



No. 42 of 1967

**An Act to Consolidate and Amend the Law Relating to  
District Courts**

[ASSENTED TO 14TH DECEMBER, 1967]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

PART I.—PRELIMINARY

1. (1) **Short title.** This Act may be cited as "*The District Courts Act of 1967.*"

(2) **Commencement of Act.** Except as herein otherwise provided this Act shall come into force on a date to be fixed by the Governor in Council by Proclamation published in the *Gazette*.

(3) **Suspension of operation of Act.** The Governor in Council may by Proclamation order that any part or provision of this Act then in force in a District shall cease to be in force in that District for such period as may be specified therein or until such time as the Governor in Council proclaims that such part or provision shall come into force again in that District.

The Governor in Council is hereby empowered to make any such lastmentioned Proclamation.

- 2. Parts of Act.** This Act is divided into Parts, as follows:—
- PART I—PRELIMINARY (ss. 1–4);
  - PART II—COURTS, JUDGES, REGISTRIES AND OFFICERS (ss. 5–51);
  - PART III—JURORS (ss. 52–57);
  - PART IV—CRIMINAL JURISDICTION AND PROCEDURE (ss. 58–65);
  - PART V—CIVIL JURISDICTION (ss. 66–87);
  - PART VI—RECOVERY OF POSSESSION OF LAND (ss. 88–91);
  - PART VII—APPEALS (ss. 92–96);
  - PART VIII—ENFORCEMENT OF JUDGMENTS (ss. 97–100);
  - PART IX—GENERAL PROVISIONS (ss. 101–108).

**3. (1) Repeals.** “*The District Courts Acts, 1958 to 1965*” (being “*The District Courts Act of 1958*,” “*The District Courts Act Amendment Act of 1960*,” “*The District Courts Acts Amendment Act of 1963*,” Part III of “*The Jury Acts and Another Act Amendment Act of 1964*,” and “*The District Courts Acts Amendment Act of 1965*”) are hereby repealed.

The Acts repealed by this subsection are in this Act referred to as “the repealed Acts”.

(2) **Savings.** (a) All District Courts established under the repealed Acts are hereby preserved, continued in existence and established under this Act and shall, subject to this Act, continue to be held at all places at which they were held under the repealed Acts at the time of the repeal thereof.

(b) The Judges of District Courts in office at the time of the repeal of the repealed Acts shall, subject to this Act, continue to hold such offices pursuant to their appointments thereto respectively (and in the case of the Chairman of District Courts, his designation as such) under the repealed Acts.

(c) A particular district which, at the time of the repeal of the repealed Acts is assigned to a District Court under the repealed Acts, shall continue for the purposes of this Act, but subject to this Act, to be the district assigned to the District Court in question.

(d) All persons who at the time of the repeal of the repealed Acts are in office as Registrars, Deputy Registrars, bailiffs or other officers of District Courts (and whether by appointment or by virtue of the provisions of the repealed Acts) shall, subject to this Act, continue to hold such offices respectively pursuant to their appointments or, as the case may be, the provisions of this Act corresponding to those of the repealed Acts by virtue of which they held those offices.

(e) Every Proclamation or Order in Council made under any provision of the repealed Acts and in force at the time of the repeal thereof shall, subject to this Act, continue in force as if it had been made under the corresponding provisions of this Act.

This paragraph does not apply to a Proclamation made under section two of the repealed Acts.

(f) All proceedings pending and all judgments given, signed, entered, or made at or before the commencement of this Act under or subject to the repealed Acts, shall be treated as if pending, given, signed, entered, or as the case may be, made under this Act, and may be proceeded with, completed, enforced, or otherwise howsoever dealt with under this Act accordingly.



A Court or a Judge may on the application of either party or of its own motion give directions in respect of such a proceeding or judgment which in its or his opinion are necessary or convenient to give effect to this paragraph (f) and any step taken in accordance with such directions shall be deemed to have been taken in accordance with this Act.

(3) **Statutory references to District Court.** A reference in any other Act to a District Court shall be construed as a reference to a District Court within the meaning of this Act, and, in the case of an Act passed before the commencement of this Act, shall be so construed notwithstanding that the reference is expressed to relate to a District Court within the meaning of an Act other than this Act.

(4) Nothing in this section shall be construed so as to limit the operation and effect of "*The Acts Interpretation Acts, 1954 to 1962.*"

**4. Interpretation.** In this Act, and the Rules of Court unless the context otherwise indicates or requires, the following terms have the meanings respectively assigned to them, that is to say:—

- "Action"—a civil proceeding commenced by plaintiff;
- "Chief Justice"—the Chief Justice of Queensland or the Acting Chief Justice of Queensland;
- "Court" or "District Court"—a Court appointed under the authority of this Act;
- "District"—a particular district assigned to a District Court under the provisions of this Act;
- "Goods"—includes money or bank notes, and cheques, bills of exchange, promissory notes, specialties, or other securities for money;
- "Judge" or "District Court Judge"—a Judge of a District Court or District Courts and includes an Acting Judge;
- "Judgment"—includes a judgment, order, or other decision or determination of a Judge;
- "Landlord"—the person entitled to the immediate reversion of land, or, if it is held in joint tenancy, coparcenary, or tenancy in common, any one of the persons entitled to the reversion;
- "Magistrates Court"—a Magistrates Court within the meaning of "*The Magistrates Courts Acts, 1921 to 1964*";
- "Magistrates Courts District"—a district appointed under "*The Justices Acts, 1886 to 1965,*" for the purpose of Magistrates Courts constituted under those Acts;
- "Matter"—a proceeding in the Court commenced otherwise than by plaintiff;
- "Mentally ill person"—a person who has been declared by the Supreme Court or a Judge thereof to be mentally ill and incapable of managing his estate, and any person who is otherwise a patient as defined in the Third Schedule to "*The Mental Health Acts, 1962 to 1964,*" and any person who, on the trial of any indictment, has been acquitted on the ground of insanity, or who, on arraignment on any indictment, has been found by a jury to be insane, and who in either case is still in confinement;

- “ Party ”—includes a person served with notice of or attending a proceeding, although not named in the record;
- “ Registrar ”—a Registrar of a District Court, and includes a Deputy Registrar of a District Court;
- “ Rules of Court ”—Rules of Court made as prescribed by this Act.

## PART II—COURTS, JUDGES, REGISTRIES AND OFFICERS

### *Courts*

5. (1) **Appointment of District Courts.** The Governor in Council may, by Proclamation, order that Courts, to be called District Courts, shall be held at such places as he thinks fit, and may, by like Proclamation, alter the place for holding a Court, or order that the holding of any Court be discontinued.

(2) **Assignment of Districts.** The Governor in Council may, by Proclamation, assign to any District Court a District, which shall consist of a Magistrates Courts District, or two or more contiguous Magistrates Courts Districts.

(3) When the holding of a Court is discontinued, all proceedings pending in the Court shall be transferred to and continued in such other Court as the Governor in Council may direct by the Proclamation, and all records of the Court, the holding of which is discontinued, shall be transferred to such other Court.

6. (1) **Courts to be Courts of Record.** Every District Court shall be a Court of Record and shall have criminal and civil jurisdiction as provided by this Act.

(2) **Limits of the jurisdiction.** Every District Court shall have jurisdiction throughout the whole of Queensland.

7. **Application of “ The Bankers’ Books Evidence Act of 1949. ”** Every District Court shall be a Court within the meaning “ *The Bankers’ Books Evidence Act of 1949* ” and the District Court or a Judge thereof shall have the same powers, authorities and duties as are conferred or imposed by that Act upon the Supreme Court or a Judge thereof.

8. **Seal of the Court.** For every Court there shall be a seal and notices, summonses, certificates, warrants and other process, issued by the Registrar shall be sealed or stamped with the seal.

### *Judges*

9. (1) **Appointment and qualification of Judges.** The Governor in Council may, by commissions in Her Majesty’s name, appoint Judges of District Courts, each of whom shall be a barrister or solicitor of the Supreme Court of Queensland of not less than five years’ standing.

(2) The number of Judges shall not exceed ten.

10. (1) **Chairman of District Courts.** The Governor in Council may also from time to time designate one of such Judges as Chairman of District Courts and in that event such designation shall be indicated on the commission of appointment of such Judge.

