

12 GEO. V. No. 15, 1921. *Supreme Court Act.*

An Act to make better provision for the Trial of Civil and Criminal Causes.

12 GEO. V.
No. 15.
THE
SUPREME
COURT ACT
OF 1921.

[ASSENTED TO 5TH NOVEMBER, 1921.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows :—

1. (1.) This Act may be cited as "*The Supreme Court Act of 1921*," and shall be read as one with *"*The Supreme Court Acts, 1861 to 1903*," and †"*The Judicature Act*," which last-mentioned Act is herein referred to as the Principal Act.

Short title, construction, and commencement of Act.

(2.) This Act shall come into operation on a day to be fixed by the Governor in Council by proclamation published in the *Gazette*.

2. In this Act, unless the context otherwise indicates, the following terms have the meanings respectively set against them, that is to say :—

Interpretation.

"Judge"—A Judge of the Supreme Court ;

"Prescribed"—Prescribed by this Act ;

"This Act"—This Act and all Orders in Council and Rules of Court made thereunder ;

And generally the terms used have the meanings respectively assigned to them by the Principal Act.

Abolition of District Courts.

3. (1.) Save as by this Act is expressly provided, †"*The District Courts Act, 1891*," and §"*The District Courts Act, 1897*," are repealed. The said Acts are hereinafter referred to as the "repealed Acts."

Repeal of District Courts Acts.

Such repeal shall not affect or invalidate any acts or things done or proceedings taken under the authority of the repealed Acts.

* 25 Vic. No. 13 and amending Acts, *supra*, pages 3429 *et seq.*

† 40 Vic. No. 6 and 64 Vic. No. 6, *supra*, pages 2401 *et seq.*

‡ 55 Vic. No. 33, *supra*, page 575.

§ 61 Vic. No. 23, *supra*, page 613.

Pending
actions.

(2.) All proceedings, civil and criminal, pending in a District Court at the commencement of this Act shall be deemed to be proceedings, civil and criminal respectively, under and for the purposes of this Act, and as such may as far as practicable be continued and determined in accordance with the provisions of this Act and subject to this Act according to the provisions of the repealed Acts, which shall for that purpose be deemed to continue in force notwithstanding such repeal.

References
to District
Court in
other Acts.

(3.) Where by or in or pursuant to the repealed Acts or any other Act any jurisdiction, power, or authority is or may be conferred or any duty is or may be imposed on a District Court or a Judge of District Courts, or on any registrar or other officer of a District Court, or any reference is made to any such Court, Judge, registrar, or officer, such Act shall be read and construed as if the Supreme Court or a Judge or registrar or other officer of the Supreme Court were respectively referred to therein.

Appeal to
District
Court, &c.

(4.) Where in the repealed Acts or in any other Act provision is made for an appeal to a District Court or 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 of the peace and no other Court of appeal from such decision is specified, the appeal shall lie to the Supreme Court or a Judge thereof.

Such Judge may, if he thinks fit, refer any question of law arising on such appeal to the Full Court.

Judges.

Commission
to President
of Court of
Industrial
Arbitration.

4. (1.) The commission issued to the President of the Court of Industrial Arbitration appointing him to be a Judge of the Supreme Court shall for all purposes be and be deemed to have always been permanent as from the date thereof, and he shall by virtue of such commission have and be deemed to have always had the same tenure of office as Judge of the Supreme Court as if he had been appointed under section three of **"The Supreme Court Acts Amendment Act of 1903"* to fill a vacancy in the number of Judges of the Supreme Court, and so that his tenure of office as such Judge shall not be contingent upon or limited to the period of his holding the office of President or Judge of the Court of Industrial Arbitration.

* 3 Edw. VII. No. 9, *supra*, page 3459.

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(2.) Whenever the President or any Judge of the Court of Industrial Arbitration is hereafter appointed to be a Judge of the Supreme Court in pursuance of section six of **"The Industrial Arbitration Act of 1916,"* his tenure of office as such Judge shall (unless the Governor in Council directs as next hereinafter provided) be limited to the period of his holding the office of President or Judge of the Court of Industrial Arbitration ; but, if then or thereafter at any time the Governor in Council so directs by a commission, he shall have the same tenure of office as a Judge of the Supreme Court, and in such case his tenure of office as such Judge shall not be contingent upon or limited to the period of his holding the office of President or Judge of the Court of Industrial Arbitration :

Future appointments of Judges of Court of Industrial Arbitration to Supreme Court.

