2.

began his official career on the Otago goldfields, as Warden at Queenstown. After a brief spell as a Warden at the Thames goldfield in the North Island, Broad was appointed as warden and resident magistrate at the short lived Wangapeka goldfield near Nelson, and then as Magistrate in Nelson. He apparently qualified as a barrister in 1875, and was then appointed district judge for the area. He held that position until his death in 1892, after which it was discovered he was insolvent and had only kept afloat by fraud.[86]

The third of this trio was Henry Wirgman Robinson, who also qualified as a barrister while serving as a resident magistrate. His first judicial position was as warden and resident magistrate in the Otago goldfields, after periods as a gold miner, journalist and newspaper editor, a newspaperman and then a goldfields warden and magistrate in the Otago goldfields 1863–1882. After this, he was a resident magistrate in Oamaru (where he qualified as a barrister) and Wellington. In 1889, he was also appointed as a district judge. He retired in 1904 (at the age of 75) whereupon he entered into a partnership with his lawyer son in Masterton.[87]

### *C. The effects of the Changing Judiciary*

It is reasonable to suppose that public perception and, probably more importantly, parliamentary and governmental perceptions of the District Court bench played a part in the decision to align more closely the jurisdiction of the Magistrates' Courts with that of the District Court. A North Island newspaper considered that the pay and position of Supreme Court judges attracted good candidates, but in the District Courts "as a rule, the Judges have not been lawyers of anything like first-class standing."[88] As more and more district court judges also sat as magistrates, it would be harder to perceive their district court work as being beyond the capacity of the magistracy. Further, after the passage of the Magistrates' Court Act 1893, the qualifications for magistrates exercising the special jurisdiction of that court were essentially identical with those for a district judge. Why then should the powers of the one be less than the other? That line of reasoning led almost inevitably to questioning why there should be two courts rather than one.

## VII. The Changing Travel Environment

It is probable that improved internal transport was a significant factor in the decline of the volume of business in the District Courts. At the time the District Court was created, there was only a stark choice between

86 "The Late Judge Broad's Estate" *Otago Daily Times* (New Zealand, 4 November 1892) at 2; and *Ex parte Weldon In re Estate of Lowther Broad* (1893) 12 NZLR 666.

87 "Obituary" *Wairarapa Daily Times* (New Zealand, 13 March 1905).

88 Untitled editorial *Wanganui Chronicle* (New Zealand, 20 July 1883) at 2.

coastal shipping, in the 1850s still largely sail-propelled, and horseback or coach travel. Travel by passenger steamer became the norm in the 1860s and 1870s, and indeed continued to be favoured over much of New Zealand for the rest of the century.[89] Rail travel became a possible alternative from the 1870s.[90] However development of the rail system was generally slow, with the exception of the Canterbury – Otago – Southland line which had, by 1880, linked Christchurch and its northern hinterland with Dunedin, Invercargill and Kingston on Lake Wakatipu. Railway building in the North Island was both slower and discontinuous. A number of lines were created reaching out from port areas, but these were not generally linked together until the 1890s. By 1886 there was a continuous rail line from New Plymouth to Wellington, but the schedule called for a trip of nearly 15 hours to cover the 400 km distance. Ship travel would have been as quick, though not necessarily as safe or reliable. Auckland was only linked to Hamilton in 1898 and the main trunk line between Wellington and Auckland was not finished until 1908. Once it became more convenient for would-be litigants to travel to a major centre, both to consult legal advisors and to attend hearings, the attraction of more regular court sittings and the greater likelihood that cases would come on reasonably quickly would have been obvious.

## VIII. The Death of the District Court.

There is a degree of irony in the way the District Court was closed. As noted above, the beginnings of the District Court can be traced to a Judiciary Bill which failed in the House of Representatives in 1856; the end of the District Court can be linked to a similarly unsuccessful Judiciary Bill in 1907 and 1908. Dr John Findlay was appointed to the Legislative Council in 1907 so that he could take on the post of Attorney-General in the, by then, embattled Liberal Government. Shortly thereafter, Findlay made public his plans for significant changes to the judicial system, in the interests of efficiency and economy. Two key components were the abolition of the District Court and the restructuring of the Supreme Court into effectively two divisions: one based in Wellington where the judges would also act as a regular Court of Appeal and the other division the judges based in Christchurch, Dunedin

89 For a very approachable discussion of the importance of coastal shipping see Simon Ville "The Coastal Trade of New Zealand Prior to World War One" (1993) 27 NZJH 75–89.

90 There is a substantial literature on the history of railways in New Zealand. Most do not deal with the social context (Neill Atkinson *Trainland: how Railways made New Zealand* (Auckland, Random House, 2007) being a notable exception). The data as to completion of rail lines and timetabled length of journeys is drawn from David Leitch and Bob Stott *New Zealand Railways: the first 125 years* (Auckland, Heinemann Reed, 1988). Geoffrey Churchman and Tony Hurst *The railways of New Zealand: a journey through history* (2nd ed, Transpress New Zealand, Auckland, 2001) provides a useful account of the early stages of rail in the new colony.

and Auckland, who would no longer migrate biannually to Wellington to sit in the Court of Appeal as then constituted. Findlay embodied his ideas in a Judiciary Bill which received a less than warm reception and was not pushed in 1907 and dropped after re-introduction in 1908. This may well have been primarily on account of the proposals for change to the Supreme Court which clearly drew a hostile reaction from some quarters.[91] The proposals in regard to the District Court drew a more mixed response, with smaller centres, especially those where gold-mining was still a significant economic activity, protesting the proposed abolition, while newspapers in the main cities saw merit in the change.