(2) The Governor in Council may by Order in Council designate another of such Judges who during the absence from the State or incapacity or unavailability for any cause of the Chairman of District Courts may act in that office and while so acting may discharge the functions and exercise the powers and be paid salary at the rate appertaining thereto.

A designation under this subsection may be general or may be made with reference to a particular absence incapacity or unavailability.

**11. Travelling expenses.** A Judge shall be entitled to receive the same allowances by way of travelling expenses as are payable to a Judge of the Supreme Court.

**12. Judges not to practise or sit in Parliament.** A Judge shall not practise as a barrister, solicitor or notary, or be directly or indirectly concerned or interested in such practice; and a Judge shall not be capable of being summoned or being chosen as a member of the Legislative Assembly.

**13. Removal from office.** The Governor in Council may remove a Judge for incapacity or misbehaviour:

Provided that twenty-one days at the least before removal, the Judge shall receive notice of the intention to remove him, and he shall thereafter and before removal have the opportunity of being heard before the Governor in Council in his defence.

**14. Retirement of Judge.** Without prejudice to the power of the Governor in Council contained in section thirteen hereof, if and when the Director-General of Medical Services and a duly qualified medical practitioner nominated by the president for the time being of the Queensland Branch of the Australian Medical Association shall certify to the Treasurer that by reason of permanent disability or infirmity a Judge is unable to perform the duties of his office the Governor in Council may, after affording the Judge an opportunity of being heard, retire the Judge and thereupon the office of such Judge shall become vacant and he shall cease to be a Judge.

Such retirement shall be a retirement for the purposes of "*The Judges' Pensions Act of 1957.*"

**15. Application of "The Judges Retirement Act of 1921."** The provisions of "*The Judges Retirement Act of 1921*" shall apply to a District Court Judge in the same manner as they apply to a Judge of the Supreme Court.

**16. Acting Judge.** (Compare 55 Vic. No. 33, s. 19 55 Vic. No. 37, s. 12.) (1) The Governor in Council may appoint (by commission in Her Majesty's name) a person qualified to be appointed a District Court Judge to be an Acting Judge—

- (a) during the absence on leave, granted by the Governor in Council, of a Judge; or
- (b) if a Judge be absent from any other cause or is incompetent or unable to take part in any decision or in any trial, action or proceeding or to sit at any sittings of a Court; or
- (c) if for any reason whatsoever the conduct of the business of a Court or the Courts in the opinion of the Governor in Council requires such an appointment.

(2) An Acting Judge appointed under subsection (1) of this section shall, during the time for which he is appointed, have all the powers and privileges and perform the duties of a Judge.

(3) The power to appoint an Acting Judge under subsection (1) of this section shall not be limited by the provisions of subsection (2) of section nine of this Act.

**17. Governor in Council may assign Courts to each Judge.** The Governor in Council may, by Order in Council, assign to a Judge, either permanently or in rotation with other Judges, such Courts as he thinks fit; but the jurisdiction of a Judge shall not be deemed thereby to be limited exclusively to the Courts so assigned to him.

**18. Judge empowered to act throughout the State.** (Compare 55 Vic. No. 33, ss. 10 and 11.) Every Judge appointed shall be appointed for the whole of the State of Queensland and shall, under his commission, be empowered to act in any District Court.

**19. Judge to hold Court where directed, and to give notice.** The Judge to whom a Court is assigned shall attend and hold the Court at the place appointed by the Governor in Council at such times as are appointed by the Judge with the approval of the Attorney-General, but so that a Court is held in the place once at least in such interval as the Governor in Council directs by Proclamation.

Notice of the days on which the Court is appointed to be held shall be put up in a conspicuous place in the Court House and in the office of the Registrar, and shall be otherwise published as the Judge directs.

When, by reason of the absence of the Judge, the Court cannot be held at the time appointed, the Registrar, or, in the event of his absence, the bailiff, shall adjourn the Court to such day as he deems convenient, and shall enter in the minute-book the cause of the adjournment.

**20. Judge may sit in Chambers.** A Judge may sit in Chambers at any time and at any place, whether that place is within or not within the district of the Court in which the action or proceeding is pending.

**21. Jurisdiction in Chambers.** Subject to the Rules of Court, a Judge may exercise in Chambers any jurisdiction of a District Court, except the trial of actions, appeals and the hearing of applications for new trials.

**22. Certain causes and matters not affected by determination of commission.** (Compare 13 Geo. VI. No. 42, s. 4.) If at the determination by effluxion of time or other cause of any commission under this Act there shall be any actions or matters, civil or criminal, including any appeal, partly heard or standing for judgment by or before the holder of such commission, the commission shall only for the purpose of deciding such actions or matters (including the completion of the hearing thereof where necessary) and so far as is necessary for that purpose, remain in force until judgment shall have been delivered therein unless the holder of that commission shall be sooner removed.

**23. Hearing de novo when Trial Judge unable to continue.** (Compare 7 Eliz. II. No. 13, s. 5.) (1) When after the commencement of the hearing of any action or matter, civil or criminal, including any appeal before

a Judge, but before judgment in the action or matter has been given, the Judge dies or becomes incapable of continuing to sit or, in the case of an action or matter which has been heard but judgment wherein has not been given, of giving his judgment, any party to the action or matter may, upon giving seven days' notice to the other party or parties, apply to a Judge for an order that the action or matter may be heard and determined *de novo*.

(2) On an application under this section to a Judge (or in the absence of a Judge to a Judge of the Supreme Court) that Judge—

(a) (if this section is applicable, in the action or matter, by reason of the incapacity of a Judge), may, according as he deems fit, either adjourn the action or matter as he deems necessary, in order to enable the Judge before whom the hearing thereof was commenced to give judgment and, if necessary for that purpose, to complete the hearing, or order the action or matter to be heard and determined *de novo*; and

(b) in any other case shall order the action or matter to be heard and determined *de novo*.

(3) When, pursuant to this section, an action or matter is heard and determined *de novo*—

(a) the Judge so hearing or determining the same may make such order as to the costs of the first hearing as he shall think fit; and

(b) the first hearing shall for all purposes, other than that set out in paragraph (a) of this subsection be deemed a nullity.

**24. Proof of incapacity of Judge.** (Compare 7 Eliz. II. No. 13, s. 6.)

When proof of the incapacity of a Judge is necessary for a purpose of the last preceding section, the certificate of the Chief Justice that such Judge is incapable as specified in the certificate shall be *prima facie* evidence of that fact.

**25. Judge may perform the duties of another Judge.** In the case of absence or disability of a Judge, or on an emergency, another Judge may, at the request in writing of the firstmentioned Judge or of the Chief Justice, sit either in Court or in Chambers for the firstmentioned Judge, and may exercise all the powers and perform all the duties which that Judge might have exercised or performed.

**26. Two Judges may sit at same place.** When it appears to the Chief Justice to be desirable for the more speedy disposal of business that two or more Judges should hold Courts or sit in Chambers concurrently for the disposal of business at the same place, any two or more Judges, upon the request in writing of the Chief Justice, may hold Courts or may sit in Chambers at the same place, and may exercise any jurisdiction of a District Court or of a Judge of a District Court at that place either concurrently or at such times as may be convenient.

**27. Removal of action only in manner provided by this Act.** A judgment given by a Judge, or an action or matter brought before him or depending in his Court, shall not be removed by appeal, motion, writ of error or certiorari, or otherwise into another Court, save and except in the manner and according to the provisions of this Act.

*Certiorari*

**28. When action may be removed.** When any action, matter or proceeding is pending in a District Court in its civil or criminal jurisdiction or when any accused person has been committed for trial to a District Court, the Supreme Court or a Judge thereof shall, upon application by the Crown, in a criminal matter or proceeding or in any action or civil proceeding in which the Crown is a party and may, if it or he thinks it desirable, upon the application of any interested person, direct a writ of certiorari to be issued for removing such action matter or proceeding into the Supreme Court or a Circuit Court or recommit the accused person for trial to the Supreme Court or a Circuit Court.

The Supreme Court or Judge may impose such terms as to payment of costs, giving security for costs or otherwise as it or he thinks fit and it or he may make such orders as to remand custody and bail and in respect of the recognizances of witnesses or otherwise as it or he shall think fit.