Provided nevertheless that the President or a Judge of the Court of Industrial Arbitration shall not after the commencement of this Act be appointed to be a Judge of the Supreme Court under subsection six of section six of **"The Industrial Arbitration Act of 1916"* and this subsection, except to fill a vacancy in the number of Judges of the Supreme Court as provided by subsection six of this section.

(3.) Provided always that the President or any Judge of the Court of Industrial Arbitration, whether appointed or deemed to have been appointed by this Act or before or at or after the commencement of this Act to be a Judge of the Supreme Court, shall not (without prejudice, however, to the provisions of subsection five of this section) be entitled to any pension in respect of such office of Judge of the Supreme Court.

No pension.

(4.) The Governor in Council may, from time to time and whenever he thinks fit, require any one or more of the permanent Judges of the Supreme Court to act as a Judge or Judges of the Court of Industrial Arbitration (including in the event of a vacancy the President thereof) for such period as the Governor in Council thinks fit ; and every Judge of the Supreme Court so required to act as a Judge of the Court of Industrial Arbitration shall so act in that capacity and jurisdiction, and whilst so acting shall have and exercise all the jurisdiction, authority, and powers of a Judge of the Court of Industrial Arbitration (including the sitting as a member of the Full Bench of that Court) in addition to his jurisdiction,

Who may be required to act as Judge of Court of Industrial Arbitration.

authority; and powers as a Judge of the Supreme Court. For the purposes of this subsection the expression " Judge of the Supreme Court " includes the Chief Justice.

Nothing in any other Act contained shall be construed to affect or limit the operation of this subsection.

Existing Judges of District Courts.

(5.) Every person who at the commencement of this Act is a Judge of District Courts shall cease to be a Judge of District Courts, and, notwithstanding the provisions of this Act or of any other Act limiting the number of Judges of the Supreme Court, shall be a Judge of the Supreme Court, and, subject to this subsection, shall have the same tenure of office, jurisdiction, powers, authorities, privileges, and immunities as any other Judge of the Supreme Court; and a fresh commission shall issue to him accordingly :

Provided that every such Judge of District Courts who has, as a Judge of District Courts and as a Judge of the Supreme Court, completed fifteen years of service, or who has attained the age of seventy years, shall be entitled, on his retirement from office as a Judge of the Supreme Court, to a pension of five hundred pounds per annum.

Appoint-ments to vacancies when number reduced below seven.

(6.) It shall be lawful for the Governor in Council, by commission in His Majesty's name, to appoint a duly qualified person to fill any vacancy in the number of Judges. But no such vacancy shall be deemed to have arisen and no such appointment shall be made until the number of Judges has been reduced below seven, in which event such number of appointments may be made as will bring the total number of Judges to seven but not more.

Salary of Chief Justice.

(7.) On and from the next appointment of a Chief Justice of Queensland, the salary of the Chief Justice shall be at the rate of two thousand two hundred and fifty pounds per annum.

Forthwith upon such appointment **" The Chief Justice's Salary Act of 1901 "* shall be repealed.

Constitution of Full Court, &c.

5. Unless in any particular case the Governor in Council on the recommendation of the Chief Justice otherwise directs by Order in Council published in the *Gazette*, not more than three Judges shall sit in the Full Court or in the Court of Criminal Appeal.

* 1 Edw VII. No. 2, *supra*, page 3459.

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The Judges who shall from time to time constitute the Full Court and the Court of Criminal Appeal respectively shall be selected in that behalf by the Chief Justice.

The Full Court and the Court of Criminal Appeal shall continue to be held in Brisbane.

Districts, &c.

6. (1.) For the more convenient administration of justice the Governor in Council may from time to time by Order in Council published in the *Gazette*—

Constitution
of districts,
&c.

- (i.) Constitute Supreme Court districts, each of which shall consist of a petty sessions district or two or more contiguous petty sessions districts, and order that sittings of the Supreme Court presided over by a Judge shall be held for the trial of criminal causes and the trial and hearing of civil causes and matters at such time or times, on such date or dates, and at such place within each such district as are from time to time prescribed ;
- (ii.) Constitute at each such place for such district a Supreme Court registry with a proper court seal or stamp, and appoint a registrar and deputy sheriff and such and so many other officers as are necessary ;
- (iii.) Make such changes in the boundaries of any district or in the place at which sittings are to be held and the registry is to be situated as he thinks fit, and give such directions as to the transfer of records and the transfer and continuance of pending causes and matters as are necessary in consequence of any such change.