Findlay's apparent inability to muster sufficient support for his Judiciary Bill meant that the District Courts Act 1858 survived the consolidation of statutes in 1908. However, the government devised a stratagem to achieve its goal of effective abolition – it simply announced that the existing District Court districts would be terminated, and no new ones promulgated to replace them.

News that the District Court was to close drew substantial criticism from provincial centres and some District Law Societies, both as to the wisdom of the substantive decision and the method by which the Government had acted. The Westland District Law Society emphasised the importance of the District Court's bankruptcy jurisdiction and that over mining appeals, while the methodology was attacked as "not only unconstitutional but also illegal".[92] Similar protests were made by lawyers and local bodies in Hawera and Thames.[93] The lawyers of Timaru, when interviewed by a local paper, were equally critical of the proposal.[94] By contrast, the Wellington bar was, it appears, much in favour of the Bill.[95] Other centres took a less principled stand, opposing abolition unless the Supreme Court began sittings in that centre,[96] or increased the frequency of existing sittings.[97] There is no indication that parliamentarians shared the lawyers' concerns about either the decision to close the courts, nor about the process followed. This suggests the District Courts had limited political support, but it may be that Findlay's stated aim of reducing expenditure resonated strongly with the opposition Reform

91 For criticism of the Supreme Court proposals as creating an impression that judges sitting outside Wellington were inferior to those in the capital see "The Judiciary Bill" *Otago Daily Times* (New Zealand, 7 October 1907) at 4.

92 "District Court Indispensable" *West Coast Times* (New Zealand, 14 May 1909) at 2; "The District Court" *Greymouth Evening Star* (New Zealand, 27 April 1909) at 3.

93 "Hawera District Court" *Taranaki Herald* (New Zealand, 19 May 1909) at 2; "Abolition of District Court". *Thames Star* (New Zealand, 9 June 1909) at 2.

94 "The Judicial System" *Timaru Herald* (New Zealand, 24 June 1907) at 2.

95 "The Judicial System" *New Zealand Times* (New Zealand, 26 June 1907) at 7.

96 As with Gore, see untitled article, *West Coast Times* (New Zealand, 19 May 1909) at 2, and Masterton, see Abolition of the District Court" *Wairarapa Age* (New Zealand, 12 May 1909) at 5.

97 As appears to be the case with Greymouth, see "Supreme Court" *Greymouth Evening Star* (New Zealand, 21 May 1909) at 3.

Party, which advocated cuts to government spending and retrenchment in the public service. Further, it would have been hard to make much of a case for continuing the court structure. Findlay countered criticism from the Thames area by quoting a return of cases in the Thames District Court which showed, for the five years to March 31 1909, there had been:[98]

> … nine criminal cases and 11 civil cases, of which only four were heard, three interpleader and other cases, four appeals under the Mining Act, 93 cases of probate and administration, and 38 bankruptcy petitions.

A similar response was given to critics on the West Coast, with Findlay stating that, with the exception of a small number of bankruptcy cases, the District Court had heard only six civil and six criminal cases in 1907, and 12 civil and three civil cases in 1908.[99]

## IX. Conclusion

The formal end of the District Courts came with the passage of the District Courts Abolition Act 1925, almost 16 years after the courts ceased to operate. The 1925 Act passed through Parliament quickly, with almost no reported debate. At committee stage in the House of Representatives the Minister of Justice, Sir James Parr, explained the bill as being purely a machinery bill, based on a 1910 first draft by John Salmond, the then Solicitor-General, to make the necessary changes to other acts when the District Courts were formally abolished.[100] He did not explain the reasons for the delay in legislating. Parr's summary was apt. The Abolition Act repealed the District Courts Act 1908, formally abolishing the District Courts. While there were savings provisions for judgments or other determinations of the Court and a catchall power conferred on the Supreme Court to enforce such judgments if necessary, most of the Act dealt with consequential amendments to other legislation.

With the enactment of the District Courts Abolition Act 1925 came the formal end to an interesting colonial experiment. While an intermediate court was a necessary and worthwhile expedient for the early colonial period, the effective closure of the District Court in 1909 was a sensible response to the changed conditions of the early 20th century. In evolutionary terms, the District Court came into being to fill a gap in the legal structures needed for the young colony. The conditions of the 1860s, particularly the explosive growth of the gold-mining sector, the boom in bankruptcy business from

98 "Thames District Court" *Thames Star* (New Zealand, 31 July 1909) at 2.

99 "District Courts" *Evening Post* (New Zealand, 7 May 1909) at 8.

100 (1925) 208 NZPD 549 (22 September 1925). The Bill immediately passed its third reading.

the late 1870s and the ever-pressing problems of transportation between population centres provided it with a broad, if temporary, environmental niche which other courts could not or did not seek to exploit. As the economy changed, transportation issues ceased to limit access to the Supreme Court and greater powers were given to the Magistrates' Courts. In consequence, the District Court became a less and less attractive option for litigants. Survival would have required Parliament to give it new powers or jurisdictions; in effect Parliament chose to strengthen the other courts and thus the District Court's competitors. The terminal decline of the District Courts followed. It is, it seems, a classic case of a legal institution whose short life was dictated by an inability to evolve so as to attract litigants who had a choice of suing elsewhere and the unwillingness of those who controlled its actions to enable and encourage it to do so.