*Order in lieu of Mandamus*

**29. Rule or order substituted for writ of mandamus to a Judge or officer.** A writ of mandamus shall not be issued to a Judge or an officer of a District Court requiring him to do any act relating to the duties of his office, but a party requiring the act to be done may apply to the Supreme Court or a Judge thereof, upon an affidavit of the facts, for a rule or summons calling upon the Judge or officer of the District Court, and also the party to be affected by the act, to show cause why the act should not be done, and if after the service of the rule or summons good cause is not shown, the Supreme Court or a Judge thereof may, by rule or order, direct the act to be done, and the Judge or officer of the District Court shall, upon being served with the rule or order, obey it under pain of attachment, and in any event the Court or Judge may make such order with respect to costs as to the Court or Judge seems fit.

*Prohibition*

**30. Judge not to be served with notice of application for prohibition.** When an application is made to the Supreme Court or a Judge thereof for a writ of prohibition addressed to a District Court, the Judge of the District Court shall not be served with notice, and shall not, except by the order of a Judge of the Supreme Court, be required to appear or be heard on the application, and shall not be liable to any order for the payment of the costs thereof; but the application shall be proceeded with and heard in the same manner in all respects as a case of an appeal duly brought from a judgment of a Judge.

Notice of the application shall be given to or served upon the same parties as in the case of an order made or refused by a Judge in a matter within his jurisdiction.

*Practice in such cases*

**31. Rule or summons to show cause why a writ of certiorari or prohibition should not be issued to be a stay of proceedings.** The granting by the Supreme Court, or by a Judge thereof, of a rule or summons to show cause why a writ of certiorari or of prohibition should not be issued to a District Court, shall, if the Supreme Court or a Judge thereof so directs, operate as a stay of proceedings in the action to which the same relates until the determination of the rule or summons, or until such Court or Judge otherwise orders; and the Judge of the District Court shall, from time to time, adjourn the hearing of the action to such day as he thinks fit, until the determination or until such order is made.

Notice of rule or summons to be given to Registrar and parties. If a copy of the rule or summons is not served by the party who obtained it on the opposite party, and on the Registrar of the District Court, at least two clear days before the day fixed for the hearing of the action, the Judge of the District Court may order the party who obtained the rule or summons to pay the costs of the day, or so much thereof as he thinks fit, unless the Supreme Court or a Judge thereof has made a different order respecting such costs.

**32. Notice of writ of certiorari or prohibition obtained ex parte to be given to Registrar and parties.** When a writ of certiorari or of prohibition addressed to a District Court is granted by the Supreme Court or a Judge thereof on an *ex parte* application, and the party who obtained it does not lodge it with the Registrar, and give notice to the opposite party that it has been issued, at least two clear days before the day fixed for hearing the action to which it relates, the Judge of the District Court may order the party who obtained the writ to pay all the costs of the day, or so much thereof as he thinks fit, unless the Supreme Court or a Judge thereof has made a different order respecting such costs.

#### *Registries*

**33. Registry, &c.** (1) In this section "District Court Registry" means the office of the Registrar of a District Court.

(2) Unless or until otherwise prescribed, where a Central Registry or a District Registry of the Supreme Court exists in a city or town where pursuant to the provisions of this Act a District Court shall be held, such Central Registry or District Registry, as the case may be, shall be a District Court Registry.

(3) When a Central Registry or District Registry is also a District Court Registry then subject to this Act the Registrar or District Registrar, Deputy Registrar, bailiff and other officers of the Supreme Court at that city or town and any persons hereafter either permanently or temporarily holding those offices shall be, without any further appointment than by this Act, officers (in their several offices) respectively of the District Court at that place for all the purposes of this Act and shall have all the powers, jurisdictions, authorities and duties conferred or imposed upon the holders of such respective offices under this Act.

(4) Unless or until otherwise prescribed where a Central Registry or a District Registry of the Supreme Court does not exist in a city or town where pursuant to the provisions of this Act a District Court shall be held, but a Magistrates Court does exist in that city or town, then the Registry of the Magistrates Court at that city or town shall be the District Court Registry at that place.

Subject to this Act, the Registrar of the Magistrates Court in that city or town and the Deputy Registrar, bailiff and other officers of that Court, and any persons hereafter either permanently or temporarily holding those offices, shall be, without any further appointment than by this Act, officers (in their several offices) respectively of the District Court at that place for all the purposes of this Act and shall have all the powers, jurisdictions, authorities and duties conferred or imposed upon the holders of such respective offices under this Act.



*Officers*

**34. Appointment and salary of Registrar and Deputy Registrars.** For every Court the Governor in Council may appoint a Registrar and such Deputy Registrars and such other officers as he shall think fit, who shall be paid such salary as he may determine.

**35. Duties of Registrar.** The Registrar shall sign and issue summonses and warrants and register the records and judgments, and keep minutes of the proceedings of the Court, and shall take charge of and keep an account of the Court fees and fines payable or paid into Court, and of the moneys paid into and out of Court, and shall enter an account of the fees, fines and moneys, in a ledger kept by him for that purpose, and shall, when required, submit his accounts to be audited by the Auditor-General or his officers.

**36. Registrar to act as deputy sheriff.** The Registrar shall, during the sitting of the Court act as deputy sheriff, and exercise the powers and perform the duties of a deputy sheriff as prescribed by "*The Jury Acts, 1929 to 1967*," so far as the provisions of those Acts are applicable.

**37. (1) Minutes of proceedings to be kept.** The Registrar shall cause a note of the complaints, summonses, judgments, executions and returns thereto, and of the fines and of all other proceedings of the Court, to be fairly entered from time to time in books belonging to the Court, which shall be kept at the office of the Court.

**(2) Evidence.** In any action or other proceeding the books, and any entries therein, or copies of the books or entries under the seal of the Court and purporting to be signed and certified by the Registrar, shall upon production be *primâ facie* evidence of the contents of the books, or of the entries, and of the proceedings referred to in them, and of the regularity of the proceedings.

**38. When a clerk of the court is Registrar, his successor or deputy shall be Registrar.** When a clerk of the court is appointed Registrar of a District Court held at the place where he is clerk, the successor in office of the clerk, or a deputy, or a person performing the duties for the time being, shall exercise, and have the rights and powers, and shall perform the duties of the Registrar of the District Court while he is performing the duties of such clerk:

Provided that the provisions of this section shall not affect the power of appointment hereinbefore vested in the Governor in Council.

In this section "clerk of the court" has the meaning assigned to that expression by "*The Justices Acts, 1886 to 1965*."

**39. Appointment of bailiffs and bailiffs' assistants.** For every Court there shall be one or more bailiffs, who shall be appointed by the Governor in Council.

A bailiff may be suspended by a Judge.

The bailiff may, by writing under his hand, appoint a sufficient number of fit persons to assist him, and may dismiss all or any of them and appoint others in their stead.

An officer so appointed may also be suspended by a Judge or suspended or dismissed by the Attorney-General.

The bailiff shall be responsible for the acts and defaults of the officers appointed to assist him.



**40. Bailiffs' assistants may act after the death or removal of bailiff.** The death or removal of a bailiff shall not invalidate the acts of the officers so appointed, but they shall continue to act until they are dismissed by the successor to the bailiff or by the Attorney-General.

They shall receive for their services while they so act after the death or removal of the bailiff the same remuneration as they were receiving at the date of the death or removal, and such remuneration shall be paid out of the salary and allowances attached to the office of bailiff.

**41. Duties of bailiffs.** The bailiffs or one of them shall, if required by the Judge, attend every sitting of the Court, and shall, by themselves or their officers, serve all plaints, and summonses and execute all warrants issued out of the Court; and the bailiffs and officers shall in the execution of their duties conform to the Rules of Court, and subject thereto to the order and direction of the Judge of the Court for which they are appointed:

Provided that a plaint or a summons may be served by the plaintiff or a person employed by him.

**42. Bailiff not required to take out auctioneer's license.** A bailiff or other officer duly authorised to execute a warrant of execution issued under the authority of this Act may sell land or goods without taking out an auctioneer's license.