(2.) Unless or until otherwise prescribed, all existing districts and District Court registries constituted under and for the purposes of the repealed Acts, and all registrars, bailiffs, and other officers appointed under those Acts, shall be deemed to have been constituted to be districts and registries and appointed to be officers (in their several offices) respectively for all purposes under this Act, and shall continue subject to this Act :

Existing
districts,
registries,
&c.

Provided that where a Supreme Court registry and District Court registry exist in the same city or town

such District Court registry shall be merged in the Supreme Court registry, which shall also be a registry for the purposes of this Act.

District registrars.

(3.) Registrars appointed to act in and for a district shall, in relation to proceedings in their respective registries, be registrars of the Supreme Court, and shall have all the powers, jurisdictions, and authorities of such registrars.

District sittings are Circuit Courts.

7. The sittings of the Supreme Court held in a district under this Act shall be a Circuit Court, and for that purpose the provisions of sections thirty, thirty-one, and thirty-two of the **Supreme Court Act of 1867* shall be applicable, except as regards the dates for holding such Courts:

The Northern Judge and Central Judge shall respectively reside in the Northern District and Central District.

Subject to the next succeeding provision, the Northern Judge and Central Judge shall also act as Judge at all Circuit Courts in the Northern District and Central District, respectively. As and when directed by the Chief Justice in cases where in his opinion such direction becomes necessary, every Judge of the Supreme Court shall act as a Judge in the Full Court or Court of Criminal Appeal or at any sittings of the Supreme Court (including any Circuit Court) whether in the Southern, Central, or Northern District.

Civil Causes and Matters.

Civil jurisdiction.

8. (1.) Subject to this Act, every civil cause or matter commenced in the Supreme Court shall be commenced in the prescribed registry, and all applications and other proceedings therein shall be made and carried on in such registry accordingly; such cause or matter shall be tried or heard in the district for which such registry has been constituted by or before a Judge either alone or sitting with a jury:

Provided that—

Removal to another registry.

(a) Any party may apply to a Judge or registrar to have a cause or matter removed into another registry; and if it is made to appear

* 31 Vic. No. 23, *supra*, page 3430.

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to such Judge or registrar that such cause or matter could be tried or heard more expeditiously, cheaply, conveniently, or advantageously in the district for which such other registry is constituted, such Judge or registrar may remove the same to such other registry, and thereupon the proceedings shall be continued in such other registry and the cause or matter shall be tried or heard in such district.

- (b) In any such case the registrar of the registry in which the cause or matter was commenced shall transmit to the proper registrar a copy of the order, together with a copy of the writ of summons and of the pleadings (if any), and other documents as prescribed. Transmission of writ, &c.
- (c) Any cause or matter so removed, and all subsequent proceedings therein, shall be tried and taken as if the cause or matter had originally been commenced in the registry to which it has been so removed. Proceedings on removal.

The Judge shall appoint a day for the trial or hearing, and notice of it shall be sent by the registrar, by post or otherwise, to the parties or their solicitors.

Where a jury is requested for the trial of the cause, the Judge may direct the summoning of such jury for the day appointed for the trial, and such jury shall be summoned and shall attend accordingly.

(2.) The provisions of this section shall, as far as practicable, apply to causes and matters pending in the Supreme Court at the date of the commencement of this Act. Actions pending in Supreme Court.

9. Subject to this Act—

- (i.) Every writ of summons issued out of a registry shall be endorsed with or have annexed thereto a short statement of claim, and every appearance to such writ shall shortly state the defence, and unless by order of a Judge no further pleadings shall be delivered; Writs and appearance to be endorsed with statement of claim and defence.
- (ii.) Upon the entry of an appearance to a writ of summons, a summons for directions shall be issued by the registrar, bringing the parties before the registrar, who may give all such Summons for directions to be issued by registrar.

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directions upon such summons as he thinks fit, and for such purposes such registrar shall have all the powers and authorities of a Judge in Chambers, or such registrar may refer the summons to a Judge.

Counsel.

Admission of
certain
solicitors as
barristers.

10. Every solicitor of the Supreme Court of Queensland of good repute in his profession, having been five years in actual practice in Queensland, shall upon motion in open court at his own request be called and admitted as a barrister-at-law without being required to pass any examination.

Rules of Court.

Rules of
Court.

