

JUDICATURE AMENDMENT BILL

EXPLANATORY NOTE

THE primary purpose of this Bill is to clarify and modify the law as to the granting by civil Courts of relief against mistakes of law. The existing rule is that, although money paid under a mistake of fact is in general recoverable, money paid under a mistake of law is not recoverable except in the case of certain classes of payments and in some cases where retention by the payee is inequitable. Typical instances where money has been paid under a mistake of law and has been held to be irrecoverable have been cases where rates or similar charges have been collected without authority, and a case where a man who was bound by covenant to pay an annuity "free of deductions" paid the income tax on the annuity for which he was not liable on a proper construction of his covenant.

Difficulties arise under the existing law not only in distinguishing between mistakes of fact and mistakes of law, but also in determining the cases in which relief against mistakes of law will be granted. Moreover the existing law has been criticised on the ground that it is not based on any clear principle of justice, and on the ground that it can result in injustices.

Clause 2 inserts two new sections in the Judicature Act 1903.

The new *section 94A* provides in *subsection (1)* that, subject to the provisions of the section, where relief in respect of any payment that has been made under mistake is sought in any Court, whether in an action or other proceeding or by way of defence, set off, counterclaim, or otherwise, and that relief could be granted if the mistake was wholly one of fact, that relief shall not be denied by reason only that the mistake is one of law, whether or not it is in any degree also one of fact.

Reference is made to payments made under mistake rather than to money paid under mistake so as to make it clear that the subsection extends to a payment made by cheque or other negotiable instrument. See *Kerr on Fraud and Mistake*, 7th Ed., p. 500. It has been thought preferable to legislate by reference to the existing law governing cases where payments made under mistake of fact are recoverable, particularly cases coming within the action for money had and received discussed in *Kerr* at the page mentioned, rather than to attempt a statutory enumeration of the cases where the new rights to relief will be either granted or refused. Any enumeration raises doubts as to cases that are not expressly covered.

Subsection (2) of the new *section 94A* makes it clear that the section does not enable relief to be given in respect of any payment made at a time when the law requires or allows, or is commonly understood to require or allow the payment to be made or enforced, by reason only that the law is subsequently changed or shown not to have been as it was commonly understood to be at the time of the payment. The section is concerned with the case where an individual makes a mistake as to the law, not with the case where a Court decision shows that there has previously been a common misunderstanding of the law.

The new *section 94B* provides that relief, whether under *section 94A* or in equity or otherwise, in respect of any payment whatsoever that is made under mistake, whether of law or of fact, shall be denied wholly or in part if the payee received the payment in good faith and has so altered his position in reliance on its validity that the Court, having regard to all possible implications in respect of other persons, considers it inequitable to grant relief. The section does more than limit the operation of the new *section 94A*. It provides a defence in certain cases to tracing proceedings in equity such as those that gave rise to the case of *Ministry of Health v. Simpson and others* [1950] 2 All E.R. 1137, and also in cases of payments made under mistake of fact.

The Crown is bound by the provisions of the Bill.

Hon. Mr Mason.

JUDICATURE AMENDMENT

ANALYSIS

Title
1. Short Title

2. New sections inserted
94A. Recovery of payments
made under mistake of law
94B. Payments made under mis-
take of law or fact not always
recoverable

A BILL INTITULED

An Act to amend the Judicature Act 1908

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

1. **Short Title**—This Act may be cited as the Judicature
Amendment Act 1958, and shall be read together with and
deemed part of the Judicature Act 1908 (hereinafter referred
to as the principal Act).
- 10 2. **New sections inserted**—The principal Act is hereby
amended by inserting in Part III, after section ninety-four,
the following sections:
- 15 “94A. **Recovery of payments made under mistake of law**—
(1) Subject to the provisions of this section, where relief in
respect of any payment that has been made under mistake is
sought in any Court, whether in an action or other proceeding
or by way of defence, set off, counterclaim, or otherwise,
and that relief could be granted if the mistake was wholly one

of fact, that relief shall not be denied by reason only that the mistake is one of law, whether or not it is in any degree also one of fact.

“(2) Nothing in this section shall enable relief to be given in respect of any payment made at a time when the law requires or allows, or is commonly understood to require or allow, the payment to be made or enforced, by reason only that the law is subsequently changed or shown not to have been as it was commonly understood to be at the time of the payment. 5 10

“94B. **Payments made under mistake of law or fact not always recoverable**—Relief, whether under section ninety-four A of this Act or in equity or otherwise, in respect of any payment made under mistake, whether of law or of fact, shall be denied wholly or in part if the person from whom relief is sought received the payment in good faith and has so altered his position in reliance on the validity of the payment that in the opinion of the Court, having regard to all possible implications in respect of other persons, it is inequitable to grant relief, or to grant relief in full, as the case may be.” 15 20