**43. Remuneration of bailiffs.** A bailiff shall be paid a salary on account of his general duties, and shall also be entitled to receive and retain for his own use the fees prescribed as bailiffs' fees, unless the Judge in any case otherwise orders. The bailiff shall, out of such fees, provide for the performance of the duties for which the fees are allowed, and for the payment of the officers appointed to assist him.

The fees received for executing warrants of execution shall be paid by the Registrar to the bailiff upon the issue of the warrant of execution.

**44. Bailiff answerable for escape and neglect to levy execution.** If a bailiff who is directed to levy execution loses by neglect, connivance, or omission, the opportunity of levying the execution, a Judge may, upon complaint of the party aggrieved, inquire into the matter in a summary way, and for that purpose may summon and enforce the attendance of the necessary parties in the same manner in which the attendance of witnesses in an action may be enforced, and may order the bailiff to pay such damages as it appears that the plaintiff has sustained, not exceeding in any case the sum of money for which the execution was issued; and the bailiff shall be liable to pay the same.

Upon demand made, and on his refusal to pay and satisfy the damages, payment may be enforced in the manner provided by this Act.

**45. Members of Police Force to attend at District Courts and execute warrants, &c.** Members of the Police Force shall when required attend at the several District Courts held at the respective places where such members are stationed, and shall obey and execute in all cases every lawful summons, warrant, execution, order and command of the Judge presiding at any such District Court.

*General Provisions relating to Officers*

**46. Disabilities of Registrar and bailiff.** A Registrar shall not act as bailiff and a bailiff, his partner or clerk, or a person in the service or employment of a bailiff or his partner, shall not act as Registrar, and an officer of the Court shall not, either by himself or by his partner, be directly or indirectly concerned as solicitor or agent for a party in a proceeding in the Court.

Any person committing an offence against this section shall be liable to pay the sum of two hundred dollars and full costs of action to any person who sues for the same.

**47. Bailiff to give security.** Every bailiff shall give security for such sum and in such manner, as the Governor in Council orders, for the due performance of his office and for the due accounting for and payment of moneys received by him under this Act or which he is liable to pay for misbehaviour in his office.

**48. Remedies against and penalties on bailiffs and other officers for misconduct.** If a Registrar, bailiff or other officer, acting under, or under colour or pretence, of the process of the Court is charged with extortion or misconduct, or with not duly paying or accounting for money levied by him under the authority of this Act, a Judge may inquire into the matter in a summary way, and for that purpose may summon and enforce the attendance of the necessary parties in the manner provided by this Act for enforcing the attendance of witnesses, and may make such order for the repayment of the money extorted, or for the due payment of the money so levied, and for the payment of such damages and costs as he thinks just.

The Judge may also impose a fine upon the Registrar, bailiff or other officer not exceeding twenty dollars for each offence, and, in default of payment of the money so ordered to be paid, payment may be enforced in the manner provided by this Act for enforcing a judgment.

**49. Indemnity to persons acting under this Act.** If an action is brought against a person for anything done under a warrant issued in pursuance of this Act, the production of the warrant under the seal of the Court in the action shall be deemed sufficient proof of the authority of the Court previous to the issuing of the warrant, and if the plaintiff in the action has a verdict given against him, is nonsuited, or discontinues the action, the defendant shall be allowed costs.

**50. Limitation of actions.** An action or prosecution shall not be commenced against a person for anything done, or omitted to be done, in pursuance or in contravention of this Act, unless it is commenced within six months after the act committed or omitted.

*Barristers, Solicitors and Agents*

**51. Appearance to be in person or by barrister, or solicitor, or other person allowed by the Judge.** A party to an action or other proceeding under this Act may appear in person or by a barrister or solicitor or by any person allowed by special leave of the Judge in any case.

But a person, not being a barrister or solicitor of the Supreme Court, shall not be entitled to claim or recover, or receive directly or indirectly, a sum of money or other remuneration for appearing or acting on behalf of another person in a District Court.

## PART III—JURORS

**52. Who shall be jurors.** The persons qualified and liable to act as jurors for the trial of criminal and civil issues and for the assessment of damages respectively, under the provisions of "*The Jury Acts, 1929 to 1967*," shall be the persons qualified and liable to act as jurors in the District Courts.

Where a Court is held at a Court town at which the Central Registry or District Registry of the Supreme Court is also the District Court Registry pursuant to this Act, the jury books or lists made under those Acts by the sheriff or deputy sheriff, or copies of them, shall be the jury books or lists for the Court.

Every District Court shall be a Court within the meaning of "*The Jury Acts, 1929 to 1967*," and every place where a District Court is held shall be a Court town within the meaning of those Acts and such Acts shall be read and construed accordingly.

Where the Court is held at a Court town at which there is no Supreme Court Registry, the Registrar of the District Court shall be, without further appointment than by this Act, a deputy sheriff.

**53. Jury list for newly proclaimed districts.** When the Governor in Council, by Proclamation, orders a Court to be held at a town in which there is no Central Registry or District Registry of the Supreme Court, the jury books or lists for that town shall be made by the sheriff in accordance with such directions as the Governor in Council may give.

If the Governor in Council does not give any such directions, the sheriff shall make such jury books or lists in accordance with "*The Jury Acts, 1929 to 1967*," as far as they can be made applicable.

**54. Provisions of "*The Jury Acts, 1929 to 1967*," to apply.** Except as herein otherwise provided, all provisions of "*The Jury Acts, 1929 to 1967*," shall apply in respect of District Courts as they apply in respect of the Supreme Court.

Without limiting the generality thereof, the provisions of those Acts relating to the constituting and procuring of juries, and the summoning and challenging of jurors, and the discharge of juries, shall extend and apply to the constituting and procuring of juries, and the summoning and challenging of jurors, and the discharge of juries, in District Courts.

**55. (1) Precept.** The Registrar of a District Court shall have the same power to issue jury precepts to the sheriff or his deputy for summoning jurors for the trial of criminal and civil issues as a Registrar of the Supreme Court shall have for the issuing of such precepts for the trial of such issues in the Supreme Court; and such sheriff or his deputy shall have the like powers, authorities and duties in respect thereof as they or he may have in respect of a jury precept issued to them by the Registrar of the Supreme Court.

**(2) Jury precept may be issued in respect of sittings of Supreme Court and District Court.** Where a sittings of a Supreme Court and a sittings of a District Court coincide wholly or in part at the same place, a jury precept may be issued for summoning jurors to attend both sittings.

Where the Registrar or District Registrar of the Supreme Court is also the Registrar of the District Court, it shall be sufficient if such precept is issued by him as the Registrar of the Supreme Court.

Where the Registrar of the Supreme Court is not also the Registrar of the District Court, such precept shall be signed by the Registrar of the Supreme Court and the Registrar of the District Court.

(3) **Number to be empanelled.** In respect of any criminal sittings of the District Court, unless a Judge of the District Court otherwise orders the number required by a jury precept issued pursuant to this section to be summoned shall be thirty-six persons and additionally, where two or more Judges of the District Court are to take concurrently the whole or part of such sittings, twelve persons for each Judge in excess of one:

Provided that in the case of any two concurrent precepts the numbers required by such precepts respectively to be summoned shall be as prescribed by the proviso to subsection (5) of section twenty-two of "*The Jury Acts, 1929 to 1967.*"

(4) **Reduced panel.** Where part only of any criminal sittings of a District Court is taken by two or more District Court Judges, for the purpose of the continuation of such sittings by a single District Court Judge the panel of persons summoned to serve as jurors shall be reduced to thirty-six persons unless a District Court Judge otherwise orders.

Jurors to the number necessary to so reduce the panel, being jurors first drawn upon the selection of persons to serve as jurors at the criminal sittings in question shall, by order of a District Court Judge, be excused and discharged from further attendance at such continued criminal sittings of the District Court during such continuance.

A person summoned to serve as a juror at both the civil and the criminal sittings of a District Court shall not, by virtue of being excused and discharged under this subsection from further attendance at such criminal sittings, be excused or discharged from attendance as a juror at such civil sittings.

(5) **Increased panel.** In any case, where a jury precept is issued for the summoning of jurors for both a sittings of the Supreme Court and a sittings of the District Court, the powers which may be exercised under section twenty-nine of "*The Jury Acts, 1929 to 1967,*" shall be exercised by the Supreme Court or a Circuit Court as the case may require.