11. (1.) The Governor in Council, with the concurrence of any two or more of the Judges, may from time to time, by Order in Council published in the *Gazette*, make all such Rules of Court as may be deemed necessary or convenient for regulating the procedure and practice of the Supreme Court for the purpose of giving full effect to the Principal Act and this Act and any other Act conferring jurisdiction power or authority on the Court, including its civil criminal admiralty ecclesiastical matrimonial insolvency and appellate jurisdiction, and may from time to time revoke, alter, add to, or re-enact any Rules previously made.

(2.) With the object of simplifying procedure and saving expense and expediting business, but without in any way limiting the generality of the foregoing provisions, such Rules of Court may make provision for all or any of the following matters :—

- (i.) The effectual execution of the Principal Act and this Act and the Acts aforesaid, and of the intention and objects thereof ;
- (ii.) The doing of anything prescribed or authorised to be done by the Principal Act or this Act or any of the Acts aforesaid ;
- (iii.) The government and conduct of the registrars, officers, and servants of the Court ; the duties of such registrars, officers, and servants ; 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,

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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 ;

- (iv.) Authorising and providing for the service within and beyond the jurisdiction of the Court of any writ, summons, or other proceeding in any cause or matter within the cognizance of the Court, or of notice of any proceeding or of notice of any judgment or order pronounced or made in any such cause or matter ;
- (v.) Providing for the admission of barristers, solicitors, and conveyancers on such terms and conditions as may be prescribed and prescribing any qualification or condition precedent notwithstanding the provisions of any Act, rule, or practice ;
- (vi.) Prescribing and regulating the costs to be allowed by the Court and paid to barristers and solicitors in any cause or matter; and empowering the Court in giving judgment or making any order to fix a sum or sums as the costs in full of all costs of a cause or matter, or any proceeding therein ;

Prescribing either generally or with respect to certain classes of causes or matters a scale of costs proportionate to the amount involved in the cause or matter;

For the taxation of solicitors' bills of costs as between party and party or as between attorney and client, specifying the several items to be allowed and the amount that is to be allowed on taxation for each item;
- (vii.) Fixing the amount of fees and percentages to be taken in respect of all causes and matters pending in the Court to and by the officers and servants thereof ;
- (viii.) Regulating the forms of process and mode of pleading in the Court, and the practice of the Court in all its various departments ; dispensing with pleadings ;

- (ix.) Empowering the Court to direct—
- (a) That any cause or matter in the Supreme Court which a Magistrates Court has jurisdiction to try shall be transferred to and heard and determined in such Magistrates Court ;
 - (b) That any action or proceeding commenced in a Magistrates Court (not being an action or proceeding which prior to the commencement of this Act might have been brought in a Small Debts Court) shall be transferred to and heard and determined in the Supreme Court ;
 - (c) As to the costs in or in connection with any cause, matter, action, or proceeding so transferred ; and generally as to the procedure for or in respect of any such direction ;
- (x.) Issuing writs of inquiry to have any issues of fact tried in any Magistrates Court or by a Judge or registrar at any place in the State ; making provision for all matters incident to or consequent upon such trial of issues ;
- (xi.) Empowering the Court or any Judge, either generally or in any particular cases, to order that any cause or matter, with or without any other matter, within the jurisdiction of the Court shall be referred to arbitration in such manner and on such terms as may be prescribed, and conferring power and authority on the arbitrator, arbitrators, or umpire to make an award, and making provision for all matters incident to or consequent upon such order ; enforcing such awards ;
- (xii.) Dispensing with technical rules of evidence for proving any matter which is not *bonâ fide* in dispute, also with such rules as might cause expense and delay arising from commissions to take evidence and otherwise ; dispensing with the proof of—
- Handwriting,
 - Documents,
 - Identity of parties or parcels,
 - Authority ;

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- (xiii.) Requiring particulars of the cause of action, of the grounds of defence, or of any other facts or circumstances connected with the cause or matter to be served within a specified time by any party ;
- (xiv.) Mutual discoveries and inspections ;
- (xv.) Requiring either party to make admissions with respect to any question of fact involved in the cause or matter ;
- (xvi.) Settling the issues for trial ;
- (xvii.) Expediting the trial ;
- (xviii.) Directing that notes of the evidence at the trial or hearing of the cause or matter shall be taken in shorthand ;
- (xix.) For the carrying into full effect of **“ The Supreme Court Funds Act of 1895 ”* ; regulating the deposit, payment, delivery, and transfer in, into, or out of Court of money and securities belonging to suitors or which are otherwise capable of being deposited in or paid or transferred into Court or in or into the bank which transacts the banking business of the Treasurer under the said Act with the privity of the Treasurer, or which are under the custody of the Court, and the evidence of such deposit, payment, delivery, or transfer ; and the investment of and other dealing with money and securities in Court in pursuance of the orders of the Court, and the execution of the orders of the Court and the powers and duties of the Treasurer with reference to such money and securities.