Subject thereto the powers conferred by the said section twenty-nine may be exercised by a District Court in respect of a jury to be summoned for that Court alone.

**56. Attendance of jurors.** A Judge of a District Court shall have the same powers to inflict fines for the non-attendance of jurors as a Judge of the Supreme Court has under section forty-seven of "*The Jury Acts, 1929 to 1967*"; and that section shall hereafter be read and construed as if the words "or District Court" were inserted after the word "Court" where it occurs in that section, and the words "or District Court Judge" were inserted after the word "Judge" where it occurs in that section.

**57. Payments to jurors.** (Compare 20 Geo. V. No. 19, s. 21.) Every juror duly summoned who attends a Court shall, for every day during which he is required to attend and actually attends the Court (whether he or she actually serves upon a jury or not), be entitled to, and every talesman whose name has been added to the panel, shall be entitled to receive such compensation for such attendance and allowance for his travelling expenses as may be prescribed from time to time in respect of jurors attending a Supreme Court or a Circuit Court.

## PART IV—CRIMINAL JURISDICTION AND PROCEDURE

58. District Courts shall have criminal jurisdiction. A District Court shall have jurisdiction to inquire of, hear, and determine all indictable offences, wheresoever committed, save as hereinafter excepted.

59. Exception from criminal jurisdiction. A District Court shall not have jurisdiction to try a prisoner charged with any indictable offence in respect of which the maximum term of imprisonment which can be imposed exceeds fourteen years.

60. Governor may withdraw criminal jurisdiction. The Governor in Council may, by Proclamation, withdraw from a Court, either absolutely or for a time to be limited by the Proclamation, the criminal jurisdiction possessed by the Court, and after three months from the publication of the Proclamation in the *Gazette* the criminal jurisdiction of the Court named in the Proclamation shall cease.

*Procedure*

61. Change of venue. When an accused person is committed for trial to a District Court, not being the Court of the District within which the offence is alleged to have been committed, a Judge of the Supreme Court or of a District Court, may order the trial to be held in the Court of that District, and may make all such orders for the remand and custody of the accused person, and for the extension of his bail or the recognizances of witnesses, as may be necessary.

In any other case the venue may be changed by order of a Judge of the Supreme Court, or of a District Court, who may make the like orders for the purposes aforesaid.

The Judge of a District Court may, at any stage of a criminal trial depending in his Court, order that the trial take place at another District Court, subject to such conditions as he thinks fit, and may remand the accused in custody or on bail to that Court.

62. Change of trial from Supreme Court to District Court. When a person has been committed for trial or sentence to the Supreme Court or a Circuit Court or has been indicted in any such Court for an offence triable in a District Court any District Court Judge if so requested by the Chief Justice may try or sentence such person and for that purpose shall have the same powers and jurisdiction as if the committal had been to or the indictment had been presented in a District Court. The request of the Chief Justice may be made in respect of a particular case or cases or in respect of specified categories of cases.

When a person has been committed for trial to a District Court or has been indicted in a District Court any Judge of the Supreme Court shall have the same powers and jurisdiction to try such person as if the committal had been to or the indictment presented in the Supreme Court or Circuit Court.

63. Jury in criminal cases. All indictable offences prosecuted in the Court shall be tried by a Judge and a jury of twelve, to be chosen, returned, summoned and sworn, as by law for the time being is provided for the choosing, returning, summoning and swearing, of jurors for the trial of criminal issues in the Supreme Court.

**64. Issues of law and fact.** Issues of law and fact shall be determined by the Judge or jury as if the trial were a trial on indictment in the Supreme Court.

**65. Registrar may issue subpoenas.** The Registrar may issue subpoenas in criminal cases for the attendance of witnesses at the trial of a person committed for trial to the Court of which he is Registrar, or to another Court, whether an information or indictment has been presented against such person or not.

A person disobeying a subpoena shall be liable to the same consequences as for disobedience to a subpoena issued in a civil proceeding under the authority of this Act.

#### PART V—CIVIL JURISDICTION

**66. Civil jurisdiction in personal actions.** (Compare No. 6117, s. 37 (Vic.)). (1) A District Court shall have jurisdiction to hear and determine all personal actions where the amount, value or damage sought to be recovered is not more than—

- (a) In the case of an action arising out of any accident in which any vehicle is involved ten thousand dollars;
- (b) And in any other case six thousand dollars whether on balance of account or after an admitted set-off or otherwise.

(2) Except as hereinafter provided, a District Court shall not have jurisdiction to try any case in which the title to land, or the validity of a devise, bequest or limitation under a will or settlement, is in question.

If the title to land incidentally comes in question in an action, the Court shall have power to decide the claim which it is the immediate object of the action to enforce, but the judgment of the Court shall not be evidence of title between the parties or their privies in another action in that Court, or in any proceedings in another Court.

**67. In cases of partnership, intestacy and legacy.** A District Court shall have jurisdiction to try any action brought to recover a sum of not more than the amount specified in paragraph (b) of subsection (1) of section sixty-six of this Act which is the whole or part of the unliquidated balance of a partnership account, or the amount or part of the amount of the distributive share under an intestacy or of a legacy under a will.

**68. Equitable claims for debt or damages.** In any case in which a person has an equitable claim or demand against another person in respect of which the only relief sought is the recovery of a sum of money or of damages, whether liquidated or unliquidated, and the amount claimed is not more than the amount specified in paragraph (b) of subsection (1) of section sixty-six of this Act, the person seeking to enforce the claim or demand may sue for and recover it in a District Court.

**69. Court to be deemed to have power to grant specific performance and rectification.** For the purposes of the last preceding section and for the purpose of applying the doctrine of part performance where a defence under the "*Statute of Frauds and Limitations of 1867*" is relied on, a District Court shall be deemed to have jurisdiction to grant specific performance and rectification of a contract and all other powers and authorities of the Supreme Court in its equitable jurisdiction.



**70. Action by Crown in District Court.** Notwithstanding anything to the contrary where the amount or value of any debt, damages, duties, sums of money, goods or liabilities due, payable or belonging or from time to time to become due, payable or belonging to Her Majesty, or to which she may lawfully lay claim in the State of Queensland, does not exceed the amount specified in paragraph (b) of subsection (1) of section sixty-six of this Act (or in the case of an action arising out of an accident in which a motor vehicle is involved does not exceed the amount specified in paragraph (a) of subsection (1) of section sixty-six of this Act), the same may be sued for and recovered in the name of the Queen in a District Court in the same manner as in any action in that Court between subject and subject.

**71. Reference to Arbitration.** The Judge may in any action or matter, at any time before judgment, order the action or matter or any question arising thereon, with or without other matters within the jurisdiction of the Court in dispute between the parties, to be referred to arbitration, to such person or persons and in such manner and on such terms as he thinks reasonable.

**72. (1) Amendment of 31 Vic. No. 16.** Section seventy-four of the "*Distress Replevin and Ejectment Act of 1867*" is amended by omitting the words "one thousand five hundred pounds" and inserting in their stead the words "six thousand dollars".

**(2) Extension of jurisdiction in replevin.** The jurisdiction given to District Courts by the "*Distress Replevin and Ejectment Act of 1867*" in actions of replevin shall extend to all cases relating to distress for rent between landlord and tenant, in which the rent, for or in respect of which the distress is or might have been made, does not exceed the amount specified in paragraph (b) of subsection (1) of section sixty-six of this Act.

**73. Consent jurisdiction.** If both parties agree, by a memorandum signed by them or by their solicitors, that any specified District Court shall have jurisdiction to try any action which might be brought or any counter-claim which might be made in the Supreme Court, that District Court shall have jurisdiction to try the action or counter-claim, or both.

The memorandum shall state that the parties signing it know that the action or as the occasion shall require, the counter-claim, is not within the jurisdiction of the District Court without such consent, and shall be filed with the Registrar in the case of an action at the time when the plaint is entered and in the case of a counter-claim, at the time the defence and counter-claim is filed or at such later time as a Judge on application made in that behalf, may allow.

**74. (1) Splitting demands; Abandonment of excess.** A plaintiff shall not divide a cause of action for the purpose of bringing two or more actions in a District Court; but a plaintiff having a cause of action for more than the amount for which a plaint might be entered under this Act may abandon the excess (which abandonment shall be stated in the plaint), and thereupon the plaintiff may, on proving his case, recover to an amount not exceeding the limit specified by this Act and the judgment of the Court shall be in full discharge of all demands in respect of the cause of action, and entry of the judgment of the Court shall be made accordingly.

(2) **Splitting debt by giving bills.** If a defendant has given two or more bills of exchange, promissory notes, bonds or other securities, for a debt or sum originally exceeding the amount specified in paragraph (b) of subsection (1) of section sixty-six of this Act the plaintiff may sue separately upon each of the securities not exceeding such amount as forming a distinct cause of action.

#### *Trial by Jury*

**75. When a jury may be summoned.** Any party may require a jury to be summoned in any of the following cases:—

- (a) in any action or matter in which the amount claimed exceeds one thousand two hundred dollars;
- (b) in any action for the recovery of possession of land of which the value exceeds one thousand two hundred dollars;
- (c) in an action of replevin in which the amount of rent in respect of which the distress was or might have been made exceeds one thousand two hundred dollars;
- (d) in proceedings in interpleader in which the amount claimed, or the value of the goods in question, exceeds one thousand two hundred dollars,

unless the action or matter is one which if brought in the Supreme Court would be required to be heard and determined by a Judge without a jury.

#### *Evidence*

**76. Rules of evidence.** The rules of evidence observed in the Supreme Court shall be applicable to and observed upon the trial of questions of fact in a District Court.

#### *Removal of actions*

**77. Removal of action from Supreme Court to District Court.** When an action is brought in the Supreme Court which might have been brought in a District Court without the defendant's consent, any party may at any time apply to the Supreme Court or a Judge thereof for an order remitting the action to a District Court, and unless it is shown by any other party—

- (a) that unnecessary delay would be caused by a trial in a District Court; or
- (b) that, either by reason of the probable cost of trial in a District Court, or by reason of the questions of the law involved in the action, or because there is reason to believe that a fair trial cannot be had in a District Court, the case ought to be tried in the Supreme Court,

the Court or Judge may order accordingly.

Thereupon the Registrar of the Supreme Court shall transmit to the Registrar of the District Court to which the action is remitted a copy of the order, together with a copy of the writ and of the pleadings (if any).

And the Judge of the District Court shall appoint a day for the trial of the action, and notice of it shall be sent by the Registrar by post or otherwise to both parties or their solicitors, and after the trial the Registrar of the District Court shall certify the result to the Registrar of the Supreme Court, and judgment in accordance with the certificate may be signed in the Supreme Court.



The costs of the parties in respect of the proceedings subsequent to the order and up to judgment shall be allowed according to the scale prescribed in District Courts. The costs of any other proceedings shall be in the discretion of the Supreme Court or a Judge thereof.

**78. Removal of action to Magistrates Court.** When an action is brought in a District Court which might have been brought in a Magistrates Court without the defendant's consent, any party may at any time apply to a District Court or a Judge thereof for an order remitting the action to a Magistrates Court, and unless it is shown by any other party—

- (a) that unnecessary delay would be caused by a trial in a Magistrates Court; or
- (b) that, either by reason of the probable cost of trial in a Magistrates Court, or by reason of the questions of law involved in the action, or because there is reason to believe that a fair trial cannot be had in a Magistrates Court, the case ought to be tried in the District Court,

the Court or Judge may order accordingly.

Thereupon the Registrar of the District Court shall transmit to the Registrar of the Magistrates Court to which the action is remitted a copy of the plaint, summons, defence and other relevant documents (if any).

And the Registrar of the Magistrates Court shall appoint a day for the trial of the action, and notice of it shall be sent by the Registrar by post or otherwise to both parties or their solicitors, and after the trial the Registrar of the Magistrates Court shall certify the result to the Registrar of the District Court, and judgment in accordance with the certificate may be signed in the District Court.

The costs of the parties in respect of the proceedings subsequent to the order and up to judgment shall be allowed according to the scale prescribed in Magistrates Courts. The costs of any other proceedings shall be in the discretion of the District Court or a Judge thereof.

**79. Plaintiff's right to transfer action of contract or tort from Magistrates Court so as to increase his claim.** Where there is now or hereafter pending in a Magistrates Court an action founded on contract or tort wherein the plaintiff claims damages, the plaintiff may at any time apply to a District Court or a Judge thereof for an order to transfer the action to a District Court on the ground that there is reasonable ground for supposing the amount recoverable in respect of his claim to be in excess of the amount recoverable in a Magistrates Court.

If, on any such application the Judge is satisfied that there is reasonable ground as aforesaid, the Judge shall make an order that the action be transferred to a District Court.

**80. Transfer of certain actions of contract or tort from Magistrates Court at defendant's instance.** Where there is now or hereafter pending in a Magistrates Court any action founded on contract or tort, the defendant may make application to a District Court or a Judge thereof to transfer the action to a District Court.

The Judge shall not grant the application unless he is satisfied that some important question of law or fact is likely to arise and the order for transfer of the action shall be subject to the defendant giving security to be approved by the Registrar for the costs of the trial in a District Court.

**81. Procedure where proceedings beyond jurisdiction are commenced in Magistrates Court.** Where any proceedings are now or hereafter pending in a Magistrates Court in which a Magistrates Court has no jurisdiction, that Magistrates Court shall, unless it is given jurisdiction by an agreement made under the provisions of the Rules under "*The Magistrates Courts Acts, 1921 to 1964*," order that the proceedings (save proceedings which are not within the jurisdiction of a District Court) be transferred to a District Court:

Provided that where, on the application of any defendant, it appears to the Magistrates Court that the plaintiff or one of the plaintiffs knew or ought to have known that a Magistrates Court had no jurisdiction in the proceedings, the Magistrates Court may, if it thinks fit, instead of ordering that the proceedings be transferred as aforesaid, order that they be struck out.

**82. How provisions to be read.** The provisions of sections seventy-nine, eighty, and eighty-one of this Act shall be read subject to the provisions of sections eighty-three, eighty-four, and eighty-five of this Act.

**83. (1) Plaintiff's right to transfer action of contract or tort from District Court so as to increase his claim.** Where there is now or hereafter pending in a District Court an action founded on contract or tort wherein the plaintiff claims damages, the plaintiff may at any time apply to the Supreme Court or a Judge thereof for an order to transfer the action to the Supreme Court, on the ground that there is reasonable ground for supposing the amount recoverable in respect of his claim to be in excess of the amount recoverable in the action in a District Court.

If, on any such application, the Court or Judge is satisfied that there is reasonable ground as aforesaid, it or he shall make an order that the action be transferred to the Supreme Court.

**(2) Transfer of certain actions of contract or tort from District Court at Defendant's instance.** Where there is now or hereafter pending in a District Court any action founded on contract or tort, the defendant may make application to the Supreme Court or a Judge thereof to transfer the action to the Supreme Court.

The Court or Judge shall not grant the application unless it or he is satisfied some important question of law or fact is likely to arise and the order for transfer of the action shall be subject to the defendant giving security to be approved by the Registrar for the costs of the trial in the Supreme Court.

**84. Costs.** When an order is granted for the removal of an action or matter from a District Court, or for the issuing of a writ of certiorari for such removal, and provision is not made with respect to the costs of the proceedings in the District Court, the costs of the proceedings shall be costs in the action or matter.

**85. Procedure where proceedings beyond jurisdiction are commenced in District Court.** Where any proceedings are now or hereafter pending in a District Court in which a District Court has no jurisdiction, that Court shall, unless it is given jurisdiction by an agreement made under the provisions of section seventy-three of this Act, order that the proceedings be transferred to the Supreme Court:

Provided that where, on the application of any defendant, it appears to a District Court that the plaintiff or one of the plaintiffs knew or ought to have known that a District Court had no jurisdiction in the proceedings, a District Court may, if it thinks fit, instead of ordering that the proceedings be transferred as aforesaid, order that they be struck out.

**86. Jurisdiction as to counter-claims.** (1) Where, in any action now or hereafter pending in a District Court, any counter-claim or set-off and counter-claim which involves matter beyond the jurisdiction of a District Court has been filed by any defendant, any party to the action may, within fourteen days after the filing of the said counter-claim or set-off and counter-claim, apply to a Judge of the Supreme Court for an order that the whole proceedings, or the proceedings on the said counter-claim or set-off and counter-claim be transferred to the Supreme Court.