(3.) Where any provisions in respect of the practice or procedure of the Court are contained in any Act of Parliament Rules of Court may be made for modifying such provisions to any extent that may be deemed necessary.

Additional power as to regulation of practice and procedure by Rules of Court.
40 Vic. No. 6, s. 21.

(4.) Every Order in Council and Rule of Court purporting to be made in pursuance of this Act shall be laid before both Houses of Parliament within forty days after the making thereof if Parliament is then sitting, or, if Parliament is not then sitting, within forty days after the commencement of the next ensuing session ; and if either House of Parliament, by a resolution passed within

Orders and Rules to be laid before Parliament.

* 59 Vic. No 7, *supra*, page 3454.

one month after such Order or Rule has been so laid before it, resolves that the whole or any part of such Order or Rule ought not to continue in force, the same shall, after the date of such resolution, cease to be of any force, without prejudice nevertheless to the making of any other Order or Rule in its place, or to anything done in pursuance of such Order or Rule before the date of such resolution; but, subject as aforesaid, every such Order or Rule purporting to be made in pursuance of this Act shall, after the expiration of the period aforesaid, be deemed to have been duly made, and to have been within the powers of this Act.

(5.) The foregoing provisions of this section shall come into operation immediately on the passing of this Act.

Existing
Rules of
Court.

(6.) Until repealed or superseded by Rules of Court made by virtue of the provisions herein contained—

(i.) All the Rules and Orders for regulating the procedure, pleading, and practice and other matters in force at the commencement of this Act shall continue and be in force in the Court, except so far as any of them are inconsistent with or repealed by any of the provisions of this Act; and

(ii.) As regards actions and proceedings of the kind mentioned in sections fifty-six to fifty-nine, inclusive, of the repealed Acts, all the provisions of the repealed Acts and Rules thereunder, whether with respect to jurisdiction as to locality, or procedure, or scale of costs or otherwise, in force at the commencement of this Act, shall *mutatis mutandis* apply to all such actions and proceedings commenced in the Supreme Court thereafter, except so far as any of them are inconsistent with or repealed by any of the provisions of this Act.

Conse-
quential
amend-
ments.

12. (1.) The following amendments are made in the **Distress Replevin and Ejectment Act of 1867*":—

In section seventy-four, the words "district courts and" and the words "in the case of a district court exceed fifty pounds or in the case of a small debts court or court of petty sessions," also the words "district courts or," are repealed.

* 31 Vic. No. 16, *supra*, page 1699.

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In section seventy-five, the words "district courts" are repealed.

In section seventy-six, the words "district courts or" are repealed.

In section seventy-seven, the words "district court and" are repealed.

(2.) (i.) Sections sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, and twenty-three of the Principal Act are repealed.

(ii.) Section three of the Act to amend **"The Judicature Act"* passed in the year one thousand nine hundred is repealed.

(iii.) Sections fifty-two, fifty-three, fifty-four, fifty-five, and sixty-three of †*"The Supreme Court Act of 1867"* are repealed.

(iv.) Sections fourteen, fifteen, and sixteen of ‡*"The Supreme Court Act of 1895"* are repealed.

(v.) Sections twenty-one and twenty-two of §*"The Supreme Court Funds Act of 1895"* are repealed.

(vi.) ||*"The Supreme Court Act of 1899"* shall be repealed as from a date to be fixed by the Governor in Council by proclamation in the *Gazette*.

13. Nothing in this Act contained shall be construed to limit or affect— Saving provisions.

- (a) The granting of probates or letters of administration or orders to administer in the registries at Brisbane, Rockhampton, and Townsville, respectively ;
- (b) The constitution or jurisdiction of the Elections Tribunal ;
- (c) The constitution or jurisdiction of the Court of Industrial Arbitration.

* 64 Vic. No. 6, *supra*, page 2410.

† 31 Vic. No. 23, *supra*, page 3430.

‡ 59 Vic. No. 21, *supra*, page 3454.

§ 59 Vic. No. 7, *supra*, page 3460.

|| 63 Vic. No. 5, *supra*, page 3458.