(2) On any such application the Judge of the Supreme Court may, as he thinks fit, order either—

- (a) that the whole proceedings be transferred to the Supreme Court; or
- (b) that the whole proceedings be heard and determined in a District Court; or
- (c) that the proceedings on the counter-claim or set-off and counter-claim be transferred to the Supreme 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 a District Court:

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

(3) Where the Supreme Court makes any order under the provisions of this section, the Registrar shall forward to the Registrar of the District Court a copy of the order so made.

(4) If no application is made under this section within the time prescribed, or if on such an application it is ordered that the whole proceedings be heard and determined in a District Court, the District Court shall have jurisdiction to hear and determine the whole proceedings, notwithstanding any enactment to the contrary.

**87. Application of Statutes of Limitations.** Any action, matter or proceeding which has been or may be—

- (a) remitted or transferred from the Supreme Court or another Court to a District Court; or
- (b) removed or remitted or transferred from a District Court to the Supreme Court or another Court,

shall be deemed, for the purposes of "*The Law Reform (Limitation of Actions) Act of 1956*," "*The Limitation Act of 1960*," "*The Limitation (Persons under Disabilities) Act of 1962*," or any other enactment prescribing a period of limitation within which an action, matter or proceeding may be brought, to have been brought in the Court to which it has been removed, remitted or transferred on the day the action, matter or proceeding was originally brought whether in the Supreme Court, a District Court or any other Court.

## PART VI—RECOVERY OF POSSESSION OF LAND

88. Possession of small tenements may be recovered by landlords when terms have expired or been determined. When the term or interest of the tenant of any land (which is not land to which Part III of "*The Landlord and Tenant Acts, 1948 to 1961*," applies) has expired, or is determined by notice to quit or by demand of possession, and the tenant or a person claiming under him actually occupies the land or a part of it, and neglects or refuses to give up possession, the landlord may bring an action to recover possession, either against the tenant, or against the person so neglecting or refusing, in the Court of the District in which the land is situate.

89. In plaint for recovery of possession plaintiff may claim for rent and mesne profits. In any such action against a tenant or other person as in the last preceding section mentioned the plaintiff may add a claim for rent or mesne profits, or both, down to the day appointed for the hearing, or to any preceding day named in the plaint, provided that the claim does not exceed the amount specified in paragraph (b) of subsection (1) of section sixty-six of this Act.

90. Possession of small tenements may be recovered by landlords for non-payment of rent. When one half-year's rent of any land (which is not land to which Part III of "*The Landlord and Tenant Acts, 1948 to 1961*," applies) of which the rent payable in respect of it does not exceed one thousand two hundred dollars by the year, is in arrear and the landlord has a right by law to re-enter for the non-payment of it, he may without formal demand or re-entry bring an action to recover possession in the Court of the District in which the land is situate.

91. Warrant to bailiff sufficient to justify entry on land. A warrant to a bailiff to give possession of land shall justify the bailiff named in the warrant in entering upon the land with such assistance as he thinks necessary, and in giving possession accordingly, but an entry under the authority of such a warrant shall not be made except between the hours of nine in the morning and four in the afternoon.

## PART VII—APPEALS

*Appeal from a District Court to the Supreme Court*

92. Appeal to the Supreme Court in certain cases. (1) Any party who is dissatisfied with the final judgment of a District Court, whether in its original or appellate jurisdiction,—

- (a) in an action or matter in which the sum sued for exceeds one thousand two hundred dollars;
- (b) in an action for the recovery of possession of land in respect of which the value or rent exceeds one thousand two hundred dollars by the year;
- (c) in an action of replevin in which the amount of rent in respect of which the distress was or might have been made exceeds one thousand two hundred dollars;
- (d) in proceedings in interpleader in which the amount claimed or the value of the goods in question exceeds one thousand two hundred dollars,

may appeal to the Full Court of the Supreme Court.

(2) Any party who is dissatisfied with a judgment of a District Court other than one hereinbefore mentioned in this section may by leave of the Supreme Court or a Judge thereof appeal to the Full Court of the Supreme Court.

Such leave may be granted upon such terms as to security for costs or otherwise as the Supreme Court or a Judge thereof may impose but such leave shall not be granted unless some important question of law or justice is involved.

(3) An appeal to the Supreme Court from a judgment of a District Court in its original jurisdiction sitting without a jury shall be by way of rehearing—

- (a) where the sum sued for exceeds three thousand dollars; and
- (b) where, in any other case whatsoever, the Full Court of the Supreme Court so orders.

**93. Jurisdiction of Supreme Court.** (1) On the hearing of an appeal the Supreme Court shall have power to draw inferences of fact from facts found by the Judge or jury, or from admitted facts or facts not disputed provided that where the appeal is not by way of rehearing such inferences shall not be inconsistent with the findings of the Judge or jury.

(2) On the hearing of any appeal the Supreme Court—

- (a) may order a new trial on such terms as the Court thinks just;
- (b) may order judgment to be entered for any party, or may make any other order, on such terms as the Supreme Court thinks proper, to ensure the determination on the merits of the real questions in controversy between the parties; and
- (c) may make such order with respect to the costs of the appeal as it thinks proper,

and every such order shall be final.

**94. Parties may agree not to appeal.** An appeal shall not lie from the decision of a Judge if, before the decision is pronounced, both parties agree, in writing signed by themselves or their solicitors or agents, that the decision of the Judge shall be final.

**95. (1) Appeals from Magistrates Courts.** An appeal shall not lie from a Magistrates Court to the Supreme Court.

(2) An appeal shall lie to a District Court in such cases and subject to the same conditions as such an appeal lay to the Supreme Court prior to the coming into operation of "*The District Courts Act of 1958*," and a District Court shall have the same powers, authorities and duties as the Supreme Court had in respect of any such appeal or application for leave to appeal.

(3) **Special case.** A Magistrates Court may not state in the form of a special case for the opinion of the Supreme Court any question of law arising in any case, but in lieu thereof may state in the form of a special case for the opinion of a District Court any such question of law, and the District Court shall have the same powers, authorities and duties as the Supreme Court had in respect of such a special case prior to the coming into force of "*The District Courts Act Amendment Act of 1960*."

(4) The jurisdiction given by this section shall be exercised by a District Court at Brisbane or if the place where the decision, appealed against, was given is within the Northern District or Central District within the meaning of "*The Supreme Court Act of 1895*," then by a District Court at Townsville or Rockhampton respectively.

96. **Other appeals.** (Compare 50 Vic. No. 17, ss. 222 to 232.) Where in any Act provision is made for an appeal to a Court of general or quarter sessions, or to a Judge of the Supreme Court on circuit, or an appeal is given from a decision of a justice and no other Court of appeal is designated, the appeal shall lie to the District Court of the District in which the decision appealed from was given:

Provided that a Judge may, with the consent of the parties, order that such appeal be heard and determined by the District Court of another District, whereupon the same shall be so heard and determined.

In any such case, the Judge may state in the form of a special case for the opinion of the Supreme Court any question of law arising upon the facts of the case, and his judgment shall be affirmed, amended or reversed, as the Supreme Court, upon the hearing of the special case, directs.

Sections two hundred and twenty-two to two hundred and thirty-two, both inclusive, of "*The Justices Acts, 1886 to 1965*," shall be read and construed as though the appeal provided for thereunder shall lie to a Judge of a District Court in lieu of to a Judge of the Supreme Court and the said sections shall apply with the necessary adaptations.

## PART VIII—ENFORCEMENT OF JUDGMENTS

### *Action on judgment*

97. **Action on judgment.** An action may be brought in the Supreme Court upon a judgment in a District Court, but the plaintiff shall not recover any costs in such an action up to judgment unless the defendant appears and unsuccessfully defends the action.

98. **Judgment to survive death.** A judgment obtained by a plaintiff but not satisfied previous to his death and also all causes of action shall survive to his personal representative who may issue out execution in his own name in the same way in which the plaintiff might have done.

99. **Warrant of execution.** A warrant of execution shall be deemed to be a writ of execution for the purposes of section ninety-one of "*The Real Property Act of 1861*," as amended by section twenty-one of "*The Real Property Acts Amendment Act of 1952*," section thirty-five of "*The Real Property Act of 1877*," as amended by section forty-three of "*The Real Property Acts Amendment Act of 1952*," and section twenty-eight of "*The Sale of Goods Act of 1896*."

100. **Entry of Magistrates Court Judgment.** (1) Whenever any judgment has been entered in a Magistrates Court the Registrar of that Court shall, upon application made by the judgment creditor or any person on his behalf, grant and issue to the person making the application a certificate of such judgment and of the amount remaining due and unpaid thereon and shall make a minute of the grant of such certificate in the judgment book and in the execution book.

(2) No such certificate shall be granted—

(a) before the expiration of any time during which execution could not be issued out of the Magistrates Court; or

(b) until after the return of any warrant of execution issued out of the Magistrates Court under that judgment against the goods and chattels of the judgment debtor.

(3) After the issue of any such certificate no further proceedings by way of execution on such judgment shall be had or taken in the Magistrates Court.

(4) Any such certificate may be filed in a District Court and thereupon without any previous process final judgment may be entered in that Court (from which judgment no appeal shall lie) for the sum mentioned in such certificate to be unpaid and all costs, fees and charges of obtaining the said certificate and entering such final judgment.

(5) Upon the entry of such judgment execution may be forthwith issued out of any District Court as for any other judgment of the said Court.

## PART IX—GENERAL PROVISIONS

### *Rules of Court*

**101. Power to make Rules of Court.** (Compare 12 Geo. V. No. 15, s. 11.) (1) The District Court Judges for the time being or a majority of them, with the approval of the Judges of the Supreme Court or two of them of whom the Chief Justice shall be one, and with the sanction of the Governor in Council by Order in Council, may, from time to time, make all such Rules of Court as may be deemed necessary or convenient for regulating the procedure and practice of District Courts and for the purpose of giving full effect to this Act or of any other Act conferring jurisdiction, power or authority on District Courts.

Rules of Court may be made, approved and sanctioned at any time after the passing of this Act.

Without restricting the generality of the foregoing, such Rules of Court may make provision for all or any of the following matters:—

- (a) the government and conduct of the Registrars, officers and servants of the Court;
- (b) the duties of such Registrars, officers and servants;
- (c) conferring on Registrars, either generally or in any particular case and under such circumstances and on such conditions as may be prescribed, the jurisdiction, powers and authorities wholly or in part of a Judge in Chambers, and providing for an appeal from such Registrars in the exercise of any such jurisdiction, power or authority;
- (d) the mode of keeping the books, entries and accounts to be kept by the Registrars;
- (e) the times for appearing to complaints and summonses, for filing and serving notices of defence, and the mode of such service;
- (f) the particulars to be given in any complaint or defence including set-off or counter-claim;
- (g) the fees to be allowed to barristers and solicitors, and the expenses to be paid to witnesses;
- (h) forms for all matters and proceedings in the Court;
- (i) the taking of the notes of the trial or hearing of any action or matter;
- (j) service and execution of process outside the State and subsequent procedure thereon.



(2) Rules of Court may be made under this Act modifying any provision in respect of practice or procedure of the Court contained in this Act.

#### *Fees and Fines*

**102. Amount of Court fees.** The Governor in Council may from time to time by Order in Council determine the fees to be paid in respect of civil proceedings in a District Court and the purposes for which and the documents in relation to which such fees shall be payable.

The fees shall be paid in the first instance by the party on whose behalf the proceeding is to be taken, and shall be paid before the proceeding is taken, and the fees payable for executing warrants of execution shall be paid into Court before or at the time of the issue of the process of execution.

A table of the fees for the time being shall be put up in some conspicuous place in the Court House and in the Registrar's office.

**103. Fees and fines to be paid to the Consolidated Revenue Fund.** All fees payable in respect of any proceedings to the Registrar, except such of them as the bailiff is entitled to receive and retain for his own use, and all fines imposed under this Act and received by the Registrar, shall be paid into the Consolidated Revenue Fund.

#### *Unclaimed Money in Court*

**104. Suitors' money unclaimed for fifteen years to be paid to the Consolidated Revenue Fund.** The Registrar of every District Court shall, in the month of March in each year, make out a list of all sums of money belonging to suitors in the Court which have been paid into Court and which have remained unclaimed for fifteen years before the first day of January then last past, specifying the names of the persons for whom or on whose account the same were so paid into Court.

A copy of the list shall be put up and remain during Court hours in some conspicuous part of the Court House, and at all times in the Registrar's office, and all sums of money which have been paid into Court to the use of any suitors, and which shall have remained unclaimed for the period of fifteen years on the first day of January next after the list has been put up as aforesaid shall be paid into Consolidated Revenue; but such payment into Consolidated Revenue shall not be a bar to any person to make at any time an application to the Judge of the Court for an order directing the transfer back of the whole or part of any moneys from Consolidated Revenue to the account from which they were so transferred and the Judge may make such an order accordingly on such terms as the Judge thinks fit.

The time during which the person entitled is an infant, or mentally ill, shall not be taken into account in estimating the number of years.

#### *Offences*

**105. Contempt of Court.** (1) If any person—

- (a) wilfully insults a Judge or a juror or a Registrar, bailiff, or other officer of a Court, during his sitting or attendance in Court, or in going to or returning from the Court; or
- (b) wilfully interrupts the proceedings of the Court or otherwise misbehaves himself in Court; or
- (c) unlawfully obstructs or assaults any person in attendance in Court; or



(d) without lawful excuse disobeys any lawful order or direction of the Court at the hearing of any proceeding,

he shall be guilty of an offence and may be excluded from the room or other place in which the Court is sitting by order of the Court, and may, whether he is so excluded or not, be dealt with as provided hereinafter by this section.

(2) A bailiff or other officer may, with or without the assistance of any other persons, by order of the Court, take an offender against paragraph (a), (b) or (c) of subsection (1) of this section into custody and detain him until the rising of the Court.

(3) If any person shall do any other act or thing which is a contempt of a District Court he shall be guilty of an offence under this section.

(4) The Court may order an offender under this section, whether he is excluded from the room or place in which the Court is sitting or not or whether he is taken into custody or not, to be committed to prison for any period not exceeding three months, or may impose on the offender a fine not exceeding three hundred dollars, and in the latter event may also order that in default of payment the offender shall be committed to prison for any period not exceeding three months unless the fine is sooner paid.

(5) In imprisoning or fining an offender under subsection (4) of this section, there shall be no need to take any evidence on oath or issue any summons, but at any time before the rising of the Court, he shall be called upon to show cause why he should not be punished.

**106. Where party to action under disability.** In any action or matter in a District Court in which money or damages is or are claimed by or on behalf of an infant or mentally ill person suing either alone or in conjunction with other parties, a District Court Judge shall have the same powers as a Judge of the Supreme Court has under section fifty-one of "*The Public Curator Acts, 1915 to 1957*," and every settlement, compromise, or acceptance of money paid into Court sanctioned by a District Court Judge in pursuance of this section shall be binding upon the infant or mentally ill person by or on whose behalf the claim was made.

**107. Executors.** An executor or administrator may sue and be sued in a District Court in the same manner in which a person may sue or be sued in his own right, and in any such case judgment may be given and execution issued against the same persons against whom, and in the same manner in which, judgment would be given or execution issued in the Supreme Court.

**108. Publication of Proclamations and Orders in Council and Rules of Court.** (1) Every Proclamation, Order in Council and Rule of Court made or purporting to be made under this Act shall—

(a) be published in the *Gazette*;

(b) upon its publication in the *Gazette*, be judicially noticed and such publication shall be conclusive evidence of the matters contained therein;

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- (c) take effect from the date of such publication unless a later date is specified therein for its commencement when in such event it shall take effect from that later date; and
  - (d) be laid before the Legislative Assembly within fourteen sitting days after such publication, if the Legislative Assembly is in session, and if not, then within fourteen sitting days after the commencement of the next session.

(2) If the Legislative Assembly passes a resolution of which notice has been given at any time within fourteen sitting days after any such Order in Council or Rule of Court has been laid before it disallowing the same or part thereof, that Order in Council, Rule of Court or part thereof shall thereupon cease to have any effect, but without prejudice to the validity of anything done in the meantime or to the making of a further Order in Council or Rule of Court.